

COPYRIGHT – WHAT DO YOU NEED TO KNOW?

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- Introduction to Copyright
 - What does copyright cover?
 - Principle of territoriality
- Rights conferred by copyright
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WHAT IS COPYRIGHT?

General Principles

WHAT IS COPYRIGHT?

- Copyright protects the original expression of an idea in tangible forms
 - Novels
 - Musical works and sound recordings
 - Cinematographic films
 - Radio broadcasts
 - Computer programmes
 - Paintings
 - Sculptures
 - Performances
 - Television broadcast, cable programmes

COPYRIGHT DOES NOT PROTECT ...

- Ideas or concepts
- Facts
- Discoveries
- Procedures and methods
- Titles, names, short phrases, slogans

COPYRIGHT PROTECTION

- Copyright protection arises automatically, and does not require registration.
- The duration of copyright differs depending on the nature of the copyright:

TYPES OF COPYRIGHT WORK	DURATION OF PROTECTION
Literary (including compilations and computer programmes), dramatic, musical and artistic works	Life of the author + 70 years from the end of the year of author's death
Published editions of literary, dramatic, musical and artistic works	25 years from the end of the year of first publication
Sound recordings, films and performances	70 years from the end of the year of first publication
Broadcasts (television and sound) and cable programmes	50 years from the end of the year of making the broadcast or cable programme

PRINCIPLE OF TERRITORIALITY

- No international copyright as copyright protection is territorial in nature.
- However, works originating from countries who are signatories to the Berne Convention will be automatically protected under Singapore's Copyright law, and vice versa.

PRINCIPLE OF TERRITORIALITY

- Copyright laws vary from country to country.
 - Copyright registration

Singapore	USA
No system of copyright registration	Voluntary system of copyright registration Copyright for works of US origin must be registered before commencing an action for copyright infringement in US

- Copyright in works created by employees

Singapore	Civil Law Countries (e.g. UAE)
Belongs to employer	Belongs to employee unless the copyright is assigned to the employer

- Copyright in commissioned works

Singapore	USA, UK, Canada, Japan
Belongs to person who commissioned the work	Belongs to the creator of the work (e.g. the photographer)

RIGHTS CONFERRED BY COPYRIGHT

- Author VS Owner

AUTHOR	OWNER
<ul style="list-style-type: none">• Creator of the work (e.g. photographer who took a picture, artist who painted a painting, author who wrote a book, musician who recorded a song)• Cannot be a corporate entity	<ul style="list-style-type: none">• Person or entity with the legal rights to publish, modify and republish the work

- Under Singapore's Copyright Act, the author is usually the owner of the copyright unless:
 - the author transfers his ownership in the copyright to another party
 - Owner: The person whom the copyright is transferred to
 - the work is created by an employed journalist
 - Owner: The newspaper, magazine or periodical that employs the journalist
 - the photographs, portraits and engravings are commissioned
 - Owner: The person who commissioned the work
 - the work is done in the course of employment
 - Owner: The employer

RIGHTS CONFERRED BY COPYRIGHT

- meaning of “work done in the course of employment”

- Scenarios:
 - NUS employed you to write a computer programme for cataloguing library materials. You spend your morning working on the computer programme for cataloguing library materials. In the afternoon, you write a new computer game using NUS' computer programmes and other utilities.

RIGHTS CONFERRED BY COPYRIGHT

- The type of exclusive rights differs depending on the nature of the copyright:

TYPES OF COPYRIGHT WORK	SPECIFIC RIGHTS
Literary, dramatic, or musical work	<ul style="list-style-type: none"> • reproduce work in material form • publish the work, if the work is unpublished • perform the work in public • Communicate the work to the public • Making an adaptation of the work • reproduce, publish, perform or communicate an adapted work.
Artistic works	<ul style="list-style-type: none"> • reproduce work in material form • publish the work, if the work is unpublished • Communicate the work to the public
Computer programme	<ul style="list-style-type: none"> • Right to enter into a commercial rental agreement in respect of the computer programme (excludes storage devices)
Published editions of literary, dramatic, musical and artistic works	<ul style="list-style-type: none"> • Exclusive right to make a reproduction of the work

RIGHTS CONFERRED BY COPYRIGHT

- The type of exclusive rights differs depending on the nature of the copyright:

TYPES OF COPYRIGHT WORK	SPECIFIC RIGHTS
Sound recordings	<ul style="list-style-type: none">• make a copy of the sound recordings• enter into a commercial rental agreement in respect of the sound recording• publish the sound recording if it is unpublished• making the sound recording available to the public by digital audio transmission
Films	<ul style="list-style-type: none">• make a copy of the film• show the film in public• Communicate the film to the public
Television broadcasts, sound broadcasts and cable programmes	<ul style="list-style-type: none">• make a film copy or sound recording of the broadcast• show, re-broadcast or communicate the broadcast to the public

HOW DO I PROTECT MY COPYRIGHT?

- Keep good records of the creation and modification of your work
- If you are not the only person involved in the work, ensure that you have come to an agreement with the other people involved as to ownership
- Mark your work with a copyright notice
- Consider registration in countries where registration is possible

WHAT CONSTITUTES INFRINGEMENT?

- Copyright infringement is the use of copyrighted works without permission
 - Examples:
 - Making unauthorised copies of copyrighted publications and assembling them as “course packs” for sale
 - Importing DVD players in boxes featuring copyrighted images
 - Reproducing a map image of an office location on a corporate website
 - Unauthorised use of pre-wedding photographs commissioned by the wedded couple to promote a bridal boutique

ENFORCEMENT – OVERVIEW

- There are 3 avenues of enforcement:
 - Civil Litigation
 - Criminal Prosecution
 - Customs Seizure

ENFORCEMENT – CIVIL LITIGATION

- The copyright owner is entitled to commence an action for copyright infringement.
- An action for copyright infringement cannot be brought after the expiration of 6 years from the time infringement took place.
- The owner of the copyright may seek:
 - an injunction;
 - damages;
 - account of profits;
 - statutory damages;
 - an order for delivery up of infringing articles; or
 - disposal of infringing articles.

ENFORCEMENT – CRIMINAL PROSECUTION

- It is a criminal offence for a person to:
 - manufacture for sale, sell, possess or import infringing copies for commercial purposes:
 - Penalty: Fine not exceeding S\$10,000 per infringing copy or S\$100,000 (whichever lower) and/or imprisonment of up to 5 years
 - Distribute infringing copies for commercial purposes
 - Penalty: Fine not exceeding S\$50,000 and/or imprisonment of up to 3 years
 - make or possess an article specifically designed for making infringing copies (e.g. machinery for manufacturing infringing copies)
 - Penalty: Fine not exceeding S\$20,000 per article and/or imprisonment of up to 2 years
 - Performing a literary dramatic or musical work or broadcasting a film in public for private profit:
 - Penalty: Fine not exceeding S\$20,000 and/or imprisonment of up to 2 years.
 - wilful infringement of copyright to obtain a commercial advantage/significant extent
 - Penalty for 1st Offence: Fine not exceeding S\$20,000 and/or imprisonment of up to 6 months
 - Penalty for 2nd Offence: Fine not exceeding S\$50,000 and/or imprisonment of up to 3 years

PLAGIARISM VS COPYRIGHT INFRINGEMENT

PLAGIARISM	COPYRIGHT INFRINGEMENT
<ul style="list-style-type: none">• Ethical concept• Occurs when a person uses another person's words or ideas without crediting the original author	<ul style="list-style-type: none">• Legal concept• Occurs when a person infringes on the exclusive rights conferred on the owner of the copyright

- Where it is plagiarism and not copyright infringement
 - Representing yourself as the owner of a work in the public domain
- Where it is both plagiarism and copyright infringement
 - Reproducing a copyrighted work and representing yourself as the owner of the copyrighted work

DEFENCES TO COPYRIGHT INFRINGEMENT

FAIR DEALING

- Fair dealing allows for copyrighted material to be copied under specific circumstances prescribed under Singapore's Copyright Act.
- Whether something amounts to fair dealing depends on the following factors:
 - purpose and character of the dealing (e.g. dealing of a commercial nature or for non-profit educational purposes);
 - nature of the work or adaptation;
 - amount copied, relative to the entire work or adaptation;
 - effect on the potential market and value for the work or adaptation; and
 - possibility of obtaining the work or adaptation within a reasonable time at an ordinary commercial price

FAIR DEALING

- What amounts to fair dealing?
 - **Fair dealing for the purpose of research and study**
 - **Fair dealing for the purpose of criticism or review**
 - Fair dealing for the purpose of reporting current events
 - Fair dealing for the purposes of judicial proceedings or professional advice

FAIR DEALING FOR THE PURPOSE OF RESEARCH & STUDY

- Includes copying for the purposes of research or study:
 - a whole or a part of the article in a periodical publication; or
 - a reasonable portion of the work or adaptation.
 - Reasonable portion: 10% of the number of pages, words or bytes or one chapter
- What amounts to “fair dealing for the purpose of research and study”?
 - students photocopying a “reasonable portion” of a book for use in their course of study
 - citing a “reasonable portion” of a book in your research paper

FAIR DEALING FOR THE PURPOSE OF CRITICISM OR REVIEW

- What is “criticism” or “review”?
 - Broad definition
 - Must involve some element of evaluation or judgement made on the merits of the work concerned
 - E.g. criticism of literary style, ideas and thoughts expressed
- Includes reproducing extracts of a work to critique or review another work
- Requirement of including sufficient acknowledgement of the work

OTHER DEFENCES AVAILABLE TO EDUCATIONAL INSTITUTIONS

- **Inclusion of works in collections** for use by educational institutions
 - The work must:
 - Be a **short extract** from a literary, dramatic, musical or artistic work contained in a book, sound recording or cinematograph film, which is **not published for the purpose of being used by educational institutions**;
 - Be **described as being intended for use** by education institutions;
 - Have **sufficient acknowledgement** of the source.
 - The collection must not:
 - Contain in addition to the extract concerned, 2 or more other extracts from, or from adaptations of, works by the same author of the first-mentioned work are contained in that collection; and
 - When taken together with every similar collection, if any, of works intended for use by educational institutions, be published by the same publisher within the period of 5 years immediately preceding the publication of the first-mentioned collection.

OTHER DEFENCES AVAILABLE TO EDUCATIONAL INSTITUTIONS

- Copying of works for the purpose of **examination**
- Multiple copying or communication of **insubstantial portions** of work
 - Only applicable to **literary** and **dramatic** works
 - Insubstantial portions – **not more than five pages** of a work in an edition of a work unless
 - there are more than 500 pages in the edition; and
 - total number of pages copied does not exceed 5% of the total number of pages in the edition.
- Copying by **non-reprographic means** for purpose of a course of education

USING COPYRIGHTED MATERIALS

What should you take note of?

GUIDE TO USING COPYRIGHTED MATERIALS

- Crediting the source does not mean that you do not have to obtain permission to use the copyrighted materials
- Always seek permission before using copyrighted materials

Steps for obtaining permission

- 1) Determine if permission is needed to use the materials
 - Permission is required if the material is protected under copyright law and the unauthorised use will amount to copyright infringement
 - No permission is required for using materials which copyright has expired or if you are within terms of use.

GUIDE TO USING COPYRIGHTED MATERIALS

Steps for obtaining permission

2) Determine what are the rights you need

- What is the intended use of the copyrighted materials?
- Term of use (e.g. how long you can use the copyrighted materials for)
- Territory in which the copyrighted material will be used in
- Exclusive or non-exclusive rights?

GUIDE TO USING COPYRIGHTED MATERIALS

Steps for obtaining permission

- 3) Identify the owner of the copyright – see copyright notice
- 4) Contact the owner and negotiate if payment is required
- 5) Ensure that the owner gives his/her permission in writing
 - If you are unable to seek the relevant permission before using the copyrighted materials, consider if you can limit your use of the copyrighted material to “fair dealing”.
 - If you are unable to seek the relevant permission before using the copyrighted materials, consider using free content not protected by copyright.
 - Use may be governed by terms and conditions

GUIDE TO USING COPYRIGHTED MATERIALS

- If you are unable to seek the relevant permission before using the copyrighted materials, consider using free content not protected by copyright.
- Use may be governed by terms and conditions
 - Read through the terms carefully before accepting the terms or using the content
 - The terms govern your use of the content (e.g. requirement of attribution, non-commercial purpose).

COMMON CONTRACTUAL TERMS

INTELLECTUAL PROPERTY CLAUSES IN EMPLOYMENT CONTRACTS

Clauses	Description
Ownership of Intellectual Property	Intellectual Property created by employee during the course of his employment is owned by the employer
Executing documents to record employer’s ownership of Intellectual Property	<p>Employee shall sign all documents or assist with the employer’s recordal of ownership of the Intellectual Property created by the employee in the course of his employment.</p> <p>Obligation continues even after employment ends</p>
Maintaining records	Employee should keep a record of all Intellectual Property created
Confidential information	<p>Employee shall:</p> <ul style="list-style-type: none"> • keep the employer’s confidential information a secret; and • not disclose the employer’s confidential information.

COPYRIGHT ASSIGNMENT AGREEMENTS

- Transfer of ownership in the copyrighted work
- Effective only if it is in writing and signed

Clauses	Description
Assignment	The ownership in the copyright is transferred to another party. This can be a partial or full assignment
Consideration	Amount paid in exchange for obtaining the ownership in the copyright
Execution of documents	Parties shall execute all documents and do all things necessary to protect the assigned copyright.
Warranties	The party assigning the copyright to another party guarantees that specific facts or conditions are true
Indemnities	The party assigning the copyright to another party promises to provide security against or exemption from legal responsibility for any actions.

COPYRIGHT LICENSING AGREEMENTS

Clauses	Description
Nature of the licence	This refers to whether the licence granted is exclusive or non-exclusive in nature.
Nature of the rights granted	This refers to what the licensee can do with the copyrighted work
Consideration	Amount payable to obtain a licence
Written acknowledgment of the author / owner	In using the copyright in the works, the author / owner of the copyright must be acknowledged
No alteration	The licensee shall not be allowed to alter, adapt, amend, revise or modify any part of the copyrighted work

PUBLISHING AGREEMENTS

Clauses	Description
Grant of Rights and Territory	<ul style="list-style-type: none">• specify the rights that the publisher has, vis-à-vis, the copyrighted work• specify in what format (paperback or digital), languages and countries that the work will be published and distributed in.
Delivery dates	<ul style="list-style-type: none">• specify when the completed manuscript should be delivered by the author to the publisher• terms may stipulate penalties payable in the event the author fails to deliver the manuscript by the stipulated date
Manuscript acceptance	<ul style="list-style-type: none">• allows the publisher to request for amendments to be made in the event that the contents of the manuscript are not considered to be acceptable• terms may allow the publisher to make amendments to the manuscript if the author is unwilling to make such amendments• terms may also allow the publisher to reject the manuscript if it considers the manuscript as unacceptable even after the author has made the necessary amendments

PUBLISHING AGREEMENTS

Clauses	Description
Obligation to publish	<ul style="list-style-type: none">• imposes an obligation on the publisher to publish the manuscript• author to be entitled to damages due to a failure to publish
Advance and royalties payable to the author	<ul style="list-style-type: none">• specify the amount of advance and royalties payable to the author, and when the payment will be made
Option	<ul style="list-style-type: none">• this clause gives the publisher a right to have the “first-look” at the author’s next book and to make an offer on it if they choose, before the author shows the manuscript to any other publishers.
No competing works	<ul style="list-style-type: none">• this clause prevents the author from publishing a similar work with another publisher or even creating a similar work for the purpose of publishing it with another publisher• protects the interests of the Publisher

PUBLISHING AGREEMENTS

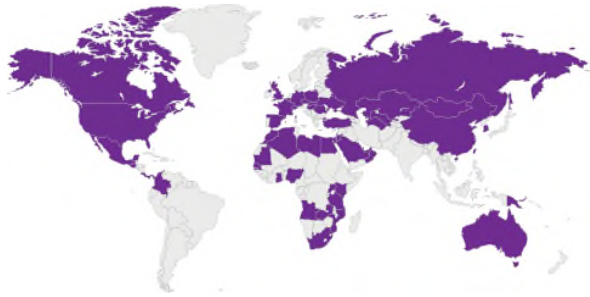
Clauses	Description
Out-of-Print (or reversion of rights clause)	<ul style="list-style-type: none">• allows an author to regain copyrights in works that the publisher is no longer publishing / selling• not an automatic reversion as the clause may require the author to demand the publisher to put the work back on sale and the author regains his rights if the publisher refuses to do so
Revised editions	<ul style="list-style-type: none">• obligation imposed on the author to edit and revise the work if a revised edition of the work is necessary to keep it up-to-date• provides the publisher with the option of arranging for another individual to edit and revise the work if the author is unable to do so• set out the royalties rate for revised editions
Subsidiary rights	<ul style="list-style-type: none">• this clause deals with merchandising rights, dramatisation and documentary rights, electronic publishing rights, picture book rights, translation rights and etc.

TIPS AND ADVICE FOR NEGOTIATING AGREEMENTS

- Do not sign the agreement without reading the terms carefully.
- When in doubt, ASK.
 - Reach out to your publisher, agent or lawyer for clarification
- Consider each term in the agreement carefully.
- Negotiate the terms of the agreement
 - Especially when the terms are unfavourable to you
- Document all communications and discussions during the course of negotiations in writing.
- Be aware of pressure tactics used in negotiations
 - e.g. Tight timelines to accept the offer

About Dentons Rodyk

About Dentons



Countries
61



Locations
149

Total number of lawyers

7,700+



Number of timekeepers

10,000+



Total people

13,700+



Numbers reflect all combinations announced in 2016, as of December 15th 2016.

About Dentons

Lawyers by locations

Africa	20+	China	4370+	Singapore	190+
Australia	180+	Hong Kong	20+	United Kingdom	425+
Canada	515+	Latin America and the Caribbean	65+	United States	920+
Central Asia	35	Middle East	80+	Western Europe	380+
Central and Eastern Europe	375+	Russia, CIS and the Caucasus	125+		

 **70+** Languages spoken

US\$32,400,000
value of pro bono and volunteer work

485+ 
Chambers ranked lawyers

110+ 
Lexpert ranked lawyers

Numbers reflect all combinations announced in 2016, as of December 15th 2016.

Dentons Rodyk's IP & Technology Practice Group

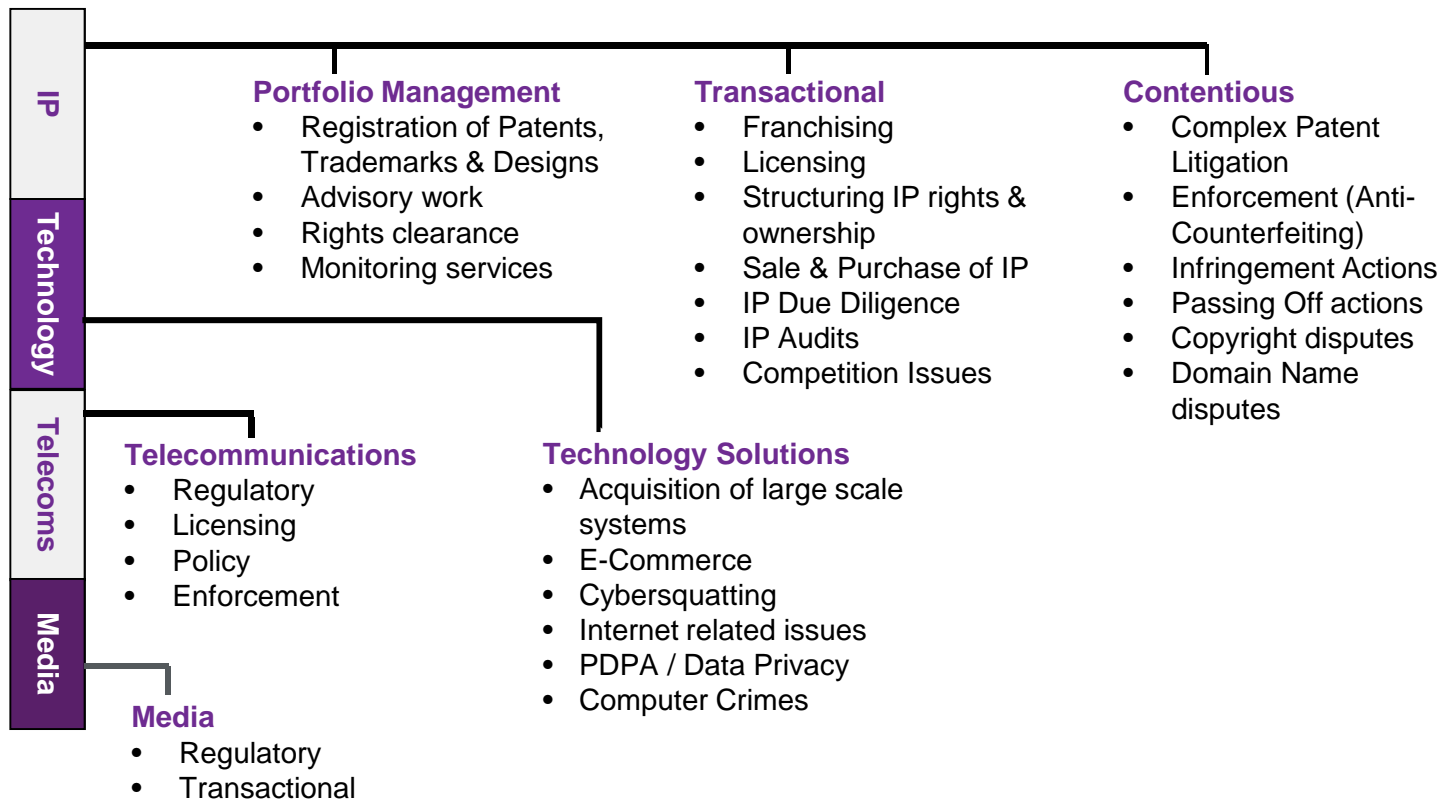


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timekeepers

“Outstanding Practice Group”

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Thank you



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