

What is copyright? Literally, the right to make copies. It is a bundle of rights both moral and commercial.

The expression "copyright" – literally, the right to make copies of a work – is an act, which may be made only by the author or through his authorization. Performers and broadcasters also have copyright.

Copyright is a bundle of rights accorded to the author – from his moral right to claim authorship (paternity) and object against any distortions (right to integrity of work) of his work to his commercial right to license, assign, sell and even disown his work.

J.K. Rowling, for example, enjoys the right to publish her novels, the right to license its

film adaptation, and the right to sell action figures based on the characters in her novels, among other rights.

It is worth mentioning that in 1858, Victor Hugo (author, *Les Miserables*) headed a Congress of Authors and Artists, which gave birth to the Berne Convention in 1886.

Copyright lasts as long as the author is alive until 50 years after his death, after which the work forms part of public domain open to public use.

How do I obtain copyright? No need to register. Copyright exists from the moment of creation.

No need to register. Copyright exists from the moment of creation (Article 5(2), Berne Convention; §172.2, IP Code, *Unilever v CA*, 498 SCRA 334 (2006)).

There are two reasons why works are registered and deposited in the National Library

and the Supreme Court library – to keep a record of the works (§191, IP Code) and for evidentiary purposes. In case of damages claimed for illegal copying (infringement), the author can cite his registry with the Library. (*Columbia Pictures v CA*, 261 SCRA 144, 187 (1996)).

I have an idea for a book. Then, all of a sudden, someone published the same idea ahead of me. Can I sue? No, as you did not express your idea. The law does not protect ideas. Ideas have to be expressed in a tangible form.

Unfortunately, no. Copyright does not protect ideas but the form of expression of ideas. For a work to enjoy protection = original (+) fixed in a tangible medium or expression.

Originality does not mean novelty (orig). It means it must have originated or come from you.

Madonna accused Gwen Stefani and Lady Gaga of copying her style, her fashion, even her lyrics. I also think that most songs say the same thing.

Am Jur states, “The author must almost inevitably work from old materials, from known themes or plots or historical events, because, except as knowledge unfolds and history takes

place, there is nothing new with which to work.” (18 Am Jur 2d COPYRIGHT AND LITERARY PROPERTY §6). Let me also quote Gwen

Stefani's comment, "Name one girl my age who wasn't inspired by her."

Is there copyright in works which are artistically bad or are obscene? Yes.

The IP Code states that "works are protected ... irrespective of ... their content, quality and purpose (§172.2)." "Having said this, however, it will be well to point out that copyright will not spare the author or publisher of obscene literature from criminal prosecution under the Revised Penal Code." (Aquino, 2006).

What is the special role of copyright in national development?

"[T]eaching material, including literary, artistic and scientific works, has to be created by authors originating in the community to which the works are addressed, and the community has, in turn, to see and recognize its reflection in them, as the author is the spokesman for his period and the mirror held up to his fellow citizens. Until that takes place, recourse to foreign works remains essential." (Sapalo, 1988)

Folklore or traditional cultural expressions are protected under related rights as performances. The protection of these related rights prevents these unique expressions from becoming extinct, preserves and disseminates national culture and opens the work to international commercial markets.

Ms. Neidhart de Ortiz of the USPTO considers the IPO as responsible for defending the "space where ideas, solutions and innovations can flourish to everyone's greater benefit. Yet this space is constantly encroached upon by those who would take but not give, by weeds if you will." Neidhart cited the Philippine film industry as an example, where the talents and hard work put in by collaborators "are overrun by those taking shortcuts." If we allow these pirates to take over that space, "Only imitators will remain. Are they capable of solving the next challenges in science and technology, of writing the next Filipino novel, of making the next great film? As we weed out these imitators and free up the space in our garden, the energy of the next would-be innovators will fill up that space."

How is copyright violated? Mass photocopying for profit, passing off, person to person (P2P) file sharing (ex. Limewire), piracy (mass burning for profit without license or authorization)

Among the most common infringing acts that students and faculty probably commit are photocopying without license or permission, or beyond fair use, plagiarism, distortion, non-attribution (which is why you should learn how to cite), piracy in the form of file-sharing and peer-to-peer downloading.

An exception to copyright is fair use. Academic use falls within the doctrine of fair use. Fair use means copying without the permission of the author under allowable

circumstances such as for criticism, comment, news reporting, teaching, scholarship, and research. Libraries can make an extra copy of a book without the author's authorization if such work is fragile, rare, or in order to preserve the work or when a brief portion is urgently needed and the work is on loan.

Do law students violate copyright when they photocopy cases?

Although no copyright subsists in the work of the Philippine government (§176), the compilation and arrangements (§173.1(b)) made by Central Publishing in the form of SCRA volumes or by lawphil.net are protected. A student who photocopies a case from SCRA or a few pages of a law textbook may claim fair use for educational purposes (§184(h)) of such protected work.

Will piracy wind down soon? How are other countries doing?

Not yet. The invisible hand is at play. For as long as the underground sector dwarfs the formal sector in terms of supply, the consumer will always pick the more practical choice between the costly original and the more affordable knockoff. This market competition, although unfair, will further drive the prices of the originals down and cause them to be more accessible and consumer-friendly (we all know how easy it is to have a bootlegged CD replaced in case of defect).

Because of this, a new business model for the music industry has been emerging. Artists in China are resorting to alternative ways of earning profits. They're relying more on live performances and product endorsements instead of CD sales. Prince has given away copies of his album. We can expect more surprises, especially since creativity thrives in crisis and scarcity.

Examples of copyright suits.

Teacher A wrote and published an English text book. After some time, Teacher B released an English text book, too. Teacher A filed a case against Teacher B for infringement. Held: There is infringement because more than 50% of Teacher A's work was copied. (Note: This should be on a case to case basis. If the publisher gave the same outline and same research materials, chances are, the work will almost be identical to a previous work. *Habana v. Robles*)

Rhoda & I is a popular TV dating game show in the 70s. Later on, It's a Date was aired. Both shows have the same format. Is there infringement? Held: No. The format of a show is not enumerated under the law as copyrightable work. (*Joaquin v. Drilon*)

In case of two authors, both own copyright to the work.

In case of work created during employment, copyright belongs to the creator, subject to damages payable to the employer.

What are the remedies of an author?

Civil – impound or destroy infringing material, damages, injunction

Criminal – imprisonment (1-3 years) + fine (P50,000 to P150,000)

Endnotes:

Fr. Ranhilio C. Aquino, INTELLECTUAL PROPERTY LAW (2006).

Atty. Adrian S. Cristobal, Jr., No Shortcuts, Raising Awareness of IP in the Philippines, WIPO (2007).

Atty. Ignacio Sapalo, Background Reading Material on Intellectual Property (1988).