

AN INSIGHT ON COPYRIGHT

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The field of Intellectual Property Law is now considered one of the growth areas in the practice. Its potentials are limitless.

High-technology such as computers, both hardware and software, telecommunications and satellite transmissions, bio-technology and genetics all involve intellectual property rights.

The more mundane topics of advertising, entertainment, sports, publishing, literature and art also involve the practice of intellectual property law.

Where does copyright law fit in?

Technology is usually transferred in the form of printed material or data on computer disks, all of which can be the proper subject matter of copyright. Factory or industrial machinery designs and blueprints, advertising materials and product packaging, computer software for both home and office application are also subject to copyright.

However, copyright does not only delve in the transfer of industrial technology but is very much evident in the cultural and educational facets of our daily lives. The right to print or to translate textbooks, the right to show movies in theaters or make copies in video format, to reproduce television programs or to play a song on the radio are all subject to copyright.

The importance of copyright cannot but be emphasized considering that most of what we do at home, at work or at play involves copyright.

WHAT IS COPYRIGHT?

The original creations of an author or authors which include, among others, literary works (such as books, periodicals, lectures, dissertations, letters and the like), dramatic or dramatico-musical compositions (such as plays), artistic works (such as paintings, sculptures or drawings), musical works (such as songs or instrumental music), photographs, audio visual, cinematographic, sound and video broadcasting works (such as movies and television) are generally called "works".

Under Philippine law, the copyright for a work is acquired by an intellectual creator from the moment of creation. Hence copyright comes into existence automatically by the fact that the work is created.

Although registration and deposit of two complete copies or reproductions of the work with the National Library within three weeks after the first publication is required under Section 26 of PD 49, otherwise known as the Decree on Intellectual Property, the registration and deposit is not for the purpose of securing copyright for the work, but rather to avoid the penalty for non-compliance of the deposit requirement and in order to recover damages in an infringement suit. Furthermore, Philippine courts are hesitant to issue seizure orders and impose punitive sanctions against pirates and infringers if one's work is not registered with the copyright office.

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RIGHT GRANTED BY COPYRIGHT

The copyright owner is granted the right to exclude others from reproducing the work, or adapting it, or from granting benefits or licenses arising from it to other persons.

In the case of books, the exclusive reproduction right means that the copyright owner is the only one who is entitled to make copies of the book. The adaptation right means, among others, that he is the only one who is entitled to translate the book to another language or dialect, or to make a movie or play from it. The publication right means that, if the book is unpublished, he is the only one who has the right to publish it.

In essence, the basic right granted by copyright is the right to exclude others from doing certain acts with respect to works covered by copyright.

Under P.D. 49, the copyright, and rights appurtenant thereto, endures during the lifetime of the author or creator and for fifty (50) years after his death. In case of works created by joint authors, the fifty (50) year period is counted from the death of the last surviving co-creator. And in case of anonymous and pseudonymous works, the copyright extends for fifty (50) years after the date of first publication.

INTERNATIONAL CONVENTIONS ON COPYRIGHT

The Philippines is a member of the "Berne Convention for the Protection of Literary and Artistic Works", usually called the "Berne Convention". Seventy five (75) other countries belong to the Convention. Works first published in any one of those seventy five (75) countries, or works of authors who are nationals of one of those countries, are also protected in the Philippines.

The United States of America is not a member of the Berne Convention but is a member of the other major international copyright convention called the Universal Copyright Convention.

Nonetheless, works first published in America are protected in the Philippines and works first published in the Philippines are protected in America by reason of the "Bilateral Agreement between the Philippines and the United States of America of October 24, 1948 for the Establishment of Reciprocal Copyright Relations". The bilateral agreement extends reciprocal copyright relations among the two countries.

EXCEPTIONS TO COPYRIGHT

It should be remembered that copyright is a right to exclude others from using a work. When securing copyright protection or a copyright license, one should consider whether there are any persons or entities against whom his right of exclusion is ineffective.

P.D. 285 as amended (September 6, 1973) is one such law which allows the reprinting by the government or any private printer of any textbook or reference book, whether of domestic or foreign origin, duly prescribed by the curriculum and certified by the registrar of the school or university or college, whenever the price thereof has become exorbitant as to be detrimental to the national interest, as determined and declared by a reprint committee chaired by the Secretary of Education and Culture.

The amended, decree defines "exorbitant price" as not less than seventy pesos (P70.00). Minimal royalties amounting to at least seven (7%) per cent of the list price in case of books published in the Philippines and at least two (2%) per cent of the list price in case of books published in other countries are to be paid the copyright owners.

The exception to copyright for educational purposes greatly lessens the value of a copyright or copyright license in works which are likely to be used in education. An example is computer software instructional manuals which are printed by authorized publishing companies.

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WORKS PUBLISHED BY FILIPINO AUTHORS

If a Filipino author creates a work in the Philippines, he will receive copyright protection in the Philippines by reason of P.D. 49. His work will also be protected in countries which belong to the Berne Convention, the Philippines being a member thereof. He will also be entitled to protection in the United States by reason of the Bilateral Agreement of October 24, 1948.

However, there are numerous countries which are not members of the Berne Convention and works first published by a Filipino author in the Philippines would not be protected in these countries.

In order to acquire wider international protection, Filipino authors should consider first publishing in some country other than the Philippines. Many countries are members of both the Berne Convention and the Universal Copyright Convention. If a Filipino author first publishes in one of these countries, he will have copyright protection under both conventions, as well as in the Philippines.

Most European countries, as well as Canada and Australia, are members of both conventions. It would be advantageous for a Filipino author to first publish his work or a translation of his work from Pilipino to another language, in a country which belongs to both conventions. Such publication would ensure protection of the work in the most major countries, including the United States of America and the Union of Soviet Socialist Republic, both of which are members of the Universal Copyright Convention.

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