1. WHAT IS COPYRIGHT?

1.1 Why Copyright is Important

The objective of copyright is to promote the public good by encouraging and fostering cultural and scientific activity. Copyright protects cultural works, the creative expression of thoughts and feelings.

These works are in a variety of forms, art works, music, novels and poetry. They are the expression of a culture – its heritage, which is built on by each generation adding their own perspective to the existing culture, which will enrich the lives of generations to come.

To demonstrate its importance to culture and society, copyright is recognised as one of the Human Rights in the Universal Declaration of Human Rights. Consequently, the value and benefits associated with copyright and the systems which support it cannot be underestimated.

Many countries are now using copyright to protect valuable indigenous cultures, ensuring their vibrant and individual national cultural expression continues.

The existence of strong and enforceable copyright laws are also a necessary precursor to participation in the global economic community, bringing particular benefits to the economies of developing countries.

The internet and lower costs of communication means that copyright works can be made available more easily, enabling improvements in the education system and skills development within communities.

It is for these reasons that creators, copyright owners and governments need to understand the key aspects of the copyright system, including its strengths and limitations.

Copyright protection comprises both economic and moral rights. While these key aspects of copyright system have their rationales in two very different approaches to copyright - one as an economic driver and the other as an author’s right – their combination or synthesis in many economies allows copyright development to become an important tool to develop and enhance the cultural industries.

1.2 Three Pillars of the Copyright System

There are three pillars of an effective copyright system – legislation, enforcement and management.

(a) Legislation

International Copyright Conventions

Consistency in copyright law between different countries is maintained through international treaties. These treaties set out the basic standards of copyright protection. Each country that chooses to become part of the system then develops national laws based on those standards of copyright protection.

The minimum standards of copyright protection are contained in the Berne Convention, which was developed in 1886. There are currently 164 national signatories to the Berne Convention.

The Berne Convention standards are incorporated into later international treaties, such as the 1994 World Trade Organisation’s Trade Related Aspects of Intellectual Property Rights Agreement (TRIPS), and the World Intellectual Property Organisation’s Copyright and Performers and Phonograms Treaties of 1996.

National Legislation

It is the role of national legislators to translate the terms of the international treaties into national law and adapt the terms of the treaties to the particular legal system operating in each country. An overriding consideration is that the national legislation must be in harmony with the norms of the international convention.

However, within these parameters it is open to the national legislators to provide exceptions to copyright and to establish the systems necessary for the collective management of copyright.

(b) Enforcement of Copyright

By enforcement I mean the ability of copyright owners to enforce their rights, through the legal system and also through administrative systems, such as customs. Enforcement is supported by raising public awareness of copyright issues, and by more specific training of judicial and policing staff in relation to copyright.
This means that those systems, as well as the legislative system should be reviewed and adapted to ensure that they adequately manage the copyright industries and the trade in copyright goods.

A critical element in establishing effective enforcement systems is education – education of those in society generally to understand the importance of copyright and of participants in those systems to understand the special features of the copyright industries.

(c) Management of Copyright

The last important element of a functioning copyright system, is the management of rights. Copyright can be managed individually or collectively.

The circumstances where collective administration is preferable to individual administration are typically when there are:

- large numbers of low value uses of copyright material;
- a potentially large pool of users in a wide geographic area.

In these mass usage situations, collective management of copyright either through a statutory or a voluntary licence can be a solution for both the copyright users and copyright owners.

In relation to individual management of rights, other legal aspects, such as laws relating to contracts, and the judicial system need to be fully functional. A key element of the management of copyright is education and communication. For example, authors and publishers must be educated about their rights, and the best means of managing them.

And of course, the community needs to be educated about their rights and obligations, as copyright users.

1.3 Works Protected by Copyright

To better understand the copyright system we must understand exactly what the term works means in the copyright system, and the rules defining which works are eligible for copyright protection.

Firstly, for a work to eligible for protection it must be fixed in material form. This means that the works must be permanent and perceptible. When computers were first invented there was some debate about whether works stored in a computer memory were in a material form as they could not be seen or heard without the computer being used. However this question was settled and material form is now understood to mean any form of storage from which the work can be reproduced.

Another requirement for protection is that the work must be created by a human author.

Next, the works created must be original. This does not mean that they must be unique or valuable. What it means is that the work must be the product of the skill and labour of the creator and not copied from another work.

Another requirement is that copyright protects the expression of ideas, not the ideas themselves. What does this mean? Think about a love story – a couple meet, they fall in love, they are separated, then reunited and live happily ever after. This storyline is an idea and its expressions would be in any number of books, movies, poems – each of which is protected by copyright – copyright protects the expression, but it doesn’t protect the ideas.

Some common examples of copyright works are:

<table>
<thead>
<tr>
<th>Category of work</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>Literary works</td>
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<td>For ballet or dance</td>
</tr>
<tr>
<td>Artistic works</td>
<td>Paintings, drawings sculpture, cartoons, maps, designs, photographs</td>
</tr>
<tr>
<td>Musical works</td>
<td>Musical pieces with or without words</td>
</tr>
<tr>
<td>Cinematographic works</td>
<td>Films, television shows, video games</td>
</tr>
</tbody>
</table>
A quick look at the examples in the table above shows us that these works are all:

- Fixed in material form
- Created by a human author
- Original
- Expressions of an idea

In addition many governments make special rules for certain categories of material, as follows:

(a) Translations
Translations, adaptations and arrangements of works are protected as original works. This means that if you translate a work that is in or out of copyright you will have a copyright in your translation. You can control the use to which your translation is put but you cannot stop another person translating the original work into their own words into the same or a different language.

If the original work that you want to translate is in copyright you will need to obtain the permission of the copyright owner in the original work for the translation to be made. This is because translation is a copyright right.

(b) Collections of Works
Collections of works such as encyclopaedias can also be protected by copyright. This copyright is independent of the copyright in the individual works or information making up the compilation. In order to be protected however, the selection and arrangement of the works has to be sufficiently original to create a copyright right in the collection itself.

(c) Legislation and other Government Publications
Governments can also decide whether or not to provide copyright protection for certain categories of works. These include legislation and official texts of an administrative nature. The approach often depends on the philosophy of the government concerned and the culture in the country. For example, in the USA all government publications are copyright free. The Australian government has retained copyright in its publications, and licenses these copyrights to publishers.

(d) Neighbouring Rights
Also, there is a specific type of copyright protection given to those involved in the production or transmission of works. The thinking here is that these activities value add to the copyright works, and should be protected independently. These works are called neighbouring rights.

The most common examples of neighbouring rights are:

- record companies have a copyright in their sound recordings
- broadcasters have a copyright in their broadcasts, and
- performers have a copyright in their performance.

Neighbouring rights are akin to copyright as they grant exclusive economic interests to those who have been involved in the production of copyright works.

1.4 The Rights of the Copyright Owner

Copyright is often referred to as a bundle of rights. What that means is that copyright is a set of rights to manage and control particular uses of works. If the use of the work is not one that is specified as a copyright use, the copyright owner does not control that particular use of their works.

Although there is a core set of copyright rights (as set out in the Berne Convention) these rights can be described differently in different countries. Sometimes the rights differ between countries, as some countries might give copyright owners greater rights than the minimum specified in the Berne Convention. For example, Japan has a display or exhibition right for artistic works but that right doesn’t exist in Australia.

(a) Economic Rights

I will firstly consider economic rights. Here are some examples of typical economic rights and examples of how they are used:
(b) Moral Rights

Moral rights protect the honour and reputation of creators. The rationale for moral rights is that creative material is an emanation or extension of the creator's personality and what is done with their copyright works may affect their standing and reputation. Moral rights provide an ongoing connection between the individual creator and his/her audience. They ensure cultural and educational best practice by requiring correct attribution and faithful reproduction of works.

1.5 Ownership of Copyright

Copyright is a set of rights given to the creator (author) or copyright owner of a work. We need now to consider the rules that apply to ownership – who is the copyright owner and therefore entitled to control the uses being made of the work.

The first and most important thing to note is that ownership of copyright exists independently of the ownership of the physical item containing the work. If for example an artist creates a painting and then sells it, the copyright in the painting doesn’t automatically pass to the new owner of the painting – it stays with the artist. Similarly when you buy a book, you are merely buying a copy of the work – not the rights to translate or reproduce the work contained in the book.

The general rule is that the first owner of copyright is the creator, the author or artist whose creative ideas are expressed in the work. Someone who acts as a mere scribe, taking down dictation does not qualify as an author. There are also several important exceptions to the general rule about copyright ownership, such as works created in the course of employment, commissioned works, and government works.

2. USE OF COPYRIGHT MATERIAL

2.1 Introduction

Just as there is a public interest in promoting and protecting copyright works and copyright owners there is also a public interest in promoting access to the copyright works of others. Of course, this access must be on terms that do not prejudice the legitimate interests of the copyright owner.

Access to creative works is important, in enabling each of us and through us our society to share in that creativity, to learn from and to experience the thoughts and emotions expressed in those works. Access to copyright works may encourage us to create new works, thereby enriching our culture, or we may learn from those works increasing our skills and education levels. The works may also entertain us and provide enjoyment.

Achieving the right balance between protecting the rights of creators over their works and the access to those works by others is one of the key objectives of copyright law.

There are two key tools to this balance. The first of these are the limited nature of copyright itself, and the second the role of exceptions to copyright.
Limitations on Copyright Rights

Limitations on copyright ensure that the advancement of knowledge and the creation of new works are not hindered by copyright owners using copyright law to limit legitimate access to the works they have created.

Some common examples of the limitations of copyright include:

(i) Term
Copyright protection is limited in time. The time period varies, but generally a copyright owner has control over their works for the life of the creator plus an additional 50 or 70 years.

Once the copyright term expires, the copyright material becomes part of the public domain.

(ii) Certain Rights
Secondly, copyright owners are only entitled to control some uses of their works. For example, copyright owners in books and journals do not generally control the rental or lending of their works.

(iii) Expression of Ideas
Further and most importantly, copyright law only protects the expression of ideas not the underlying ideas themselves. This is to encourage the reuse, criticism or discussion of the ideas contained in copyright works.

2.2 The Three Step Test – Exceptions to Copyright

The Berne Convention also recognises that in certain circumstances, governments will need to legislate for exceptions to the exclusive rights of copyright owners. It sets out guidelines for the scope of these permitted exceptions and limitations.

These exceptions apply in different circumstances depending on the national context in the country concerned. Any limitations and exceptions contained in national laws are required to be consistent with the standards of protection set down in the Berne Convention.

The three step test provides that exceptions to copyright can only be justified if they:

- Not conflict with the normal exploitation of the work - the uses permitted by the exceptions to copyright must not be of considerable or practical importance or economically compete with the author’s interests, and;
- Not unreasonably prejudice the legitimate interests of the author – the legitimate interests of the author include both moral and economic rights. It may be that if the exception to copyright provides for a payment to the copyright owner then permitting a use in legislation will not unreasonably prejudice the interests of the copyright owner. If this is the case, the exception is called a compulsory or statutory licence.

Governments use the three step test in deciding how to frame the exceptions that they will adopt in their national copyright laws. Even though many of these are specific to individual natural circumstances, there are a number of exceptions to copyright that appear in the copyright law of most countries. I will now review some of these common exceptions.

2.3 Common Exceptions to Copyright

There are several exceptions to copyright that in many countries are considered to be consistent with the three step test. However, it is important to note that these are limited exceptions, not broad use rights. The scope of these exceptions must be construed narrowly so as to comply with the three step test.

Following is a table which sets out several common exceptions to copyright owner’s rights:
<table>
<thead>
<tr>
<th>Exception</th>
<th>Explanation</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Use by disabled readers</td>
<td>Provides access to works by the visually impaired, as the works may not be in the format they require.</td>
<td>Digital networks provide great opportunities for the visually impaired, however care must be taken to ensure that copies made for this purpose do not find their way into the general market for copyright goods.</td>
</tr>
<tr>
<td>Fair dealing for research and study</td>
<td>Use by a student related to a course of study they are undertaking.</td>
<td>The fairness requirement means that the scope of these exceptions cannot involve copying the whole or a substantial part of the book.</td>
</tr>
<tr>
<td>News reporting</td>
<td>Only as much as is required to report the news.</td>
<td>This is an important exception, but the scope of the term news is subject to debate – it generally means “the news of the day”.</td>
</tr>
<tr>
<td>Criticism and review</td>
<td>For the purposes of reviewing or analysing another work.</td>
<td>Requires acknowledgment of the original source. The amount used cannot be so much as to substitute for the original.</td>
</tr>
<tr>
<td>Legal proceedings</td>
<td>For individuals to inform themselves of the law when they are involved in legal matters.</td>
<td>Again, the scope is limited, and does not include all copying by lawyers, for example.</td>
</tr>
<tr>
<td>Copying by libraries</td>
<td>To assist patrons exercising fair dealing exceptions and for preservation and archiving purposes.</td>
<td>The scope is limited to the equivalent of fair dealing uses, and does not extend to commercial document supply, or libraries in commercial undertakings.</td>
</tr>
</tbody>
</table>

A common feature of each of these exceptions is that the uses of copyright permitted by them are limited. Such limited uses are considered not to prejudice the interests of the copyright owner, and consequently to be consistent with the three step test.

Other exceptions include some forms of collective management, such as statutory licences and private copying levies.

3. COLLECTIVE MANAGEMENT OF COPYRIGHT

3.1 Collective Management

Ideally, individual copyright owners should be able to manage their own copyright - they are their own property rights after all. This is of course possible, and preferable, in the case of negotiations for copyright usage with a limited number of parties.

Collective management complements the individual management of rights. It is most appropriate when individual administration of copyright is impractical and difficult. Very often the individual license fee to be claimed would be small or insignificant. It would cost more for the copyright owner to collect the fees, than the actual fees themselves.

It is to solve this problem for copyright owners that collective management of copyright has developed. It provides an efficient method for exercising copyright rights and enabling copyright owners to receive payment for the use of their works. These are often called secondary rights.

Collective management means transaction costs are reduced and the public interest is served by ensuring that educational and scientific material is readily available for educational and research purposes. It also serves the public policy interest of ensuring that copyright owners receive remuneration for their creative efforts, which operates as an incentive to them to produce more works.
Generally, the copying of complete books and other publications is not collectively managed. Collective management is confined to making portions of works available to users. Copying complete works is considered an act of piracy. Efficient enforcement is important in the case of pirated products, be they books, music cassettes or audiovisual material. In most countries, collective management of reprographic copying and effective enforcement sanctions against the makers of pirated books are needed simultaneously.

Collective management has a role in many copyright industries. Some examples of situations that are appropriate for collective management are: photocopying in schools, the playing of music on the radio, and the downloading of ring tones. What each of these situations has in common is a large number of low value uses of copyright, a large number of individual users, and a large number of different works.

### 3.2 How Collective Management Works

Collecting societies or copyright management organisations (CMO’s) are established by copyright owners to manage the use of their works when individual administration by an author or their publisher is not practical or economically feasible.

The relationship between a CMO, its members and copyright users is expressed through three main functions: licensing, monitoring and distribution. The following diagram illustrates in a very simplified way the relationship between the three main functions of a collecting society.

![Diagram](image)

### 3.3 Contracts for Copyright Works

If you want to make use of a copyright work and it is not permitted by any of the exceptions or by a licence from a collecting society, then you will need to enter into a contract with the copyright owner. The copyright owner has the right to negotiate the terms of the use, including payment and if agreement cannot be reached the use cannot take place.

Common examples of situations in which individual contract negotiations take place are when someone wants to translate a work, when someone wants to publish a work, or use an artistic work on a calendar or book cover.

### 4. COPYRIGHT IN ASIAN COUNTRIES

In Asia the importance of copyright protection to cultural development is only recently being recognised. As a result many Asian countries are reviewing their legal systems to ensure that their copyright laws are up to date and provide the engine for economic development of their intellectual property industries.

### 4.1 Legislation

Most activity in Asian countries in recent years has been in the first of the three pillars – legislation. In the last decade or so nine Asian countries have amended their laws to comply with the standards of copyright protection in the Berne Convention. These countries include: Nepal, 2006; Bhutan, 2004; Viet Nam, 2004; Democratic People's Republic of Korea, 2003; Bangladesh, 1999; Mongolia, 1998; Singapore, 1998; Indonesia, 1997; and Republic of Korea, 1996.

Additionally, seven Asian countries have acceded to the WIPO Copyright Treaty to ensure copyright protection in the digital environment. These countries include: China, Indonesia, Japan, Mongolia, Philippines, Republic of Korea, and Singapore. This shows a commitment to enhancing the copyright environment to encourage further investment in cultural/IP products in this region.

### 4.2 Enforcement

Activity is also taking place in respect of enforcement, particularly against piracy. China, for example, has been making a concerted effort to address concerns about perceptions of it as a pirate
CHAPTER II

territory in the audio-visual and text products area. China has invested resources into employing additional police, customs and administrative staff, and in training them to be able to identify and take action in response to piracy.

Once copyright infringement has been identified, access to court based remedies has been made easier for copyright owners – with threshold infringements for violations reduced, and fines and penalties increased. Access by foreign copyright owners to Chinese courts has also been simplified.

Judicial staff have been given appropriate training to conduct infringement cases – the number of which has increased exponentially in recent years. These matters have combined to place copyright owners in a position to assert their rights more effectively.

4.3 Management

Many Asian countries are implementing legislation to allow and regulate collective management of copyright. While enforcement of copyright through infringement actions may be necessary to create precedents and to promote a culture of copyright compliance, collective management is desirable for both owners and users of copyright material due to its efficiency.

In the Philippines, the government, through the Book Development Board, is actively working with authors and publishers to develop a collective management organisation.

Thailand is in the process of considering regulation of voluntary collective licensing schemes to assist in reducing what have historically been high rates of piracy – particularly in relation to educational texts.

CMO’s have been adopted in India, Japan, South Korea, Singapore, Hong Kong and Indonesia.

5. CONCLUSION

A sound copyright legal framework is the cornerstone of creativity and innovation. To achieve our community’s goals in education and publishing, and in other areas of economic and cultural development, there must be an effective, harmonised framework of international copyright law.
CHAPTER II

National Training Seminar on Copyright Awareness
Phnom Penh, Cambodia
8-10 October 2008
Presenter:
• Caroline Morgan

Why Copyright is Important
• Copyright encourages and protects creativity and cultural development
• Copyright is a tool for economic development
• Copyright comprises both economic and moral rights

Three Pillars of Copyright
• Legislation
• Enforcement
• Management

Legislation
• International Copyright Conventions – Berne Convention and Universal Copyright Convention
• National legislation

Copyright Enforcement
• Legal and judicial systems
• Administrative systems, for example - customs
• Education and public awareness

Copyright Management
Alternatives:
• Individual Administration - appropriate for some copyright uses such as publishing
• Collective Management - essential when individual administration is impractical or impossible
Key elements in the Copyright System

- Works
- Rights
- Ownership

Special Rules – Collections of Works

- Collections can be protected as original copyright works
- Must be original in their selection and arrangement

Works Protected by Copyright

“Every production in the literary, scientific and artistic domain”

Subsistence of Copyright

- Material form
- Human author
- Original work
- Expression not idea

Examples of Copyright Works

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</tr>
</tbody>
</table>

Special Rules - Translations

- Translation is a copyright right
- Translating copyright works requires the consent of the copyright owner
- Joint ownership of the translated work
Excluded from Protection

- Some works can be excluded from copyright protection
- Legislation, official texts
- Political speeches and lectures
- News of the day

Copyright Rights

- Bundle of rights
- Economic rights
- Moral rights

Moral Rights

- Attribution
- Object to derogatory treatment
- Disclosure

Neighbouring Rights

- Value adding activities
- The production or transmission of works
- Sound recordings, broadcasts, performances
- Protection levels are different from works

Economic Rights

<table>
<thead>
<tr>
<th>Right</th>
<th>Explanation</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reproduction</td>
<td>- Production or reproduction of a work in any material and by any means</td>
<td>- Photocopy, publication, printing, recording</td>
</tr>
<tr>
<td>Performances</td>
<td>- Any public performance of a work that is protected by copyright</td>
<td>- Public performance, playing instruments, reading a work, showing a work</td>
</tr>
<tr>
<td>Communication</td>
<td>- Any public communication of a work to the public by any means and device</td>
<td>- Radio, television, display, internet</td>
</tr>
<tr>
<td>Publicity</td>
<td>- Any public disclosure of a work to the public to the public</td>
<td>- Distribution, lending, rental, performance of a work, motion picture</td>
</tr>
<tr>
<td>Amendments</td>
<td>- Any form or extent to which technology is used in the exercise of a right</td>
<td>- Computer programs, electronic media, reproduction of a work in a library</td>
</tr>
</tbody>
</table>

Ownership of Copyright

- First owner is author
- In course of employment = employer
- Commissioned works
- Government works
CHAPTER II

Using Copyright Works

- Is the work copyright protected?
- Does an exception or statutory licence apply?
- Do I have the copyright owner’s permission?

Using Copyright Works - Limitations

- Term of protection
- Only certain rights
- Expression of ideas, not the ideas themselves
- Public domain

Exceptions and Limitations

- Three step test
  - Only certain special cases
  - Not conflict with normal exploitation
  - Not unreasonably prejudice the legitimate interests of the author

Common Exceptions

- Use by disabled readers
- Fair dealing for research and study
- News reporting
- Criticism and review
- Legal proceedings
- Copying by libraries

Collective Management

- A large number of low value uses of copyright material
- A large number of copyright users

Collective Management

- Photocopying, in schools and universities
- Playing of music on radio stations and television
- Use of music for karaoke, in restaurants and bars
- Downloading of ring tones
CHAPTER II

Collective Management - Snapshot

<table>
<thead>
<tr>
<th>Benefits of Collective Management</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Creator / Copyright Owners</strong></td>
</tr>
<tr>
<td>Payment for works provides incentive to create</td>
</tr>
<tr>
<td>Collective management is cheaper than individual administration</td>
</tr>
<tr>
<td>Collective management licensing schemes provide direct access to mass users of copyright</td>
</tr>
<tr>
<td>Legal and social assistance for copyright owners</td>
</tr>
<tr>
<td><strong>User / Society</strong></td>
</tr>
<tr>
<td>More works created provides access to a greater repertoire of material, new ideas and cultural expression</td>
</tr>
<tr>
<td>Lower administrative costs means affordable access to materials, reduced transaction costs</td>
</tr>
<tr>
<td>Licensing schemes promote clearer and consistent legal guidelines and administrative rules for use of copyright material</td>
</tr>
<tr>
<td>Inform and educate the community about the value of copyright works and their uses</td>
</tr>
</tbody>
</table>

Copyright in Asian Countries

- Legislation
- Enforcement
- Management

Asia - Legislation

- Focus has been on this area
- Berne Signatories
  - Nepal, 2006
  - Bhutan, 2004
  - Viet Nam, 2004
  - Democratic People’s Republic of Korea, 2003
  - Bangladesh, 1996
  - Mongolia, 1998
  - Singapore, 1998
  - Indonesia, 1997
  - Republic of Korea, 1996

Asia - Enforcement

- Infringement
- Piracy

Asia - Management

- Development
  - Philippines
  - Thailand
- CMOs
  - India
  - Japan
  - South Korea
  - Singapore
  - Hong Kong
  - Indonesia