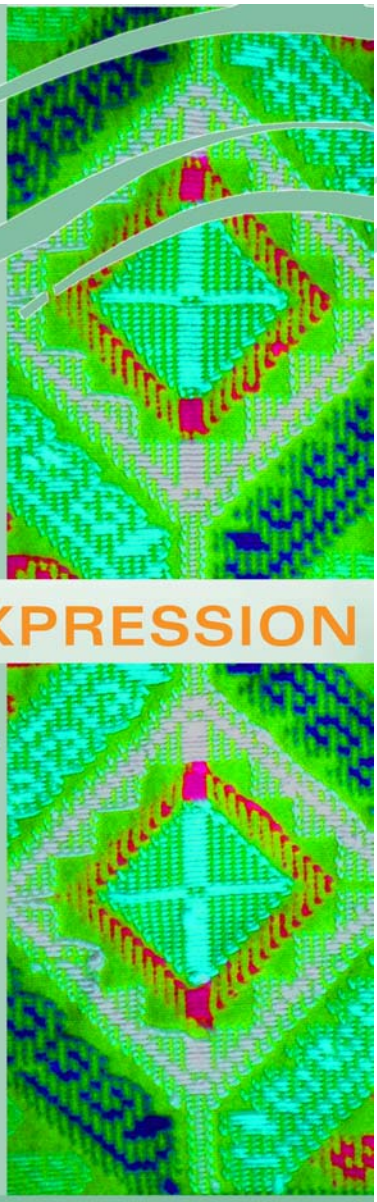
Intellectual Property
for Business Series
Number 4



CREATIVE EXPRESSION

An Introduction to Trademarks for Small and Medium-sized Enterprises

Intellectual Property for Business Series Number 4

CREATIVE EXPRESSION

An Introduction to Copyright for Small and Medium-sized Enterprises

Intellectual Property Philippines

Publications in the Intellectual Property for Business series:

1. Making a Mark: An Introduction to Trademarks for Small and Medium-sized Enterprises. IP Philippines publication
2. Looking Good: An Introduction to Industrial Designs for Small and Medium-sized Enterprises. IP Philippines publication
3. Inventing the Future: An Introduction to Patents for Small and Medium-sized Enterprises. IP Philippines publication
4. Creative Expression: An Introduction to Copyright for Small and Medium-sized Enterprises. IP Philippines publication

All publications are available at the Intellectual Property Office of the Philippines or www.ipophil.gov.ph.

Preface

Creative Expression:An Introduction to Copyright and Related Rights for Small and Medium-sized Enterprises is the fourth in the series of guides on Intellectual Property for Business. It provides an introduction to copyright and related rights for business managers and entrepreneurs. It explains, in simple language, the aspects of copyright law and practice that impact on and relevant to the business strategies of enterprises.

Enterprises involved in print, broadcast and the new media spawned by information communication technology depend on copyright and related rights. Hence, every single business day will most likely create or use materials protected by copyright and related rights.

This guide aims to help people especially small and medium-sized enterprises (SMEs) to understand how to protect the works they create or in which they own rights. It also helps them to get the most out of their copyright and/or related rights, and to avoid violation of copyright or related rights of others.

ADRIAN S. CRISTOBAL, JR.
Director General, IP Philippines

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1. Copyright and Related Rights

What is copyright?

Copyright is the **bundle of exclusive rights** over an author's or creator's work for a limited but rather lengthy period of time. These rights enable the author to **control the economic use** of his work in a number of ways and to receive payment.

Copyright law grants authors, composers, computer programmers, website designers and other creators legal protection for their literary, artistic, dramatic and other types of creations, which are usually referred to as "works."

Copyright law also provides **"moral rights,"** which protect, among other things, an author's reputation and the integrity of the work.

Copyright law protects a wide variety of original works, such as books, magazines, newspapers, music, paintings, photographs, sculptures, architecture, films, computer programs, video games and original databases (for a more detailed list, see page 8).

Maintenance manuals and presentations are protected under copyright.

Copyright and Business

In most companies, some aspects of their business are protected by copyright. Examples include: computer programs or software; content on websites; product catalogs; newsletters; instruction sheets or operating manuals for machines or consumer products; user, repair or maintenance manuals for various types of equipment; artwork and text on product literature, labels or packaging; marketing and advertising materials on paper, billboards, websites, and so on. In most countries, copyright also protects sketches, drawings or designs of manufactured products.

What are related rights?

"Related rights" refer to the category of rights granted to performers, producers of sound recordings, and broadcast organizations. These rights are protected because these individuals and legal entities contribute to making works

available to the public or produce subject matter which, while not qualifying as works under copyright, contain sufficient creativity or technical and organizational skill to justify recognition of a copyright-like property right.

In the case of a song, for example, copyright would protect the music of the composer and the words of the author (lyricist and/or writer). Related rights would apply to the performances of the musicians and singers who perform the song, the sound recording of the producer in which the song is included, and the broadcast program of the organization that produces and broadcasts the program containing the song.

Thus, there are three kinds of "related rights" or "neighboring rights":

- Rights of **performers** (e.g., actors, musicians) in their performances. They include a live performance of a pre-existing artistic, dramatic or musical work, or a live recitation or reading of a pre-existing literary work. The work performed need not be previously fixed in any medium or form, and may be in the public domain or protected by copyright. The performance may also be an improvised one, whether original or based on a pre-existing work.

Example: In the case of a song, copyright protects the music of the composer and the words of the author (lyricist and/or writer). Related rights would apply to the:

- Performances of the musicians and singers who perform the song;
- Sound recording of the producer in which the song is included; and

Courtesy: Mark Robert A. Dy

- Broadcast program of the organization that produces and broadcasts the program containing the song.

- Rights of **producers of sound recordings** (or "phonograms") in their recordings (e.g., compact discs); and

- Rights of **broadcasting organizations** in their radio and television programs transmitted over the air and, in some countries, rights in the transmission of works via cable systems (so-called cable castings). (More on related rights on page 21).

How are copyright and related rights relevant to your business?

Copyright protects the literary, artistic, dramatic or other creative elements of a product or service, whereby the copyright holder can prevent those original elements from being used by others. Copyright and related rights enable a business to:

- **Control commercial exploitation of original works:** such as books, music, films, computer programs, original databases, advertisements, content on websites, video games, sound recordings, radio and television programs or any other creative works. Works protected by copyright and related rights may not be copied or exploited commercially by others without the prior permission of the rights owner. Such exclusivity over the use of copyright and related rights protected works helps a business to gain and maintain a sustainable competitive edge in the market place.

- **Generate income:** Like the owner of a property, the owner of copyright or related rights in a work may use it, give it away by way of sale, gift or inheritance. There are different ways to commercialize copyright and related rights. One possibility is to make and sell multiple copies of a work protected by copyright or related rights (e.g., prints of a

photograph); another is to sell (assign) your copyright to another person or company. Finally, a third – often preferable – option is to license, that is, permit another person or company to use your copyright-protected-work in exchange for payment, on mutually agreed terms and conditions (see pages 40-41).

- **Raise funds:** Companies that own copyright and related rights assets (e.g., a portfolio of distribution rights to a number of movies/films) may be able to borrow money from a financial institution by using such a bundle of rights as collateral by letting investors and lenders take a "security interest" in them.

- **Take action against infringers:** Copyright law enables right holders to take legal action against anyone encroaching on the exclusive rights of the copyright holder (called infringers in legal parlance) for obtaining monetary relief, destruction of infringing works, and recovery of attorneys' fees. In some countries, criminal penalties may be imposed on willful copyright violators.

- **Use works owned by others:** Using works based on the copyright and related rights owned by others for commercial purposes may enhance the value or efficiency of your business, including

Most businesses print brochures or publish advertisements that rely on copyright protected materials.

enhancing its brand value. For example, playing music in a restaurant, bar, retail shop, or airlines, adds value to the experience of a customer while using a service or while visiting a business outlet. In most countries, for using music in this manner, prior permission of the copyright and related rights owners must be obtained by means of a license to use the music for a specified purpose. Understanding copyright and related rights laws will enable you to know when authorization is required and how to go about obtaining it. Obtaining a license from the copyright and/or related rights owners to use a work for a specific purpose is often the best way to avoid disputes that may otherwise result in potentially time consuming, uncertain, and expensive litigation.

How are copyright and related rights obtained?

Here in the Philippines, copyright protection is automatic; works are protected by the sole fact of creation, irrespective of their mode or form of expression as well as their content, quality and purpose. You do not have to file any application or undergo any formal procedure inorder to acquire copyright protection.

Several countries are signatories to several important **international treaties** that have helped to harmonize, to a considerable extent, the level of copyright and related rights protection amongst countries. This has made it possible for works to benefit from copyright protection **without any formalities or requirement of registration**. A list of the main international treaties is in Annex III.

Are there other legal means for protecting original creations?

Depending on the nature of your creation, you may also be able to use one or more of the following types of intellectual property rights to protect your business interests:

- **Trademarks.** A trademark provides exclusivity over a sign (such as a word, logo, color or combination of these) which helps to distinguish the products of a business from those of others.
- **Industrial designs.** Exclusivity over the ornamental or aesthetic features of a product may be

obtained through the protection of industrial designs, which are known as "design patents" in some countries.

- **Patents**. Patents may protect inventions that meet the criteria of novelty, inventive step and industrial applicability.
- **Confidential business information** of commercial value may be protected as a trade secret, as long as reasonable steps are taken by its owner to keep the information confidential or secret.
- **Unfair competition** laws may allow you to take action against unfair business behavior of competitors. Protection under unfair competition law may often grant some additional protection against copying of different aspects of products beyond what is possible through the various types of intellectual property rights. Even so, generally speaking, protection under the laws governing the various specific types of intellectual property rights is stronger than the protection available under the general national law against unfair competition.

A number of intellectual property in the Philippines is protected under copyright laws.

2. Scope and Duration of Protection

What categories or types of works are protected by copyright?

For purposes of copyright protection, the term "literary and artistic works" is understood to mean every original work of authorship, regardless of its literary or artistic merit. The ideas in the work do not need to be original but the form of the expression must be an original creation of the author. These include:

- Books, pamphlets, articles and other writings;

- Periodicals and newspapers;
- Lectures, sermons, addresses, dissertations prepared for oral delivery, whether or not reduced in writing or other material form;
- Letters;
- Dramatic or dramatico-musical compositions; choreographic works or entertainment in dumb shows;
- Musical compositions, with or without words;
- Works of drawing, painting, architecture, sculpture, engraving, lithography or other works of art; models or designs for works of art;
- Original ornamental designs or models for articles of manufacture, whether or not registrable as an industrial design, and other works of applied art;
- Illustrations, maps, plans, sketches, charts and three-dimensional works relative to geography, topography, architecture or science;
- Drawings or plastic works of a scientific or technical character;
- Photographic works including works produced by a process analogous to photography; lantern slides;
- Audiovisual works and cinematographic works and works produced by a process analogous to cinematography or any process for making audio-visual recordings;

Copyright protects works that are expressed in print as well as those created or stored in electronic or digital media. The fact that a work in its digital form can only be read by a computer – because it consists only of ones and zeros – does not affect its copyright protection.

Protection of Computer Programs and Software

From a digital point of view, there is absolutely no distinction between text, sounds, graphics, photographs, music, animations, videos... and software. But one vital difference separates computer programs from all the rest. While text, sounds, graphics, etc. are generally **passive** in nature, programs, by contrast, are essentially **active**. Therefore, there is much debate about the suitability of copyright law for protection of computer programs.

In practice, there are many ways to protect different elements of a computer program:

- Copyright protects an author's original expression in a computer program as a 'literary work.' Source code can thus be viewed as a human-readable literary work, which expresses the ideas of the software engineers who authored it. Not only the human-readable instructions (source code) but also binary machine-readable instructions (object code) are considered to be literary works or "written expressions," and, therefore, are also protected by **copyright**. However, the economic value of copyrighted object code is completely derived from the functional ends facilitated by the software. The object code is what makes the computer function, that is what is distributed to the public in the form of retail software. The packaged software market exhibits lead-time effects. This means that producers have a window of time during which they can gain an advantage on competitors. Copyright law extends natural lead-time effects during the legal term of protection by giving authors exclusive rights to produce derivative works.
- Functional elements of (that is, inventions relating to) computer programs may be protected by **patents**; software alone are explicitly excluded from the purview of patent protection. In the Philippines, the law expressly excludes computer program for Patent protection. The functional elements may be protected by patents so long as they are technical solutions to a problem and satisfy the requisites for patentability.
- It is common commercial practice to keep source code of computer

programs as a **trade secret** in addition to copyright protection.

- Certain features created by computer programs, such as icons on a computer screen, may be protected, in some countries, as **industrial designs**.
- An agreement governed by **contract law** remains a central form of legal protection, complementing or possibly even substituting for intellectual property rights. Often, such additional protection through a contract/license agreement is labeled as 'super-copyright.' No wonder, such additional protection often attracts negative attention as it may be considered a misuse of dominant position.
- In recent years, several countries have enacted special laws to regulate access to information technologies, including software.
- Beyond legal protection, a new facet in protecting software is provided by **technology** itself; for example, through lockout programs and use of encryption methods. Thus, technology allows clever producers to craft their own extra-legal protection. For example, a video game manufacturer might rely on lockout technology and/or copyright law to protect its object code.

At the same time, it must be noted that some aspects of software simply cannot be copyrighted. Methods of operation (e.g., menu commands) are generally not copyrightable, unless they contain highly individual or artistic elements. Likewise, a Graphical User Interface (GUI) is not copyrightable, unless it contains some truly expressive elements.

Protecting expressive elements of computer software through copyright:

- Does not require registration (see page 28);
- Is, therefore, inexpensive to obtain;
- Lasts a long time (see page 26);
- Grants limited protection, as it only covers the particular way the ideas, systems, and processes embodied in software are **expressed** in a given program (see page 13);
- Does not protect an idea, system, or process itself. In other words, copyright protects against the unauthorized copying or use of a source code, object code, executable program, interface, and user's instruction manuals, but not the

underlying functions, ideas, procedures, processes, algorithms, methods of operation or logic used in software. These may sometimes be protected by patents, or by keeping the program as a trade secret.

Whether one considers legal or technological measures, today's landscape affords software producers unprecedented protection over their products provided they care to understand and use it as a part of their business strategy. There is an accompanying challenge too. A perfect copy of a digital work can be made and sent anywhere in the world with a few mouse-clicks or keystrokes on a personal computer and an Internet account.

It is important to note that, with today's large, complex computer programs, most copyright infringement consists of the word for word copying or unauthorized distribution of a computer program. In most cases, the question as to whether any similarities are expression (protected by copyright) or function (not protected by copyright) does not need to be considered.

- Pictorial illustrations and advertisements;
- Computer programs;
- Other literary, scholarly, scientific and artistic works;
- Dramatizations, translations, adaptations, abridgments, arrangements, and other alterations of literary or artistic works; and
- Collections of literary, scholarly or artistic works, and compilations of data and other materials which are original by reason of the selection or coordination or arrangement of their contents.

What criteria must a work meet to qualify for protection?

To qualify for copyright protection, a work must be **original**. An original work is one that 'originates' in its expression from the author, that is, the work was independently created and was not copied from the work of another or from materials in the public domain. The exact meaning of originality under copyright law differs from one country to another. In any case, originality relates to the **form of expression** and not to the underlying idea.

Under the Philippine law, no fixation is required for protection of works unlike in other countries which require that the work be **fixed in some material form.** Fixation includes, for example, that a work is written on paper, stored on a disk, painted on canvas or recorded on tape. Therefore, choreographic works or improvised speeches or music performances that have not been notated or recorded, are not protected.

A work may be fixed by the author or under the authority of the author. Transmission of a work containing sounds or images is deemed 'fixed' if a fixation of the work is made simultaneously with the transmission. Such a work may be fixed in two types of material objects: phonograms or copies. Copies may be physical (in print or non-print medium such as a computer chip) or digital (computer programs and database compilations).
Copyright protects both published and unpublished works.

Creating an original work involves labor, skill, time, ingenuity, selection or mental effort. Even so, a work enjoys copyright protection **irrespective of its creative elements, quality or value**, and does not need to have any literary or artistic merit. Copyright also applies to, for example, recipes, purely technical guides, instruction manuals, or engineering drawings as well as to the drawings of, say, a three-year-old child.

What aspects of a work are not protected by copyright?

- **Ideas or concepts.** Copyright law only protects the way ideas or concepts are expressed in a particular work. It does not protect the underlying idea, concept, discovery, method of operation, principle, procedure, process, or system, regardless of the form in which it is described or embodied in a work. While a concept or method of doing something is not subject to copyright, written instructions or sketches explaining or illustrating the concept or method are protected by copyright.

Protection of Database

A database is a collection of information that has been systematically organized for easy access and analysis. It may be in paper or electronic form. Copyright law is the primary means to legally protect databases. However, **not all databases are protected by copyright**, and even those that are may enjoy very **limited protection**.

- Copyright only protects a database if it is selected, coordinated, or arranged in such a way that it is sufficiently **original**. However, exhaustive databases and databases in which the data is arranged according to basic rules (e.g., alphabetically, as in a phone directory) are usually not protected under copyright law (but may sometimes be protected under **unfair competition law**). In the Philippines, databases (compilation of data) are protected if they are original by reason of the selection or coordination or arrangement of their contents.
- In the Philippines, there is yet no separate legislation on databases. But in Europe, for example, n**on original databases** are protected by a *sui generis* right called the **database right**. This gives a much greater protection to databases. It allows makers of databases to sue competitors if they extract and reuse substantial (quantitatively or qualitatively) portions of the database, provided there has been a **substantial investment** in either obtaining, verifying, or presenting the data contents. If a database has a sufficient level of originality in its structure, it is also protected by copyright.

When a database is protected by copyright, this protection extends **only to the manner of selection and presentation** of the database and not to its contents.

Example: Your company has copyright over an instruction manual that describes a system for brewing beer. The copyright in the manual will allow you to prevent others from copying the way you wrote the manual, and the phrases and illustrations that you have used. However, it will not give you any right to prevent competitors from (a) using the machinery, processes, and merchandising methods described in the manual; or (b) writing another manual for a beer brewery.

- **Facts or information.** Copyright does not protect facts or information – whether scientific, historical, biographical or news – but only the manner in which such facts or information are/is expressed, selected or arranged (see also box on protection of databases, page 14).

  Example: A biography includes many facts about a person's life. The author may have spent considerable time and effort discovering things that were previously unknown. Still, others are free to use such facts as long as they do not copy the particular manner in which the facts are expressed. Similarly, one can use the information in a recipe to cook a dish but not make copies of the recipe, without permission.

- **Names, titles, slogans and other short phrases** are generally excluded from copyright protection. However, some countries allow protection if they are highly creative. The name of a product or an advertising slogan will usually not be protected by copyright but may be protected under trademark law (see page 13) or the law of unfair competition. A logo, on the contrary, may be protected under copyright as well as by trademark law, if the respective requirements for such protection are met.

- **Official government works** (such as copies of statutes or judicial opinions) have no copyright protection in some countries (see page 38). Although this is also the rule in the Philippines, the government agency wherein the work is created may impose conditions (even the payment of royalties) for the commercial exploitation of the work.

What rights does copyright protection provide?

Copyright provides two sets or bundles of rights. Economic rights protect the author's or owner's economic interests in possible commercial gain. Moral rights protect the integrity of the work and author's reputation.

Illustrations, schematic diagrams and technical drawings are protected by copyright.

What are economic rights?

Economic rights give the owner/holder of copyright the **exclusive right** to authorize or prohibit certain uses of a work. **Exclusive** means no one may exercise these rights without a copyright owner's prior permission. The scope of these rights, and their limitations and exceptions, differ depending on the type of work concerned and the relevant national copyright law. The economic rights are more than simply a "right to copy"; the emphasis is not solely on this right, but on several different rights to prevent others from unfairly taking advantage of the creative work of the original owner of the copyright. Generally, the economic rights include the exclusive rights to:

- **Reproduce a work in copies** in various forms. For example, copying a CD, photocopying a book, downloading a computer program, digitizing a photo and storing it on a hard disk, scanning a text, printing a cartoon character

on a T-shirt, or incorporating a portion of a song into a new song. This is one of the most important rights granted by copyright.

- **Distribute copies of a work to the public.** Copyright allows its owner to prohibit others from selling, leasing or licensing unauthorized copies of the work. But there is an important exception: In the Philippines, the right of distribution comes to an end on the first sale or transfer of ownership of a particular copy. In other words, a copyright owner can control only the "first sale" of a copy of a work, including its timing and other terms and conditions. But, once a particular copy is sold, the copyright owner has no say over how that copy is further distributed in the territory of the relevant country(ies). The buyer can resell the copy, or give it away, but cannot make any copies or prepare derivative works (see below) based on it.

- **Rent copies of a work.** This right generally applies only to certain types of works, such as cinematographic works, works embodied in a sound recording, or computer programs. However, the right does not extend to computer programs which are part of an industrial product, for example the program controlling the ignition in a rental car.

Works of Applied Art – Overlap Between Copyright and Design Rights

Works of applied art are artistic works used for industrial purposes by being incorporated in everyday products. Typical examples are jewelry, lamps, and furniture. Works of applied art have a double nature: they may be regarded as artistic works; however, their exploitation and use do not take place in the specific cultural markets but rather in the market of general purpose products. This places them on the borderline between copyright and industrial design protection.

- **Make translations or adaptations of a work.** Such works are also called **derivative works**, which are new works that are **based on a protected work**. For example, translating an instruction manual in English into other languages, turning a novel into a film (motion picture), rewriting a computer program in a different computer language, making different musical arrangements, or making a toy based on a cartoon figure. In the Philippines, there are, however, important exceptions to the exclusive right to create derivative works; e.g., if you lawfully own a copy of a computer program, you may adapt or reproduce one back-up copy, provided that such adaptation or copy is necessary for: a) use in conjunction with a computer for the purpose, and to the extent, for which the computer program has been obtained; and b) for archival purposes, and, for the replacement of the lawfully owned copy in the event that such copy is lost, destroyed or rendered unusable.

- **Publicly perform and communicate a work to the public.** These include the exclusive rights to communicate the work by means of public performance, recitation, broadcasting or communication by radio, cable, satellite, or television (TV) or transmission by Internet. A work is **performed in public** when it is performed in a place that is open to the public or where persons outside the normal circle of a family and that family's closest social acquaintances are or can be present. The performance right is limited to literary, musical and audiovisual works, while the communication right includes all categories of works.

- **Receive a percentage of the sale price if a work is resold**. This is referred to as resale right or *droit de suite*. It is available in some countries only like the Philippines and is usually limited to certain types of works (e.g., paintings, drawings, prints, collages, sculptures, engravings, tapestries, ceramics, glassware, original manuscripts, etc.). In the Philippines, it is available only to the original work of painting, sculture, or manuscript of a writer or composer. Resale rights give creators the right to receive a

share of the profit on resale of a work provided the resale occurs in a specified way. In the Philippines, the law allows this sharing to the extent of five percent of the gross proceeds of the sale.

- **Make works available** on the Internet for on-demand access by the public so that a person may access the work from a place and at a time individually chosen by him/her. It covers in particular on-demand, interactive communication through the Internet.

Any person or company wishing to use protected works for any of the purposes listed above must normally obtain prior authorization from the copyright owner(s). Although a copyright owner's rights are exclusive, they are limited in time (see page 26) and are subject to some important exceptions and limitations (see page 51).

What are moral rights?

These are based on the French *droit d'auteur* tradition, which sees intellectual creations as an embodiment of the spirit or soul of the creator. The Anglo-Saxon common law tradition regards copyright and related rights as property rights pure and simple, which means that any creation can be bought, sold or leased in much the same way as a house or a car.

Moral rights grant to author

- The right **to be named as the author of the work** ("authorship right" or "paternity right" or "attribution right"). When the work of an author is reproduced, published, made available or communicated to the public, or exhibited in public, the person responsible for doing so must make sure that the author's name appears on or in relation to the work, whenever reasonable;
- the right to make any alterations of his work prior to, or to withhold it from publication;
- the right to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, his work which would be prejudicial to his honor or reputation; and
- the right to restrain the use of his name with respect to any work not of his own creation or in a distorted version of his work.

These rights are independent of an author's economic rights and remain with him even after he has transferred his economic rights. Moral rights are only accorded to natural persons. For example, a film producer may own the economic rights in a work but only the individual creator has moral rights to it.

Moral rights cannot be transferred but they can be waived through a written instrument. Except, if it damages the author's reputation or allows another to use the author's name in a work he did not create (Section 195, IP Code).

What rights do "related rights" provide?

Rights of Performers

Performers are actors, singers, musicians, dancers, and other persons who act, sing, declaim, play in, interpret, or otherwise perform literary and artistic work.

Their rights are recognized because their creative intervention is necessary to give life to, for example, movies, and dramatic and choreographic works. They also have an interest in legal protection of their individual interpretations.

Performers enjoy right to authorize:

- the broadcasting and other communication of their performance;
- the fixation (recording) of their performance;
- the direct or indirect reproduction of their performances fixed in sound recordings, in any manner or form;
- the first public distribution of the original and copies of their performances fixed in sound recording through sale or rental or other forms of transfer of ownership;
- the commercial rental to the public of the original and copies of their performances fixed in sound recordings, even after distribution of them by, or pursuant to the authorization of the performer; and
- the making available to the public of their performances fixed in sound recordings, by wire or wireless means, in such a way that members of the public may access them from a place and time individually chosen by them.

Rights of Producers of Sound Recordings

Producers of a sound recording are the persons or legal entities, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance, or the representation of sounds.

The rights of producers are recognized because of their creative, financial and organizational resources are necessary to make the works available to the public in the form of commercial recordings. They also have an interest in having the legal basis to take action against unauthorized uses, such as the making and distribution of unauthorized copies or the unauthorized broadcasting of their recordings.

They are granted the right to authorize or prohibit:

- the reproduction of their sound recordings, in any manner or form;
- the placing of these reproductions in the market and the right of rental or lending;
- the first public distribution of the original and copies of their sound recordings through sale or rental or other forms of transferring ownership; and
- the commercial rental to the public of the original and copies of their sound recordings even after distribution by them by or pursuant to authorization by the producer.

Rights of Broadcasting Organizations

Broadcasting organizations are persons or juridical entities who are authorized to engage in broadcasting, which means the transmission by wireless means for the public reception of sounds or of images or representations thereof.

The rights of broadcasting organizations are recognized because of their role in making works available to the public and of their interest in controlling the transmission and retransmission of their broadcasts.

They are granted the right to carry out, authorize, or prevent the following:

- the rebroadcasting of their broadcasts;
- the recording in any manner, including the making of films or the use of video tape, of their broadcasts for the purpose of communication to the public of

television broadcasts of the same; and
- the use of such records for fresh transmissions or for fresh recording.

Limitation on Rights

The use of performances, sound recordings, and broadcasts is allowed even without authority:

- by a natural person exclusively for his own personal use;
- for short excerpts for reporting current events;
- for the purpose of teaching or scientific research; and
- for fair use of the broadcast.

The principles of fair use discussed above also apply.

Duration of Rights

The rights of performers and producers of sound recordings are protected for fifty years from the date of the fixation or the performance. The rights of broadcasting organizations are protected for twenty years from the date of the broadcast.

Enforcement of Rights

The remedies available to copyright owners are also available for infringement or violation of related rights.

Rights of Record Manufacturers

Record manufacturers cannot prohibit broadcasting of their records, but only have the right to receive a royalty from the broadcasters.

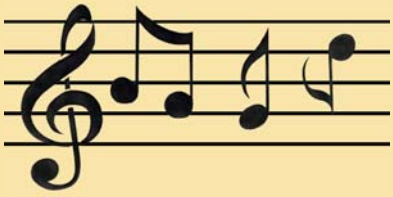
Where that right is recognized, payment must be made by broadcasting organizations, not only to the composer for the right to broadcast a composition and to the record company for the purchase of the recording, but also to the record company for the right to broadcast the recording.

When a country joins the Rome Convention, the WTO (TRIPS Agreement) or the WIPO Performances and Phonograms Treaty, it may make reservations so that broadcasters in that country do not have an obligation to pay any royalties to record manufacturers.

Copyright and Related Rights for Music

A business may use music for various reasons to attract customers, create a positive effect on customer behavior, or for the benefit of its employees. This may help the business to obtain a competitive edge over its competitors, provide a better working environment for its employees, help establish a core of faithful customers, and even enhance people's perception of its brand or the company as a whole.

The licensed public performance or use of music is paid for by major television networks, local television and radio stations, cable and satellite networks and systems, public broadcasters, Internet web sites, colleges and universities, night clubs, restaurants, background music services, fitness and health clubs, hotels, trade shows, concert presenters, shopping centers, amusement parks, airlines, and music users in a wide variety of other industries, including the telephone industry (ring tones).



Copyright and related rights protection for music often involves layers of rights and a range of rights owners/administrators, including lyricists, composers, publishers of the scores, record companies, broadcasters, website owners, and copyright collecting societies.

If the music and lyrics are composed by two different people then most likely, a national law will treat the song as consisting of two works – a musical work and a literary work. However, in most cases a license can be obtained from one collective management organization (CMO; see page 45) for the broadcasting of the entire song.

The **music publishing rights** include the right to record, the right to perform, the right to duplicate, and the right to include the work in a new or different work, sometimes called a derivative work. To facilitate commercial exploitation, most songwriters generally prefer to transfer the publishing rights to an entity identified as "the publisher," pursuant to a music publishing agreement, that assigns the copyright or the right to administer the copyright to the publisher. Among the many types of rights tied to works of music are performance rights, print rights, mechanical rights, and synchronization rights. These are briefly explained below:

The **public performance right** is generally the most lucrative source of income for songwriters. A public performance right is not available in sound recordings (or "phonograms") but only for digital audio transmission. In the Philippines, a license is not needed to perform the non-digital sound recording but is needed for the underlying song embodied in the recording.

The right to print and sell single song and multiple songs or copies of sheet music of musical compositions is the **print right**, which is licensed by the publisher.

A **mechanical right** refers to the right to record, reproduce and distribute to the public a copyrighted musical composition on phonerecords (which includes audiotapes, compact discs and any other material object in which sounds are fixed, except those accompanying motion pictures and other audiovisual works). The licenses granted to the user to exploit the mechanical rights are called **mechanical licenses**.

The right to record a musical composition in synchronization with the frames or pictures in an audiovisual production, such as a motion picture, television program, television commercial, or video production, is called the **synchronization ("synch") right. A synchronization license** is required to permit the music to be fixed in an audiovisual recording. The grant of this license permits the producer to incorporate a particular piece of

music into an audiovisual work. This license is traditionally obtained by the television producer, through direct negotiation with the composer and the lyric writer or, more commonly, their publisher.

Apart from the license needed to be obtained from a composer for the use of music in an audio-visual recording, a separate "sync" license needs to be secured from the owner of the sound recording, which embodies or contains the musical work.

The term **master recording** (or **master** for short) refers to the originally produced recording of sounds (on a tape or other storage media) from which a record manufacturer or producer makes CD's or tapes, which it sells to the public. **Master recording rights** or **master use rights** are required to reproduce and distribute a sound recording embodying the specific performance of a musical composition by a specific artist. The use of musical works as mobile ringtones has been a rapidly growing area of music use. It has become a fun and hugely popular way to personalize your mobile phone. The popularity of ringtones has proved to be more widespread and enduring than many initially expected and has placed this new form of music use at the forefront of a predicted growth in 'paid-for' content for mobile devices. A ringtone is a file of binary code sent to a mobile device via SMS or WAP. The license for ringtones usually covers the creation and delivery of both 'monophonic' and 'polyphonic' ringtones.

"Digital Rights Management" (DRM) tools and systems (see page -) play an important role in online management of music sales to prevent piracy. For example, Apple's FairPlay technology and Microsoft's Windows Media build restraints into digital music so that copyright holders are compensated for sales and so that making of digital copies is curtailed.

How long do copyright and related rights protections last?

In general, copyright shall be protected during the life of the author and for fifty (50) years after his death.

In case of works of joint authorship, the economic rights shall be protected during the life of the last surviving author and for fifty (50) years after his death.

In case of anonymous or pseudonymous works, the copyright shall be protected for fifty (50) years from the date on which the work was first lawfully published. If, before the expiration of the said period, the author's identity is revealed or is no longer in doubt, the general rule shall apply. If such work if not published before, it shall be protected for fifty (50) years counted from the making of the work.

In case of works of applied art, the protection shall be for a period of twenty-five (25) years from the date of making (a work of applied art is an artistic creation with utilitarian functions or incorporated in a useful article, whether made by hand or produced on an industrial scale).

In case of photographic works, the protection shall be for fifty (50) years from publication of the work and, if unpublished, fifty (50) years from the making.

In case of audio-visual works including those produced by process analogous to photography or any process for making audio-visual recordings, the term shall be fifty (50) years from date of publication and, if unpublished, from the date of making.

Moral rights shall last during the lifetime of the author and for fifty (50) years after his death. The persons to be charged with posthumous enforcement of these rights shall be named in writing, with the names to be filed with the National Library.

Ownership, Exercise and Transfer of Copyright

The general rule is that copyright belongs to the author of the work. However, in the case of work created by an author during and in the course of his employment, the copyright shall belong to:

- The employee, if the creation of the object of copyright is not a

part of his regular duties even if the employee uses the time, facilities and materials of the employer.

- The employer, if the work is the result of the performance of his regularly-assigned duties, unless there is an agreement, express or implied, to the contrary.

In the case of commissioned works, the copyright would belong to the author unless he assigns it in writing to the person who commissioned the work. The work itself would belong to the person who commissioned the work.

Economic rights may be assigned in whole or in part. Moral rights, which are personal to the author, can never be transferred. Authors may sell their works to individuals or companies best able to market their works, in return for payment. These payments are often made dependent on the actual use of the work, and are then referred to as "royalties."

The assignment has to be made in writing.

Under an assignment, the rights owner transfers the right to authorize or prohibit certain acts covered by one, several or all rights under copyright. An assignment is a transfer of a property right. Thus, if all rights are assigned, the person to whom the rights are assigned becomes the new owner of the copyright.

An author can also choose to license the work. Licensing means that the owner of the copyright retains ownership but authorizes a third party to carry out certain acts covered by his economic rights, generally for a specific period and for a specific purpose. For example, the author of a novel may grant a publisher a license to publish copies of the novel. At the same time, the novelist can license a film producer to make a film based on the novel.

Enforcement of Rights

Anyone who engages without the prior permission of the copyright owner in an activity, which the copyright owner alone is authorized to do or prohibit, is said to have violated the owner's copyright and is considered to have "infringed" copyright.

The law provides enforcement procedures to protect copyright owners. In case of infringement or violation of the

rights protected by law, the copyright owner may file an administrative complaint with the Intellectual Property Philippines, a civil action, and/or a criminal case in court for infringement against the infringer. It would be best to consult a lawyer before any of these measures are taken.

The copyright owners or their heirs can designate a society of artists to enforce their economic and moral rights on their behalf.

3. Protecting Your Original Creations

What do you have to do to obtain copyright or related rights protection?

Copyright and related rights protection is granted without any official procedure. A work is **automatically** protected as soon as it exists, without any special registration, deposit, payment of fee or any other formal requirement, though some countries require that it be fixed in some material form (see page 12).

Copyright Protection for Multimedia Products

A "multimedia" product typically consists of several types of works, often combined together in a single fixed medium, such as computer disk or CD-ROM. Examples of multimedia products are video games, information kiosks and interactive web pages. The elements that can be combined into a multimedia product include music, text, photographs, clip art, graphics, software, and full motion video. Each of these elements may be entitled to copyright protection in its own right. In addition, the compilation or consolidation of these works – the multimedia product itself – may receive copyright protection if this process results in a product which is considered to be original.

How do you prove that you are the owner of copyright?

A system of protection without formalities may pose some difficulty when trying to enforce your rights in case of a dispute. Indeed, if someone claims that you have copied a work of his or hers, then how do you prove that you were the first creator? You can take some precautions to create evidence that you authored the work at a particular point in time.
For example:

- The IP Code provides an option to deposit and/or register your works for a fee (see Annex II for a list of websites of some national copyright offices) in the National Library and the Supreme Court library (for works in the field of law). Doing so provides evidence of the existence of a valid claim to copyright protection.
- You may deposit a copy of your work with a **bank or lawyer**. Alternatively, you could **send yourself a copy** of your work in a sealed envelope by special delivery post (which results in a clear date stamp on the envelope), leaving the envelope unopened upon delivery.
- **Copyright notice**
- It is also advisable to mark your work with specific standard **identification numbering systems**, such as the International Standard Book Number (ISBN) for books; the International Standard Recording Code (ISRC) for sound recordings; the International Standard Music Number (ISMN) for printed music publications; the International Standard Musical Work Code (ISWC) for musical works of the kind which are within repertories mostly controlled by collective management organizations; the International Standard Audiovisual Number (ISAN) for audiovisual works, etc.

How do you protect your works in electronic or digital form?

Works in electronic or digital form (e.g., CDs, DVDs, online text, music, movies) are especially vulnerable to infringement, as they are easy to copy and transmit over the Internet, often without any significant loss of quality, if at all. The measures outlined above, such as the registration or deposit at the national copyright office also apply to such works.

When businesses provide copyright-protected works online, such works are generally subject to a **"mouse-click contract"** (also called "click-wrap contract") that seeks to limit what the user can do with the content. Such restrictions typically limit use to a single user and allow that user only to read/ listen to a single copy. Redistribution or reuse is generally prohibited.

In addition, many businesses employ technological measures to protect their copyright in digital content. Such measures are generally referred to as **"Digital Rights Management"** (DRM) tools and systems. They are used for defining, tracking and enforcing permissions and conditions through electronic means and throughout the content lifecycle.

There are two ways in which DRM tools and systems can help control copyright in digital works:

- Marking the digital works with information about its copyright protection, owner, etc., which is called **"rights management information;"** and
- Implementing **"technological protection measures"** (TPMs) that help to restrict (permit or deny) access or use of the digital works. TPMs, when used in relation to different types of copyright works, can help control the user's ability to view, hear, modify, record, excerpt, translate, keep for a certain period of time, forward, copy, print, etc., in accordance with the applicable copyright or related rights law. TPMs also ensure privacy, security and content integrity.

Choosing the Right DRM Tools

There are many techniques that can be used to lower the likelihood of copyright infringement through the application of DRM tools and systems. Each has different strengths and weaknesses as well as acquisition, integration and maintenance costs. The choice of particular techniques is best determined by your assessment of the level of risk associated with the use of the work.

Rights management information

There are various ways to identify your copyright protected material:

- You may **label** the digital content, for example, with a copyright notice or a warning label such as "May be reproduced for non-commercial purposes only." It is good practice also to include a copyright statement on every page of your business website that spells out the terms and conditions for use of the content on that page.
- The **Digital Object Identifier** (DOI) is a system for identifying copyright works in the digital environment. DOIs are digital tags/names assigned to a work in digital form for use on the Internet. They are used to provide current information, including where the work can be found on the Internet. Information about a digital work may change over time, including where to find it, but its DOI will not change. (See www.doi.org).
- A **time stamp** is a label attached to digital content (works), which can prove what the state of the content was at a given time. Time is a critical element when proving copyright infringement: when a particular email was sent, when a contract was agreed to, when a piece of intellectual property was created or modified, or when digital evidence was taken. A specialized timestamping service may be involved to certify the time a document was created.
- **Digital watermarks** use software to embed copyright information into the digital work itself. The digital watermark may be in a visible form that is readily apparent, much like a copyright notice on the margin of a photograph, or it may be embedded throughout the document, just as documents are printed on watermarked papers. Often, it is embedded so that in normal use it remains undetected. While visible watermarks are useful for deterrence, invisible watermarks are useful for proving theft and on-line tracing of the use of a copyright work.

Technological protection measures (TPMs)

Some businesses prefer to use technology to limit access to their works to only those customers who accept certain terms and conditions for the use of the works. Such measures may include the following:

- **Encryption** is often used to safeguard software products, phonograms and audiovisual works from unlicensed use. For example, when a customer downloads a work, DRM software can contact a clearinghouse (an institution which manages the copyright and related rights) to arrange payment, decrypt the file, and assign an individual "key"- such as a password – to the customer for viewing, or listening to, the content.
- An **access control or conditional access system**, in its simplest form, checks the identity of the user, the content files, and the privileges (reading, altering, executing, etc.) that each user has for a particular work. An owner of a digital work may configure access

Use Care When It Comes to TPMs

Businesses that offer digital content may consider implementing TPMs if there is a need to protect against unauthorized reproduction and distribution of the digital works. The use of TPMs, however, should be balanced with other considerations. For example, TPMs should not be used in ways that violate other laws that may apply, such as laws of privacy, laws protecting consumers, or laws against anticompetitive practices.

Businesses that make use of other people's digital content are encouraged to obtain all licenses or permissions necessary for the desired use (including authorization to decrypt a protected work, if necessary). This is because a business or individual who circumvents a TPM and then uses the protected work may be liable for violating an anticircumvention law as well as for copyright infringement (see page 53).

in numerous ways. For example, a document may be viewable but not printable, or may be used only for a limited period of time.

- **Releasing only versions of lower quality.** For instance, businesses can post photographs or other images on their website with sufficient detail to determine whether they would be useful, e.g., in an advertising layout, but with insufficient detail and quality to allow reproduction in a magazine.

What protection do you have abroad?

The Philippines is a member of one or more international treaties to ensure, among other things, that a copyright work created in one country is **automatically protected in all countries that are members of such international treaties.** The most important international treaty on copyright is the **Berne Convention for the Protection of Literary and Artistic Works** (see Annex III). If you are a national or a resident of a country party to the Berne Convention (see list of members in Annex III), or if you have published your work in one of the member countries, your work will automatically enjoy the level of copyright protection granted in the Berne Convention in all other countries that are party to this Convention.

However, copyright protection remains **territorial** in nature. Therefore your work will only enjoy copyright protection if it **meets the legal requirements of the copyright law of the relevant country.** So while your work may automatically be protected by copyright in many countries (because of international treaties), you still have a separate copyright protection system in each country, which varies considerably among countries.

Is a copyright notice on the work obligatory?

In the Philippines, and in most countries, a **copyright notice** is not required for protection. Nevertheless, it is strongly advisable to place a copyright notice on or in relation to your work, because it reminds people that the work is protected and identifies the copyright owner. Such identification helps all those who may wish to obtain prior permission to use your work. Placing a copyright notice is a very cost effective

safeguard. It requires no significant extra expense, but may end up saving costs by deterring others from copying your work, as well as facilitating the process of granting prior permission by making it easier to identify the copyright owner.

Also, in certain jurisdictions, including a valid notice means that an infringer is deemed to have known of the copyright status of the work. As a result, a court will hold him accountable for willful infringement, which carries a much higher penalty than for an innocent infringement.

Case Study – Memory Computacion

At the same event in which Office XP was launched in New York in 2001, Microsoft also presented a software called Memory Conty, which is an accounting program for enterprises, to be integrated into Office XP. The software was created by Memory Computación ("Memory"), a small software company from Uruguay:

Memory systematically assesses the measures necessary to protect, manage and enforce its rights, so as to obtain the best possible commercial results from its ownership. Every copy of the Memory Conty software includes a user's license, which **indicates that the software is protected** by copyright law, and forbids its copying or reproduction wholly or partially, for any purpose other than a back-up copy to support its use. Memory registered its software with the copyright offices in the countries where it operates and where such offices permit voluntary registration of copyright.

Memory is aware that violations of intellectual property rights and, in particular, software piracy occurs frequently, and has, therefore, elaborated a parallel strategy to protect its products. First, Memory incorporated in its software a series of **technological mechanisms** to prevent the software from being easily copied. Second, Memory focused on the quality of its **after sales services** and on the **continuing innovation of new versions** of its products to be delivered to legitimate clients, so that its clients prefer and perceive the value of purchasing legal software instead of pirated software.

There is no formal procedure to put the notice on your work. It can be written, typed, stamped or painted. A copyright notice generally consists of:

- The word "copyright", "copr." or the copyright symbol ©;
- The year in which the work was first published; and
- The name of the copyright owner.

Example
Cooperatives, Social Capital and The Shaping of State Transformation
Copyright 2008 by Social Weather Stations

If you significantly modify a work, it is advisable to update its copyright notice by adding the years of each modification. For example, "2000, 2002, 2004" indicates that the work was created in 2000 and modified in 2002 and 2004.

For a work that is constantly updated, such as content on a website, it is possible to include the years from the time of first publication to the present: for example, © 1998-2006, ABC Ltd. It is also advisable to supplement the notice with a listing of acts that may not be performed without permission.

For protected **sound recordings**, the letter "P" (for phonogram), in a circle or in brackets, is used. Some countries require that the symbol and the year of first publication appear on copies of phonograms (e.g., on CDs or audio tapes) in order to be protected in that country.

4. Ownership of Copyright

Is the author always the owner of a copyright work?

The meaning of 'authorship' and of 'ownership' is often confused. The **author** of a work is the person who created the work. If the work was created by more than one person, then all the creators are considered as co-authors or joint authors. The issue of authorship is especially relevant in connection with moral rights and in order to determine the date on which protection expires (see page 26).

Copyright ownership is a different issue. The **owner** of the copyright in a work is the person who has the exclusive rights to exploit the work, for example, to use, copy, sell, and make derivative works. Generally, copyright in a work initially belongs to the person who

actually created it, that is to say, the author. However, this is not the case in every country and may particularly not be the case in the following circumstances:

- If the work was created by an employee as a part of his/her job;
- If the work was commissioned or specially ordered andthere is a written agreement transferring copyright ownership to the one who commissioned the work; or
- If the work was created by several persons.

Contractual agreements may alter or clarify the general results established by law in respect of ownership of copyright.

Who owns the moral rights?

Moral rights always belong to the individual creator of the work (or his/her heirs). But, as noted above, moral rights may be waived in some countries.

Companies cannot have moral rights. For example, if the producer of a film is a company, then only the director and screenwriter will have moral rights in the film.

Who owns the copyright in works created by an employee?

If a work was created by an employee within the scope of his/her employment, then the employer automatically owns the copyright, unless otherwise agreed. But this is not always the case. Under the law, the transfer of rights to the employer may not be automatic and may have to be specified in the employment contract. In fact, the actual deed of assignment of copyright may have to be executed for every copyright work created in this manner.

Example: A computer programmer is employed by a company. As part of his job, he makes video games, during normal working hours and using the equipment provided by the company. The economic rights over the software will belong to the company.

Disputes may arise in the event an employee does some work at home or after hours, or produces work not within the scope of the employee's ordinary employment. It is a good practice, to avoid disputes, to have employees sign a written agreement that clearly addresses all the relevant types of copyright issues that may arise.

Who owns the copyright in commissioned works?

If a work was created by, say, an external consultant or creative service, that is, in the course of a commission contract, the situation is different. In most countries, like the Philippines, the creator owns the copyright in the commissioned work, and the person who ordered the work will only have a license to use the work for the purposes for which it was commissioned. Many composers, photographers, freelance journalists, graphic designers, computer programmers and website designers work on this basis. **The issue of ownership most often arises in connection with re-use of commissioned material for the same or a different purpose.**

Example: You outsource the creation of an advertisement for your company. At the time, you intend to use it to promote your new product at a trade show. The advertising agency will own the copyright, unless it was expressly agreed otherwise in the contract. Some time later, you want to use parts of the advertisement (a graphic design, a photo or a logo) on your new website. You must seek the permission from the advertising agency to use the copyright material in this new way. This is because the use of the material on your website was not necessarily envisaged at the time of the original contract.

Nevertheless, there are some exceptional cases, such as photographs taken for private purposes, portraits and engravings, sound recordings, cinematographic films, where, in some countries, the party, which commissions the work, owns the copyright in it, unless agreed otherwise.

Copyright Protection for Websites

Websites involve combinations of many different creative works, such as graphics, text, music, artwork, photographs, databases, videos, computer software, the HTML code used to design the website, etc. Copyright may protect these elements separately, e.g., an article at a website may have its own copyright. Copyright may also protect the particular way that these diverse elements are selected and arranged to create the total website. For further information, see: www.wipo.int/sme/en/documents/business_ website.htm

As is the case in the employer-employee context, it is important that you address copyright ownership issues in a **written agreement**, which should be entered into before commissioning external creative services.

Who owns the copyright in works created by several authors?

A basic requirement of co-authorship is that each co-author's contribution must itself be copyrightable subject matter. In the case of co-authorship, the rights are usually exercised on the basis of an agreement between all the coauthors. In the absence of such agreement, the following rules generally apply:

- **Joint works**. When two or more authors agree to merge their contributions into an inseparable or interdependent combination of the individual contributions, a "joint work" is created. An example of a joint work is a textbook in which two or more authors contribute separate components that are intended to be combined into a single work. In a joint work, the contributing authors become the **joint owners of the entire work.** The copyright law of many countries requires that all joint owners must consent to the exercise of copy-

Works Created for Governments

The government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest or otherwise. Small businesses that create work for government departments and agencies need to be aware of this rule and arrange, by written contract, to clarify copyright ownership.

Works for hire

A work made for hire is a work created by an employee within the scope of employment or commissioned under contract.

right. In other countries, any one of the joint owners may exploit the work without permission of the other coauthor(s) (but may have to share the profits generated from such use). A **written agreement** among the authors or owners is usually the best course of action, specifying such issues as ownership and use issues, rights to revise the works, marketing and sharing of any revenue, and warranties against copyright infringement.

- **Collective works**. These are works created by two (2) or more natural persons at the initiative and under the direction of another with the understanding that it will be disclosed by the latter under his own name and that contributing natural persons will not be identified.
- **Derivative works**. A derivative work is a work based on one or more pre-existing works, such as a translation, musical arrangement, art reproduction, dramatization or motion picture version. Making derivative works is an **exclusive right of the copyright owner**.

However, a derivative work itself can qualify for separate copyright protection, although the copyright extends **only to those aspects, which are original** to the derivative work. In practice, it is not always easy to distinguish a joint work from a collective or a derivative work. The various authors of a joint work often make their respective contributions independently and at different times, so that there may be 'earlier' and 'later' works. **It is the mutual intent of the co-authors to be, or not to be, joint authors that will determine, in most countries, whether the work is a joint work, a collective or a derivative work**. Joint authorship requires intent – without the intent to create a joint work, two or more authors producing inseparable or interdependent works will produce a derivative or collective work.

5. Benefiting from copyright and related rights

How can you generate income from creative works?

If your company owns copyright in a work, you automatically have a complete bundle of exclusive rights. This means that only your company may reproduce the protected work, sell or rent copies of the work, prepare derivative works, perform and display the work in public, and do other similar acts. If others want to use or commercialize your copyright material, you may license or sell a part of one, various or all of your exclusive rights, in exchange for payment(s). The payment(s) can be one time or recurring. This will often add up to much greater profits for your business than direct exploitation of your copyright by the author, creator or copyright owner.

The exclusive rights can be divided and subdivided and licensed or sold to others in just about any way you can imagine. Thus, these may be sold or licensed limited by territory, time, market segment, language (translation), media or content. For example, a copyright owner may assign the copyright in a work completely or sell the publishing rights to a book publisher, the film rights to a film company, the right to broadcast the work to a radio station and the right to adapt the work dramatically to a drama society or television company.

There are many ways to commercialize creative works:

- You may simply **sell the works** that are protected by copyright, or make copies and **sell the copies**; in both cases, you retain all or most of the rights arising out of copyright ownership (see next paragraph);
- You may allow someone else to reproduce or otherwise use the works. This can be done by **licensing your economic rights** over the works; and
- You may **sell (assign) your copyright over the works,** either entirely or partly.

If you sell your works, do you lose copyright over it?

Copyright is distinct from the right of possession of the physical object in which the work is fixed. Merely selling a copyright work (e.g., a computer program or a manuscript) does not

automatically transfer copyright to the buyer. **Copyright in a work generally remains with the author unless he expressly assigns it by a written agreement to the buyer of the work.**

However, if you sell a copy of a work, or the original (e.g., a painting), you may lose some of your exclusive rights out of the bundle of rights associated with copyright. For example, the buyer of the copy may have the right to further dispose of the copy, for instance to sell or transfer it (see also "first sale" on page 17). What rights will be lost or kept varies significantly from country to country. It is advisable to check the applicable copyright law(s) before selling copies of a work in your own country as well as in an export market.

What is a copyright license?

A license is a permission that is granted to **others (individuals or companies) to exercise one or more of your economic rights** over a work protected by copyright. The advantage of licensing is that you remain the copyright owner while allowing others to make copies, distribute, download, broadcast, webcast, simulcast, podcast, or make derivative works in exchange for payment. Licensing agreements can be tailored to fit the parties' specific requirements. Thus, you may license some rights and not others. For example, while licensing the right to copy and use a computer game, you may retain the rights to create derivative works from it (e.g., a movie).

What is the difference between an exclusive and a non-exclusive license?

A license may be exclusive or non-exclusive. If you grant an **exclusive license**, the licensee alone has the right to use the work in the ways covered by the license. In most countries, an exclusive license must be **in writing** in order to be valid. An exclusive license may also be restricted, for example, to a specified territory, for a period of time,

Nick Joaquin's play, **Portrait of the Artist as Filipino,** was made into a movie by National Artist for Theater and Film Lamberto Avellaña, starring his wife National Artist for Theater, Daisy Hontiveros-Avellana as Candida and Naty Crame-Rogers as Paula.

for limited purposes, or the continuation of the exclusivity may be conditional upon other types of performance requirements. Exclusive licenses are often a good business strategy for getting a copyright product distributed and sold on the market, if you lack the resources to effectively market your work yourself.

On the other hand, if you grant a **nonexclusive license** to a company, you give that company the right to exercise one or more of your exclusive rights, but this does not prevent you from allowing others (including yourself) to exercise the same rights at the same time. Thus, you may give any number of individuals or companies the right to use, copy or distribute your work. As with exclusive licenses, nonexclusive licenses may be limited and restricted in all ways. In most countries, a non-exclusive license may be oral or in writing. However, a written agreement is preferable.

Licensing Strategy

By granting a license, you give the licensee the permission to do certain things as specified in the license agreement that otherwise would not be permissible. Therefore, it is important to clearly define the scope of the activities permitted under the license agreement as precisely as possible. **Generally, it is better to grant licenses that are limited in scope** to the specific needs and interests of the licensee. Grant of a nonexclusive license makes it possible to grant any number of licenses to other interested users for identical or different purposes on identical or different terms and conditions.

Sometimes, however, absolute control over a work represents a business security for the licensee or an essential part of its business strategy. In such situations, an exclusive license or an assignment of all your rights in exchange for a one-time fee may be the best deal. But you should consider such negotiations only after having exhausted all other possible alternatives, and make sure that you are paid adequately for it. Once you assign the copyright in a work you lose all its future income-earning potential.

What happens when you sell your copyright?

An alternative to licensing is to **sell your copyright** in the work to someone else, who then becomes the new copyright owner. The technical term for such a transfer of ownership is an **"assignment."** Whereas a license only grants a right to do something, which in the absence of the license would be unlawful, an assignment transfers the total interest in your right(s). You may either transfer the entire bundle of rights, or just part of it. An assignment must be **in writing** and signed by the copyright owner to be valid.

What is merchandising?

Merchandising is a form of marketing whereby an intellectual property right (typically a trademark, industrial design or copyright) is used on a product to enhance the attractiveness of the product in the eyes of the customers. Strip cartoons, actors, pop stars, sports celebrities, famous paintings, statues, and many other images appear on a whole range of products, such as T-shirts, toys, stationary items, coffee mugs or posters. The merchandising of products by relying on copyright may be a lucrative additional source of income:

- For businesses that own copyright works (such as strip cartoons or photographs), licensing out copyright to potential merchandisers can generate lucrative **license fees and royalties**. It also allows a business to generate income from new product markets in a relatively risk-free and cost-effective way.

Example of Filipino Merchandising

New Placenta is a soap and beauty product made from plant placenta and fruit extracts popularly used to address anti-aging concerns. It is produced by Psalmstre Enterprises, Inc., a dynamic Filipino business. Endorsed by beauty queen and actress Melanie Marquez, New Placenta is an excellent example of Filipino product and entrepreneurship with its trademark registered at IP Philippines. Its merchandising strategy targets and caters to women with a demanding lifestyle. Read its story on http://www.psalmstre.com.ph/

- Companies that manufacture low-priced mass produced goods, such as coffee mugs, candies or T-shirts, may make their products more attractive by using a famous character, artistic work, or other appealing element on them.

Merchandising requires prior authorization to use the various rights (such as a copyright protected work, an industrial design or a trademark) on the merchandised good. Extra caution is necessary when celebrities' images are used for merchandising, as they may be protected by privacy and publicity rights.

How do you license your works?

As a copyright or related rights owner, it is up to you to decide whether, how and to whom you may license the use of your works. There are various ways in which licensing is managed by copyright holders.

One option is to **handle all aspects of the process of licensing yourself**. You may negotiate the terms and conditions of the licensing agreement individually with every single licensee or you may offer licenses on standard terms and conditions that must be accepted as such by the other party if it is interested in exploiting your copyright or related rights works.

Administering all your rights yourself will most frequently involve considerable administrative workload and costs to gather market information, search for potential licensees and negotiate contracts. Therefore, you may consider entrusting the administration of some or all of your rights to a professional **licensing agent or agency**, such as a book publisher or a record producer, who will then enter into licensing agreements on your behalf. Licensing agents are often in a better position to locate potential licensees and negotiate better prices and licensing terms than you may be able to do on your own.

Copyright can be assigned but only the economic rights may be transferred, as moral rights always remain with the author (see page 17).

In practice, it is often difficult for a copyright or related rights owner, and even for licensing agents, to monitor all the different uses made of their works. It is also quite difficult for users, such as radio or TV stations, to individually contact each author or copyright owner in order to obtain the necessary permissions. In situations where individual licensing is impossible or impracticable, joining a **collective management organization** (CMO) may be a good option, if available for the specific category of works involved. CMOs monitor uses of works on behalf of creators of certain categories of works, and are in charge of negotiating licenses and collecting payment. You may join a relevant CMO in your own country, if it exists, and/or in other countries.

How do collective management organizations work?

CMOs act as intermediaries between users and a number of copyright owners who are members of the CMO. Generally, there is one CMO per type of work and per country. However, CMOs exist for only some types of works, such as film, music, photography, reprography (all kinds of printed material), television and video, and visual arts. On joining a CMO, members notify the CMO about the works that they have created or own. The core activities of a CMO are: 1) documentation of works of its members, 2) licensing and collecting royalties on behalf its members, 3) gathering and reporting information on the use of works, 4) monitoring and auditing, and 5) distribution of royalties to its members. The works included in the repertoire of the CMO are consulted by persons or companies interested in obtaining a license for their use. To enable the copyright or related rights owners to be represented internationally, CMOs enter into reciprocal agreements with other CMOs throughout the world. The CMOs then grant licenses on behalf of their members, collect the payments, and redistribute the amount collected, based on an agreed formula, to the copyright owners.

The practical advantages of collective management are as follows:

- Collective licensing has many benefits for users and rights-holders. A **one-stop shopping** greatly reduces administrative burden for users and rights-holders; not only does collective management provide right-owners

access to economies of scale with respect to administration costs but also in making investments in research and development for creating digital systems that allow a more effective fight against piracy. Further, collective licensing is a great equalizer; without a collective system in which all market operators participate, small and medium-sized right-holders and small and medium-sized users would be simply locked out of the market.

Managing Copyright and Related Rights

The rights granted by copyright and related rights may be managed by:

- The owner of the rights;
- An intermediary, such as a publisher, producer or distributor; or
- A collective management organization (CMO). In some cases, management by a CMO may even be mandated by law.

- It also allows owners of protected works to use the power of **collective bargaining** to obtain better terms and conditions for the use of their works as a CMO is able to negotiate on a more balanced basis with numerous, more powerful and often dispersed and distant user groups.
- Businesses that want to use others' copyright or related rights are able to deal with only one organization and may be able to get a **blanket license**. A blanket license allows the licensee to use any item in the CMO's catalogue or repertoire for a specified period of time, without the need to negotiate the terms and conditions for the rights of each individual work.
- It offers a useful tool for businesses which want to license material in **digital** form, while making it simpler to obtain those rights.
- Many CMOs also play an important role outside of their immediate licensing business. For example, they are involved in enforcement (anti-piracy); provide education and information dissemination services; interface with legislators; stimulate and promote the growth of new works in different cultures through cultural initiatives; and

Collective Management in the Book Industry

Businesses make massive use of all types of **copyright-protected printed material**. For example, they may need to photocopy articles from newspapers, journals and other periodicals and disseminate them to their employees for information and research purposes. It would be impractical for companies, if not impossible, to ask for permission directly from authors and publishers all over the world for such use.

In response to the need to license large-scale photocopying, authors and publishers have established Reproduction Rights Organizations (RROs) – a type of CMO – to act as intermediaries and facilitate the necessary copyright authorization whenever it is impracticable for right holders to act individually.

On behalf of its members, licenses are issued by RROs whereby permission is granted to make reprographic or scanned copies of a portion of a published work (including books, journals, periodicals, etc.), in limited numbers of copies, for use by employees of institutions and organizations (including libraries, public administrations, copy shop, educational institutions, and a wide variety of businesses in trade and industry). Some RROs are also permitted to license other copyright uses, such as those related to electronic distribution via networks.

In the Philippines, literary authors have banded together to form the Filipino Copyright Licensing Society (FILCOLS) to administer the reproduction rights of authors.

contribute to social and legal welfare of their members. In recent years, many CMOs are actively developing DRM components for managing rights (see page 30). Also, many CMOs are actively participating in international fora to promote the development of common, interoperable and secure standards that respond to their needs for managing, administering and enforcing the rights they represent.

- Details of the relevant CMOs in a country may be obtained from an international federation of CMOs (see Annex I) or from IP Philippines (see Annex II), from the relevant industry association or from one of the international non-governmental organizations listed in Annex I on page 59.

6. Using Works Owned by Others

When do you need a permission to use the works of others?

Businesses often need to use works protected by copyright or related rights works to support their business activities. When using the work of others you must first determine if copyright permission is required. In principle, you will need authorization from the copyright owner:

- If the work is covered by copyright and/or related rights law(s) (see section 2);
- If the work is not in the public domain (see page 50);
- If your planned exploitation implies the use of all or part of the rights granted to the copyright and/or related rights owner; and
- If your intended use is not covered by "fair use" or "fair dealing" or by a limitation or exception specifically included in the national copyright or related rights law (see pages 51-52).

Remember that you may need specific permission for using other people's content **outside your business premises** (investor "road show," company website, annual report, company newsletter, etc.), and **inside your business premises** (distribution to employees, product research, in-house meetings and training, etc.). And, even if you use **just a part of a copyright-protected work**, you will generally need prior permission (see page 56).

Do you also need permission to make electronic or digital use of the works of others?

Copyright protection applies to digital use and storage in the same way as it does to any other uses. Therefore, you may need prior permission from the copyright owners to scan their works; post their works on an electronic bulletin board or a website; save their digital content on your enterprise's database; or publish their works on your

Licensing software

Standardized packaged software is often licensed to you upon purchase. You purchase the physical package but only receive a license for certain uses of the software contained in it. The terms and conditions of the license (called **"shrink-wrap license"**) are often contained on the package, which may be returned if you do not agree with the stated terms and conditions. By opening the package, you are deemed to have accepted the terms and conditions of the agreement. Otherwise, the **licensing agreement** may be included inside the packaged software.

Often, the licensing of software also takes place on-line by means of **"click-wrap licenses."** In such licenses, you accept the terms and conditions of the agreement by clicking on the relevant icon on a webpage. If you need a particular software for a number of computers within your company, you may be able to receive **volume licenses** that give you significant discounts by purchasing software licenses in quantity.

In recent years, there has been increasing debate concerning the validity of software licenses as many manufacturers try to extend the boundaries of their rights through additional contractual provisions that go beyond what copyright and/or related rights laws permit. In all such cases, you should carefully go through the licensing agreement to find out what you may and may not do with the software you have bought. In addition, there may be exceptions under the national copyright law that allow you to make certain uses of the computer program without needing permission, such as making interoperable products, correcting errors, testing security and making a backup copy.

website. Most websites list the e-mail address of a contact person, making it relatively easy to request permission to reproduce images or text.

If you have bought a work protected by copyright, are you free to use it as you wish?

As explained above, copyright is separate from the right of possession of the work (see page 40). Buying a copy of a book, CD, video or computer program by itself does not necessarily give the buyer the right to make further copies or play or show them in public. The right to do these things will generally remain with the copyright owner, whose permission you would need to do those acts. You should note that, as with photocopying a work, scanning a work to produce an electronic copy and downloading a copy of a work which is in an electronic form all involve copying the work, prior permission is generally needed before doing any of those acts.

What content or material are you entitled to use without permissions?

Authorization from the copyright owner is not needed:

- If you are using an aspect of the work which is not protected under copyright law. For example, if you are using the **facts or ideas** from a protected work, rather than copying the author's expression (see pages 13, 15);
- If the work is in the **public domain**; and
- If your use is covered by the concept of 'fair use' or 'fair dealing' or by a **limitation or exception** specifically included in the national copyright law.

When is a work in the public domain?

If no one has copyright in a work, that work belongs to the public domain and anyone may freely use it for any purpose whatsoever. The following types of works are in the public domain:

- A work for which copyright protection period has expired (see page 26);
- A work that cannot be protected by copyright (e.g., title of a book) (see page 13); and
- A work for which the copyright owner has explicitly abandoned his rights, for example, by putting a public domain notice on the work.

Absence of a copyright notice does not imply that a work is in the public domain, even if the work is available on the Internet.

> ***Example:*** *Lucio D. San Pedro is a Filipino master composer, conductor, and teacher whose music evokes the folk elements of the Filipino heritage. He was conferred the National Artist for Music in 1991. He died in 2002.* His music may be found in the public domain. Refer to http://www.opm.org.ph/registry/artist_profile.php?artist_id=628.

How do you find out whether a work is still protected by copyright or related rights?

In accordance with moral rights, an author's name will normally be indicated on the work, whereas the year in which the author died may be available in bibliographic works or public registers. If that search does not give clear results, you may consult the National Library to check for any relevant information, or you may contact the relevant collective management organization or the publisher of the work. Remember that there may be several copyrights in one product, and these rights may have different owners, and with different periods of protection. For example, a book may contain text and images that are protected by several and separate copyrights, each expiring at a different date.

When can you use a work under a limitation or exception to copyright or under the concept of "fair use" or "fair dealing?"

The Philippine copyright laws include a number of limitations and exceptions, which limit the scope of copyright

Current technology makes it easy to use material created by others – film and television clips, music, graphics, photographs, software, text, etc. – in your website. The technical ease of using and copying works does not give you the legal right to do so.

protection, and which allow either free use of works under certain circumstances, or use without permission but against a payment. The exact provisions vary from one country to another, but generally exceptions and limitations include the use of a **quotation** from a published work (that is, to use short excerpts in an independently created work), some copying for **private and personal use** (e.g., for research and study purposes), some reproduction in **libraries and archives** (e.g., of works out of print, where the copies are too fragile to be lent to the general public), reproduction of excerpts of works by **teachers** for use by the students in a class, or the making of special copies for use by **visually handicapped** persons.

Note that, even if you use other people's work, you still need, to cite the name of the author.

What is a levy system for private copying?

Individuals copy copyright material for their own personal, noncommercial use. Such copying creates a profitable market for the manufacturers and importers of recording equipment and media. However, private copying cannot by its very nature be managed by contract: private copies are made spontaneously by people in the privacy of their own homes. Therefore, in some countries, copying for private use is simply permitted under an exception; no prior permission needs to be sought. But in exchange, the Philippines has set up a payment system of levies to reimburse artists, writers and musicians for such duplication of their works. A levy system may be composed of two elements:

- **Equipment and media levy:** a small copyright fee is added to the price of all sorts of recording equipment, ranging from copying and fax machines to CD and DVD burners, video cassette recorders and scanners. Some countries also provide for a levy on blank recording media, such as photocopying paper, blank tapes, CD-Rs or flash cards.
- **Operator levy:** a "user fee" is paid by schools, colleges, government and research institutions, universities, libraries and enterprises making a large volume of photocopies.

Levies are usually collected by a collective management organization from manufacturers, importers, operators or users, and then distributed to the relevant right owners.

Can you use works protected by technological protection measures (TPMs)?

Businesses need to use care when making commercial uses of works protected by TPMs if this would require **circumventing the TPM**, an action that is now prohibited by law in several countries. Liability for these violations maybe separate and distinct from any liability for infringing copyright in the protected works. This means that the offender can be held liable for two (2) offenses: infringement and circumvention. Thus, any exploitation of the work probably still needs to be licensed from the copyright owner.

Circumvention of a TPM would occur, for instance, if you hack into someone's digital rights management system in order to use the protected content without authorization, or if you decrypt a copyright work without authorization.

How can you get authorization to use protected works over which rights are owned by others?

There are two primary ways to go about obtaining permission to use the copyright or related rights-protected work: using the services of a CMO, or contacting the copyright or related rights owner directly if contact details are available.

The best way is probably to first see if the work is registered in the repertoire of the relevant **CMO**, which considerably simplifies the process of obtaining licenses. CMOs generally offer different types of licenses, for different purposes and uses. Some CMOs also offer digital licenses (see also pages 45-46; 48).

If copyright or related rights in the work is/are not managed by any CMO, you will have to contact the copyright or related rights owner directly or his/her agent. The person named in the copyright notice is probably the person who was the initial copyright owner, but over

a period of time, the economic rights of copyright or related rights may have been transferred to another person. By searching the **national copyright register** you should be able to identify the current copyright or related rights owner in countries such as India and the United States of America that provide a voluntary system of copyright registration. In case of written or musical works, you may contact the work's **publisher or the record producer**, who often owns the right to reproduce the material.

As there might be several "layers" of rights, there may be several different right owners from each of whom licenses are required. For example, there may be a music publisher for the composition, a recording company for the recording of music, and often also the performers.

For important licenses, it is advisable to obtain expert advice before negotiating the terms and conditions of your license agreement, even when a license is initially offered on so-called standard terms and conditions. A competent licensing expert may help to negotiate the best licensing solution to meet your business needs.

How can your business reduce the risk of infringement?

Litigation for copyright infringement can be an expensive affair. Therefore, it would be wise to implement policies that help avoid infringement. The following are recommended:

- Educate the staff employed by your company so that they are made aware of possible copyright implications of their work and actions;
- Obtain written licenses or assignments, where needed, and ensure that staff are familiar with the scope of such licenses or assignments;
- Mark any apparatus that could be used to infringe copyright (such as photocopiers, computers, CD and DVD burners) with a clear notice that the apparatus must not be used to infringe copyright;
- Prohibit your staff explicitly from downloading any copyright-protected material from the Internet on office computers without authorization; and

- If your business makes frequent use of products protected by technological protection measures (TPMs), develop policies to ensure that employees do not circumvent TPMs without authorization from the copyright owner, or do not exceed the scope of the authorization.

Every business should have a comprehensive policy for copyright compliance, which includes detailed procedures for obtaining copyright permission that are specific to its business and usage needs. Creating a culture of copyright compliance within your business will reduce your risk of copyright infringement.

Summary checklist

- **Maximize your copyright protection.** Register your works with the National Library, where such voluntary copyright registration is available. Put a copyright notice on your works. Employ digital rights management tools to protect digital works.
- **Ascertain copyright ownership.** Have written agreements with all employees, independent contractors and other persons to address the question of ownership of copyright in any works that are created for your company.
- **Avoid infringement.** If your product or service includes any material that is not entirely original to your company, find out whether you need permission to use such material and, where needed, get prior permission.
- As a rule of thumb, **get the most out of your copyright.** License your rights, rather than selling them. Grant specific and restrictive licenses, so as to tailor each license to the particular needs of the licensee.

7. Enforcing Copyright

When is your copyright infringed?

Anyone who engages without the prior permission of the copyright owner in an activity, which the copyright owner alone is authorized to do or prohibit, is said to have violated the owner's copyright, and is said to have "infringed" copyright.

The **economic rights** may be infringed if someone, without authorization:

- Does an act that you alone have the exclusive right to do;
- Aids or abets such infringement; or
- Possesses an infringing copy for commercial purposes.

There may be copyright infringement, even if only a **part** of a work is used. An infringement will generally occur where a "substantial part" – that is an important, essential or distinct part – is used in one of the ways exclusively reserved to the **copyright** owner. So, both the **quantity** and **quality** matter. However, there is no general rule on how much of a work maybe used without infringing copyright. The question will be determined on a case-by-case basis, depending on the actual facts and circumstances of each case.

The **moral rights** may be infringed:

- If your contribution, as author of the work, is not recognized; or
- If your work is subjected to derogatory treatment or is modified in a way that would be prejudicial to your honor or reputation.

There may also be an infringement if someone makes, imports, or commercially deals in devices that **circumvent technological protection measures** that you have put in place to protect your copyright content against unauthorized uses. Moreover, there may be infringement if someone **removes or alters rights management information** that you have attached to a copyright work (see page 31).

One single act may violate the rights of many right holders. For example, it is an infringement of the right in the broadcast to sell tapes of broadcast programs. Of course, this action would also infringe the copyright of the composer of the music and the record company, which produced the original recording. Each rightholder may take separate legal actions.

What should you do if your rights are likely to be or have been violated?

The burden of enforcing copyright and related rights falls mainly on the right owner. It is up to you to identify any violation of your rights and to decide what measures should be taken to enforce your rights.

A copyright lawyer or law firm would provide information on the existing options and help you to decide if, when, how and what legal action to take against infringers, and also how to settle any such dispute through litigation or otherwise. Make sure that any such decision meets your overall business strategy and objectives.
If your copyright is infringed, then you may begin by **sending a letter** (called a "cease and desist letter" or "demand letter") to the alleged infringer informing him/her of the possible existence of a conflict. It is advisable to seek the help of a lawyer to write this letter. In some countries, if someone has infringed your copyright on the Internet, you may have the option:

- To send a special cease and desist letter to an Internet Service Provider (ISP) requesting that the infringing content be removed from the website or that access to it be blocked ("notice and take-down"); or
- To notify the ISP, which in turn notifies its clients of the alleged infringement and thereby facilitates resolution of the issue ("notice and notice" approach).

Sometimes surprise is the best tactic.

Giving an infringer notice of a claim may enable him to hide or destroy evidence. If you consider the infringement to be willful, and you know the location of the infringing activity, then you may wish to go to court without giving any notice to the infringer and ask for the appropriate remedy.

Court proceedings may take a considerable period of time. In order to prevent further damage during this period, you may take immediate action to stop the allegedly infringing action and to prevent infringing goods from entering into the channels of commerce. The law allows the court to issue a preliminary injunction by which the court may order, pending the final outcome of the court case, the alleged infringer to stop his infringing action and to preserve relevant evidence.

Bringing **legal proceedings** against an infringer is advisable only if: (i) you can prove that you own the copyright in the work; (ii) you can prove infringement of your rights; and (iii) the value of succeeding in the legal action outweighs the costs of the proceedings. The remedies that courts may provide to compensate for an infringement include damages, injunctions, orders to account for profits, and orders to deliver up infringing goods to right holders. The infringer may also be compelled to reveal the identity of third parties involved in the production and distribution of the infringing material and their channels of distribution. In addition, the court may order, upon request, that infringing goods be destroyed without compensation.

The copyright law may also impose **criminal liability** for making or commercially dealing with copies of infringing works. The penalties for infringement includes imprisonment and/or fine.

In order to **prevent the importation of pirated works,** you should contact the national customs authorities. Many countries have put in place border enforcement measures, which allow copyright owners and licensees to request the detention of suspected pirated and counterfeit goods.

What are your options for settling copyright infringement without going to a court?

In many instances, an effective way of dealing with infringement is through **arbitration or mediation**. Arbitration generally has the advantage of being a less formal, shorter and cheaper procedure than court proceedings, and an arbitral award is more easily enforceable internationally. An advantage of both arbitration and mediation is that the parties retain control of the dispute resolution process. As such, it can help to preserve good business relations with another enterprise with which your company may like to continue to collaborate or enter into a new licensing or cross-licensing arrangement in the future. It is generally good practice to include mediation and/or arbitration clauses in licensing agreements. For more information on mediation services offered by IP Philippines, log on to www.ipophil.gov.ph.

Annex I -- Useful websites

For more information on:

- Philippine IP laws and services www.ipophil.gov.ph
- intellectual property issues from a business perspective www.wipo.int/sme
- trademarks in general www.wipo.int/about-ip www.inta.org(International Trademark Association)
- the practical aspects relating to the registration of trademarks see Annex II or www.wipo.int/directory/en/urls.jsp
- Madrid system for the International Registration of Marks www.wipo.int/madrid
- International Classification of Goods and Services for the Purposes of the Registration of Marks under the Nice Agreement www.wipo.int/classifications(under Nice Agreement)
- International Classification of the Figurative Elements of Marks under the Vienna Agreement www.wipo.int/classifications(under Vienna Agreement)
- the conflict between trademarks and domain names and on alternative dispute resolution procedures for domain names www.arbiter.wipo.int/domains www.icann.org.

A list of the online trademark databases maintained by industrial property offices throughout the world is available at www.arbiter.wipo.int/trademark

ANNEX II – Internet Addresses

National and Regional Intellectual Property Offices

African Intellectual Property Organization	www.oapi.wipo.net
Algeria	www.inapi.org
Albania	www.alpto.gov.al
Andorra	www.ompa.ad
Argentina	www.inpi.gov.ar
Armenia	www.armpatent.org
Australia	www.ipaustralia.gov.au
Austria	www.patent.bmvit.gv.at
Bahrain	www.gulf-patent-office.org.sa/bahrainframe.htm
Barbados	www.caipo.org
Belarus	www.belgospatent.org/english/about/history.html
Belgium	www.mineco.fgov.be
Belize	www.belipo.bz
Benelux	www.boip.int
Benin	www.oapi.wipo.net
Bolivia	www.senapi.gov.bo
Botswana	www.aripo.org
Brazil	www.inpi.gov.br
Bulgaria	www.bpo.bg
Burkina Faso	www.oapi.wipo.net
Burundi	www.oapi.wipo.net
Cambodia	www.moc.gov.kh
Cameroon	www.oapi.wipo.net
Canada	www.opic.gc.ca
Central African Republic	www.oapi.wipo.net
Chad	www.oapi.wipo.net
Chile	www.dpi.cl
China	www.sipo.gov.cn

China (Hong Kong -SAR)	www.ipd.gov.hk
China (Macao)	www.economia.gov.mo
China (Marks)	www.saic.gov.cn
Colombia	www.sic.gov.co
Congo	www.oapi.wipo.net
Costa Rica	www.registronacional.go.cr
Côte d'Ivoire	www.oapi.wipo.net
Croatia	www.dziv.hr
Cuba	www.ocpi.cu
Cyprus	www.mcit.gov.cy/mcit/drcor/drcor.nsf
Czech Republic	www.upv.cz
Democratic Republic of the Congo	www.oapi.wipo.net
Denmark	www.dkpto.dk
Dominican Republic	www.seic.gov.do/onapi
Egypt	www.egypo.gov.eg
El Salvador	www.cnr.gobs.sv
Estonia	www.epa.ee
Eurasian Patent Office	www.eapo.org
European Union (Office for Harmonization in the Internal Market – OHIM)	www.oami.eu.int
Finland	www.prh.fi
France	www.inpi.fr
Gabon	www.oapi.wipo.net
Gambia	www.aripo.org
Georgia	www.sakpatenti.org.ge
Germany	www.dpma.de
Ghana	www.aripo.org
Greece	www.obi.gr
Honduras	www.sic.gob.hn/pintelec/indice.htm
Hungary	www.mszh.hu/english/index.html
Iceland	www.patent.is/focal/webguard.nsf/key2/indexeng.html
India	www.ipindia.nic.in

Indonesia	www.dgip.go.id
Ireland	www.patentsoffice.ie
Israel	www.justice.gov.il
Italy	www.uibm.gov.it
Jamaica	www.jipo.gov.jm
Japan	www.jpo.go.jp
Jordan	www.mit.gov.jo
Kazakhstan	www.kazpatent.org/english
Kenya	www.aripo.org
Kuwait	www.gulf-patent-office.org.sa
Lao People's Democratic Republic	www.stea.la.wipo.net
Latvia	www.lrpv.lv
Lebanon	www.economy.gov.lb
Lesotho	www.aripo.org
Liechtenstein	www.european-patent-office.org
Lithuania	www.vpb.lt
Luxembourg	www.etat.lu/ec
Malawi	www.aripo.org
Malaysia	www.mipc.gov.my
Mali	www.oapi.wipo.net
Mexico	www.impi.gob.mx
Monaco	www.european-patent-office.org/patlib/country/monaco
Montenegro	www.yupat.sv.gov.yu
Morocco	www.ompic.org.ma
Mozambique	www.aripo.org
Namibia	www.aripo.org
Nepal	www.ip.np.wipo.net
Netherlands	www.octrooicentrum.nl
New Zealand	www.iponz.govt.nz
Niger	www.oapi.wipo.net
Norway	www.patentstyret.no
Oman	www.gulf-patent-office.org.sa
Panama	www.digerpi.gob.pa

Peru	www.indecopi.gob.pe
Philippines	www.ipophil.gov.ph
Poland	www.business.gov.pl/Intellectual,property,protection,90.html
Portugal	www.inpi.pt
Qatar	www.gulf-patent-office.org.sa
Republic of Korea	www.kipo.go.kr
Republic of Moldova	www.agepi.md
Romania	www.osim.ro
Russian Federation	www.rupto.ru
Saint Vincent and the Grenadines	196.1.161.62/govt/cipo/index.asp
Saudi Arabia	www.gulf-patent-office.org.sa
Senegal	www.oapi.wipo.net
Serbia	www.yupat.sv.gov.yu
Sierra Leone	www.aripo.org
Singapore	www.ipos.gov.sg
Slovak Republic	www.indprop.gov.sk
Slovenia	www.uil-sipo.si/Default.htm
Somalia	www.aripo.org
South Africa	www.cipro.gov.za
Spain	www.oepm.es
Sudan	www.aripo.org
Swaziland	www.aripo.org
Sweden	www.prv.se
Switzerland	www.ige.ch
Syrian Arab Republic	www.himaya.net
Tajikistan	www.tipat.org
Thailand	www.ipthailand.org
The Former Yugoslav Republicof Macedonia	www.ippo.gov.mk
Togo	www.oapi.wipo.net
Trinidad and Tobago	www.ipo.gov.tt/home.asp
Tunisia	www.inorpi.ind.tn
Turkey	www.turkpatent.gov.tr
Turkmenistan	www.eapo.org

Uganda	www.aripo.org
Ukraine	www.sdip.gov.ua
United Arab Emirates	www.gulf-patent-office.org.sa
United Kingdom	www.patent.gov.uk
United Republic of Tanzania	www.aripo.org
United States	www.uspto.gov
Uruguay	www.dnpi.gub.uy
Uzbekistan	www.patent.uz
Venezuela	www.sapi.gov.ve
Yemen	www.most.org.ye
Zambia	www.aripo.org
Zimbabwe	www.aripo.org

Note:

For up-to-date information visit website at the following urls: www.wipo.int/members/en/ and www.wipo.int/directory/en/urls.jsp

Annex III

Summary of the Main International Treaties Dealing with Copyright and Related Rights

The Berne Convention for the Protection of Literary and Artistic Works (The Berne Convention) (1886)

The Berne Convention is the main international copyright treaty. The Berne Convention establishes, amongst other things, the rule of "national treatment," meaning that in every country, foreign authors enjoy the same right as national authors. The Convention is currently in force in 162 countries. A list of contracting parties and the full text of the Convention are available at *www.wipo.int/treaties_e/ip/berne/index.html.*

International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (The Rome Convention) (1961)

The Rome Convention extends protection to neighboring rights: performing artists enjoy rights over their performances, producers of phonograms over their sound recordings and radio and television organizations over their broadcast programs. The Convention's membership is currently signed by 83 countries. For a list of contracting parties and full text of the Convention, see *www.wipo.int/treaties/enlip/romelindex.html.*

Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (The Phonograms Convention) (1971)

The Phonograms Convention provides for the obligation of each contracting State to protect a producer of phonograms who is a national of another contracting State against the making of duplicates without the consent of the producer, against the importation of such duplicates, where the making or importation is for the purposes of distribution to the public, and against the distribution of such duplicates to the public. "Phonogram" means an exclusively aura! fixation (that is, it does not comprise, for example, the sound tracks of films or videocassettes), whatever be its form (disc, tape or other). The Convention is currently in force in 75 countries. A list of the contracting parties and full text of the Convention are available at *www.wipo.int/treaties/en/tp/phonograms/index.html.*

Agreement on Trade Related Aspects of Intellectual Property Rights (The TRIPS Agreement) (1994)

Aiming at harmonizing international trade hand in hand with effective and adequate protection of IP rights, the TRIPS Agreement was drafted to ensure the provision of proper standards and principles concerning the availability, scope and use of trade-related IP rights. At the same time, the Agreement provides means for the enforcement of such rights. The TRIPS Agreement is binding on an 149 members of the World Trade Organization. The text can be read at the website of the World Trade Organization *http://www.wto.org/english/docs_e/legal_e/27-trips.doc*.

WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (1996)

The WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT) were concluded in 1996 in order to adapt the protection of the rights of authors, performers and phonogram producers to the challenges posed by the advent of the digital world. The WCT supplements the Berne Convention for the Protection of Literary and Artistic Works, adapting its provisions to the new requirements of the Information Society. This means firstly that ail regulations in the Berne Convention are applicable *mutatis mutandis* to the digital environment. It also means that all WCT Contracting Parties must meet the substantive provisions of the Berne Convention, irrespective of whether they are parties to the Berne Convention itself. The WCT extends authors' rights in respect of their works by granting them three exclusive rights, i.e., the right to:

- authorise or prohibit the distribution to the public of original works or copies thereof by sale or otherwise (right of distribution);
- authorise or prohibit the commercial rental of computer programs, cinematographic works (if such commercial rental has led to widespread copying of such works, materially impairing the exclusive right of reproduction) or works embodied in phonograms (right of rental); and
- authorise or prohibit communication to the public of their original works or copies thereof, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them (right of communication to the public).

The *WCT* entered into force on March 6, 2002, and currently some 59 states are members of the WCT (see: www.*wipo.int/treaties/en/ip/wct/index.html).*

In contrast to the WCT, the WPPT deals with holders of related rights, its purpose being the international harmonisation of protection for performers and phonogram producers in the information society. However, it does not apply to audiovisual performances. The WPPT mainly protects the economic interests and personality rights of performers (actors, singers, musicians, etc) in respect of their performances, whether or not they are recorded on phonograms. It also helps persons who, or legal entities which, take the initiative and have the responsibility for the fixation of the sounds. WPPT grants rights holders the exclusive right to:

- authorise or prohibit direct or indirect reproduction of a phonogram (right of reproduction);
- authorise or prohibit the making available to the public of the original or copies of a phonogram by sale or other transfer of ownership (right of distribution);
- authorise or prohibit the commercial rental to the public of the original or copies of a phonogram (right of rental); and
- authorise or prohibit the making available to the public. by wire or wireless means, of any performance fixed on a phonogram in such a way that members of the public may access the fixed performance from a place and at a time individually chosen by them, e.g., on-demand services (right of making available).

With regard to live performances, i.e., those not fixed on a phonogram, the WPPT also grants performers the exclusive right to authorise:

- broadcasting to the public;
- communication to the public; and
- fixation (of sound only).

The WPPT came into force on May 20, 2002; 58 states are currently member of the WPPT (see *www.wipo.int/treatieslen/ip/wpptlindex.html).*

Convention on Cybercrime (2001)

Drafted by the Council of Europe, the convention on cybercrime sets out a common criminal policy aimed at the protection of society against cybercrime. It is the first international treaty on crimes committed via the Internet and other computer networks, dealing particularly with infringements of copyright, computer-related fraud, child pornography and violations of network security. It also contains a series of powers and procedures such as the search of computer networks and interception. The full text can be read at *conventions.coe.intlTreaty/en/Treaties/Htm!/185.htm.*

Copyright Directive (2001)

The European Community Directive on the harmonisation of certain aspects of copyright and related rights in the information society harmonises rights in certain key areas, primarily to meet the challenge of the Internet and e-commerce, and digital technology in general. It also deals with exceptions to these rights and legal protection for technological aspects of rights management systems.

Annex IV

List of countries party to the Berne Convention for the Protection of Literacy and Artistic Works (Status as of June 16, 2006)

Albania
Algeria
Andorra
Antigua and Barbuda
Argentina
Armenia
Australia
Azerbaijan
Bahamas
Bahrain
Bangladesh
Barbados
Belarus
Belgium
Belize
Benin
Bhutan
Bolivia
Bosnia and Herzegovina
Botswana
Burnei Darussalem
Bulgaria
Burkina Faso
Cameron
Canada
Cape Verde
Central African Republic
Chad
Chile
China
Colombia
Comoros
Congo
Costa Rica
Cote d'Ivoire
Croatia
Cuba
Cyprus
Czech Republic
Democratic People's Republic of Korea
Democratic Republic of the Congo
Denmark
Djibouti
Dominica
Dominican Republic
Ecuador
Egypt
El Salvador
Eqautorial Guinea
Estonia
Fiji
Finland
France
Gabon
Gambia
Georgia
Germany
Ghana
Guatemala
Guinea
Guinea-Bissau
Guyana
Haiti
Holy See
Honduras
Hungary
Iceland
India
Indonesia
Ireland
Israel
Italy
Jamaica
Japan
Jordan
Kazakhstan
Latvia
Lebanon
Lesotho
Liberia
Libyan Arab Jamahiriya
Liechtenstein
Lithuana
Luxemborg
Madagascar

Malawi
Malaysia
Mali
Malta
Mauritania
Mauritius
Mexico
Micronesia (Fedrated States of)
Monaco
Mongolia
Morocco
Namibia
Nepal
Netherlands
New Zealand
Nicaragua
Niger
Nigeria
Norway
Oman
Pakistan
Panama
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Republic of Korea
Republic of Moldova
Romania
Russian Federation
Rwanda
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and Grenadines
Saudi Arabia
Samoa
Senegal
Serbia and Montenegro
Singapore
Slovakia
Slovenia
South Africa
Spain
Sri Lanka
Sudan
Suriname
Swaziland
Sweden
Switzerland
Syrian Arab Republic
Tajikistan
Thailand
The former Yugoslav Republic of Macedonia
Togo
Tonga
Trinidad and Tobago
Tunisia
Turkey
Ukraine
United Arab Emirates
United Kingdom
United Republic of Tanzania
United States of America
Uruguay
Uzbekistan
Venezuela
Vietnam
Zambia
Zimbabwe

(Total: 162 States)

Note: For up-to-date information visit website at the following url: www.wipo.int/treaties/en/ip/berne

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IP Philippines Office Publication No. _____ ISBN No. _____

Customization and printing of this material was financed under the WIPO United States Patent and Trademark Office Funds in Trust.