

CHAPTER 4 RIGHTS AND PERMISSION

Copyright

Any body who writes or, commissioned to write, a book or any form of writing and later publishes it is automatically protected by law of his/her rights over the said work. If the writing is published, the writer transfers part or whole of that rights, via an official agreement, to the publisher.

Copyright is the exclusive right given by the law to a person or a recipient of those rights against reproduction or a variety of usages of the product over a period of time. A piece of writing belongs to its writer. As such copyright is like a “property” for him and he has every right to protect it. Reproductions in whatever forms require prior permission from the writer or owner of the copyright.

From the publisher’s perspective, there are two types of rights, i.e., the right to increase the quantity of the work (normally via printing) and the right to distribute copies of the work to general public.

Another category of rights is the rights that derive from the use of the work such as the right to translate, summarise, adaptation, cinematography, screen play or adaption to other media.

All rights mentioned in the above paragraphs are categorised as subsidiary rights for the specific work. The copyrights come automatically as soon as the work is created in a movable form and is permanent. The writer has a complete right over the copyright and is free to sell, present, rent or transfer partially or wholly to whoever he chooses.

Objective of the Copyright

Generally, copyright aims at protecting the writer and creator from unauthorised reproduction of his work. Without the protection of a copyright, other parties are free to exploit a piece of work to his own benefit without any compensation to the original author.

The goal of copyright protection is twofold: economic, which is related to the business of publishing; and social, which is related to the welfare of copyright holder.

Economic Goal.

Publishing industry is an important economic activity and it involves several parties such as the authors, publishers, printers, and book sellers. To publish a book, a publisher needs a huge capital outlay. The publisher has to meet production costs including printing cost, commission to book sellers, and royalty to authors.

To be profitable, the publisher hopes the income from the sale of the book to exceed his cost. In the context of Malaysia, not only the profit margin of book publishing is low (less than 10% of cost), it also takes a long time to recoup. The norm is three to four years.

Due to factors such as these, it is therefore justifiable to give legal protection to the publisher and the author of the book. Without copyright protection, it is impossible for the publisher to estimate the income to be accrued, for he might just witness other parties who violated copyright, reaping the harvest.

With copyright protection, the publisher can minimise the risk (of loss) and with the proceeds from the sale of a publication he will be able to finance his next project. This will help to develop the book industry in the country and the economy as well.

Moral Goal.

Copyright protection can also provide an incentive to the writer to proceed with writing and contributes to the development of culture and knowledge. With the copyright protection, the author gets a decent compensation out of the proceeds of his book. The economic return is an incentive as well as a challenge for the writer to write books and other works in the future, and thereby contributes to the intellectual development of his nation.

No copyright protection means that no economic returns. No economic returns means that no incentive to write books and other works. Thus intellectual and cultural activities will be at a slower pace.

The right to be recognised as a writer is looked upon as a high moral right to a person, and copyright protection is a sure way of providing that right. In most countries, writers occupy a special position in society. However, the special position may not mean that much if the idea or thought expressed by them are not given copyright protection. In the long run, they will be in similar position with just anybody else because the authors do not possess or given protection over their work.

With copyright protection, it also means that a writer is responsible for his work. Should there be any dispute, either over ideas or legal, the author can be held responsible. The copyright over a particular work determines the locus of responsibility.

Based on the above considerations, it is clear that copyright protection is of paramount importance to the economic and intellectual development. Without it, development in these two areas will be severely affected.

COPYRIGHT ACT 1987

Laws on copyright in Malaysia come under the ambit of Copyright Act 1987. The Act, which evolved from Copyright Act 1969, is applicable throughout Malaysia. The Act protects, among others, literary works, art, music, film, voice recording, broadcasting, works by the government and government agencies, and international organisations.

LITERARY WORK

Under the Act, book publishing is classified as literary work. Literary work given protection by the Act include;

- a. Novel, short-story, bulletin, manuscript, poetry and other forms of writing.
- b. Play, drama, stage direction, film scenario, broadcast script, choreography, and pantomime.
- c. Treatise, history, biography, composition and article.
- d. Encyclopaedia, dictionary and other reference materials.
- e. Letters, reports and memorandums.
- f. Lectures, speeches, sermons, and other works of similar nature.
- g. Tables or arrangement which are put into words, statistics or symbols (either in visible forms or not)
- h. Computer program or arrangement of computer program.

There are three conditions that should be fulfilled before a literary work is given copyright protection. These are:

- a. Sufficient efforts have been taken to make it an original work.
- b. It is written, recorded or others to turn it into a material form.
- c. Its author is some body “qualified”, i.e. a Malaysian citizen or a permanent resident and the work is first published in Malaysia.

DURATION OF THE PROTECTION

Duration of protection is:

- a. Copyright protection is for a lifetime of the author and up to 50 years after his death.
- b. If it has not been published before the death of the author, the protection is up to 50 years beginning from the calendar year following its first publication.
- c. If published without the name of the author or under a nom de plum, copyright is up to 50 years from the beginning of the calendar year following its publication. After the identity of the author is known, the duration of protection is to last his/her lifetime up to 50 years after his death.

OWNERSHIP OF COPYRIGHT

The ownership of the copyright is with the author. If the work is commissioned, then the ownership is with the person who commissioned it. Ownership can be transferred to other another person(s) /party (ies) through ownership transfer, will and application of law. The transferee will be the new owner of the work. The holder of copyright is given the right to control. Prior permission has to be obtained from the holder/owner if it is to be reproduced in a material form to be distributed to the public, broadcast, connected via cable and produced for use by the public.

VIOLATION OF COPYRIGHT

Violation of copyright occurs when:

- a. Another publisher publishes in the same or almost the same form the work of an author which has been previously published by a publisher.
- b. A writer copies whole-sale or a major portion of another writer’s work.
- c. Translations or adaptation. Any reproduction in whatever form constitutes a violation of copyright.

What have been described above are direct violations. There are also indirect violations. These include:

- a. Making copies for sale or rent of the copied version.
- b. Selling or renting of copies of the copied version.
- c. Exhibiting or offering for sale or rent of the copied version.
- d. Distributing copies of the copied version.
- e. Possession of the copied version, except for personal and domestic use.
- f. Exhibiting to the public with the intention of making sales of any copied version.
- g. Importing into Malaysia, except for personal and domestic use, any copies which if produced in Malaysia would have been a copied version.
- h. Producing or having in possession gadget which is used or intended for use to produce copied version.
- i. Causing a work to be exhibited to the public.

EXCEPTION

However, Copyright Act 1987 provides several flexibilities for the general public. Even if an action is deemed to contravene the provision of the said act, it is still allowable if the action is:

- a. For the purpose of research and without profit-motive, for personal study, critique or report of current affairs.
- b. For teaching purposes and done in accordance with the usual practice of acknowledging the source or the name of the author.
- c. For recording done at schools, universities or educational institutions for in-house use only.
- d. To be read or delivered by someone to the public and the extract is given ample acknowledgement.
- e. For use of National Archive, National Library, State Libraries, via government order, not motivated by profit and no entrance is charged to the members of the public if / when they want to inspect or view them.
- f. For court proceeding
- g. Use of extracts of published work with full acknowledgement.

COPYRIGHT TRIBUNAL

Any party can apply to the Tribunal to obtain a licence to produce and publish a translated work in Malay language from any work which has been written and published.

The Tribunal can initiate an investigation and issue a licence to produce or publish a translated work to the applicant on condition that the applicant compensates the author of the original work to the amount decided by the Tribunal.

The Tribunal will give the licence to the applicant to produce or publish the translated work if:

- a. If the work has not been translated into Melayu language by the owner of copyright or any parties given the right within one year after the publication of the original work or if it has been translated before, the translation is no longer available.
- b. The applicant has applied the right from the owner of the copyright and his application has been rejected.
- c. The applicant has failed to meet or to contact the owner of the copyright though sufficient effort has been made.
- d. The applicant has submitted a copy of the letter seeking permission to translate the work to
- e. The Tribunal is satisfied that the applicant is capable to produce or publish a good translated work and able to pay the royalty to the owner of the copyright.
- f. The applicant undertakes to publish the original title on all copies of the translation to be printed.
- g. The translation is for the purpose of teaching, education and research.

The licence given by the Tribunal to the applicant is not transferable and does not include the right to export the copies.

THE RESPONSIBILITY OF THE PUBLISHER

No publisher can publish any work until and unless it receives the right to publish and to distribute and to sell to the general public. These rights are normally obtained through agreement, known as Memorandum of Agreement, with the author and UMP.

The Memorandum of Agreement UMP (as in Appendix) includes a clause on the responsibility of the of the publisher, and the author has to sign it in the presence of several witnesses before the author officially transfers the copyright to the publisher.

The publisher will manage, on behalf of the author, issues related to copyright such as subsidiary rights, registration of copyright and deposition of copies as required by the law.

The publisher markets the copyright of the author. In book publishing, subsidiary rights often include the following:

Right to publish overseas - given to the publisher in another country to publish or to translate the work in that country and market it within a specified region.

Right to broadcast - given to periodical or newspaper to publish a work as serial or summary.

Paperback right - given to a publisher to publish and market paperback edition.

Right of book club - given to book clubs to produce other edition of the work to be sold to their members at discounted prices.

Right to reprint - given to any party to reprint the work, partially or wholly or as an anthology.

Other rights - given to any party to use the work in various other usage, electronic, film, drama, pantomime etc.

AUTHOR'S RESPONSIBILITY

Upon entering Memorandum of Agreement with UMP, the author must give the assurance that his work is original and has not been published, and if it had been published before a written permission from the third party has to be produced.

The author must ensure that the content of the material to be used in the work, whether the text, preliminary, the end section, table, photograph, charts, maps etc are free from claims of copyright by any other party and if a third party is involved, a written permission has to be produced.