The Protection of Copyright and Related Rights and their Role in Trade and Commerce

University of West Indies

Carlos Castro
Copyright Law Division
I. What are Copyright & Related Rights?

Copyright?

(I) Literally: the right to copy = activity of exploiting the work by means of reproduction.

Copyright ?

(II) the set of **prerogatives** which the **author** enjoys in relation to his/her **work**.
Copyright

Moral Rights
- Paternity
- Integrity

Economic Rights
- Reproduction (Art 9 BC)
- Translation (Art 8 BC)
- Adaptation, Alterations (Art 12 BC)
- Public Performance and Public Communication (Art 11 BC)
- Public Recitation (Art 11ter BC)
- Broadcasting (Art 11bis BC)
- Related to Cinematographic Works (Art 14, 14bis BC)
- Droite de Suite (Art 14ter BC)
Protected Works

- Every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression.

- Open list in the Berne Convention (article 2).

- Not ideas, but only expressions

- Formality-free protection
Rights Related to Copyright?

(I) Starting point = Work protected by Copyright

(II) Intermediaries between Authors & their works

(III) Person or Organization

(IV) Added value to the work = their creativity or technique

(V) Disseminate/Make Available a Creative Work to the public
Related Rights’ protection?

- Legal interest of certain persons and/or Organizations

- Who either contributes to:
  - making works available to the public or
  - produce subject matter, that does not qualify as “works”, but express creativity or technical and organizational skill sufficient to justify recognition of a copyright-like property right.
Who are the beneficiaries of these Rights?

- Performing Artists.
- Phonograms Producers.
- Broadcasting Organizations.
Performers?

- Actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore (Art. 9 RC, Art. 2(a) WPPT).
Phonogram producers?

Rights of producers of phonograms are recognized because their creative, financial and organizational resources are necessary to make recorded sound available to the public in the form of commercial phonograms, and because of their legitimate interest in having the legal resources necessary to take action against unauthorized uses.

Vynil's commercial boom! – 1950’s
Broadcasting Organizations?

Rights of broadcasting organizations are recognized because their **financial and organizational resources** are necessary to disseminate contents to the public. They also have a legitimate interest in having the **legal resources necessary to take action against unauthorized retransmissions of their own programs by other similar organizations**.
II. Copyright International Legal Framework

Source: http://bulletinamaelstrom.files.wordpress.com/2012/01/world-puzzle.jpg
Copyright and Related Rights Treaties

- Berne Convention (1886)
- Rome Convention (1961)
- Phonograms Convention (1971)
- Satellites Convention (1974)
- TRIPS Agreement (1994)
- WCT (1996)
- WPPT (1996)
The Berne Convention for the Protection of Literary and Artistic Works (Berne Convention, 1886) - 165/185

Source: http://o.aolcdn.com/photo-hub/news_gallery/6/7/676568/1279567015202.JPEG
The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (**Rome Convention, 1961**) – 91/185
The Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms (Phonograms Convention, 1971) - 77/185
The Agreement on Trade-Related Aspects of Intellectual Property (TRIPS agreement, 1995) - 154
WIPO Copyright Treaty (WCT, 1996) - 89/185
Who is missing?

Federico Fellini, 1920 – 1993 – Film Director & Scriptwriter
Audiovisual Performers !!!!
The New WIPO Treaty

Diplomatic Conference on the Protection of Audiovisual Performances
June 20 to 26, 2012 - Beijing, China
III. Current Hot Topics

Source: http://correspondencecommittee.blogspot.com/2009_09_01_archive.html
Internet & E-Commerce
Consumer Spending
An Evolving Landscape for the Distribution of Creativity. Different Scenarios.

- *The Web is Dead: Long Live the Internet* by Cris Anderson and Michael Wolff: [http://www.wired.com/magazine/2010/08/ff_webrip/all/1](http://www.wired.com/magazine/2010/08/ff_webrip/all/1)

Source: Cisco estimates on CAIDA publications

- Experience of the Net increasingly focused on applications.
Online Music Sales

Source: International Federation of the Phonographic Industry (IFPI)
Collective Management

“..is the exercise of copyright and related rights by organizations acting in the interest and on behalf of the owners of rights”;

- Impracticability of managing certain activities individually (e.g. broadcasting, public performance), both for the owner and for the user;
International Music Registry
Tablets & Smartphones market

Source: Gartner, Inc., International Data Corporation (IDC), Strategy Analytics, and BI Intelligence.
E-book reading devices

Source: AAP (Association of American Publishers)
E-books sales

Source: IDATE DigiWorld
The Book Industry

Author's Rights as Practice in Europe

Fiction / Non-Fiction

United Kingdom
- Nature of Contract: Licence
- Term: 99 years
- Intellectual Property: Rights
- Average Royalties (net): 15% of list price
- Share of Royalties: 50% for the author, 50% for the publisher

France
- Nature of Contract: Assignment (Servitudes)
- Term: 70 years
- Intellectual Property: Rights
- Average Royalties (net): 15% of list price
- Share of Royalties: 80% for the author, 20% for the publisher

Spain
- Nature of Contract: Licence (exclusiva)
- Term: 25 years
- Intellectual Property: Rights
- Average Royalties (net): 10% of list price
- Share of Royalties: 50% for the author, 50% for the publisher

Germany
- Nature of Contract: Licence
- Term: 50 years
- Intellectual Property: Rights
- Average Royalties (net): 20% of list price
- Share of Royalties: 70% for the author, 30% for the publisher

The book market is the leading market in the European cultural sector in terms of turnover: 40bn €. In France in 2009 book publishing represented 54% of the market for cultural goods.

Source: The book and writing “observatory,” le MOTif, funded by the Paris regional government
WIPO Review of Contractual Considerations in the Audiovisual Sector

prepared by Ms. Katherine Sand, Consultant

under the terms of reference and guidelines prepared by the World Intellectual Property Organization (WIPO) and in consultation with stakeholders in the audiovisual sector
Books Digitization

Orphan Works

Apps (Software) – Apple Store

Source: http://www.macstories.net/wp-content/uploads/2012/05/AppleAppStoreStatistics.png
Video Games

The Web as Platform, User controls his own data

- BitTorrent: Radical Decentralization
- Google AdSense: customer self-service enabling the long tail
- Wikipedia: Radical Trust
- Gmail, Google Maps and Ajax: Rich User experiences
- Flickr, del.icio.us: Tagging, not taxonomy

A “meme map” of Web 2.0 that was developed at a brainstorming session during FOO Camp, a conference at O'Reilly Media
User Generated Content

User-generated content ("UGC") is
- created by users and posted to online sites;
- created by third parties and posted by users;
- a combination of the two.

No widely-accepted definition. "UGC" vs. "UCC" (Organization for Economic Co-operation and Development)

OECD definition
- Publication requirement (i.e. accessibility by third parties);
- Creative effort (similar to "originality" in copyright law);
- Creation outside of professional routines and practices (questionable: e.g. professional bloggers; in 2006 Google acquired YouTube for USD 1.5+ bilion; business methods like advertising, voluntary contributions, online sales).
The Web as Platform, User controls his own data

- BitTorrent: Radical Decentralization
- Wikipedia: Radical Trust
- Gmail, Google Maps and Ajax: Rich User experiences
- Flickr, del.icio.us: Tagging, not taxonomy

A “meme map” of Web 2.0 that was developed at a brainstorming session during FOO Camp, a conference at O’Reilly Media
UGC
5.B (...) You shall not download any Content unless you see a “download” or similar link displayed by YouTube on the Service for that Content. You shall not copy, reproduce, distribute, transmit, broadcast, display, sell, license, or otherwise exploit any Content for any other purposes without the prior written consent of YouTube or the respective licensors of the Content. YouTube and its licensors reserve all rights not expressly granted in and to the Service and the Content. (…)

6.C. For clarity, you retain all of your ownership rights in your Content. However, by submitting Content to YouTube, you hereby grant YouTube a worldwide, non-exclusive, royalty-free, sublicenseable and transferable license to use, reproduce, distribute, prepare derivative works of, display, and perform the Content in connection with the Service and YouTube's (and its successors' and affiliates') business, including without limitation for promoting and redistributing part or all of the Service (and derivative works thereof) in any media formats and through any media channels. (…)

http://www.youtube.com/static?hl=en&template=terms
Security on the Net – ISP Liability

CONTENT BLOCKED
SOPA  PIPA
under authority granted by H.R. 3261 & S.968
Other Initiatives on Copyright related to Development

‘Development Agenda’ for the World Intellectual Property Organisation (WIPO)
Access to Knowledge

WIKIPEDIA
The Free Encyclopedia

creative commons

WIPO
WORLD INTELLECTUAL PROPERTY ORGANIZATION
VIP Initiative

- Trusted Intermediary Global Accessible Resources (TIGAR) Project.

- Enabling Technologies Framework (ETF) Project