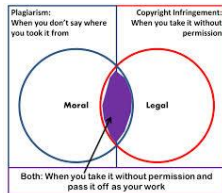




Training Manual on IP Crime Prosecution

4. COPYRIGHT PIRACY

Copyright and plagiarism



Copyright rights

- Protects the owner against those who “copy”, (reproduce) the form of the work.
- Other acts of exploitation as more specifically defined in national law are also infringing, in accordance with the nature of the work
 - performance of a dramatic work,
 - rental of a DVD and
 - broadcasting of a musical work.

Introduction

- Copyright piracy deals with the criminal infringement of
 - copyright and
 - rights related to copyright.
- Piracy presupposes civil infringement.
- Criminal liability requires willfulness and infringement on a commercial scale.

Nature of copyright

- Copyright deals with the rights of intellectual creators in the literary, scientific and artistic domain.
- It is the right of the author of an original “work”.
- Secures reasonable remuneration for the use of the work.
- Protects expression and form.
- Does not protect ideas, procedures, methods of operation, or mathematical concepts as such.
- Novelty and quality irrelevant.
- It must be an original creation of the author.

“Related rights” (“neighboring rights”)

Related to copyright.

Rights of those who assist intellectual creators to communicate their message by disseminating their works to the public at large

- Performers
- Producers
- Broadcasters

Author or owner of copyright

- Beneficiary is the owner of copyright.
- The author is usually the first owner of copyright in a particular work.
- The author may transfer ownership in the copyright.
- “Moral rights” (e.g., the right of paternity and the right to object to the distortion or derogatory treatment of his work fall outside the scope of TRIPS.

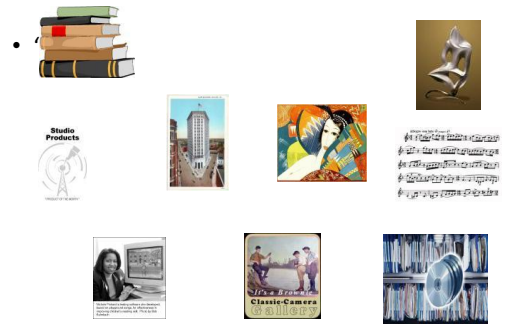
Requirements for copyright

- The work must be a protected work.
- It must be original.
- It must be reduced to material form.
- The work must be eligible for copyright protection.

Protected works

- Local legislation defines eligible “works”
- International requirement: “literary and artistic works” are entitled to copyright protection and they “include” :
 - Books and other writings
 - Dramatic or musical works
 - Cinematographic works (films)
 - Drawings, paintings, sculptures and engravings
 - Photographs
 - Computer software.

A ‘work’



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The meaning of “original”

- Seldom arises in piracy cases: works invariably “original” by any standard.
- Different approaches:
 - Classic common law: “Sweat of the brow” or “industriousness” standard. More than a mere copy.
 - Development: expression of an idea by exercise of skill and judgement.
 - Civil law: work is its author’s own intellectual creation and reflects the author’s personality.

Eligibility for copyright protection

Copyright may be conferred under three alternative circumstances:

- If the author is a qualified person
- By virtue of first publication
- State (crown) copyright.

Proof of copyright

- *Registration*: is not – and may not be – a requirement for subsistence of copyright but, if provided for in the laws of a country, it may provide *prima facie* evidence of subsistence.
- *Affidavit evidence*: Depends on local law.
- *Presumptions* – the Berne requirements

Exclusive rights of authors

Someone who exercises an exclusive right without the authorization of the owner commits an act of civil infringement e.g.

- Makes reproductions in any manner or form
- Translates
- Makes adaptations and arrangements of the work; and
- Uses the work as a basis for an audiovisual work.

TRIPS: Copyright piracy

This definition is incomplete because it was intended to deal with imported goods only but it does provide a useful guide:

- any goods which are copies
- made without the consent of the right holder
- in the country of production and
- which are made directly or indirectly from an article
- where the making of that copy would have constituted an infringement of a copyright or a related right
- under the law of the country of importation.”



“Copies made directly or indirectly from a copyright work”

- Copyright infringement is a pre-requisite for piracy.
- But not mean that all infringing acts amount to piracy.
- Pirate goods take wholesale the value of the protected work.
- In practice, pirate goods are duplicates of the original.

Works that are typically pirated

- Computer programs
- Optical media such as DVDs and CDs
- Digital downloads
- Photographs
- Books and teaching materials
- Broadcasts of sporting events.



Copies made without consent

- Lack of consent of the right holder is also a requirement for civil infringement
- Follows from the definition of the rights of a copyright owner.
- Prosecution must prove the lack of consent
- Seldom in issue.

“infringement under the law of the country of importation”

- Of relevance in respect of imported goods only.
- Goods that are counterfeit in the country of production are not considered to be counterfeit in the country of importation if the making of that copy would not have constituted an infringement under the law of the country of importation.

Technological protection measures and rights management information

- Depends on local law.
- Many countries have introduced laws to protect technical measures against circumvention (in the case of technological protection measures) or removal for the purpose of facilitating or concealing an infringement

Place of production

“Made without the consent of the right holder or person duly authorized by the right holder in the country of production”

Who commits piracy

- Local law determines who is pirate.
- The person who commits the actual act of piracy
- Anyone who imports or deals with pirated goods on a commercial scale
- Accessory or someone who aids and abets in the commission of the crime.