

FAQs on Copyrights

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FAQs on Copyrights

1. What is copyright?

Copyright is an intangible incorporeal right to certain literary, scholarly, scientific and artistic productions granted by statute to the author or creator of the work, and giving him, his heirs and assigns copyright or economic rights, which shall consist of the exclusive right to carry out, authorize or prevent the following acts:

- a) Reproduction of the work or substantial portion of the work;
- b) Dramatization, translation, adaptation, abridgment, arrangement or other transformation of the work;
- c) The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership;
- d) Rental of the original or a copy of an audiovisual or cinematographic work, a work embodied in a sound recording, a computer program, a compilation of data and other materials or a musical work in graphic form, irrespective of the ownership of the original or the copy which is the subject of the rental;
- e) Public display of the original or a copy of the work;
- f) Public performance of the work; and
- g) Other communication to the public of the work

2. Who can claim copyright?

In the case of original literary and artistic works, copyright shall belong to the author of the work.

In the case of works of joint authorship, the co-authors shall be the original owners of the copyright, and in the absence of agreement, their rights shall be governed by the rules on co-ownership. If, however, a work of joint authorship consists of parts that can be used separately and the author of each part can be identified, the author of each part shall be the original owner of the copyright in the part that he has created;

In the case of work created by an author during and in the course of his employment, the copyright shall belong to:

(a) 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.

(b) 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 a work commissioned by a person other than an employer of the author and who pays for it, and the work is made in pursuance of the commission, the person who so commissioned the work shall have ownership of the work, but the copyright thereto shall remain with the creator, unless there is a written stipulation to the contrary;

In the case of audiovisual work, the copyright shall belong to the producer, the author of the scenario, the composer of the music, the film director, and the author of the work so adapted. However, subject to contrary or other stipulations among the creators, the producers shall exercise the copyright to an extent required for the exhibition of the work in any manner, except for the right to collect performing license fees for the performance of musical compositions, with or without words, which are incorporated into the work; and

In respect of letters, the copyright shall belong to the writer subject to the provisions of the Civil Code of the Philippines.

3. What works are protected?

There are two classes of works that are protected, namely original and derivative.

a. Original work- Literary and artistic works, hereinafter referred to as "works", are original intellectual creations in the literary and artistic domain protected from the moment of their creation and shall include in particular:

- i. Books, pamphlets, articles and other writings;
- ii. Periodicals and newspapers;
- iii. Lectures, sermons, addresses, dissertations prepared for oral delivery, whether or not reduced in writing or other material form;
- iv. Letters;
- v. Dramatic or dramatico-musical compositions; choreographic works or entertainment in dumb shows;
- vi. Musical compositions, with or without words;
- vii. Works of drawing, painting, architecture, sculpture, engraving, lithography or other works of art; models or designs for works of art;

viii. Original ornamental designs or models for articles of manufacture, whether or not registrable as an industrial design, and other works of applied art;

ix. Illustrations, maps, plans, sketches, charts and three-dimensional works relative to geography, topography, architecture or science;

x. Drawings or plastic works of a scientific or technical character;

xi. Photographic works including works produced by a process analogous to photography; lantern slides;

xii. Audiovisual works and cinematographic works and works produced by a process analogous to cinematography or any process for making audio-visual recordings;

xiii. Pictorial illustrations and advertisements;

xiv. Computer programs; and

xv. Other literary, scholarly, scientific and artistic works.

Works are protected by the sole fact of their creation, irrespective of their mode or form of expression, as well as of their content, quality and purpose.

b. Derivative work- The following derivative works shall also be protected by copyright:

i. Dramatizations, translations, adaptations, abridgments, arrangements, and other alterations of literary or artistic works; and

ii. 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.

The works referred to in paragraphs (i) and (ii) of b shall be protected as new works: Provided however, that such new work shall not affect the force of any subsisting copyright upon the original works employed or any part thereof, or be construed to imply any right to such use of the original works, or to secure or extend copyright in such original works.

4. What is not protected by copyright?

No protection is extended to any idea, procedure, system method or operation, concept, principle, discovery or mere data as such, even if they are expressed, explained, illustrated or embodied in a work; news of the day and other miscellaneous facts having the character of mere items of press information; or any official text of a legislative, administrative or legal nature, as well as any official translation thereof.

No copyright subsists in any work of the Government of the Philippines. However, prior approval of the government agency or office wherein the work is created is necessary for exploitation of such work for profit. Such agency or office may, among other things, impose as a condition the payment of royalties. No prior approval or conditions are required for the use of any purpose of statutes, rules and regulations, and speeches, lectures, sermons, addresses, and dissertations, pronounced, read or rendered in courts of justice, before administrative agencies, in deliberative assemblies and in meetings of public character.

The Author of speeches, lectures, sermons, addresses, and dissertations mentioned in the preceding paragraphs has the exclusive right of making a collection of his works.

Notwithstanding the foregoing, the Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest or otherwise; nor shall publication or republication by the Government in a public document of any work in which copyright is subsisting be taken to cause any abridgment or annulment of the copyright or to authorize any use or appropriation of such work without the consent of the copyright owner.

5. Is registration and/or fixation necessary for copyright protection of works?

No. Works are protected from the moment of their creation by the sole fact of such creation, irrespective of their mode or form of expression.

6. What is the procedure for registration of copyrights?

After the first public dissemination of performance by authority of the copyright owner, there shall, for the purpose of completing the records of the National Library and the Supreme Court Library, within three (3) weeks, be registered and deposited with it, by personal delivery or by registered mail, two (2) complete copies or reproductions of the work in such form as the directors of said libraries may prescribe. A certificate of deposit shall be issued for which the prescribed fee shall be collected and within three (3) weeks after receipt by the copyright owner of a written demand copyright owner shall be exempt from making additional deposit of the works with the National Library and the Supreme Court Library under other laws. If, within three (3) weeks after receipt by the copyright owner of a written demand from the directors for such deposit, the required copies or reproductions are not delivered and the fee is not paid, the copyright owner shall be liable to pay a fine equivalent to the required fee per month of delay and to pay to the National Library and the Supreme Court Library the amount of the retail price of the best edition of the work. Only the above mentioned classes of work shall be accepted for deposit by the National Library and the Supreme Court Library.

Each copy of a work published or offered for sale may contain a notice bearing the name of the copyright owner, and the year of its first publication, and, in copies produced after the creator's death, the year of such death.

7. What is the duration of copyright protection?

The copyright for original and derivative works shall be protected during the life of the author and for fifty (50) years after his death. This rule also applies to posthumous works.

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: Provided, That where, before the expiration of the said period, the author's identity is revealed or is no longer in doubt, a specific provision of the Intellectual Property Code shall apply, as the case may be: Provided, further, That such works if not published before 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.

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

The rights granted to performers and producers of sound recordings under the Intellectual Property Code of the Philippines shall expire:

(a) For performances not incorporated in recordings, fifty (50) years from the end of the year in which the performance took place; and

(b) For sound or image and sound recordings and for performances incorporated therein, fifty (50) years from the end of the year in which the recording took place.

In case of broadcasts, the term shall be twenty (20) years from the date the broadcast took place. The extended term shall be applied only to old works with subsisting protection under the prior law.

8. Can a copyright be transferred or assigned?

The copyright may be assigned in whole or in part. Within the scope of the assignment, the assignee is entitled to all the rights and remedies which the assignor had with respect to the copyright.

The copyright is not deemed assigned inter vivos in whole or in part unless there is a written indication of such intention.

The submission of a literary, photographic or artistic work to a newspaper, magazine or periodical for publication shall constitute only a license to make a single publication unless a greater right is expressly granted. If two (2) or more persons jointly own a copyright or any part thereof, neither of the owners shall be entitled to grant licenses without the prior written consent of the other owner or owners.

The copyright is distinct from the property in the material object subject to it. Consequently, the transfer or assignment of the copyright shall not itself constitute a transfer of the material object. Nor shall a transfer or assignment of the sole copy or of one or several copies of the work imply transfer or assignment of the copyright.

An assignment or exclusive license may be filed in duplicate with the National Library upon payment of the prescribed fee for registration in books and records kept for the purpose. Upon recording, a copy of the instrument shall be returned to the sender with a notation of the fact of record. Notice of the record shall be published in the IPO Gazette.

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

9. What are the rights conferred to the author of a work?

The copyright or economic rights of the owner of the work shall consist of the exclusive right to carry out, authorize or prevent the following acts:

- Reproduction of the work or substantial portion of the work;
- Dramatization, translation, adaptation, abridgment, arrangement or other transformation of the work;
- The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership;
- Rental of the original or a copy of an audiovisual or cinematographic work, a work embodied in a sound recording, a computer program, a compilation of data and other materials or a musical work in graphic form, irrespective of the ownership of the original or the copy which is the subject of the rental;
- Public display of the original or a copy of the work;
- Public performance of the work; and
- Other communication to the public of the work.

The author of a work shall, independently of the economic rights or the grant of an assignment or license with respect to such right, have the right:

- To require that the authorship of the works be attributed to him, in particular, the right that his name, as far as practicable, be indicated in a prominent way on the copies, and in connection with the public use of his work;
- To make any alterations of his work prior to, or to withhold it from publication;
- 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
- 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.

10. What are other special laws which ensure protection of copyright owners of audio-visual works?

The **Optical Media Act of 2003** regulates the manufacture, mastering, replication, importation and exportation of optical media in which information, including sounds and/or images, or software code, has been stored, either by mastering and/or replication.

Any person, establishment or entity shall, prior to engaging in one or more of the business or activities enumerated under the Optical Media Act of 2003, register with, and secure the appropriate licenses from the Optical Media Board (OMB):

- a. Importation, exportation, acquisition, sale or distribution of optical media, manufacturing equipment, parts and accessories and manufacturing materials used or intended for use in the mastering, manufacture or replication of optical media;
- b. Possession or operation of manufacturing equipment, parts and accessories, or the possession, acquisition, sale or use of manufacturing materials for the mastering, manufacture or replication of optical media; and
- c. The mastering, manufacture, replication, importation or exportation of optical media.

With respect to the preceding paragraph (c), the licenses issued by the OMB are conditions precedent for securing the necessary business permits, licenses, or registration from the appropriate authorities, and shall also be necessary requirement for the release of manufacturing equipment, parts and accessories, and materials intended for use in mastering and/or manufacturing optical media, from customs or economic zones exercising independent custom laws.

Those engaged or intending to engage in more than one of the above mentioned activities and/or conduct or intend to conduct business in more than one location shall

separately register with and secure the license from the OMB for every business activity at each place of business.

No business activity registered and licensed by the OMB for a specific place of business shall be conducted in a place and/or location other than that indicated in the license, without the prior written approval of the OMB. The registration and license issued by the OMB shall be prominently displayed at the designated place of business.

11 .Under Philippine laws, what are the rights conferred to performers?

Subject to the provisions of the Intellectual Property Code of the Philippines, performers shall enjoy the following exclusive rights:

- a) The right of authorizing:
 - i) The broadcasting and other communication to the public of their performance; and
 - ii) The fixation of their unfixed performance.
- b) The right of authorizing the direct or indirect reproduction of their performances fixed in sound recordings, in any manner or form; Subject to the provisions of Section 206 of the IPC, the right of authorizing the first public distribution of the original and copies of their performance fixed in the sound recording through sale or rental or other forms of transfer of ownership;
- c) The right of authorizing 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 by the performer; and
- d) The right of authorizing 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.

12. What is the scope of moral rights of performers?

Independently of a performer's economic rights, the performer, shall, as regards his live aural performances or performances fixed in sound recordings, have the right to claim to be identified as the performer of his performances, except where the omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.

The rights granted to a performer shall be maintained and exercised fifty (50) years after his death, by his heirs, and in default of heirs, the government, where protection is claimed.

13. What is the scope of rights of producers of sound recordings?

Producers of sound recordings shall enjoy the following exclusive rights:

- The right to authorize the direct or indirect 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 right to authorize 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 right to authorize 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.

14. What is the scope of rights afforded to broadcasting organizations?

Broadcasting organizations shall enjoy the exclusive right to carry out, authorize or prevent any of the following acts:

- 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.

15. What are the remedies for infringement of copyright?

Any person infringing a right protected under the Intellectual Property Code of the Philippines (RA 8293) shall be liable:

(a) To an injunction restraining such infringement. The court may also order the defendant to desist from an infringement, among others, to prevent the entry into the channels of commerce of imported goods that involve an infringement, immediately after customs clearance of such goods;

(b) Pay to the copyright proprietor or his assigns or heirs such actual damages, including legal costs and other expenses, as he may have incurred due to the infringement as well as the profits the infringer may have made due to such infringement, and in

proving profits the plaintiff shall be required to prove sales only and the defendant shall be required to prove every element of cost which he claims, or, in lieu of actual damages and profits, such damages which to the court shall appear to be just and shall not be regarded as penalty;

(c) Deliver under oath, for impounding during the pendency of the action, upon such terms and conditions as the court may prescribe, sales invoices and other documents evidencing sales, all articles and their packaging alleged to infringe a copyright and implements for making them;

(d) Deliver under oath for destruction without any compensation all infringing copies or devices, as well as all plates, molds, or other means for making such infringing copies as the court may order; and

(e) Such other terms and conditions, including the payment of moral and exemplary damages, which the court may deem proper, wise and equitable and the destruction of infringing copies of the work even in the event of acquittal in a criminal case.

In an infringement action, the court shall also have the power to order the seizure and impounding of any article which may serve as evidence in the court proceedings.

