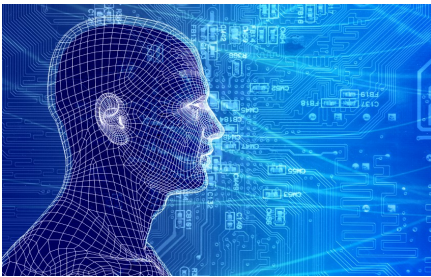


RIGHTS, COPYRIGHT AND OTHER INTELLECTUAL PROPERTY



Musbri Mohamed
DIL; ADIL (ITM)
Pursuing MBL (UKM)



WHAT IS COPYRIGHT ?

The subject matter of copyright is usually described as 'literary and artistic works,' that is, original creations in the fields of literature and arts. The form in which such works are expressed may be words, symbols, music, pictures, three-dimensional objects, or combinations thereof.





Introduction

1709 – first copyright act formed in UK

Gave sole right and liberty of printing
books to authors and whoever they
assigned rights to

Protection period 14 years

Later revisions include other creative works
such as engravings and music

Copyright – new means of distributing
intellectual property



Copyright protection in Malaysia is governed by the Copyright Act 1987 which provides comprehensive protection for copyrightable works. The Act outlines the nature of works eligible for copyright (which includes computer software), the scope of protection, and the manner in which the protection is accorded.



A unique feature of the Act is the inclusion of provisions for enforcing the Act, which include such powers to enter premises suspected of having infringing copies and to search and seize infringing copies and contrivances. A special team of officers is appointed to enforce the Act.

Malaysia is a signatory of the Berne Convention. Foreign works of non-Berne member countries are also protected if they are made in Malaysia and are published in Malaysia within thirty days of their first publication in the country of origin.



Information technology has challenged the traditional concept of copyright protection.

The Amendment Act, which amended the Copyright Act 1987, came into force on the 1st April 1999. This Act seeks to update the law on copyright.

Amongst other things, the Amendment Act makes unauthorized transmission of copyright works over the Internet an infringement of copyright.

The definition of a literary work now includes table or compilations "whether or not expressed in words, figures or symbols and whether or not in a visible form". The owner of copyright in a work including a derivative work, will have the exclusive right to control "the transmission of a work through wire or wireless means to the public, including the making available of a work to the public in such a way that members of the public may access the work from a place and at a time individually chosen by them".



It is also an infringement of copyright to circumvent any effective technological measures aimed at restricting access to works, removal or alteration of any electronic rights management information without authority, or distribution, importation for distribution or communication to the public, without authority, works or copies of works in respect of which electronic rights management information has been removed or altered without authority."

These provisions are aimed at ensuring adequate protection of intellectual property rights for companies investing in the IT and multimedia environment.

The Copyright Act (1987) provides for the enforcement of the law by the Ministry of Domestic Trade and Consumer Affairs, specifically the Enforcement Division, apart from the Police. The Act also provides the necessary clout to the enforcement agencies to effectively carry out anti-piracy measures.





The Malaysian Copyright Act provides for a Copyright Tribunal whose function is to grant Licenses to produce and publish in the National Language a translation of a literary work written in any other language. The Act is currently amended to expand the power of the tribunal to include arbitration of disputes relating to use of copyright works.



A work that is eligible is fulfillment of the following conditions :

Sufficient effort has been expended to make the work original in character.

The work has been written down, recorded or reduced to material form.

The author is a qualified person or the work is made in Malaysia or the work is first published in Malaysia.

Works eligible for protection are:

- Literary works
- Musical works
- Artistic works
- Films
- Sound recording
- Broadcasts
- Derivative works
- Published editions





WHO OWNS THE COPYRIGHT ?

A work vests initially in the author (writer, composer, maker of the work, etc.) is a copyright. However, where the making of a work is commissioned or where a work is made by and employee in the course of his employment, unless there is any contrary agreement, the copyright in the work shall be deemed to vest in the person who commissioned the work or the employer. The author's right is transferable by assignment testamentary disposition or by operation of law, in which case the assignee shall be the owner.



WHAT IS THE DURATION OF THE COPYRIGHT ?

Generally, copyright subsist during the life of the author plus 50 years after his death.

However, if a work has not been published during the life time of the author, copyright in the work continue to subsist until the expiration of 50 years, following the year in which the work was first published. In the case of a work with joint authorship, the life of the author who dies last is used for the purpose of calculating the copyright duration of the work.



The copyright in a work is infringed when a person who, not being the owner of the copyright, and without license from the owner, does or authorizes any of the following acts :

Reproduces in any material form, performs, shows or plays or distributes to the public, communicates by cable or broadcast of the whole work or a substantial part thereof either in its original or derivative form.

Imports any article into Malaysia for the purpose of trade or financial gains.

Makes, lets for hire or by way of trade, exposes or offers for sale or hire any infringing copy.

Sells, lets for hire or by way of trade, exposes or offers for sale or hire any infringing copy.



Distributes infringing copies.

Possesses, otherwise than for his private and domestic use, any infringing copy.

By way of trade, exhibits in public any infringing copy
Imports into Malaysia, otherwise than for his private and domestic use any copy which if it were made in Malaysia would be an infringing copy.

Makes or has in the possession any contrivance used or intended to be used for the purposes of making infringing copies; or

Causes the work to be performed in public.

The doing of (i) and (ii) above are termed as direct infringement and is actionable at the suit of the owner.

The doing of (iii) to (x) are termed as indirect infringement and attract criminal sanction and enforceable by the Ministry of Domestic Trade and Consumer Affairs.



WHAT ARE THE LEGAL RIGHTS OF COPYRIGHT OWNERS ?

Generally, owner of copyright works have the exclusive right to :

Reproduce the work in any material form (including photocopying, recording, etc.).

Perform, show or play the work to the public (including performing a work live, or playing a recording or showing a film containing the work in a non-domestic situation).

Broadcast the work.

Communicate the work by cable ;and

Distribute copies of the work to the public by sale rental or lending.



Rights Model

All rights

Gives the developer all the rights for exploitation of the material

Non-theatric

Excludes broadcast, home video and theatric rights. Use in training, business, education, conferences and exhibitions

Home video

Allows you to sell or rent the material to the general public

Internet and Interactive Right

Applied to a permission to use material on the website or on a CD-ROM

Flash fees

Still images, when used on television. (*"How long is it on screen"* – issue)

Patent

Document given to you by the government granting you the exclusive right to exploit and control exploitation of the process for doing something.

You are the first who discover it.

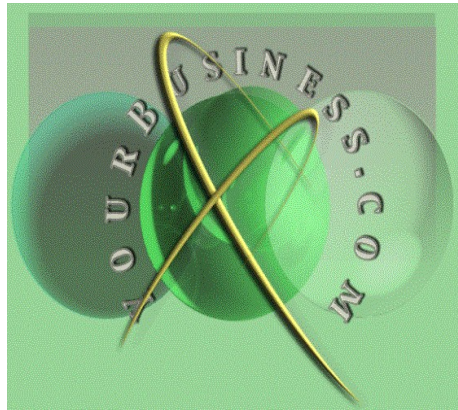
Computer program cannot be patented. Only the technical process (algorithm) can be patented.



Patents are a public policy tool:

to promote and reward innovation

**to disclose the invention, and make it
available to society**





Data Protection Principles

Fairly and lawfully processed.

Processed for limited purposes.

Adequate, relevant and not excessive.

Accurate.

Not kept longer than necessary.

Processed in accordance with the data subjects' rights.

Secure.

Not transferred to countries outside the European.

Economics Area without adequate protection.



WHAT TO DO IF THERE IS AN INFRINGEMENT ?

Copyright owners shall lodge an official complaint supported by the necessary document to the Enforcement Division of the Ministry of Domestic Trade and Consumer Affairs if they suspect infringement. Immediate action will be taken by the said authority. The Division will conduct the necessary investigation and prosecutions.

**Perbadanan Harta Intelekt Malaysia
(Intellectual Property Corporation of Malaysia)**

Tingkat 32, Menara Dayabumi
Jalan Sultan Hishamuddin
50623 Kuala Lumpur
Phone No: 03-22748671 (Counter)/
03-2263 2100 (Operator)
Fax No: 03-22741332