

COPYRIGHT 101



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How is copyright acquired?

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

Sec. 172.2

Originality + Creativity = Copyright

“... THE CONSTITUTIONAL REQUIREMENT (OF ORIGINALITY) NECESSITATES **INDEPENDENT CREATION PLUS A MODICUM OF CREATIVITY...** THERE IS NOTHING REMOTELY CREATIVE ABOUT ARRANGING NAMES ALPHABETICALLY IN A WHITE PAGES DIRECTORY. IT IS AN AGE-OLD PRACTICE, FIRMLY ROOTED IN TRADITION AND IS SO COMMONPLACE THAT IT HAS COME TO BE EXPECTED AS A MATTER OF COURSE.”

Feist Publications v. Rural Telephone
(499 U.S. 340, 111 S. Ct. 1282, 1991)

Copyright Deposit

At any time during the **subsistence of the copyright**, the owner of the copyright or of any exclusive right in the work may, for the purpose of **completing the records** of the National Library and the Supreme Court Library, register and deposit with them, by personal delivery or by registered mail, **two (2) complete copies or reproductions** of the work in such form as the Directors of the said libraries may prescribe in accordance with regulations: Provided, That only works in the field of law shall be deposited with the Supreme Court Library. Such registration and deposit is **not a condition of copyright protection**.

Sec. 191, IP Code

Idea/Expression Dichotomy

ONLY THE **EXPRESSION** OF AN
IDEA IS PROTECTED BY
COPYRIGHT, **NOT THE IDEA**
ITSELF.



PEARL & DEAN INC. VS. SHOEMART INC.
[148222. AUGUST 15, 2003]

Unprotected Subject Matter

idea, concept, principle
**procedure, system, method or
operation**
discovery or mere data
news, items of press information
official text, translation of laws
work of the government

Sec. 175

What are protected by copyright?



Original Literary & Artistic Works

- Books & other writings;
- Periodicals;
- Lectures, addresses;
- Letters;
- Dramatico-musical comp;
- Musical compositions;
- Drawing, painting, architecture, sculpture;
- Ornamental designs, applied art;

What are protected by copyright?

- Illustrations, maps;
- Drawings or plastic work;
- Photographs;
- Audiovisual works;
- Illustrations & ads;
- Computer programs;
- Other literary, scholarly, scientific, artistic works.



Sec. 172.1

Economic Rights



- **Reproduction**
- **Transformation**
- **First public distribution**
- **Rental**
- **Public display**
- **Public performance**
- **Communication to the public**

Moral Rights

- **Attribution**
- **Alteration prior to/withhold from publication**
- **Object to prejudicial distortion**
- **Restrain use of name**



Right of Reproduction



"Reproduction" is the making of **one (1) or more copies**, temporary or permanent, in whole or in part, of a work or a sound recording in any manner or form without prejudice to the provisions of Section 185 of this Act.

Sec. 171.9, IP Code

Who owns the copyright?

literary & artistic works → author
 works of joint authorship → co-author
 joint works, separable parts → @ part's author

work not part of regular duties → employee
 work part of regular duties → employer
 commissioned works → creator

audiovisual works → producer, director, etc.
 letters → writer

Sec. 178

What constitutes copyright violation?

- (a) **Directly** commits an infringement;
- (b) **Benefits** from the infringing activity of another person who commits an infringement if the person benefiting **has been given notice** of the infringing activity and **has the right and ability to control** the activities of the other person; or
- (c) **With knowledge of the infringing activity, induces, causes or materially contributes** to the infringing conduct of another.

Sec. 216

What constitutes copyright violation?

Habana et al., v. Robles (GR No. 131522, July 19, 1999)

College English for Today Page 404	Developing English Today Page 73
Items in dates and addresses: He died on Monday, April 15, 1975. Miss Reyes lives in 214 Taft Avenue, Manila	He died on Monday, April 25, 1975. Miss Reyes address is 214 Taft Avenue Manila

College English for Today Page 250	Developing English Today Page 100
<p>Example on parallelism or repetition of sentence structures:</p> <p>The proposition is peace. Not peace through the medium of war; not peace to be hunted through the labyrinth of intricate and endless negotiations; not peace to arise out of universal discord, fomented from principle, in all parts of the empire; not peace to depend on the juridical determination of perplexing questions, or the precise marking of the boundary of a complex government. It is simple peace: sought in its natural course, and in its ordinary haunts. It is peace sought in the spirit of peace, and laid in principles purely pacific.</p> <p>- Edmund Burke, Speech on Criticism</p>	<p>On the topic of parallel structure and repetition:</p> <p>The proposition is peace. Not peace through the medium of war; not peace to be hunted through the labyrinth of intricate and endless negotiations; not peace to arise out of universal discord, fomented from principle, in all parts of the empire; not peace to depend on the juridical determination of perplexing questions, or the precise marking of the boundary of a complex government. It is simple peace: sought in its natural course, and in its ordinary haunts. It is peace sought in the spirit of peace, and laid in principles purely pacific.</p> <p><i>No acknowledgement of author</i></p>

Lifting and Failure to Acknowledge

We believe that respondent Robles' act of lifting from the book of petitioners substantial portions of discussions and examples, and her failure to acknowledge the same in her book is an infringement of petitioners' copyrights.

Habana, et al., v. Robles

Substantial Reproduction

When is there a substantial reproduction of a book? It does not necessarily require that the entire copyrighted work, or even a large portion of it, be copied. If so much is taken that the **value** of the original work is **substantially diminished**, there is an infringement of copyright and to an injurious extent, the work is appropriated.

Habana, et al., v. Robles

Are there limitations to copyright?

- **Statutory Fair Use: Quotations**

The making of quotations from a **published** work if they are **compatible with fair use** and **only to the extent justified** for the purpose, including quotations from newspaper articles and periodicals in the form of press summaries: Provided, That the **source** and the **name** of the author, if appearing on the work, are mentioned;

Sec. 184.1(b)

Are there limitations to copyright?

- “Limitations to the limitations”

The **provisions** of this section shall be interpreted in such a way as to allow the work to be used in a manner which **does not conflict with the normal exploitation** of the work and **does not unreasonably prejudice** the right holder's legitimate interest.

Sec. 184.2

Are there limitations to copyright?

- Fair Use

The fair use of a copyrighted work for criticism, comment, news reporting, teaching including **limited** number of copies for classroom use, scholarship, research, and similar purposes is not an infringement of copyright...

Sec. 185.1

Are there limitations to copyright?

• Fair Use: Factors

- (a) **Purpose and character** of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
- (b) **Nature** of the copyrighted work;
- (c) **Amount and substantiality** of the portion used in relation to the copyrighted work as a whole; and
- (d) **Effect** of the use upon the **potential market** for or **value** of the copyrighted work.

Sec. 185.1

Work of the Government of the Philippines



A work created by an officer or employee of the Philippine Government or any of its subdivisions and instrumentalities, including government-owned or controlled corporations as part of his regularly prescribed official duties.

Sec. 171.11, IP Code

Work of the Government of the Philippines

No copyright shall subsist in any work of the Government of the Philippines. However, **prior approval** of the government agency or office wherein the work is created shall be necessary for exploitation of such work **for profit**. Such agency or office may, among other things, impose as a condition the payment of royalties...

Sec. 176.1, IP Code

Work of the Government of the Philippines

... **No prior approval or conditions** shall be 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.

Sec. 176.1, IP Code

“DepEd Works”: Permissions Needed

Non-copyrighted Works

- made by government employees in the course of their regularly-prescribed duties in DepEd
 - *no permission needed, just acknowledge author*
- made by government employees in the course of their regularly-prescribed duties in other government agencies
 - *no permission needed, just acknowledge source and author; permission needed from the concerned government agency if use is for profit*
- in the public domain
 - *no permission needed, just acknowledge author*

“DepEd Works”: Permissions Needed

Copyrighted Works

- made by authors/creators who are not government employees
 - *permission needed from the author/collective management organization (CMO)/any entity owning the copyright over the work*

“DepEd Works”: Permissions Needed

Copyrighted Works

- made by government employees NOT in the course of their regularly-prescribed duties in DepEd
 - *permission needed from the author/collective management organization (CMO)/any entity owning the copyright over the work*
- made by government employees NOT in the course of their regularly-prescribed duties in other government agencies
 - *permission needed from the author/collective management organization (CMO)/any entity owning the copyright over the work*

“DepEd Works”: Permissions Needed

Copyrighted Works

- made by government employees NOT in the course of their regularly-prescribed duties in DepEd but assigned to DepEd
 - *permission needed from DepEd*
- made by government employees NOT in the course of their regularly-prescribed duties in other government agencies but assigned to such agencies
 - *permission needed from such agencies*

“DepEd Works”: Permissions Needed

Copyrighted Works

- **made by government contractuels/consultants**
 - *permission needed from such contractuels/consultants*
- **made by government contractuels/consultants whose terms of reference or contracts provide for assignment of copyright to the government agency who hired them**
 - *permission needed from such agencies*

Copyright infringement ≠ Plagiarism

“[T]he 8th edition of Black’s Law Dictionary defines plagiarism as the ‘deliberate and knowing presentation of another person’s original ideas or creative expressions as one’s own.’ Thus, plagiarism presupposes intent and a deliberate, conscious effort to steal another’s work and pass it off as one’s own.”

In the Matter of the Charges of Plagiarism, etc., against Associate Justice Mariano C. Del Castillo, A.M. No. 10-7-17-SC, October 12, 2010

Copyright infringement ≠ Plagiarism

“[P]lagiarism per se is not punishable as a crime under the IPC unless it also amounts to copyright infringement.”

Department of Justice Advisory Opinion No. 02
18 September 2012

Plagiarism = Copyright infringement when...

A plagiaristic act may constitute copyright infringement if such act involves the following:

- **substantial copying of a work;**
- **such work is copyright-protected;**
- **the infringer had access to such work; and**
- **the author or copyright owner of such work did not give his consent to the copying.**

Acts constituting Plagiarism

Plagiarism may consist in doing the following acts without proper attribution:

- **Word for word copying;**
- **“Cut-and-paste” several works and combine them to produce a composite work.**
- **Paraphrase a work;**
- **Adopt the outline of a work or the manner in which the author developed his ideas**

Based on the 2014 Revised Thesis Rules of the Graduate Legal Studies Institute, Law Thesis Center, Ateneo de Manila Law School *citing* http://education.arts.unsw.edu.au/media/File/2_GENT1501_Gifted_and_Talented_Students_Recognition_and_Responsibility_S1_2010.pdf >; also in GUIDELINES AND RULES ON STUDENT PLAGIARISM HANDBOOK FOR STUDENTS (As at 1 June 2005 - for coursework students only) by the University of New South Wales, adopting the same from the University of Melbourne.

Thank you!



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