What is Intellectual Property?

- IP refers to creation of the human mind – i.e. creative work, an original expression, or technical solutions to a problem
- Concerns the goodwill and reputation of a trader’s business
- IP covers a broad spectrum of legal rights –
  - Copyright
  - Trade marks
  - Patents
  - Industrial designs
  - Geographical indications
  - Layout designs of integrated circuits
  - Protection of undisclosed information (e.g. trade secrets)
  - Plant Varieties
Trade Marks

- TM is a sign capable of being represented graphically and distinguishing goods or services provided in the course of trade by a person from those of his competitors.
  - Definition of "sign" is non-exhaustive - includes any letter, word, name, signature, numeral, shape, colour or aspect of packaging.
- Common symbols: ® and ™:
  - ® indicates that the mark is a registered trade mark.
  - ™ indicates that the mark is in use as a trade mark, but does not denote that the mark is already registered.
- Legal regime governing TM:
  - Statutory rights – registration with the Registry of TM within IPOS.
  - Common law of passing off – exists regardless of registration.

Trade Marks

- The 2 rights may co-exist - registration does not extinguish the proprietor's rights to sue for passing off – gives additional rights.
- Registration of TM:
  - Based on a prescribed system of classification.
  - Exclusive rights to registered proprietor for initial period of 10 years from date of registration.
  - Renewal can be made for further periods of 10 years each.
- Not compulsory to register a trade mark, but has many benefits:
  - Right of ownership & right to prevent others from using a similar mark without trade mark owner’s permission.
  - Commercial exploitation of marks e.g. licensing, sale of trade mark portfolio for valuable consideration, boost valuation in company acquisition.
Patents

• Exclusive right granted to the inventor
• Invention can be new product or a new process that gives a new technical solution to an existing problem (e.g., new method of manufacture)
• Protection by registration with IPOS
• Generally up to 20 years from the date of filing of the application
• Patentable inventions:
  – Must be new – does not form part of the state of the art
  – Must involve an inventive step – improvement over any existing product or process & improvement must non-obvious to a person who is skilled in the art
  – Must be capable of industrial application
• Non-Patentable inventions:
  – Invention that is expected to encourage offensive, immoral or anti-social behaviour

Patentable Inventions

• Must be new – What is “state of the art”?
  – Matter which has at any time before the priority date of that invention been made available to the public (whether in Singapore or elsewhere) by written or oral description, by use or in any other way
  – Matter contained in another patent application which was published on or after the priority date of the invention sought to be patented
• Exceptions:
  • Disclosure that is due to, or made in consequence of –
    – the matter having been obtained unlawfully or in breach of confidence by any person from either the inventor or from any other person, or
    – the inventor displaying the invention at an international exhibition. On filing the application, applicant must state that the invention has been so displayed, or
    – the inventor describing the invention in a paper read by him or another person with his consent or on his behalf before any learned society or published with his consent in the transactions of any learned society.
  • Application for patent must be made within 12 months from the date of its disclosure
  • “Learned society” – any club or association constituted in Singapore or elsewhere whose main object is the promotion of any branch of learning or science
Patentable Inventions

- **Inventive steps – “Person skilled in the art”**
  - Someone with a breadth of knowledge (but not the entire spectrum) of the field of science/technology within which the invention lies
  - Lacks inventive imagination, otherwise it is impossible to affirm whether an invention is inventive in the eyes of the person skilled in the art
  - Test to determine the existence of an inventive step – merely a guide for the court to assess inventive step: *Windsurfing International Inc v. Tabur Marine (Great Britain) Ltd*
    - What is the inventive step said to be involved in the patent?
    - What was, at the priority date, the state of the art relevant to that inventive step?
    - In what respect does the step go beyond, or differ from, that state of the art?
    - Having regard to such development or difference, would the taking of the step be obvious to the person skilled in the art?

- **Capable of Industrial application**
  - Invention that can be made or used in any kind of industry, including agriculture
  - *Exception:* Invention of a method of treatment of the human or animal body by surgery/therapy or of diagnosis practised on the human/animal body are not capable of industrial application – in order to prevent methods treatment & diagnosis from being controlled by a few

Registered Designs
Registered Designs

- "Design" refers to the novel features of shape, configuration, pattern or ornament applied to an article by an industrial process
- Protection under Registered Designs Act only conferred if design is registered with IPOS
- To qualify for registration, a design must satisfy two key criteria:
  1. Design must be new
     • must not have been registered in Singapore or elsewhere or published anywhere in the world before the date of application; and
     • differs in material details or feature from other designs that are commonly found in trade
  2. Design must be industrially applied onto an article
     • More than 50 copies of the article have been or intended to be produced for sale or hire

Registered Designs

- The following cannot be registered under the RDA:
  • Designs that are contrary to the public order or morality
  • Computer programmes or layout-designs of integrated circuits
  • Designs applied to certain articles
    > works of sculpture (other than casts used or intended for use as models or patterns to be multiplied by any industrial process)
    > wall plaques, medals and medallions
    > printed matter primarily of a literary or artistic character (including book jackets, calendars, certificates, coupons, dress-making patterns, greeting cards, labels, leaflets, maps, plans, playing cards, postcards, stamps, trade advertisements, trade forms and cards, transfers and similar articles)
  • Any method or principle of construction

Registered Designs

- Designs that are solely functional
- Designs that are dependent upon the appearance of another article, of which it is intended by the designer to form an integral part, or enable the article to be connected to, or placed in, around or against, another article so that either article may perform its function

- Consequence of non-registration of a registrable design:
  • No design protection
  • No copyright protection
  • No unregistered design right here
Basic Concepts of Copyright

- Copyright – exclusive rights in an original work
- No registration needed
- Copyright marking (eg. "©") not needed
  - but used to indicate intention to assert copyright
- As soon as original work is created, copyright exists
- Protection of the form of expression, NOT ideas

Subsistence of Copyright

- Connecting factors (copyright subsisting under Singapore laws)
  - Place of first publication
    - Foreign copyright works are also protected – first publication in a WTO country, or under Berne Convention
  - Status of creator – citizen or resident
- Publication (providing copies to the public) - must be intended to satisfy reasonable requirements of the public (e.g. publishing story in newspapers, selling CDs)
- Originality of expression (not original idea) – “not slavish copy”, product of independent skill, labour and effort
- Work must be reduced into writing or material form
What Copyright Law Protects

- Literary, dramatic, musical, and artistic works
- Published editions of works
- Sound recordings
- Films

What is Not Protected?

- Ideas (e.g. a new business idea that has not been documented)
- Concepts (e.g. an idea for a new game show that has not been written down)
- Discoveries (e.g. a research finding that has not been known before)
- Procedures (e.g. the steps involved when applying for a travel visa)
- Methods (e.g. the unique solution to a mathematical problem)
- Subject matter that has not been made tangible in a recording or writing (e.g. a speech or a dance that has not been written or recorded)
- Subject matter which is not of original authorship (e.g. works which contain information in the public domain such as standards and the like)

Rights of Copyright Owner

- Literary, dramatic, musical, and artistic works
  - Author given exclusive rights to:
    - reproduce the work
    - publish the work
    - perform the work in public
    - communicate the work to the public
    - make an adaptation of the work
  - Published editions of works
    - Producer has exclusive right to make reproduction of the published edition
  - Sound recordings
    - Producer has exclusive rights to:
      - make copy of sound recording
      - rent out sound recording
      - publish sound recording
      - make sound recording available to public by means of or as part of a digital audio transmission
  - Films
    - Producer has exclusive rights to:
      - make copy of film
      - cause film to be seen in public
      - communicate film to public
Rights of Copyright Owner

**Television and radio broadcasts**
- Broadcaster has exclusive rights to:
  - make recording of broadcast
  - rebroadcast
  - communicate broadcast to the public
  - cause broadcast to be seen or heard by paying audience

**Cable Programmes**
- Producer has exclusive rights to:
  - make recording of cable programme
  - rebroadcast
  - communicate cable programme to the public
  - cause cable programme to be seen or heard by paying audience

**Performances**
- Performer has rights to:
  - allow performance to be seen and/or heard live in public
  - make sound recording of his live performance
  - make available recording of performance to public in such a way that the recording may be assessed by any person from a place and at a time chosen by him

Rights of Copyright Owner

**Performances**
- distribute, sell or import for distribution or sale, such recordings
- publish a recording of a performance
- communicate the live performance to the public (including by way of broadcast, internet dissemination and inclusion of the performance in a cable programme)

"Communicate" means to transmit by electronic means, whether or not sent in response to a request, and includes:
- broadcasting
- inclusion in a cable programme
- making available of the work in such a way that the work may be accessed by any person from a place and at a time chosen by him (eg. access over the internet)

Term of Copyright

- Intellectual Property (Misc Amdts) Act – w.e.f May 2004
- For literary, dramatic, musical and artistic works: "life of the author" plus 70 years.
- For works published after the death of author: 70 years after the date of first publication.
- For sound recordings and films: 70 years from date of publication
- For performances: 70 years from date of performance.
- For broadcasts and cable programmes: 50 years from publication of broadcast or cable program
- For published editions of works: 25 years from first publication
Who Owns the Copyright?

- **Maker** of copyright work = owner of copyright work
  - Eg. author, artist, publisher, producer of sound recording/film/cable programme, broadcaster, performer
- **But**:
  - Works created pursuant to an **agreement** with another person (e.g. record label who enters into production agreement with a producer to create sound recording) for valuable **consideration** (some form of payment), then the other person (e.g. record label) is the owner of the work.
  - Works created in pursuance of terms of employment with the owner of a newspaper/magazine/periodical ("publication") → owner of the publication is entitled to the copyright **only** to extent of being able to publish the work in the publication or reproduce the work for purposes of publishing the work in the publication.
  - Other than the above two scenarios, when work is created in pursuance of the creator’s terms of **employment**, then employer is the owner of the work.

Statutory Presumption

- Copyright deemed to subsist in work, and person claiming ownership presumed to be copyright owner, unless defendant proves otherwise.
- If defendant challenges in bad faith, may be penalised in costs.
- Defendant must not only prove otherwise, but also must show reasonable grounds in raising defence.
- To refute defence, all plaintiff has to do is file affidavit asserting facts relevant to proving copyright in work and ownership.
- Where name of person or group appears on cover of recording of performance by that person or group, presumption that named person or group is performer of that recording.

Authorship of Works

- Author of a LDM work owns the copyright.
- **What is “Authorship”?**
  - Not defined in the CA
  - Originator of the work – the person whose intellectual effort and labour was responsible for the expression embodied in the work
- "Work of joint authorship" – a work that has been produced by the collaboration of 2 or more authors and the contribution of each author is not separate from the contribution of the other authors.
  - A person who claims joint authorship must show a substantial contribution to the work.
  - Contributions in the form of criticism, basic ideas and themes are insufficient.
Authorship of Works

Illustration:

Kenrick & Co. v. Lawrence & Co.

- J & K were in partnership as printers and publishers. J had the idea of drawing a hand holding a pencil in the act of marking a cross within a square to help illiterate voters.
- J could not draw and asked his employee, B to sketch. J gave further directions for the position of the hand to be altered.
- The final drawing was registered with J as the author and the firm as the proprietor.
- It was held that both J and B are joint authors. Copyright can only be given to an author who at least have substantial share in putting the touches on to paper.

Authorship of Works

Ray (Robin) v. Classic FM plc

- A joint author –
  - provides a significant creative input and whose contribution is not distinct from that of the other author
  - must contribute to the production of the finished work
  - must participate in the writing and share responsibility for the form of expression in the work
  - must do more than contribute ideas
  - must be an author/creator – insufficient if he thought of the plot or give suggestions
  - need not necessarily exercised penmanship – suffice is there is a direct responsibility for what actually appears on paper

Authorship Presumptions

- Name of the author that appears on copies of the work as published is presumed to be the author until the contrary is proved
- Similar principles in the case of works of joint authorship
- Presumption does not apply if the work is published anonymously or pseudonymously
What is Literary Work?
• Defined in the CA to include: (a) a compilation in any form, (b) a computer program
• "Compilation" means a compilation, or table –
  – consisting wholly of relevant materials or parts of relevant materials;
  – consisting partly of relevant materials or parts of relevant materials; or
  – of data other than relevant materials or parts of relevant materials
• "relevant materials" means a work, including a computer program, a sound recording, a cinematograph film, a published edition of a work, a television or sound broadcast, a cable programme or a recording of a performance
• University of London Press Ltd v. University Tutorial Press Ltd
  – Literary merit is an entirely irrelevant consideration – covers works which is expressed in print or writing, irrespective of the question whether the quality or style is high
  – Works that are designed to offer information, pleasure or instruction to the reader
• Examples: maps, letters to newspapers, translations, football coupons, results of research conducted

What is Dramatic Work?
• Defined in the CA to include –
  – a choreographic show (eg ballets) or other dumb show (eg mime) if described in writing in the form in which the show is to be presented; and
  – a scenario or script for a cinematograph film
• All dramatic works are also literary works but not all literary works are dramatic works. Dramatic works usually involve some form of stage presentation
• Illustration:
  – Creation Records Ltd v. News Group Newspapers Ltd
    • Some photographs were taken for the cover of a new record of a group of singers. A picture of the scene that was similar to the one that was approved by the group singer was taken by another photographer and it was published in the papers
    • Plaintiff sued for infringement and argued that the scene itself was a type of dramatic work
    • It was held that the scene cannot be a dramatic work as it was static and had no movement, story or action
What is Dramatic Work?

Norowzian v. Arks Limited (No. 2)

- Plaintiff made a short film called “Joy”. The cast comprised 1 man dancing to the music. The visual impact of the film was edited using “jump editing technique” – produced a sequence of movements by the actor that in reality could not be performed
- Defendant produced a film advertisement called “Anticipation” for a beer product using similar jump editing techniques
- Whether the series of images was a dramatic work?
  - It was held that it was not a dramatic work because the surreal effects were the product of jump cutting and the finished result is very different from a recording of a dance actually performed by the dancer
  - To be a dramatic work, it has to be capable of being physically performed

What is Musical Work?

- Not defined in the CA
- “product of mind of human composer which is intended to be performed by production of combination of sounds to be appreciated by the ear for reasons other than linguistic content” – so what about computer generated music?
- Must be original – a re-arrangement or adaptation of an existing musical work may enjoy its own copyright as an original musical work provided that it is not a slavish copy and that the re-arrangement involved sufficient skill, labour and judgment – eg. classical pieces
- A song has 2 distinct copyrights:
  1. tune and musical score are original musical work;
  2. lyrics are literary works
  - These copyrights may well belong to different individuals i.e. lyricist has the literary rights whilst music arranger has the musical copyright

Public Performances of LDMW

- Performance of a LDMW in public is an infringement if it is done in Singapore without the licence of the copyright owner
- What is “performance”?
  - Defined in section 22 of CA
    - Any mode of visual or aural presentation, whether the presentation is made by the use of any receiving apparatus, by the exhibition of the a cinematograph film, by the use of a record or by any other means – eg. singing a song is a performance of literary & music copyright in that song
    - A delivery of a lecture, an address, a speech or a sermon
Public Performances of LDMW

- What is “public”?  
  - Not defined in the CA.  
  - Propositions laid down by courts:
    - Premises on which the performance took place need not be a public place. A performance can be public even if it occurs on private property.  
    - The fact that no fee is charged for the performance does not prevent the performance from being categorized as being a public performance.  
    - Performances before family members or in domestic/quasi domestic situations will not be a public performance.  
    - The size of the audience is not a decisive factor. A public performance that is not very successful is still a public performance.

Performances of LDMW by EI

- What is an “educational institution”?  
  - not-for-profit (whether directly or indirectly)
  - can be one of the following:
    - institution at which full-time primary, secondary or pre-university education is provided
    - junior college, university, college of advanced education or technical and further education institution
    - institution that conducts primary, secondary, pre-university or tertiary education by correspondence or external study basis
    - school of nursing
    - undertaking within hospital that conducts medical related courses
    - teacher education or training centre
    - institution that has, as its principal function, provision of general education (eg. kindergartens), professional training or continuing education in a particular occupation or profession
    - institution at which education is provided as declared by copyright regulations to be an educational institution
    - institution that provides materials to educational institutions referred to above for purpose of assisting in their teaching purposes

What is “educational purpose”?  

- something done in connection with a particular course of instruction provided by an educational institution or for inclusion in a collection of the educational institution’s library  
  - above definition not exhaustive

What is “staff of an educational institution”?  

- full-time staff employed by the educational institution
- any adjunct staff of the educational institution
- any person engaged by the educational institution to conduct any course of instruction, activity or programme offered by the educational institution
Performances of LDM by EI

- Certain performances by students & staff are deemed not to be performances in public:
  - In the case of musical work, a performance that:
    - takes place in the premise of the educational institution or elsewhere in the presence of an audience; and
    - is made in the course of the activities of the institution
  - In the case of literary work, a performance that:
    - takes place at the premises of the educational institution or elsewhere; and
    - is in the presence of an audience limited to persons who are taking part in the instruction or are otherwise directly connected with the institution eg. students’ parents, guardian, brothers or sisters

Collecting Societies & the Copyright Tribunal

- Formed or appointed by copyright holders to administer licensing of rights, collection of royalties and enforcement of rights on behalf of the copyright holders. But do not necessarily cover all rights.

- Represents composers, songwriters, lyricists and publishers
- Administers the public performance rights in music scores and lyrics for songwriters and lyricists, and also reproduction and adaptation rights of musical works of some local music publishers. Public performance means the playing or use of music in a public place such as in a shopping centre, restaurant, lounge or in a concert hall
- Collects royalties on behalf of members, enforces infringements of members’ copyrights
- Reciprocal arrangements with foreign agencies like ASCAP, BMI and CASH
- Royalties payable depend on place, type and extent of use, event in which music is used, nature of business of user etc.
Licensing & Collecting Societies

- **RIPS**
  - A collective licensing body representing record companies, administers public performance rights of all karaoke and/or music videos in which the copyright is owned or controlled by the record companies
  - Also administers reproduction rights of sound recordings of member record companies
  - Collects royalties on behalf of members, enforces infringements of members' copyrights
  - Licence fee depends on type of outlet and its seating capacity as stated in the Public Entertainment Licence. Ad-hoc licences will depend on type and duration of event

- **InnoForm Entertainment**
  - Administers reproduction rights of karaoke and music videos on behalf of major record companies
  - Licence applicable to making of reproductions of karaoke and/or music videos and storage of videos on servers

Licensing & Collecting Societies

- **MPS**
  - Comprises 12 music publishing companies in Singapore, who collectively control a large number of music copyrights in Singapore
  - Enforces on behalf of members and their composers and/or lyricists, all copyrights and remedies pertaining to the use of musical compositions owned or administered by members
  - Administers copyright in original musical compositions - i.e. instrumental composition and lyrics
  - Unlike COMPASS, which administers public performance and broadcast rights, MPS administers non-performance rights (mechanical, print and reproduction rights) in musical compositions – eg. use of music in television commercial or movie production

Licensing & Collecting Societies

- **Copyright Licensing and Administration Society of Singapore Ltd (CLASS)**
  - Set up by publishers and authors to protect their copyright interests
  - Administers the reproduction right of published literary works such as books, magazines, journals etc on behalf of member authors and publishers
  - Provides licences to allow photocopying of these works
  - Pays members and foreign reproduction rights organisations with which CLASS has reciprocal or bilateral agreements, their shares of collected royalties and provides data to enable these societies to pay individual authors and publishers
Copyright Clearance

**Song copyright:**
- Need to locate and contact representative (usually music publishers) of each composer, confirm their ownership or percentage rights, and negotiate a fee for use of their share of the song.
- Eg. "My Way" recorded by Frank Sinatra, Elvis, Paul Anka etc. Originally composed by Jacques Revaux, with French words by Gillis Thibault. Subsequently, English words written by Paul Anka.
- Negotiating fee for use of song is based on type of production - eg. film, tv show, corporate meeting, trade show, commercial, CD-ROM, web site, compilation record etc.
- Other factors include how much of the song is used and the manner in which it is used.
- Different rights may be negotiated – eg. music synchronization rights, mechanical rights, performance rights etc.

Copyright Clearance

**Recording copyright:**
- If Sinatra’s recording is to be used for commercial, need to get clearance from his recording company
- but which version? Capitol? WEA?
- Publishing companies and record companies almost always different entities.
- May need to get clearance from record company if a particular recording of song is required to be used
- Ownership of recording may have changed over the years – eg. change of record labels, digital remastering, compilations
- Use of commercial clearing agents

The Copyright Tribunal

- Forum for resolving certain types of disputes between copyright owners and users of copyright materials.
- The Tribunal is empowered to:
  - resolve disputes relating to rates for licences to perform, broadcast or include in cable programme services for literary, dramatic or musical works, but not cinematograph films like music karaoke;
  - settle disputes over such licences;
  - determine what constitutes "equitable remuneration" payable by educational institutions when they use copyright materials within the permissible limits allowed under the Copyright Act;
  - ascertain the royalty payable for the recording of musical works and, where applicable, apportion the royalty in respect of a record;
  - determine what constitutes "equitable remuneration" for the right to film artistic works for permitted broadcasts or cable programmes; and
  - determine what constitutes "equitable remuneration" for the making available to the public of a sound recording through a non-interactive digital audio transmission.
The Copyright Tribunal

- Consists of President of the Tribunal and between 2 to 4 other members appointed by the Minister.
- Where members are unable to agree as to the order to be made by the Tribunal, majority decisions are permitted. In event of equality of votes, President is entitled to a second or casting vote.
- The Tribunal has power to refer to the High Court any matter that comes before it for the determination on a point of law.
- IPOS is the secretariat of Copyright Tribunal
- Current plans to extend jurisdiction of Tribunal. Proposals made by Law Society include:
  - Jurisdiction to hear infringement cases
  - Jurisdiction to assess and award damages
  - Arbitrating copyright disputes
  - Determining whether licences are anti-competitive

Infringement of Copyright and its Consequences

Infringement of copyright

- **Primary infringement:** Doing any of the exclusive acts comprised in copyright without authorisation from the copyright owner
  - substantial, qualitative copying
  - does not include transient and incidental copying that is part of the technical process of making / receiving a communication, unless communication itself is infringing
- **Infringing authorisation:** Authorising someone to do any of the exclusive acts comprised in copyright without authorisation from the copyright owner
**Infringement of copyright**

- **Secondary infringement:**
  - Importing for sale or hire / letting for hire / exposing for sale or trade / offering by way of trade articles that infringe the copyright, when infringer knows, or ought reasonably to know that owner of copyright did not consent

- **False attribution of authorship:**
  - Duty not to insert someone else’s name to a work / performance in such a way as to imply that the person is the author / performer of the work / performance
  - Duty not to falsely represent altered work or recording of a performance as unaltered

**Remedies**

- Injunction
- Damages and/or account of profits
- Statutory damages
- Delivery up of infringing articles
- Forfeiture / destruction
- Costs

**Statutory Damages**

- May be difficult to prove how much monetary damage copyright infringement has caused, even if infringement is established.
- Also, copyright owner may actually spend more on litigating than recovery of losses.
- Copyright owners now given viable alternative to claiming actual damages, while increasing deterrence against infringement.
- Amounts that may be awarded as statutory damages are:
  - Not more than S$10,000 for each infringing work or subject matter
  - Not more than S$200,000 in aggregate, unless plaintiff proves that actual loss exceeds S$200,000
Statutory Damages

- Discretion given to courts on award of statutory damages
- Following factors relevant:
  - Nature and purpose of infringing act, including whether commercial or otherwise
  - Flagrancy of infringement
  - Whether defendant had acted in bad faith
  - Any loss suffered or likely to be suffered by Plaintiff by reason of infringement
  - Any benefit shown to have accrued to Defendant by reason of infringement
  - Conduct of Parties before and during proceedings
  - Need to deter other similar infringements
  - All other relevant matters

Offences

1. Making infringing article for sale or hire
2. Selling / letting for hire / by way of trade offering or exposing for sale or hire infringing article
3. By way of trade exhibiting in public infringing article
4. Distributing infringing article for purposes of trade, or such as to affect owner of copyright prejudicially
5. Possession of infringing article for purpose of (2), (3) or (4)
6. Importing infringing article into Singapore for purpose of (2), (3) or (4)
   - Fine of up to $10k for each article up to $100k and/or up to 5 years’ imprisonment
7. End user offence
   - Fine of up to $20k and/or up to 6 months’ imprisonment, and $50k / 3 years for second and subsequent offences

End User Criminal Liability

- Primary infringement - civil action may be taken by copyright owner.
- EUCL provision intended to target primary infringer whose acts cause substantial harm to copyright owner – eg. when either infringement is to a significant extent or when infringement is for purpose of obtaining a commercial advantage.
- “significant extent” – dependent on volume and value of infringing articles, and whether infringement has substantial prejudicial impact on copyright owner. If so, then fact that infringer did not gain any financial benefit is irrelevant
- “commercial advantage” - direct advantage, benefit or financial gain for a business or trade carried on by the infringer.
- Difficulties in enforcement in non-commercial situations
Fair Dealing Defences

- Specific provisions for fair dealing:
  - Fair dealing for purpose of criticism or review, provided sufficient acknowledgment is made (must identify title of work + author)
  - Fair dealing for purpose of reporting of current events
    - In newspaper / magazine / periodical, provided sufficient acknowledgment is made
    - By means of broadcasting or a cable programme or in a cinematograph film

Fair Dealing Defences

- "Research and study" deemed fair dealing
- "Study" need not be private, personal affair
- Section 35 general defence of fair dealing expanded:
  - "Fair dealing" depends on
    - purpose and character of dealing, including whether of commercial nature or non-profit educational purposes
    - nature of work
    - amount and substantiality of part copied in relation to whole work
    - effect of dealing upon potential market for work or value of work
    - possibility of obtaining work within reasonable time at ordinary commercial price

Other Defences

- Introduced to cater to technological advances
- Decompilation - lawful user of computer program permitted to decompile if necessary to create independent computer program that can operate with decompiled program – encourages open systems and interoperable programs/products. Cannot be contracted out.
- Necessary copying for lawful use of computer program – eg. correcting errors in program
- Libraries and educational institutions – extension of defences to cater to materials in electronic form
Selected FAQs

Student Activities – Use of Script

When is permission required?
- Permission is needed to use a script when the script is protected by copyright, e.g. when:
  - it has been less than 70 years from the death of the script writer
  - the script is not an original script written by the students
  - Where the script is to be localised, a significant part of the script is similar to an original script that is copyright protected

Whose permission is required?
- The copyright owner of the script; or
- The representative collecting society

Student Activities – Plays & Musicals

- Permit required for putting up plays and musicals
  - Arts Entertainment Licence from the Media Development Authority of Singapore unless exempted
- Music played during performance
  - Composers and Authors Society of Singapore (COMPASS)
  - Recording Industry Performance Singapore Pte Ltd (RIPS), where the music is played from sound recordings (music CDs)
- Music performed by live band
  - COMPASS
  - RIPS for minus-one recordings
### Student Activities – Film Screenings

**Permission and permits required for screening of films**

- Permission from the copyright owner of the film is required for causing the film to be seen in public
  - Copyright owner identifiable from DVD/VCD sleeve and movie credits
- Film exhibition licence from the Media Development Authority of Singapore if the film intended to be screened is rated NC16, M18 or R21. Film exhibition licence is not required for films rated PG. NB: This requirement does not apply to screenings conducted as part of a class for the purposes of criticism or comment.

### Student Activities - Concerts

**Permits required**

- Arts Entertainment Licence from the MDA
  - “Arts Entertainment” includes plays, musical and dance performances, art exhibitions, variety shows and pop/rock concerts. All indoor or outdoor events that are open to members of the public require an arts entertainment licence
  - Exempted activities include arts entertainment for children below 12, classical performances, performances of instrumental music, traditional dances etc.
- COMPASS licence
- Possibly RIPS licence

### Failure to obtain permission and permit

- Where script, plays, music and films are used without the prior approval of the copyright owner or the relevant collecting society:
  - Copyright owner may sue for copyright infringement
  - Section 136(6) of the Copyright Act: Offence of causing a literary, dramatic or musical work to be seen or heard for profit in public when the offender knew or ought to have known that the work was protected by copyright is punishable on conviction by a fine of up to $20,000 or to imprisonment of up to 2 years or both
- Where permits or licences are required for the provision of public entertainment:
  - Section 19 of the Public Entertainments And Meetings Act: liable on conviction to a fine not exceeding $10,000
Student Activities - Exhibitions

Permits required to stage an exhibition
• Permission from the copyright owner of the exhibit
  – eg. the creator (sculptor, photographer, painter) of the exhibit
• Arts Entertainment Licence from the MDA unless exempted – eg. exhibitions of art and crafts, commemorative items like coins and stamps, paintings etc.

Reprints / copies of exhibits to sell
• Reprints/copies of the exhibits to sell may be made only if:
  – No copyright subsists in the exhibits (eg. term expired); or
  – A license to reprint such exhibits is obtained from the copyright owner

Student Activities – Publicity & Advertisements

Matters to be considered when designing publicity materials to avoid copyright infringement
• Design must be a product of independent skill, labour and effort – not copied substantially from other sources
• Pictures or art clips should only be used if prior consent from the copyright owner is obtained, or if terms of use allow

Changes made to publicity materials from outside sources to publicise own event
• Depends on the extent of the changes made to the publicity materials
• If a substantial part of the design/artwork of the publicity materials of another person remain unchanged and only the event details are changed, there is still infringement of copyright

“Substantial” - not defined in CA, but quality and quantity of amount copied would be relevant.

Beware of planted indicia of copying: SLA v Virtual Map

Organising singing competition called “Campus Superstar” or “NTU Idol”
• Permissible if appropriate licences (eg. Arts Entertainment Licence) and consent from the relevant collecting societies are obtained
• Consent from collecting societies is not required if the participants of the competition are limited to students or staff of an educational institution in the premises of the institution or elsewhere in the presence of an audience and is so performed in the course of the activities of the institution (section 23, CA)

Naming issues
Student Activities – Publicity & Advertisements

• Use of trade marks of sponsors in publicity materials published by school
  – Privileges of sponsors often include featuring of their trade marks in publicity materials
  – Should sponsor not want to be featured, then its decision ought to be respected

Student Activities – Publicity & Advertisements

Prohibited content

• Obscene materials (tending to deprave and corrupt)
• Objectionable materials (depicting matters such as sex, horror, crime, cruelty, violence, drug or alcohol consumption, matters of race or religion in such manner as is likely to cause feelings of enmity, hatred, ill will or hostility between racial or religious groups
• Materials which are defamatory of other persons
• Seditious materials (e.g. materials to bring into hatred, contempt or to excite disaffection against the Government or the administration of justice; materials to raise discontent or disaffection amongst citizens or residents; materials to promote ill will and hostility between different races or classes of population)

Research

• Intellectual property rights in research
  – Original research work that is reduced into writing or material form is copyright protected
  – An invention (i.e. a product or process) that fulfils the criteria of a patentable invention and that is derived from a research can be patented
  – Confidential information / trade secrets

• Research work produced in a group project and in collaboration with third parties
  – Other group members and third parties may be joint authors of the research work if there is substantial contribution to the research work by them
Research Collaboration with 3rd parties

Factors to consider
- Who owns the intellectual property rights to the work?
  - Where research work is reduced into writing or material form, who owns the copyright?
  - Where the research culminates in an invention that is patentable, who has the right to patent?
- Distinguishing between Foreground IP & Background IP
- Proportion of ownership?
- How are proceeds or royalties to be divided?
- Who has the right to exploit the written research work if the collaboration is terminated?
- Control and approval - is consent from each collaborator required for the use of the work even if his contribution is not significant?
- Extent of warranties and indemnities from each collaborator

Thesis/Reports for Final Year Project

- Students who have written the thesis or reports for final year project own the copyright to these works as authors, provided that the thesis or reports are product of independent skill, labour and effort
- Where thesis includes materials which are non-original, copyright clearances from the respective copyright owners may have to be obtained. Mere acknowledgment is insufficient to avoid infringement unless fair dealing defence applies.

Invention

- Patent protection for invention that has been published in a journal
  - A disclosure before any learned society or published by you or with your consent in the transactions of any learned society will be disregarded if you file for a patent within 12 months from the date of its disclosure.
  - A "learned society" includes any club or association constituted in Singapore or elsewhere whose main object is the promotion of any branch of learning or science.
Invention

- Patent protection for invention that has been exhibited in an exhibition
  - If the invention was displayed in an international exhibition, the disclosure will be disregarded if you provide the necessary information in writing at the point of filing the patent application and a certificate issued by the authority responsible for the exhibition within 4 months from the day of filing the application.
  - The filing of the patent application must be made within 12 months from the date of its display in the international exhibition.

Questions?

Thank You!

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