Singapore Copyright Law

for Library Professionals

Prepared by: Foo Yan Chuin, Wee Carolyn and Lim Siu Chen

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General Principles of Copyright

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2. When in time does Copyright protection arise?
3. What is the subject matter of Copyright?
4. What is the duration of Copyright?
5. Does the use come under the exclusive rights of the owner?
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2. Multiple Copying by Institutions Exception
   a. Section 51 Copyright Act
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Part 1

General Principles of Copyright

1. What is Copyright?
2. When in time does Copyright protection arise?
3. What is the subject matter of Copyright?
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General Principles

1. What is Copyright?

What is copyright?

• The right to prevent others from copying a protected object
• Extends to preventing others from commercially exploiting it in other ways

How is copyright acquired?

• Copyright arises when an author reduces his/her original “expression” into a “material form”
General Principles

1. What is Copyright?
Which of these can be copyrighted?

The fact that there are differences between the sexes

The book *Men Are from Mars, Women Are from Venus*

The song *Gangnam Style*

The idea of a handsome vampire falling for a beautiful teenage girl

The film *Twilight*

The idea of writing a Korean satirical song about the Gangnam District

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General Principles

1. What is Copyright?

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Global Yellow Pages Ltd v. Promedia Directories Pte Ltd. [2016] SGHC 09

Justice George Wei, had to consider whether Yellow Pages had rights over published names, addresses, phone and fax numbers of firms and business, which are facts for information.

“I have concluded that copyright does not subsist in the individual listings in the plaintiff’s directories because they are essentially facts, and there cannot be copyright in facts....”

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General Principles

2. When in time does copyright protection arise?

A. When the author gets paid?
B. As soon as the work is created?
C. When published with a © symbol?
D. Upon registration for copyright?

Answer:
B: Copyright arises automatically in a work when it is created and there is no formal requirement of registration to secure copyright.
General Principles

3. What is the subject matter of Copyright?

Copyright protects authors works (abbreviated as “LDMA”)

- Literary works
- Dramatic works
- Musical works
- Artistic works

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General Principles

3. What is the subject matter of Copyright?

Copyright protects authors works ("LDMA")
- Literary works (lyrics)
- Dramatic works (script)
- Musical works (score)
- Artistic works (cover art)

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General Principles

3. What is the subject matter of Copyright?

Copyright protects authors works ("LDMA")
- Literary works
- Dramatic works
- Musical works
- Artistic works

What qualifies as an artistic work?

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General Principles

3. What is the subject matter of Copyright?

Copyright protects authors works ("LDMA")

- Literary works
- Dramatic works
- Musical works
- Artistic works

“A single straight line drawn with the aid of a ruler would not seem to me a promising subject for copyright. But apart from cases of such barren and naked simplicity as that, I should be slow to exclude drawings from copyright on the mere score of simplicity. I do not think that the mere fact that a drawing is of an elementary and commonplace article makes it too simple to be the subject of copyright” per Megarry J. British Northrop v. Texteam

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4. What is the duration of Copyright?

<table>
<thead>
<tr>
<th>Copyright Work</th>
<th>Published or Unpublished</th>
<th>When Publication occurred</th>
<th>Copyright Term</th>
</tr>
</thead>
<tbody>
<tr>
<td>Literary, dramatic and musical works</td>
<td>Published</td>
<td>During lifetime of the author</td>
<td>S 28(2): 70 years after the death of the author</td>
</tr>
<tr>
<td></td>
<td></td>
<td>After death of the author</td>
<td>S 28(3): 70 years after the first publication of the work</td>
</tr>
<tr>
<td></td>
<td>Unpublished</td>
<td>–</td>
<td>Indefinite</td>
</tr>
<tr>
<td>Artistic work, other than engraving and photograph</td>
<td>Published</td>
<td>During lifetime of the author</td>
<td>S 28(2): 70 years after the death of the author</td>
</tr>
<tr>
<td></td>
<td></td>
<td>After death of the author</td>
<td>S 28(3): 70 years after the first publication of the work</td>
</tr>
<tr>
<td></td>
<td>Unpublished</td>
<td>–</td>
<td>Indefinite</td>
</tr>
<tr>
<td>Engraving</td>
<td>Published</td>
<td>During lifetime of the author</td>
<td>S 28(2): 70 years after the death of the author</td>
</tr>
<tr>
<td></td>
<td></td>
<td>After death of the author</td>
<td>S 28(5): 70 years after the first publication of the engraving</td>
</tr>
<tr>
<td></td>
<td>Unpublished</td>
<td>–</td>
<td>Indefinite</td>
</tr>
<tr>
<td>Photograph</td>
<td>Published</td>
<td>During lifetime of the author</td>
<td>S 28(6): 70 years after the first publication of the photograph</td>
</tr>
<tr>
<td></td>
<td></td>
<td>After death of the author</td>
<td>S 28(6): 70 years after the first publication of the photograph</td>
</tr>
<tr>
<td></td>
<td>Unpublished</td>
<td>–</td>
<td>Indefinite</td>
</tr>
</tbody>
</table>

Ng-Loy Wee Loon, Law of Intellectual Property of Singapore (Sweet & Maxwel Asia, 2009 Rev Ed)

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General Principles

5. Does the use come under the exclusive rights of the owner?

Copyright owners of LDMA’s have the 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

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Sample Copyright FAQ

Q. Can I reproduce and use an image from a 1981 NUS dissertation in my research paper?

Our response:
The Copyright in the text of the dissertation is separate from the Copyright in the images themselves.

- The photograph is not subject to the Copyright of NUS.
- As such, you would have to ascertain who owns the Copyright in the images and seek permission to use the images from them.

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Summary

Some questions to ask when addressing Copyright queries from user:

• Is the work copyrighted?
  • Reduction into material form (fact / idea & expression dichotomy)
  • Still under the term of copyright
  • Originality not a bar to simplicity

• Does use of the work come under the exclusive rights of the owner?
• Who is the owner?

to be continued...
Part 2

Exceptions

1. Fair Dealing Exception
2. Multiple Copying by Institutions Exception
   a. Section 51 Copyright Act
   b. Section 52 Copyright Act
3. Exception for Examination Purposes
Exceptions

Copyright law must balance conflicting interests
- commercial interests of copyright owners
- the public interest

The Copyright Act does so, by having exceptions for:
- fair dealing
- multiple copying by educational institutions
- examination purposes
Fair Dealing Exception
Related to NUS Libraries Work Processes

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Fair Dealing

Fair dealing exceptions
1. criticism or review (s.36)
2. reporting current events (s.37)
3. for **any purpose** (including research and study)(s.35)

To qualify for defences
• Dealing must be for the protected purpose
• Dealing with the copyrighted material must be “fair”
Fair Dealing

Relevant factors for whether the dealing is fair under s. 35(2) include:

a)  the purpose and character of the dealing, including whether such dealing is of a commercial nature or is for non-profit educational purposes;

b)  the nature of the work or adaptation;

c)  the amount and substantiality of the part copied taken in relation to the whole work or adaptation;

d)  the effect of the dealing upon the potential market for, or value of, the work or adaptation; and

e)  the possibility of obtaining the work or adaptation within a reasonable time at an ordinary commercial price.

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Fair Use

17 U.S.C. § 107

In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

• the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
• the nature of the copyrighted work;
• the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
• the effect of the use upon the potential market for or value of the copyrighted work.
Sample Query

Hi,

I would like to enquire about the use of copyrighted images taken from video games in my PhD thesis (and for future publications):

http://scholarbank.nus.edu.sg/handle/10635/123104

If the copyright owners from the video game companies do not reply my email query on the use of the video game screenshots in my thesis, do I have to remove the images from my thesis, or can I cite fair use (dealing)? Does the library have to produce a memo or letter for my thesis and publications saying that “fair use” is allowed for reproduction of copyrighted screen captures of video gameplay recordings? Thank you.
If the copyright owners from the video game companies do not reply my email query on the use of the video game screenshots in my thesis, I do have to remove the images from my thesis,

Based on the limited facts available to us, it would be prudent to obtain permission from the copyright owner (likely the developer/publisher of the game) before using the images in your thesis. Our concern is that you do not infringe the copyright owners rights.

or can I cite fair use (dealing)?

Whether your use of the screenshots (“the work”) in your thesis may be considered ‘fair dealing’ under Singapore law will depend on a number of factors. The factors a judge would consider:

- Purpose for copying the work. Whether non-profit educational or commercial?
- Nature of the copied work. Is it published or unpublished? Confidential or intended for a wide audience?
- Amount of the work copied in relation to the whole work.
- Possibility of obtaining a copy within a reasonable time at an ordinary commercial price.
- Effect of use upon the potential market for, or value of, the work.

These factors are used to decide whether use of the work is considered ‘fair dealing’ under Singapore law.

Does the library have to produce a memo or letter for my thesis and publications saying that “fair use” is allowed for reproduction of copyrighted screen captures of video gameplay recordings?

Unfortunately, the NUS Libraries cannot give you permission to use the screenshot as we are not the copyright holder of those images. To reduce the risk of infringement, it is best for you to obtain permission from the copyright owner before using the images in your thesis.

As for the issue of fair dealing, ultimately, it will be the courts who determine if a particular use is considered ‘fair dealing’. The Copyright Act does not clearly delineate the situations when use of a work is considered ‘fair dealing’ and when it would not. The Copyright Act only provides a number of factors (bullet pointed above) for judges to consider in deciding whether use of a work is ‘fair dealing’.

We wish you all the best!
Thank you so much.

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Summary

Some questions to ask when addressing Copyright queries from user:

- Is the work copyrighted?
- Does use of the work come under the exclusive rights of the owner?
- Who is the owner?
- Does an exception apply?
- Do you have a license that deals with the intended use?
  - If no, seek permission from the Copyright owner.
  - If yes, you may go ahead and use it.

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Multiple Copying by Educational Institutions Exception
Related to NUS Libraries Work Processes

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Multiple Copying by Educational Institutions

• Rationale: to facilitate the conduct of courses of education

• “Multiple copying”
  • The making of more than one copy of a copyrighted work

• Making of a single copy
  • Not “multiple copying”
  • Outside the scope of this briefing

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Multiple Copying by Educational Institutions

• Two forms of multiple copying by educational institutions

  • multiple copying of **insubstantial** portions of works
    • governed by section 51

  • multiple copying of **substantial** portions of works
    • governed by section 52

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Multiple Copying by Educational Institutions

Difference between copying substantial (s 52) and insubstantial (s 51) portions

• S.52 permits the communication of multiple copies
  • same as s.51
• Payment must be made to copyright owners
  • unlike s.51
• Copying record must be made as soon as practicable after the copying, for s.52 to apply
  • unlike s.51
• Notation must be made on the copies made
  • unlike s.51

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Multiple Copying by Educational Institutions

Multiple Copying of Substantial Portions (s.52)

Notation of the Copies Made

• A notation must be made on all copies made under s.52, stating:
  • that the copy was made on behalf of NUS
  • the date that the copy was made

• If no notation is made on the copies, then s.52 does not apply and NUS becomes potentially liable for copyright infringement

• False notation of copies is a criminal offence

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Multiple Copying by Educational Institutions

Limits of Copying (s.52)

- Articles in a periodical publication
  - Only one article, unless all articles copied are on the same subject matter

- Works that are not articles
  - Only a “reasonable portion”, unless reasonable investigations establish that original (i.e. not secondhand) copies cannot be obtained within a reasonable time at an ordinary commercial price

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Multiple Copying by Educational Institutions

What portion of a work may I make available on e-Reserves for my module?

Meaning of “reasonable portion” under s 52

- 10% of the total number of pages in a physical edition of the work

OR

- 10% of the total number of bytes in an electronic edition of the work

OR

- 1 chapter, if the work is divided into chapters (even if 1 chapter is more than 10% of the number of pages or bytes)

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Multiple Copying by Educational Institutions

Example of s.52 in operation

*Law of Contract* by Professor Andrew Phang - 1158 pages in all

- 50 pages copied (from different chapters)
  - less than 10% of the total of 1158 pages
  - a “reasonable portion” of the work

- 150 pages copied (from different chapters)
  - more than 10% of the total of 1158 pages
  - *NOT* a “reasonable portion” of the work

- 200 pages copied, but all from 1 chapter
  - a “reasonable portion” of the work

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Multiple Copying for Educational Institutions

**FAQ:** Can the author of a book give me permission to make available more than 10% or one chapter of a work on e-Reserves?

**A:** The author of a work does not necessarily own the copyright which subsists within a work. For example, the author might have assigned the copyright in the book to the publisher when he published the book and would not be able to give permission.
Multiple Copying by Educational Institutions

How long must records be kept?

Retention of copying records

- Records to be retained for 4 years from date of copying
- **Criminal offence** if records are not retained for 4 years
Multiple Copying by Educational Institutions

Who is the custodian of copying records?

- Department heads
- Programme coordinators

Duties of the custodian

- The custodian is guilty of an offence punishable upon conviction to a fine of up to $1000 for any failure to retain copying records for the requisite 4 years

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Multiple Copying by Educational Institutions

Form of s.52 copying record

• A written record must substantially comply with the form prescribed in the Copyright Regulations

• The record must contain the prescribed particulars relating to the act of multiple copying

• Different forms used, for the copying of articles and works that are not articles

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Multiple Copying for Educational Institutions

**FAQ:** What happens if I do not make a copying record (S52 Form) when I make multiple copies of substantial portions under s 52?

**A:** The University may become liable for copyright infringement. You may also be personally liable for a criminal offence under the Copyright Regulations.
Multiple Copying for Educational Institutions

**FAQ:** What are some common mistakes to avoid?

A: You should never:

- copy more than one article from a given periodical, unless they relate to the same subject matter
- copy an entire work, or more than 10% of the total number of pages, or more than one chapter, of an edition of a work, unless you have investigated and ascertained that new copies are unavailable within a reasonable time at an ordinary commercial price

When filling out the S52 Form, you should never:

- fill in a date for the making of the record, that is earlier than the date for the making of the copies
- make copying records when they are not required, e.g. when s.51 applies

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- 3 publishers sued Georgia State University for “systematic, widespread and unauthorized copying and distribution of a vast amount of copyrighted works” through its e-reserves system

- At first instance in the district court, Georgia State University held guilty for only 5

- Case has been appealed and is ongoing in the US

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Multiple Copying for Educational Institutions

**FAQ:** Why should a teaching staff use e-Reserves?

**A:** NUS Libraries e-Reserves assists with:

- checking copyright compliance,
- adding copyright notices,
- keeping records as required by the Class License and the Statutory License under section 52 of the Copyright Act.

If a teaching staff wishes to upload the document onto IVLE instead of e-Reserves, this requires compliance with s 52 of the Copyright Act.

For more detailed information please contact the Office of Legal Affairs through the Dean’s office.
Multiple Copying for Educational Institutions

Summary

• The Copyright Act recognises that copying is necessary for educational purposes but this has to be balanced against the commercial interests of the copyright owners.

• Accordingly, when substantial copying is done for the educational purposes of the University, records in the prescribed form must be kept.
Multiple Copying for Educational Institutions

Concluding Remarks

- Making and keeping proper copying records under s. 52 is a serious matter

- Failure to make or keep records as required may result in:
  - civil and criminal liability for NUS
  - criminal liability for custodians
  - adverse publicity for NUS

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Exception for Examination Purposes

Related to Teaching Staff Preparing Examination Papers

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Exception for Examination Purposes

Q: What about reproducing copyrighted materials in examination papers?

Section 52A Copyright Act

“The copyright in a work is not infringed by anything done for the purposes of an examination, whether by way of:

• setting the questions
• communicating the questions to the candidates or
• answering the questions.”

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Sample FAQs

Miscellaneous

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Sample FAQ

Q. An organiser of a local, non-profit conference/seminar wants to make multiple copies of an article in NUS Libraries for their conference. Can NUS rely on s 52 of the Copyright Act (Multiple Copying Exception for Educational Institutions) to do this?

• Multiple copying of NUS Libraries for the purposes other than the educational purposes of NUS as an institution is not allowed.
• The organiser should seek permission directly from the copyright owner.

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FAQ: Can a document obtained from DDS be placed in e-Reserves?

A: Documents obtained through DDS cannot be placed in e-Reserves as they are obtained for the specific purpose of personal research and study and not for making multiple copies of readings for students and staff.

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Unresolved Issues

Q. How much of a Musical Score Can be Reproduced / Performed by a student / teaching staff of a Conservatory?

A: Waiting for OLA’s advice.
Sample FAQ

Q. How much of an NUS Undergraduate Academic Exercise / Directed Research Paper can I photocopy for the purpose of research and study?

Previously, NUS staff and students could copy only 50% of an Honours thesis for the purpose of their personal research / study.

Hwee Lee from OLA has confirmed that:

- NUS staff and students can photocopy up to 100% of NUS theses for private study and research.
- Non-NUS staff and students can only photocopy up to 10% of NUS theses as per the restrictions under the Copyright Act.

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