

A Study Concerning to The Tight Spot of Different Work Types That Can Be Protected by Copyright

By

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Abstract

Copyright is a protection given to authors, copyright owners and performers of their copyright work and performances as prescribed under the Copyright Act 1987 (Act 332). The Copyright Act of 1987 (Act 332) gives the author, holder of the copyright, and performer the right to control their own works for a certain amount of time (Malaysia). The issue is about the kinds of works that are protected by the Act. The second point to discuss is the rights of the person who owns the copyright. Whenever someone uses a work protected by copyright without the author, the copyright holder, or the performer's consent, they are in violation of the Copyright Act of 1987 (Act 332). Hence, the article tries to answer questions about the kinds of works that can be protected by copyright, the rights of the person who owns the copyright, and copyright infringement. In this article, the method of qualitative research that was used is explained. The data has been collected from primary and secondary sources. Finally, it is crucial to look at the important parts of the Copyright Act of 1987 to see if it fully protects copyright in Malaysia or if it falls short.

Keywords: Artistic works, Copyright Act 1987, copyright infringement, intellectual property, Malaysia.

Introduction

Intellectual property (IP) includes things like inventions, works of literature and art, designs, and symbols, names, and pictures that are used in business. IP is legally protected by things like patents, copyright, and trademarks, which allow people to get credit for their inventions or creations or to make money from them. The goal of the IP system is to create a

place where creativity and innovation can thrive by balancing the needs of innovators with the needs of the public as a whole. Copyright is the legal term for the rights that authors and artists have over their written and visual works. Works that are protected by copyright include books, movies, ballads, portraits, sculptures, computer programmes, databases, maps, and technical drawings.



Picture 1: Film of Jurassic World (Entertainment, 2022).

Next is patent. The patent is a grant of the right to do something for yourself. The owner of a patent has the right to decide how or if anyone else can use the innovation. In exchange for this permission, the patent owner publishes a patent document with technical information about the innovation. A trademark is a sign that shows how the goods or services of one company are different from those of other companies. In the past, artists used their signature or “mark” to identify their work. An industrial design is a way a product looks or how is decorated. A design can have both three-dimensional and two-dimensional parts, like the shape or surface of an object or a pattern, line, or colour. Geographical indications and appellations of origin are labels that go on products that come from a specific place and have qualities, a reputation, or other characteristics that come from that place. Most of the time, a geographical indication is just the name of the place where the product was made. Trade secrets are private pieces of information that can be licenced or sold. They are protected by intellectual property rights. Getting, using, or sharing this kind of secret information without permission or in a way that goes against honest business practises is considered unfair business behaviour and a breach of trade secret protection (Citaristi, 2022). Copyright, on the other hand, will be the only thing this study is about because it is so important to the body of knowledge. The Copyright Act of 1987 (Act 332) oversees copyright in Malaysia. It replaced the Copyright Act of 1969 on December 1, 1987. Since then, the law has been changed in several important ways. For example, the Act has been changed in 1990, 1999, 2000, 2003, and 2012. Malaysia signed the WIPO Berne Convention for the Protection of Literary and Artistic Works in 1971. (Berne Convention). The Berne Convention led to the creation of the Copyright (Application to Other Countries) Regulations of 1990, which went into effect on October 1, 1990, the same day Malaysia joined the Berne Convention. Malaysia also joined the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights in 1994. (TRIPS). Malaysia also joined the WIPO Copyright Treaty 1996 and the WIPO Performances and Phonograms Treaty (WPPT) 1996, both of which went into effect on December 27, 2012.

Methodology

This article used a pure legal research method by giving a qualitative analysis of copyright law. Content analysis was used in this article to look at research on copyright law. Krippendorff says that content analysis can be as simple as counting the number of words or as complex as a thematic or conceptual analysis (Krippendorff, 2018). The information gathered comes from both primary and secondary sources, with a focus on the qualitative analysis of secondary sources (Azira Tengku Zainudin et al., 2021). Besides, a critical analysis was also performed on all materials collected pertaining to copyright law such as journals, books, legal provisions, websites, and others.

Types of Works That Can Be Protected by Copyright

Copyright can protect many kinds of works. Literary works, creative works, movies, plays, sound recordings, radio, and TV broadcasts, and works that are based on other works are all examples. Standard surveys and questionnaires now have copy rights (Freres & Finkelman, 2014). Copyright is the right to protect original works like computer software, musical instruments, and books. It can be given to an individual or an organisation.

Copyright can protect books, songs, creative works, movies, sound recordings, and broadcasts, according to Section 7(1) of the Copyrights Act of 1987. Section 7(3) says that any published, registered, or otherwise reduced to a material form literary work, musical composition, or creative production is only eligible for copyright protection if proper steps have been taken to make sure the work is original. In *Megnaway Enterprise Sdn Bhd v. Soon* 8 CLJ 130, the High Court decided that the level of dedication, expertise, or work put into a product is inextricably linked to its originality. The authors think that Malaysian law has a short list of works that are protected.

Section 3 of the Copyright Act of 1987, paragraph (a), says that a literary work can also refer to a computer programme (h). So, Section 7 (1) of the Act says that a computer programme is a literary work that needs to be protected by copyright. Also, a computer programme is a term for a collection (whether related or not) of instructions in each phrase, code, or notation to make a system do a specific function directly or after either function, directly or after both of them (Article 3 of the Copyright Act). So, copyright protects computer codes that are written as literary works in a computer language.

The second part is made up of mathematical ideas, techniques, ways to do things, and concepts. Section 7(2A) of the Copyright Act makes it clear that ideas, techniques, methods of operation, and mathematical concepts are not protected by copyright. In *Goodyear Tyre & Rubber Company & Anor v. Silverstone Tyre and Co Sdn Bhd*, 1 CLJ 509, the exclusion of ideas from protection was the subject of the case. It is explained that copyright policy wasn't linked to the copying of ideas, as the Supreme Court had said (however original). In this case, the goal is to copy the way ideas are presented. The use of the tyre, as opposed to its artistic value, is not considered.

Original works are protected as original works. This includes translations, adaptations, arrangements, and other changes to works that may qualify for copyright protection based on how their contents are collected and distributed (section 8, Copyright Act). Copyright protection may be available for published editions of works of literature, art, or music that are

not exact copies of earlier editions (section 9(1), Copyright Act) if the edition was first published in Malaysia or if the editor was an eligible person at the time of the first publication. Section 7(5) of the Copyright Act says that no design registered in accordance with a published law on industrial design shall be protected by copyright. This is because copyright and design laws overlap. Only practical designs that have been licenced as industrial designs are not protected by copyright laws. In Malaysia, the Copyright Act says that the author must be a smart person for a work to be protected by copyright. A person is eligible if they are a Malaysian citizen or a permanent resident, or if they are a Malaysian-founded or -assigned corporation (section 3, Copyright Act).

The copyright period is different for each type of copyright. When it comes to works of literature, music, or art, copyrighted works often represent the author for the rest of his life plus 50 years after his death. In the meantime, this type of copyright work for the movie, the sound recordings, and the actor lasts for 50 years after the movie and recordings are released. For the purposes of copyright, the performances either happened in person or were recorded. But wireless or wireless transmission had copyright protection for broadcasts, and 50 years are thought to have passed since the first broadcast.

The Rights of Copyright Owners

Fast et al. say that people's beliefs may go against the law, and their research suggests that people's ideas about how to protect intellectual property will be shaped by learning about the basis of intellectual property rights (Fast, Olson, & Mandel, 2016). So, intellectual property and the rights of people who own copyrights are very important to education. The first right to understand is the right to legal rights. Copyright law gives the author, who owns the copyright, the right to be in charge of the performance. Their legal rights include the right to go after people who break their copyright, either in civil or criminal court. Criminal prosecution is the job of either the Enforcement Division of the Ministry of Domestic Trade, Cooperatives, and Consumer Affairs (MTDCC) or the Royal Malaysian Police.

There are also rights about money. Economic rights given to right holders include the right to reproduce, the right to communicate with the public, the right to perform, the right to show or perform in public, the right to distribute, and the right to rent commercially. According to the copyright law from 1987, these rights can be used. Also, economic rights let the owners of rights get paid money when their works are used by other people or for commercial purposes. Economic rights can be given, given away, or made available by will.

Moral rights are the third type. Paternity rights and dignity rights don't have to go together. In terms of paternity rights, these let authors show how unique they are. When it comes to integrity rights, this right gives the author the power to stop users from distorting, mutilating, or otherwise changing his or her work in a way that changes the original work in a way that hurts the author's honour or reputation.

Copyright Infringements

Anyone who uses copyright works without the author's, copyright owner and performer's permission or authorisation could be a violation of the Copyright Act 1987. Amongst the act of infringement can be seen as follows:

- sells or rents any infringing copy.
- reproduces in any material form, performs, displays or plays, or distributes to the public;
- imports any goods into Malaysia for the purpose of trade or financial advantage;
- sells, rents, exposes, or offers for sale or rent any unauthorised copy by way of trade;
- distributes copies that are infringing.
- creates or has in his possession any contrivance used or intended to be used for the purpose of producing infringing copies, other than for his private and domestic use;
- exhibits in public any infringing copy by way of trade;
- creates or has in his possession any contrivance used or intended to be used for the purpose of producing infringing copies, other than for his private and domestic use.

In the case of Sherrina Nur Elena bt MLJU 150, for copyright infringement, the plaintiff sued the accused. The plaintiff said that the defendant took her photo without permission and put it on a product of the defendant. The product image was spotted on a giant billboard in Kota Kinabalu. The plaintiff, however, failed to convey her point. Even though it featured her photograph and her name, the High Court determined that the plaintiff is not the owner of the copyright. The photographer took a snapshot of her, and under Article 10(1) of the Copyright Act 1987, the photographer is the proprietor of the photograph and the image. If the photograph was produced by the photographer in the course of his employment with Kent Well Edar Sdn Bhd, the copyright holder would be Kent Well Edar Sdn Bhd. This is provided for in section 26 (2) of the Copyright Act of 1987, which states:

“Where a work (a) is commissioned by a person who is not the author's employer under a contract of service or apprenticeship; or (b) is made in the course of the author's employment, the copyright shall be deemed to be transferred to the person who commissioned the work of the author's employer, subject to any agreement between the parties excluding or limiting such transfer.”

In *Ultra Dimension Sdn Bhd v. Ketua Pengarah Lembaga Penggalakan Pelancongan Mohd Zahir et al.* (2021) 8 CLJ 245, the plaintiff photographed the Kuala Lumpur Skyline, focusing on landscapes and landmarks such as the KLCC and the Tower KL. In 2007, the defendant published in his *Visit Malaysia Year* booklet an image taken by the plaintiff. The plaintiff filed a lawsuit against the defendant for infringement of copyright. In reality, a team of photographers captured the photographs. They collaborated to produce the photographs. They contributed. The defendant refused to demonstrate that he owned the copyright to the images. Then, he does not claim for infringement of the photographs' copyright.

In the recent case *Siti Khadijah Apparel Sdn Bhd v Ariani Textiles & Manufacturing (M) 7 MLJ 478*, the High Court was asked to decide questions regarding the existence of prayer veil copyright (a long-flowing garment typically worn by Muslim women during prayers) and to determine if the prayer veil manufactured by the plaintiff is unlawfully copied. The defendant's defence was that the plaintiff's prayer veil was based on a freely accessible standard prayer veil design, was solely functional in nature (always used for prayer), and was therefore not subject to copyright protection. The defence relied on two elementary copyright principles: Copyright can only exist if the work comes within one of the categories specified by the Copyright Law of 1987. Consequently, the work's useful subject matter does not contain any copyright rights.

The court determined that the plaintiff had devoted sufficient time and effort to the construction of the prayer veil, which has qualities. It did not leave a mark on the user's head, and the user felt comfortable and stylish while using it. It was agreed that the two-dimensional and three-dimensional designs of the prayer veil would constitute a “graphic” under the Copyright Act of 1987. In addition, the court determined that the prayer veil worn by the plaintiff was not just utilitarian and so entitled to copyright protection. The copyright holder for the prayer veil is the person who invested time and skill in creating it. As the copyright conditions had been met, the prayer veil of the plaintiff was entitled to copyright protection. Alternately, the defendant asserts that even though copyright remains in the prayer veil of the plaintiff, it was removed because the prayer veil was copied more than fifty times in violation of the now-defunct Section 7(6) of the Copyright Act 1987.

The court denied the defendant's request to examine such a claim and determined that, as of March 1, 2012, the revoked disposition was no longer enforceable. In any case, the deleted Section 7(6) of the Copyright Act (1987), as well as television, as stipulated by the Industrial Design Act (1996), should not be considered an industrial design. Therefore, the Court determined that the appellant's television was not registrable under the Industrial Design Act of 1996. In conclusion, it is evident from the Siti Khadijah case that a work generated with a functional object is not fully excluded from copyright protection. Copyright protection can also be given for works that are not industrial designs, providing the standards of the Copyright Act of 1987 are met (Carmen, 2020). In this instance, Ariani was unable to provide documentation that its designer created the prayer veil (Siti, 2020). The prayer veil has a physical shape. The Copyright Act of 1987, section 3(a), classifies the prayer veil as a "artistic work." It is considered to be a graphic work (Siti, 2020). Due to this, Ariani was found to be infringing on copyright.

Result and Discussion

People often misunderstand intellectual property rules or don't follow them. This has led to many regulations, intellectual property owners, and researchers trying (usually unsuccessfully) to change these ideas and behaviours (Fast et al., 2016). Copyright is infringed by anyone who, without the owner's permission, does something that is protected by copyright under the Copyright Act (section 36(1) of the Copyright Act) or gets someone else to do it. In the case of Megnaway Enterprise Sdn 3 MLJ 525, the interpretation of section 36(1) of the Copyright Act, along with section 13(1), led to the conclusion that the original work and the infringing copy must have enough objective similarities for direct infringement to be proven. Second, there is a link between the first assignment and the copy that wasn't finished. Lastly, a large part of the original work must be copied.

In the case of Megnaway Enterprise, the High Court decided if proof of actual copying is needed or if proof of a strong resemblance is enough. Even though an imitation is not an exact copy of the original work, the court thought that there may have been an infringement. It doesn't matter if the copy is bigger or smaller than the original or if the original was copied in whole or in part. The two works can't be exact copies of each other, but they must be very similar. In copyright law, if there is a substantial resemblance, it is assumed that the defendant copied, and it is up to the defendant to disprove the link between the two.

Copyright is important because the person who wants to use it can only do so if the work has been copied a lot. So, the plaintiff won't win a copyright case if the defendant can show the court that it has done enough to show the nature of the original work and that there is no link between the two works.

The degree, not the number, of similarities between an infringing work and a patent-protected work, determines whether or not the two are substantially the same (for copyright purposes). A piece of a work that doesn't have a copyright isn't an important part of the work and copying it doesn't make a substantial copy of the protected work. On the other hand, a part of a copyrighted work can be a substantial part if it is new and interesting, and a copy of that part can be a substantial part of the copyrighted work (*Longman (M) Sdn Bhd v. Pustaka Delta Pelajaran*).

Malaysia does not have a system for registering a copyright, so there is no way to get rid of copyright. Copyright claims can be argued against, though, and the courts may say that a work's owner is not protecting its copyright. Copyright could be called into question if the work doesn't deserve protection and/or if the author has no ties to Malaysia, where the original work was written. Also, the originality of literary, artistic, and musical works can be called into question if not enough work is put into making the work unique. Also, the work is not written down, recorded, or otherwise made into something that can be touched.

Contractual acts, torts, and other actions couldn't be taken until six years after the triggering event happened (section 6, Limitation Act 1953). So, you might not be able to take action for copyright violations until six years have passed since the reason for the action. Every new violation adds to the total amount of behaviour. For restriction to work, the defendant must say so out loud. But if a lot of time has passed before the owner of the copyright sues the defendant, the defendant may still admit that he broke the law, even though the statute of limitations under the Limitation Act of 1953 has not been set.

The Copyright (Amendment) Act 2022 changes the Copyright Act 1987 to make it easier to enforce copyright, especially in the digital world, by making it illegal to use streaming technology. This is to keep up with the growth of online content streaming and to meet standards set by the Marrakesh Treaty To Facilitate Access To Published Works For Persons Who Are Blind, Visually Impaired, Or Have Other Print Disabilities, among others.

The Copyright (Amendment) Act 2022 now has measures to make it easier to enforce copyright laws in the digital world. For example, it includes crimes related to streaming technology, which reflects how popular online content streaming has become. With the addition of Section 43AA, which talks about crimes related to streaming technology, the Act now officially recognises streaming technology to break copyright laws and spells out what will happen to people who do so.

Pursuant to Section 43AA, it would be an offence for a person to commit or facilitate the infringement of the copyright in any work as follows:

- (a) manufacturing a streaming technology for sale or hire;
- (b) importing a streaming technology;
- (c) selling or letting for hire, offering, exposing or advertising for sale or hire, possessing or distributing a streaming technology in the course of a business;
- (d) distributing a streaming technology for purposes other than in the course of a business to such an extent as to affect prejudicially the owner of the copyright; or
- (e) offering to the public or a person who manufactures, imports, sells or lets for hire, a streaming technology.

Section 41(1)(k) says that law enforcement agencies can look for and make copies of media content that is being used to break the law. It also says that it is illegal to give unauthorised users access to copies of works on the internet. If you break the law, you could get a fine between RM 10,000 and RM 200,000 or up to 20 years in prison, or both. Offenders may also be given the option to settle for “a sum of money not exceeding fifty per centum of the maximum fine to which the person would have been liable if he had been convicted of the offence, within such time as may be specified in the written offer” and avoid prosecution if they forfeit or return the item connected to the crime.

With the addition of a new paragraph (f) to Section 48 of the Act, it is now a crime for anyone to destroy or give false information about evidence related to a crime in order to protect the criminal from legal punishment.

In terms of enforcing copyrights, the Act has also been changed to give law enforcement more power to act against people who break copyrights. For example:

- i. In accordance with Section 27M, the Controller may issue regulations pertaining to any aspect of the declaration and operation of a collective management organisation;
- ii. With or without an application filed pursuant to Section 39(6) of the Act, the Assistant Controller, a police officer not below the rank of Inspector, or any Customs officer may search for and seize any infringing copies that are forbidden from being imported into Malaysia;
- iii. Additional explanation of the process for the Controller, Deputy Controller, or any person authorised in writing by the Controller to compound any offence that is prescribed in the Act as a compoundable offence, with the written consent of the Public Prosecutor. According to Section 41A, the amount compounded may not be greater than 50% of the maximum fine for the offence;
- iv. The Assistant Controller has the power to direct the copyright owner, or any representative acting on the owner’s behalf, to conduct test purchases in order to assess the owner’s compliance with the Act [Section 51B]; and
- v. The Assistant Controller is now empowered to require the production of any information, documents, or evidence held by or capable of being presented by any person that is relevant to the performance of the Assistant Controller’s powers and functions and to provide for the procedures on the Assistant Controller’s exercise of those powers [Section 52B].

Lastly, it’s interesting that Section 26A of the Act no longer gives authors the right to file a voluntary copyright notification. This change could clear up any confusion about who owns the rights to a work that is protected by copyright since the owner has the moral right and the owner has the economic right.

Conclusion

People’s ideas about how safe intellectual property is can change if they know why intellectual property rights exist. The goal of copyright laws is to protect works and services that artists and others have worked hard to create. The only people who can use the copyright are the author, the person who owns the copyright, and the person who performs it. The 1987 Copyright Act says that it is possible to break the law if you use a copyrighted work without the author, owner of the copyright, or performer’s permission. Malaysia’s copyright laws are

the Copyright Act of 1987 and the Copyright (Amendment) Act of 2022. Both laws cover copyright in a thorough and appropriate way. It is important for the government to keep trying to solve this problem. Still, people who own the rights to their works must do a lot to protect them.

Acknowledgment

The highest appreciation goes to the Ministry of Higher Education (Malaysia) and Universiti Kebangsaan Malaysia (UKM) for providing the research funding under GGPM-2021-041, UU-2021-012, UU-2021-013, GGP-2020-005, FRGS/1/2014/SS110/UKM/02/7 and special appreciation to the research group member on your expertise, Faculty of Law of UKM, Fakultas Hukum, Universitas Janabadra, Indonesia, also Inovasi@UKM.

References

- Azira Tengku Zainudin, T. N., Mohd Zahir, M. Z., Mohd Shariff, A. A., Rajamanickam, R., Chin, O. T., Rahman, Z. A., Mohamad Nor, N. H., Sulaiman, S., Bidin, A., & Musa, M. K. (2021). Legal Exploration of Right to Health. *Pertanika Journal of Social Sciences & Humanities*, 29. <https://doi.org/10.47836/pjssh.29.S2.15>
- Carmen, L. (2020). Fundamentals of Copyright Revisited-A Case Review. <https://henrygoh.com/fundamentals-of-copyright-revisited-a-case-review/>
- Citaristi, I. (2022). World Intellectual Property Organization—WIPO. In *The Europa Directory of International Organizations 2022* (pp. 395-398). Routledge. <https://www.taylorfrancis.com/chapters/edit/10.4324/9781003292548-80/world-intellectual-property-organization%E2%80%94wipo-ileana-citaristi>
- Entertainment, B. (2022). Movies Playing this Weekend in Mumbai <https://in.bookmyshow.com/explore/movies-this-weekend>
- Fast, A. A., Olson, K. R., & Mandel, G. N. (2016). Experimental investigations on the basis for intellectual property rights. *Law and human behavior*, 40(4), 458. <https://psycnet.apa.org/fulltext/2016-21975-001.html>
- Freres, M., & Finkelman, J. (2014). How to protect the intellectual property of I-O and consulting psychology interventions and gain a competitive advantage: Secrecy, copyright, and patent eligibility through empirical components. *Consulting Psychology Journal: Practice and Research*, 66(2), 138-153. <https://doi.org/10.1037/cpb0000006>
- Krippendorff, K. (2018). *Content analysis: An introduction to its methodology*. Sage publications.
- Mohd Zahir, M. Z., Azira Tengku Zainudin, T. N., Rajamanickam, R., Shariff, A. A. M., Rahman, Z. A., Ishak, M. K., Sulaiman, S., & Mohamad Nor, N. H. (2021). Prospect and Legal Challenges of Medical Tourism in Relation to the Advance Medical Directive (AMD) in Malaysia. *Pertanika Journal of Social Sciences & Humanities*, 29. <https://doi.org/10.47836/pjssh.29.S2.02>
- Siti, N. (2020). The Telekung War: Siti Khadijah v Ariani. <https://www.teeip.com/2019/10/25/the-telekung-war-siti-khadijah-v-ariani/>