



WHAT IS COPYRIGHT ALL ABOUT?



You may be asking yourself "What is copyright all about?" Copyright is a property right which exists in certain specified works, such as, literary; artistic; choreographic; dramatic and musical works, sound recordings, motion pictures and other audiovisual works. Copyright in The Bahamas is governed by the Copyright Act

1998 and its amendments thereto and by the Rules thereunder.

One point to bear in mind is that the Copyright Act does not protect ideas. It protects the **expression** of an idea or ideas. For example, anyone is free or able to write a suspense novel. The concept of writing a suspense novel is an idea. However, copyright law protects the way the author has expressed his thoughts in actual print or writing. The Act seeks to protect a person's original and creative efforts. More importantly the law exists to prevent others from taking advantage of another person's creative efforts.

Another interesting point to note is the distinction between the "author" of a work and the "owner" of the work. The author of the work is the person who creates it, for example, the author of a work of literature is the person who writes it and the author of a piece of music is its composer. Under the Copyright Act, the basic rule is that the author of a protected work is the first owner of any copyright in that work. Some straight forward examples of this relates to a person who creates works for his own pleasure or amusement. However, there are circumstances when the author of a work will not be the first owner of the protected work. This happens when a literary, dramatic, musical or artistic work is made by an employee in the course of his employment. The employer is considered the author of the work for the purposes of the Act unless the parties have expressly agreed otherwise in a written instrument signed by them. Another instance is where a protected work is a work of joint authorship and the authors are the co-owners of the copyright in that work. Copyright in each contribution to a collective work is vested initially in the author of the contribution.

As it appears that ownership flows from authorship, it is permissible for the owner of a copyright work to transfer in whole or in part ownership of the copyright. Transfer can take place by means of conveyance or by operation of law and may be bequeathed by will or passed on as personal property by the applicable laws of intestate succession.



Under Section 9 of the Act, the owner of the copyright works has the exclusive right to do and authorize others to do the following: -

- i. to reproduce the work in copies or phonorecords;
- ii. to prepare derivative works based upon the copyright work;
- iii. to distribute copies or phonorecords of the copyright work to the public by sale or other transfer of ownership or by rental or loan;
- iv. in the case of literary, musical, dramatic and choreographic, and motion pictures and other audiovisual works, to perform the copyright work publicly;
- v. in the case of a literary, musical, dramatic, choreographic, artistic works, including the individual sequence images of a motion picture audiovisual work, to display the copyright work publicly; and
- vi. to broadcast the copyright work or include it in a cable programme service.

If the copyright owner notices that anyone is conducting or undertaking any one of the acts referred to in points i. to vi. without his permission or a license, then the copyright in his work has been infringed. It is also important to be aware that infringement of copyright in a work can happen under many different types of circumstances. For example, if someone, who without the license of the copyright owner imports into The Bahamas for purposes other than his private or domestic use a copy or phonorecord which he knows or has reason to believe is an infringing copy or phonorecord of the work. Another example is whereby a person who without the license of the copyright owner transmits the work knowing or having reason to believe that infringing copies of phonorecords of the work will be made by means of the reception of the transmission in The Bahamas or elsewhere. There are also other infringing acts that are commercial in nature.

Once an infringement of copyright occurs, the owner's likely question would be "What remedies are available to me?" The Act provides a range of remedies for an infringement of copyright to the copyright owner such as the copyright owner's actual damage and any additional profits of the infringer, statutory damages, injunctions and account of profits from the defendant.

In addition to the Act establishing copyright as a property right and rendering protection to the owner of the copyright, it likewise confers moral rights and related rights to the author of the protected works. The author of a literary, choreographic, musical, dramatic or artistic work that is protected has the right to be identified as the author of the work in specified circumstances. Another moral right conferred by the Act is the right of the author to object to derogatory treatment of a protected work of visual art. Under the Act, a person has the right

not to have a musical, dramatic, literary, artistic or choreographic work falsely attributed to him as the author or not to have a motion picture falsely attributed to him as director. The latter two rights are known as related rights.



The moral right of the author is infringed by a person who fails to identify the author of a work. Similarly the moral right of an author of visual art is infringed if he discovers his work has been intentionally distorted, mutilated or modified in a manner which would be prejudicial to the author's reputation. An author's moral right is also infringed by a person who distributes to the public or displays copies or reproduction of the work containing a false attribution to the author. An example of this is where a reputable artist discovers another person has painted a standard work in the artist's style and tries to claim it is the work of the artist.

The infringement of the moral rights and related rights of the author is actionable as a statutory duty owed to the person entitled to the right. A person found guilty of infringing copyright commits an offence and shall be liable on conviction to a fine or imprisonment or to both such fine and imprisonment.

The Act provides for exceptions to infringement of copyright; namely fair dealing, educational purposes, libraries and archives and public administration.

The owner of copyright or of the exclusive right of publication in a work published in The Bahamas shall deposit within three (3) months after the date of such publication two (2) complete copies of the best edition or if the work is a sound recording, two (2) complete phonorecords of the best edition, together with any printed or other visually perceptible material published with such phonorecords.

The above provides a brief insight into copyright and the Copyright Act and is by no means the 'be all and end all' of copyright and the Act. Copyright issues can become very detailed and involved. Should you require more information or before taking any action with respect to a copyright matter, I would recommend that you seek legal counsel.

The information stated above is not intended to be construed as legal advice in anyway.

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