



Singapore Press Club

CONNECTING MEDIA PROFESSIONALS

A *Purposeful* networking organisation serving a vibrant media community in Singapore across all platforms and all media related professionals

We are dedicated to the professional development of our members, and strive to provide thought leadership on issues of the day.

Singapore Press Club Freelancer Network

A free service for Club members who are able and willing to undertake freelance project work.

The aim is to provide an efficient platform to connect with companies, organisations and individuals who need freelance media-related services.

The Network is open to all categories of members with a good track record in media-related work.

Offering the full range of services – consultancy, editing, writing, translation, layout, art and design, photography, digital media, video production, voice-overs and event hosting, as well as marketing, communications, investor relations and public relations.



Singapore Press Club Freelancer Network



How the Network will operate. **FAQ** is available for viewing on SPC's website or this link

https://pressclub.org.sg/wp-content/uploads/2020/05/SPC-Freelancer-Network-FAQ_Final_28May2020-2.pdf.

If you want to join the Network, you need to complete the Freelancer Profile form

using this link <http://tiny.cc/spc-freelancer>.

If not a member yet, you can join with this link

<https://pressclub.org.sg/memberships-new/>

Speaker:

Dr Stanley Lai

Senior Counsel & Partner, Allen & Gledhill LLP

Stanley is a partner of the Litigation and Dispute Resolution Department. He also heads the Firm's Intellectual Property Practice.

Stanley specialises in all forms of IP litigation and information technology disputes, and is also a commercial/chancery litigator. He has appeared in arbitrations both as arbitrator and counsel. He maintains a strong advisory practice for IP/data management and cybersecurity, serving a broad spectrum of clients, representing clients in investigations that are undertaken by the various agencies. In the biomedical and pharmaceutical sectors, Stanley has substantial experience in advising on healthcare and medical IP and regulatory issues concerning medicines, generics, patent linkage, bio-similars, medical devices, clinical trials, product recalls and product liability.

Stanley is currently the Chairman of the Intellectual Property Office of Singapore. He is also a member of the Singapore International Arbitration Centre IP Panel and Singapore Copyright Tribunal. He also serves as a Principal Mediator of the Singapore Mediation Centre. He has published extensively on IP and information technology law, including the book entitled "The Copyright Protection of Computer Software in the United Kingdom".

Webinar Topics

1. Basic principles of copyright law that apply to freelance work.
2. To what extent can you reproduce, communicate and publish content that derives from third parties or social media.
3. Contracts - what are the common pitfalls for freelance workers.

ALLEN & GLEDHILL

FREELANCE WORK

Safeguarding your rights in
intellectual property

Presented by

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16 June 2020

INTRODUCTION TO IP

WHAT ARE INTELLECTUAL PROPERTY RIGHTS?

- Legal rights over the product of human intellect
- A bundle of exclusive rights (monopoly) conferred on the IP owner and the exercise of any of the exclusive rights without the consent of the IP owner is an infringement
- Intangible asset which may be dealt with as personal property
 - Can be commercially exploited / used to generate income
 - May be assigned
 - May be licensed
 - Certain IP rights may be used as security

WHAT IP RIGHTS ARE ENGAGED BY FREELANCE WORK?

- Mainly copyright in the form of literary, artistic, and musical works
- What is copyright?
 - “An authorial creation that is causally connected with the engagement of the human intellect”
 - Copyright protects the expression of original works and other subject matter and not ideas
 - Copyright confers a bundle of exclusive rights in respect of works and other subject matter

COPYRIGHT

- Copyright can subsist in:
 - Literary works: Written work, compilation in any form, computer programme, software (life of author + 70 years)
 - Dramatic works: Plays, scripts for cinematograph film (life of author + 70 years)
 - Artistic works: Paintings, drawings (including architectural drawings), engravings, photographs (life of author + 70 years)
 - Musical works: Songs, symphonies (life of author + 70 years)
 - Other subject matter:
 - Sound recordings, cinematograph films (70 years after calendar year of first publication)
 - television broadcast, sound broadcast, cable programmes (50 years after calendar year of first broadcast / included in cable service)
 - published editions (25 years after year of publication of first edition)

CAN COPYRIGHT SUBSIST IN A “#” / SLOGAN?

Some creatives are tasked with coming up with slogans or ad campaigns (some of which incorporate the use of “hashtags”) on a freelance basis – can copyright subsist in such slogans?

The Newspaper Licensing Agency Ltd v Meltwater Holding BV and ors [2011] EWCA Civ 890

- Newspaper headlines can have necessary quality of originality to qualify as independent literary works

Cf. position in *Tay Long Kee Impex v Tan Beng Huwah* [2000] 2 SLR 750

- The expression of a warranty card is *de minimis* and copyright does not subsist
- The central question is whether a slogan or hashtag have the necessary quality of originality to qualify as an independent literary work?

OWNERSHIP VS AUTHORSHIP OF COPYRIGHT

- For copyright to subsist, there must be an identifiable “author”
- First owner is the author, except for:
 - Commissioned photographs, painting, drawing of a portrait, engraving, sound recordings and cinematograph films
 - Literary, dramatic or artistic works made by authors pursuant to the terms of employment with a newspaper, magazine or similar periodical under a contract of service
- Ownership of copyright may be modified by contract
 - In most cases, the contract will provide that ownership of the copyright vests in the company
 - Otherwise, it would be very difficult for the company to deal with the work
 - Freelancers can potentially safeguard their rights in the work by requiring a limited license / attribution rights etc.

EXCLUSIVE RIGHTS FOR LITERARY, DRAMATIC AND MUSICAL WORKS

- To do all or any of the following acts:
 - To reproduce the work in a material form;
 - To publish the work if the work is unpublished;
 - To perform the work in public;
 - To communicate the work to the public;
 - To make an adaptation of the work;
 - To do, in relation to a work that is an adaptation of the first-mentioned work, any of the acts specified in relation to the first-mentioned work in relation to any of the above.

EXCLUSIVE RIGHTS FOR ARTISTIC WORKS

- To do all or any of the following acts:
 - To reproduce the work in a material form;
 - To publish the work in Singapore or in any country in relation to which this Act applies if the work is unpublished;
 - To communicate the work to the public.

EXCLUSIVE RIGHTS FOR OTHER WORKS

- For sound recordings:
 - Making a copy;
 - Entering into a commercial rental arrangement;
 - Publishing the sound recording if it is unpublished;
 - Making available to the public by means of, or as part of, a digital audio transmission
- For cinematograph films:
 - Making a copy;
 - Causing the film to be seen in public;
 - Communicating the film to the public
- For television and sound broadcasts:
 - Making a recording of the broadcast, or copy of such a recording;
 - Causing the broadcast to be seen or heard in public by a paying audience;
 - Re-broadcasting or otherwise communicating the broadcast to the public

EXCLUSIVE RIGHTS FOR OTHER WORKS

- For cable programmes:
 - Making a recording or copy of the cable programme;
 - Causing the cable programme to be seen or heard in public by a paying audience;
 - Communicating the cable programme to the public
- For published editions of works:
 - Making, by a means that includes a photographic process, a reproduction of the edition

INFRINGEMENT OF COPYRIGHT

- A common problem faced by freelance creators is third parties making reproductions or adaptations of works
- Copyright infringement includes the situations where an individual does or authorises the doing in Singapore of any act comprised in the copyright without the consent of the copyright owner
- Subject to exceptions set out in the Copyright Act, including fair dealing

EXCEPTIONS - ACTS NOT CONSTITUTING INFRINGEMENTS OF COPYRIGHT

Section 35 CA – Fair dealing in relation to works

- Fair dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, for any purpose other than for criticism, review or reporting current events, shall not constitute an infringement of the copyright in the work.
- Research and study would constitute as fair dealing.

EXCEPTIONS - ACTS NOT CONSTITUTING INFRINGEMENTS OF COPYRIGHT

Section 35 CA – Fair dealing in relation to works

- The matters to which regard shall be had, in determining whether this defense is applicable include the following:
 - (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.

EXCEPTIONS - ACTS NOT CONSTITUTING INFRINGEMENTS OF COPYRIGHT

Section 36 CA – Fair dealing for purpose of criticism or review

- A fair dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, shall not constitute an infringement of the copyright in the work if it is for the purpose of criticism or review, whether of that work or of another work, and a sufficient acknowledgment of the work is made.

Section 37 CA – Fair dealing for purpose of reporting current events

- A fair dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, shall not constitute an infringement of the copyright in the work if it is for the purpose of, or is associated with, the reporting of current events –
 - (a) In a newspaper, magazine or similar periodical and a sufficient acknowledgement of the work is made; or
 - (b) By means of broadcasting or a cable programme service or in a cinematograph film.

EXCEPTIONS - ACTS NOT CONSTITUTING INFRINGEMENTS OF COPYRIGHT

- Similar exceptions apply to infringement of audio-visual items (defined as “sound recordings, cinematograph films, sound broadcasts, television broadcasts or cable programme”):
 - Section 109 CA – Fair dealing in relation to other subject-matter
 - Section 110 CA – Fair dealing for purpose of criticism or review
 - Section 111 CA – Fair dealing for purpose of reporting news

REMEDIES FOR INFRINGEMENT

- Injunction
- Damages or an account of profits
- Statutory damages in lieu of damages or an account of profits, of not more than \$10,000 for each work or subject-matter in respect of which the copyright has been infringed but not more than \$200,000 in the aggregate, unless the plaintiff proves that his actual loss from such infringement exceeds \$200,000.
- Additional damages may be awarded if the Court considers it proper to do so, having regard to (i) flagrancy of infringement; (ii) benefit accruing to the infringer; and (iii) all other relevant matters
- Order for delivery up of infringing copies, articles used for making infringing copies
- Order for forfeiture or destruction of infringing copies or articles used for making infringing copies

TOPICS OF INTEREST

SOCIAL MEDIA AND IP

SOCIAL MEDIA AND IP

- Much content is now being posted on social media e.g. articles written by freelancers, maintaining an online portfolio, etc.
- Does copyright subsist in the following?
 - Social media posts
 - Social media stories (which are automatically deleted)?
 - Software programs?
 - Layout of an online website?
 - Articles written on social media platforms e.g. Facebook news?
- Who owns the copyright in the works listed above?



FACEBOOK: RIGHTS TO POSTED CONTENT

Clause 3.3.1. **Permission to use content that you create and share**

*When you share, post or upload content that is covered by intellectual property rights on or in connection with our Products, **you grant us a non-exclusive, transferable, sub-licensable, royalty-free, and worldwide license to host, use, distribute, modify, run, copy, publicly perform or display, translate and create derivative works of your content...** This licence will end when your content is deleted from our systems... [your content] may continue to exist elsewhere on our systems where [it] has been used by others in accordance with this licence and they have not deleted it.*

(last accessed 15 June 2020)

- You can continue to use your posted content and license it to others
- Facebook has a right to use your content in any way and license it to 3rd parties for use within or outside Facebook

SIMILAR PROVISIONS ON OTHER PLATFORMS



“...worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute such Content in any and all media or distribution methods now known or later developed... This license authorizes us to make your Content available to the rest of the world and to let others do the same.”

(last accessed 15 June 2020)



“A worldwide, transferable and sublicensable right to use, copy, modify, distribute, publish, and process, information and content that you provide through our Services and the services of others, without any further consent, notice and/or compensation to you or others.”

(last accessed 15 June 2020)

YOUTUBE'S TERMS AND CONDITIONS



- License is narrower in scope than Facebook/ Twitter/ LinkedIn/ Instagram
- Worldwide, non-exclusive, royalty-free, sublicensable and transferable license to use [Content] (including to reproduce, distribute, prepare derivative works, display and perform it) ***in connection with YouTube and its business***
- The licenses to video content terminate within a “commercially reasonable time” after the video is removed
- YouTube may then retain, but not display, distribute or perform server copies of the deleted videos

(last accessed 15 June 2020)

SOCIAL MEDIA TERMS AND CONDITIONS

- Terms and conditions govern use of content posted on the social media platform as-is
- Permission is granted to the social media platform
- This does *not* grant others permission to use the content for other purposes
- For example, if an artist posts an artistic work on Instagram as part of his online portfolio:
 - Instagram’s T&Cs allow Instagram to reproduce, adapt, communicate the work – this is necessary for its operations i.e. showing the picture on multiple devices
 - Instagram’s T&Cs do not allow other users to take a screenshot of the work and repost it on their feed

ADAPTATION OF POSTS ON SOCIAL MEDIA

- SMPs empower people to become active creators
- Difficult to distinguish original content from derivative works
- In what situations would reposting someone else's post on social media be acceptable?
 - Retweets / Facebook shares (within the ambit of the license granted to the platform)
- What if someone takes your creation and modifies it, before posting it as his own?

ADAPTATION OF POSTS ON SOCIAL MEDIA

The screenshot displays the PropertyGuru Singapore website interface. At the top, the browser address bar shows the URL <https://www.propertyguru.com.sg/property-for-sale>. The main navigation bar indicates 80,407 results for property for sale in Singapore, with options to log in or sign up. Below this, search filters are set to 'Buy', 'Residential', 'Type or Select Location', 'Any Price', and 'More Options', with a red 'Search' button.

The main content area is divided into two columns. The left column features a section titled 'Learn More About Areas In Singapore' with a grid of area names: Tampines, Jurong, East Coast, Punggol, Orchard, and Woodlands. Below this, three property listings are shown:

- 504C Canberra Link:** 504C Canberra Link, S\$ 390,000, 3 bedrooms, 2 bathrooms, 1184 sqft, S\$ 329.39 psf. It is an HDB Apartment with a 99-year leasehold. Listed by George Kyaw.
- Riverparc Residence:** 100 Punggol Dr, S\$ 1,077,000, 3 bedrooms, 2 bathrooms, 1077 sqft, S\$ 1,000.00 psf. It is an Executive Condominium with a 99-year leasehold, built in 2014. Listed by Noel DRAGON Tan, "Seclusive Corner Unit with Nice Pool View".
- 8 St Thomas:** 8 St Thomas Walk.

The right column is titled 'Latest New Launches' and features three property listings:

- 8 ST THOMAS:** Freehold, Bukit Sembawang View Pte Ltd, 8 St Thomas Walk.
- BOULEVARD 88:** By CDL, City Developments Limited, Orchard mrt.
- \$55k developer discount now!** Sheltered doorstep to LRT, Sing Holdings & Wee Hur, Fernvale street.

Below these listings, there are more details for '4 Mins walk to future MRT | Affinity at Serangoon | 5% direct developer discount now!' by Oxley Holdings, 10 Serangoon North Ave 1, and 'Margaret Ville @ Queenstown | Mins walk to Queenstown MRT!' by MCL Land, 20 Margaret Drive.

ADAPTATION OF POSTS ON SOCIAL MEDIA

PropertyGuru Pte Ltd v 99 Pte Ltd [2018] SGHC 52

- Discusses whether copyright attaches to derivative works / adaptations
- Defendant had taken photos from plaintiff's property listing site without permission, edited them slightly, and re-uploaded them on their own site
- “The copying, enlargement or resizing of an artistic work, such as a drawing, painting or photograph, does not make the resulting image a copyrighted work. There must be a **material alteration or embellishment** to the original work to confer originality (and hence copyright protection) on the resulting work. What counts as “material” for this purpose is a **question of fact and degree**”
- Court found that alterations to original photographs did not result in substantial difference: “there is barely any discernible difference between each original photograph and its image”
- **Note:** case was decided in the context of property listing sites, but principles may be extended to any form of original content

PROTECTING YOURSELF THROUGH CONTRACT

PRACTICAL TIPS ON SAFEGUARDING YOUR RIGHTS IN COPYRIGHT WORKS

- A written contract sets out the agreement between parties and provides a reference point for parties to understand their respective obligations
- Reduces the potential for dispute
- No formalities are required – a contract may be entered into over email or WhatsApp, as long as there is a clear intention to enter into legally binding relations

HOW SHOULD CONTRACTS BE STRUCTURED TO PROTECT YOUR RIGHTS?

- Who owns the copyright in the work being produced pursuant to the contract?
- If the copyright is owned by the creator:
 - What is the scope of the licence granted to the company? Is the company allowed to adapt, modify, or reproduce the work?
- If the copyright is not owned by the creator:
 - Are attribution rights covered by the agreement?
 - Is there a licence granted to the author/creator of the work to use the work for his own purposes?

PRACTICAL TIPS ON SAFEGUARDING YOUR RIGHTS IN COPYRIGHT WORKS

- Other important considerations of rights in a written contract
 - How many hours of work are expected?
 - How many revisions is the client entitled to?
 - How will payment be calculated?
- Dispute resolution
 - Provision for alternative dispute resolution in dispute resolution clause
 - Court proceedings or mediation?
 - Need to maintain confidentiality?
 - Cost considerations?

MEDIATION

- Amicable way of resolving a dispute without a hearing
- Neutral 3P mediator will help the parties to communicate and explore options in order to find a cost-effective solution that benefits both parties
- Control and certainty over the process
- Confidential process
- Lower costs than litigation and arbitration
- Enhanced Mediation Promotion Scheme administered by the Intellectual Property Office of Singapore
 - If parties agree to mediate, they may obtain funding of up to S\$10,000 (S\$12,000 if mediation includes foreign IP rights), regardless of outcome

LITIGATION

- Relatively fixed procedures and timelines
- Public forum (may be a relevant consideration if public coverage and commercial pressure is the objective)
- Singapore has an international reputation for quality court judgments and an efficient court system
- Remedies are prescribed by law
- Parties have the option of an appeal, but judge's decisions will ultimately be final
- Relatively costly
- Potential upcoming “fast track” procedure for small businesses:
 - Statutory cap on amount of costs that are recoverable;
 - Statutory cap on the amount of damages / account of profits recoverable;
 - Streamlined procedural rules which allow for early and active Judge-led case management; and
 - Cap on length of trial

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Notes

This presentation does not necessarily deal with every important topic nor cover every aspect of the topics with which it deals. This presentation is intended to provide general information only and does not contain or convey any legal or other advice.

Although we endeavour to ensure that the information contained herein is accurate, we do not warrant its accuracy or completeness or accept any liability for any loss or damage arising from any reliance thereon.

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