

PROTECTING COPYRIGHT IN MATERIAL



Many persons have from time to time asked attorneys, “How do I copyright my work?” This question raises two legal issues:

- (i) Is the work in question subject to copyright?
and
- (ii) Are there any formalities required in order to protect the copyright in the work?

Nature of Copyright

Copyright in Jamaica is governed by the *Copyright Act* (“the Act”). Section 9 of the Act provides that “the owner of copyright in a work shall have the exclusive right to do or authorize other persons to do any of the following acts in Jamaica [in relation to the whole or any substantial part of the work]-

- (a) to copy the work;
- (b) to issue copies of the work to the public;
- (c) to perform the work in public, or in the case of a sound recording, film, broadcast or cable programme, to play or show the work in public;
- (d) to broadcast the work or include it in a cable programme service; or
- (e) to make an adaptation of the work and, in relation to such adaptation, to do any or all of the foregoing acts.”

The owner of copyright in a work also has the right:

- (i) to be identified as the author of the work when the work is issued, performed, shown or otherwise distributed to the public; and
- (ii) to object to addition, deletion or alteration of the work which amounts to a distortion or mutilation, or is otherwise prejudicial to the honour or reputation of the author or director. Fair dealing for the purpose of reporting current events is allowed.

Copyright Protected Works

The general principle is that an author has copyright in his original recorded work. The Act provides that copyright may subsist in the following categories of work:

- Original literary work,
- Original dramatic work,

- Original musical work,
- Original artistic work,
- Sound recordings,
- Films,
- Broadcasts,
- Cable programmes, and
- Typographical arrangements of published editions.

Copyright in literary, dramatic, musical and artistic works is created at the time that the work is recorded in writing or otherwise. It is immaterial whether the work is recorded by or with the permission of the author. Separate copyright could potentially be created for different forms of recording the same ideas. There is no copyright in unrecorded thoughts or ideas.

It is the form of expression of a work, and not the ideas expressed, that is accorded copyright protection. The form of expression would include the selection and arrangement of material or concepts in a particular order. Therefore, the ideas may be extracted and used by others to produce their own works without infringing the copyright of the author of the earlier work. The later work may be an infringing copy of the earlier work if it substantially replicates or adapts the earlier work, and a sufficient degree of independent skill and labour is not evident. The degree of independent skill and labour required is very low. For instance, a compilation of poems written by other persons, a directory and a photograph of a painting are all accorded copyright separate from the earlier work.

Formalities for the Protection of Copyright

The author of a work automatically has copyright from the date that the work is recorded. There are no formalities required for copyright to subsist in a work, and in Jamaica there is no mandatory system of registration. However, authors may wish to take steps to preserve the evidence that they are the owners of the copyright. Some of the options available are:

- (i) The copyright notice – This notice is most suitable for written works, and is often seen on the cover of books or recorded in films in the following format: “© 2007 [name of author]”. It would state who the copyright owner is and the date of creation of the material. It is also usual to include a note of the prohibited acts by third parties.
- (ii) Poor man’s copyright – This well known practice involves the copyright owner sending to himself a registered mail package containing the created material.
- (iii) Submitting to the Intellectual Property Service Center (IPC) a Claim and Declaration attesting to authorship and ownership of the copyright in the created material. Notice of this submission is published in the Jamaica Gazette.

The challenge of the copyright owner is usually associated with how to monitor and guard against infringement of copyright. On some occasions there are disputes as to ownership of copyright in material, and it is in these instances that evidence of ownership will become important.

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