

JOYCE A TAN &
PARTNERS

Unbundling IP Rights & IP Clauses

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Lawyers Who **Lead**

Topics

- A snapshot of the background: The “creator economy”
- Copyright isn’t everything but it’s a lot
- IP licensing and dealings – your “force multiplier”
- What content licensing entails and unbundling the clauses at a glance
- Gen AI is impacting industry norms – shifting rapidly

Along the way, we will use examples from different types of creative works or categories

The Creator Economy: 1987 vs 2021

1987	2021
You bought a CD / cassette tape	You stream music
You bought a VHS tape	You stream movies
You went to a shopping mall to buy things	You order online
You found content	Content finds you
Artists find an audience	The audience finds artists
Fewer forms of entertainment	Many more media / platforms
Large studios / publishers	Fragmented and cottage industry like
You make a lot of money by sale / licensing of content	You make most money from ads, tours, pressers, merchandise, etc

Copyright isn't Everthing ...But it's a lot

- Copyright Act 2021 – types of works

Authorial works

Adaptations of
Literary, musical,
and dramatic
work

Artistic work

Published editions

Sound recordings

Films

Broadcasts

Cable
programmes

Qualifying
performances

Copyright Act 2021

- A re-write, not a revision
 - Whole new structure:
 - Concept-led (i.e. definitions and ideas drive flow)
 - In many areas, continuity in substance
 - In many areas, had to not undo what was in place in previous 1987 and 1911 copyright acts
 - Aim for a more systematic breakdown and delivery of concepts
- Light touch “regulation”
 - Primary objective remains to articulate the legal monopoly set out under the act – a matter of property rights

Copyright Act 2021 (an example)

- The words do matter – they break down the subject matter into important categories.
- Each category represents an economic right / opportunity.

What does communicate mean

61.—(1) “Communicate”, in relation to a work or performance, means to transmit the work or performance by electronic means, and includes —

- (a) broadcasting the work or performance;
- (b) the inclusion of the work or performance in a cable programme; and
- (c) making the work or performance available (on a network or otherwise) in way that it may be accessed by any person on demand.

What is doing an act by the reception of a broadcast

64.—(1) To do an act by the reception of a broadcast is to do that act by receiving a broadcast from —

- (a) the transmission by which the broadcast is made; or
- (b) a transmission that is —
 - (i) made otherwise than by broadcasting; and
 - (ii) made simultaneously with the transmission by which the broadcast is made.

Copyright Act 2021

- How do the rights link up to opportunities?
 - Legal monopoly = value in giving your consent; failure to get your consent is an infringement of copyright
 - Each right is a way to sub-divide your rights so that you can carve out a piece at a time, at the price that suits (assuming you have the ability to do so)
 - So for creators, unbundling your IPR is a key step to unbundling and separately maximising your economic opportunities.

Copyright – “layers” (an example)

- A musical work has different “layers” of copyright, each of which may be owned separately or licensed separately.

Lyrics

- Protected as a Literary Work if it is original

Musical work

(e.g. the melody)

Sound recording

- AKA the masters / master recording

Performance Rights

- A performance of a musical work is a Protected Performance

Exclusive right to make a copy, publish, publicly perform, communicate, and adapt the lyrics and melody for the life of the author + 70 years.

Exclusive right to make a copy, enter into commercial rental agreements, publish, communicate the sound recording for 70 years after the recording is first published

Right to bring action against person who records a performance or makes a copy or deals commercially with performance recordings for 70 years after the performance is given

Copyright Act 2021

- Regulated IP contracts? – freedom of contract (mostly)
 - Contractual freedom largely preserved
 - Ownership rules
 - Employees' work product remains with owners (s134(3);
 - exception 133(4) work done for periodicals); EXCEPT where there is a contrary intention in written agreement by the first owner
 - Commissioned works, owner is creator (s133(1)) except for pre-21/11/2021 works (s135)
 - It remains the case that assignment only needs to be in writing, and is agnostic over value etc; now explicitly includes “future copyright”
 - Can also licence future copyright
 - Necessity to read the fine print remains

Key difference between Contract and IP

- IP vs Contract
 - A contract is between you and the other party. Only persons specifically identifiable as entitled to sue can actually sue on the contract (e.g. class of persons identified as being entitled to the benefit of the contract under the Contracts (Rights of Third Parties) Act)
 - A property right is “good against the world” – it is the state (through statutes) that give you a right to sue anyone who infringes the property right – you do not need to individually agree with someone that the right exists before you sue.
- (1) it is more powerful (has greater reach) than contract
- (2) it can be modified or dealt away with by contract
- (3) only specific courts are entitled to hear IP claims

Licensing vs Assignments

- Language is important, and there's a difference between we "broadly" mean and what the law says

Assignment	Licence
Sell the right. After you sell it, you are no longer the owner.	You grant the consent. You remain the owner.
"Purchase the right, title and interest"	"Purchase the licence"
You can no longer use it yourself after you sell it.	Unless the licence is exclusive, you can still use it after you grant consent
Usually is one and done (except rarely, where there is "reversion")	Usually is for a defined time
Becomes the buyer's property and therefore his asset	Still the licensor's property, and therefore an asset

Contracts – Tripartite Standards

- Guidelines on what you should include in contracts:
- <https://www.tal.sg/tafep/getting-started/progressive/tripartite-standards#media-freelancers>
- <https://www.tal.sg/tafep/-/media/tal/tafep/media/references/annex/2018/tripartite-standard-on-contracting-with-self-employed-persons.ashx>
- Not mandatory, but it is intended to set a standard on contracting norms – can use as a reference point.
- Doesn't contain IP clauses or provisions though – you still need to navigate IP clauses / provisions on your own.
- Ensure you remember the distinction between assignments and licences.

Gen AI & Industry Norms (an example)

- Shifting Rapidly
- See <https://www.hollywoodreporter.com/business/business-news/chatgpt-hollywood-screenwriters-film-tv-1235296724/>
- See <https://www.theverge.com/2023/9/26/23891835/wga-contract-summary-ai-streaming-data>

Q&A

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