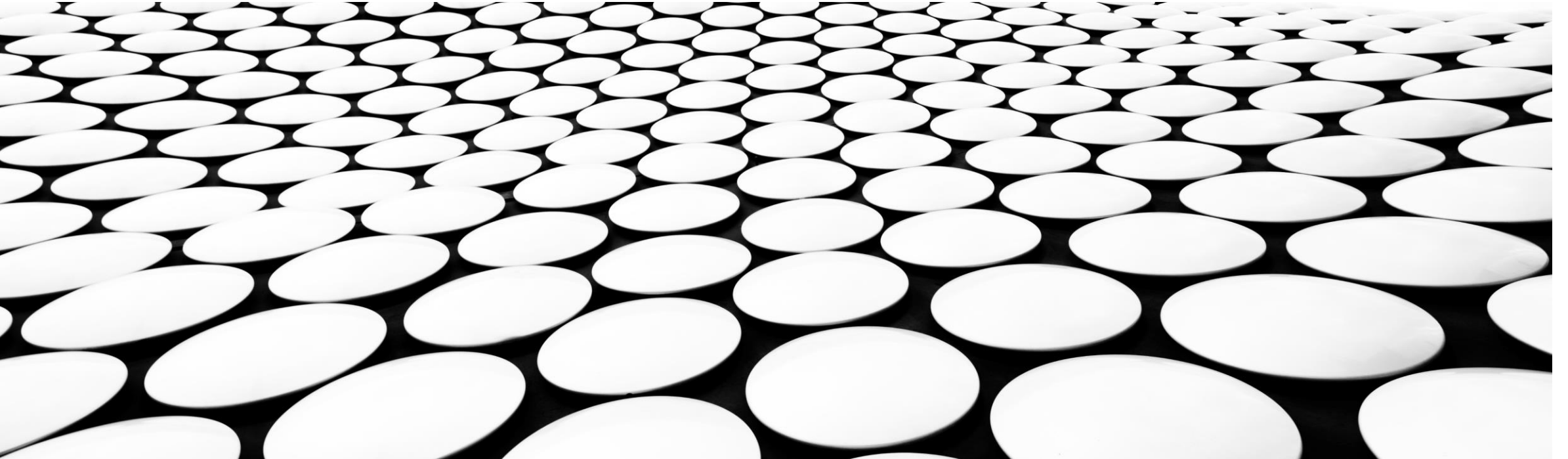


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# COPYRIGHT

K.Y. ENRIQUEZ





# COPYRIGHT

- It is an intangible, incorporeal right granted by statute to the author or originator of certain literary or artistic productions, whereby he or she is invested, for a specific period, with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them.



# CHARACTERISTICS OF A COPYRIGHT

- Granted to the creator or originator of the copyrightable work.
- Object is original intellectual creation in the literary, artistic and scientific domains.
- The economic and moral rights are exclusive to the creator or originator of the work during the term specified by law, except for the moral right of attribution which is in perpetuity.
- Mere statutory grant.



# STARTING POINT OF COPYRIGHT PROTECTION

- Works are protected by the sole fact of their creation, irrespective of their mode or form of expression, as well as of their content, quality and purpose.



# CLASSIFICATION OF PROTECTED WORKS

- Original and literary and artistic works; and
- Derivative works



# ORIGINAL LITERARY AND ARTISTIC WORKS

- Books, pamphlets, articles and other writings;
- Periodicals and newspapers;
- Lectures, sermons, addresses, dissertations prepared for oral delivery, whether or not reduced in writing or other material form;
- Letters:
- Dramatic or dramatico-musical compositions; choreographic works or entertainment in dumb shows;
- Musical compositions, with or without words;
- Works of drawing, painting, architecture, sculpture, engraving, lithography or other works of art; models or designs for works of art;
- Original ornamental designs or models for articles of manufacture, whether or not registrable as an industrial design, and other works of applied art;

## ORIGINAL LITERARY AND ARTISTIC WORKS (CON'T)

- Illustrations, maps, plans, sketches, charts and three-dimensional works relative to geography, topography, architecture or science;
- Drawings or plastic works of a scientific or technical character;
- Photographic works including works produced by a process analogous to photography; lantern slides;
- Audiovisual works and cinematographic works and works produced by a process analogous to cinematography or any process for making audio visual recordings;
- Pictorial illustrations and advertisements;
- Computer programs; and
- Other literary, scholarly, scientific, and artistic works.

# USEFUL ARTICLE

- A “useful article” defined as an article “having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information” is excluded from copyright eligibility.
- The only instance when a useful article may be the subject of copyright protection is when it incorporates a design element that is physically or conceptually separable from the underlying product. This means that the utilitarian article can function without the design element. In such an instance, the design element is eligible for copyright protection.
- *Denicola Test* - if design elements of an article reflect a merger of aesthetic and functional considerations, the artistic aspects of the work cannot be conceptually separable from the utilitarian aspects; thus, the article cannot be copyrighted.



# DERIVATIVE WORKS

- The following are considered derivative works and shall also be protected by copyright:
  - Dramatizations, translations, adaptations, abridgments, arrangements, and other alterations of literary or artistic works; and
  - Collections of literary, scholarly or artistic works, and compilations of data and other materials which are original by reason of the selection or coordination or arrangement of their contents.
- They shall be protected as new works: provided however, that such new work shall not affect the force of any subsisting copyright upon the original works employed or any part thereof, or be construed to imply any right to such use of the original works, or to secure or extend copyright in such original works.
- One of the economic rights of the author is to carry out, prevent or authorize derivative work.<sup>319</sup> Thus, no one carry out a work derived from the original work except the author or without his authorization.



## UNPROTECTED SUBJECT MATTER

- Idea, procedure, system, method or operation, concept, principle, discovery or mere data as such, even if they are expressed, explained, illustrated or embodied in a work;
- News of the day and other miscellaneous facts having the character of mere items of press information;
- Any official text of a legislative, administrative or legal nature, as well as any official translation thereof;
- Any work of the Government of the Philippines. However, prior approval of the government agency or office wherein the work is created shall be necessary for exploitation of such work for profit. Such agency or office may, among other things, impose as a condition the payment of royalties;
- Statutes, rules and regulations, and speeches, lectures, sermons, addresses, and dissertations, pronounced, read or rendered in courts of justice, before administrative agencies, in deliberative assemblies and in meetings of public character.



# RIGHTS CONFERRED BY A COPYRIGHT

- Economic Rights; and
- Moral Rights



# ECONOMIC RIGHTS

Copyright or economic rights shall consist of the exclusive right to carry out, authorize or prevent the following acts:

- Reproduction of the work or substantial portion of the work;
- Dramatization, translation, adaptation, abridgment, arrangement or other transformation of the work;
- The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership;
- Rental of the original or a copy of an (i) audiovisual, or (ii) cinematographic work, (iii) a work embodied in a sound recording, (iv) a computer program, (v) a compilation of data and other materials, or (vi) a musical work in graphic form, irrespective of the ownership of the original or the copy which is the subject of the rental;
- Public display of the original or a copy of the work;
- Public performance of the work; and
- Other communication to the public of the work.

# MORAL RIGHTS

- To require that the authorship of the works be attributed to him. in particular, the right that his name, as far as practicable, be indicated in a prominent way on the copies, and in connection with the public use of his work; (“Right of attribution”)
- To make any alterations of his work prior to, or to withhold it from publication;
- To object to any distortion, mutilation or other modification of, or other derogatory action in relation to, his work which would be prejudicial to his honor or reputation; (“Right of integrity”)
- To restrain the use of his name with respect to any work not of his own creation or in a distorted version of his work. (“Right against false attribution”)

All moral rights shall be coterminous with the economic rights of the author or creator of the work except the right of attribution, which is in perpetuity.

# RULES ON COPYRIGHT OWNERSHIP

- In the case of original literary and artistic works, copyright shall belong to the author of the work;
- In the case of works of joint authorship, the co-authors shall be the original owners of the copyright and in the absence of agreement, their rights shall be governed by the rules on co-ownership. If, however, a work of joint authorship consists of parts that can be used separately and the author of each part can be identified, the author of each part shall be the original owner of the copyright in the part that he has created;
- In the case of work created by an author during and in the course of his employment, the copyright shall belong to:
  - The employee, if the creation of the object of copyright is not a part of his regular duties even if the employee uses the time, facilities and materials of the employer.
  - The employer, if the work is the result of the performance of his regularly-assigned duties, unless there is an agreement, express or implied, to the contrary.
- In the case of a work commissioned by a person other than an employer of the author, and who pays for it, and the work is made in pursuance of the commission, the person who so commissioned the work shall have ownership of the work, but the copyright thereto shall remain with the creator, unless there is a written stipulation to the contrary;
- In respect of letters, the copyright shall belong to the writer subject to the provisions of Article 723 of the Civil Code.

# LIMITATIONS ON COPYRIGHT

- The recitation or performance of a work, once it has been lawfully made accessible to the public, (i) if done privately and free of charge or (ii) if made strictly for a charitable or religious institution or society;
- The reproduction or communication to the public by mass media of (i) articles on current political, social, economic, scientific or religious topic, (ii) lectures, addresses and other works of the same nature, which are delivered in public if such use is for information purposes and has not been expressly reserved: provided, that the source is clearly indicated;

Example: News story printing a substantial part of the speech of a public official.

- The public performance or the communication to the public of a work, in a place where no admission fee is charged in respect of such public performance or communication, by a club or institution for charitable or educational purpose only, whose aim is not profit making, subject to such other limitations as may be provided in the Regulations;

## **LIMITATIONS ON COPYRIGHT (CON'T)**

- The reproduction or distribution of published articles or materials in a specialized format exclusively for the use of the blind, visually- and reading-impaired persons: Provided, That such copies and distribution shall be made on a nonprofit basis and shall indicate the copyright owner and the date of the original publication; and,  
  
Example: The non-commercial reproduction of books under the Braille system for the use of the blind.
- In case of fair use of the copyrighted work.





# FAIR USE DOCTRINE

- Fair use is a privilege to use the copyrighted material in a reasonable manner without the consent of the copyright owner or as copying the theme or ideas rather than their expression.
- Under this doctrine, the fair use of a copyrighted work for: (1) criticism and comment; (2) news reporting; (3) teaching, including multiple copies for classroom use; and (4) scholarship, research, and similar purposes is not an infringement of copyright.
- Factors (Section 185 of the Intellectual Property Code):
  - The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
  - The nature of the copyrighted work;
  - The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
  - The effect of the use upon the potential market for or value of the copyrighted work.



# COPYRIGHT INFRINGEMENT

- Consists in the doing by any person, without the consent of the owner of the copyright, of anything the sole right to do which is conferred by statute on the owner of the copyright.
- Committed by any person who shall use original literary or artistic works, or derivative works, without the copyright owner's consent in such a manner as to violate the foregoing economic and moral rights of the author.
- Absolute similarity of the purported pirated works to the copyrighted works is not required. The essence of a copyright infringement is the similarity or at least substantial similarity of the purported pirated works to the copyrighted work.



# **RECENT JURISPRUDENCE ON COPYRIGHT**



# **FILIPINO SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, INC., V. ANREY, INC., G.R. NO. 233918, AUGUST 9, 2022 [PER J. ZALAMEDA]**

- FILSCAP is a non-profit society of composer, authors, and publishers that owns public performance rights over the copyrighted musical works of its members. It also owns the right to license public performances in the Philippines of copyrighted foreign musical works of its members and affiliate performing rights societies abroad. It is deputized to enforce and protect the copyrighted works of its members or affiliates by issuing licenses and collecting royalties and/or license fees from anyone who publicly exhibits or performs music belonging to FILSCAP's worldwide repertoire.
- The case stemmed from when a FILSCAP representative monitored between July and September 2008 that the branches of Sizzling Plate Restaurant along Session Road and along Abandon Extension in Baguio City, both of which were owned by respondent Anrey, played copyrighted music owned by FILSCAP.
- The Court upheld FILSCAP's legal standing to sue for copyright infringement. The Court held that the act of playing radio broadcasts containing copyrighted music through the use of loudspeakers is, in itself, a performance. Further, the Court held that radio reception transmitted through loudspeakers to enhance profit does not constitute, and is not analogous to, fair use.
- In the case at bar, the reception was transmitted through loudspeakers within Anrey's restaurants. While Anrey does not directly charge a fee for playing radio broadcasts over its speakers, such reception is clearly done to enhance profit by providing entertainment to the public, particularly its customers, who pay for the dining experience in Anrey's restaurants.

# GOOGLE LLC V. ORACLE AMERICA, INC. (US CASE)

- Google's copying of the Java SE API, which included only those lines of code that were needed to allow programmers to put their accrued talents to work in a new and transformative program, was a fair use of that material as a matter of law.
- (1) The nature of the work at issue favors fair use. The copied lines of code are part of a "user interface" that provides a way for programmers to access prewritten computer code through the use of simple commands. As a result, this code is different from many other types of code, such as the code that actually instructs the computer to execute a task. As part of an interface, the copied lines are inherently bound together with uncopyrightable ideas (the overall organization of the API) and the creation of new creative expression (the code independently written by Google).
- (2) Google's limited copying of the API is a transformative use. Google copied only what was needed to allow programmers to work in a different computing environment without discarding a portion of a familiar programming language. Google's purpose was to create a different task-related system for a different computing environment (smartphones) and to create a platform—the Android platform—that would help achieve and popularize that objective.
- (3) Google copied approximately 11,500 lines of declaring code from the API, which amounts to virtually all the declaring code needed to call up hundreds of different tasks. Those 11,500 lines, however, are only 0.4 percent of the entire API at issue, which consists of 2.86 million total lines.
- (4) The fourth statutory factor focuses upon the "effect" of the copying in the "market for or value of the copyrighted work." Here the record showed that Google's new smartphone platform is not a market substitute for Java SE.



# END

THANK YOU AND STUDY WELL

