

Book Pirates and Copycats: Infringement That Speaks For Itself

Fajar Sugianto¹, Astrid Athina Indradewi², Yohanie Maretta³

^{1, 2, 3} Universitas Pelita Harapan

¹ fajar.sugianto@uph.edu

Abstract

The aim of this writing is to have clearer understanding on: (i) basic principles of copyright; (ii) general provisions on assignment, license, and testamentary disposition in the form of legal protection of books as protected works; and (iii) the distinctive characteristics between copyright, trade marks and patents. The results are, first, Copyright Act promotes the underlying principle of creations of persons minds (human works and intellect). In order to be protected, any works must be produced or originated by labour, skill, judgement and efforts of a person that requires intellect and intellectual process of thought. Having the fact that each person has different dimension and degree of *cipta* (produce), *rasa* (sense), and *karsa* (objective). Under declarative principle and first-to-create-system, automatic protection is given therefore registration is not compulsory, but optional. To satisfy evidence and proof of the creations, all titles may be registered in the copyright register and it shall be preliminary proof of copyright. On the other hand, trademark, patent and industrial design applies first-to-file-system and protect temporary in terms of time period. Second, assignment is basically the right of the owner of the copyright to grant limited interest to another person through a written agreement. Unlike an assignment, license only permits one to do an act which would be unlawful without the license. Third, since the trademark law adopts first-to-file-system, an unregistered trademark is not protected. However, no person can 'pass off' his product as that of someone else. Such 'passing off' is a civil wrong and the owner of the original trade mark can sue the imitator and claim compensation from him. The owner of a registered trade mark can use both remedies. The Patent Law deals with inventions of products and process. Such inventions can be registered with the registrar of patents and the inventor then gets exclusive rights. There are certain inventions cannot be registered. Frivolous inventions, those whose use would be contrary to law and morality or injurious to public health are in such category. The Law of Industrial Design protects designs include shape, configuration, patterns or ornament applied to any article by manual, chemical or industrial process. They are judged solely by the eye. While the design is part of an article, trademark is not.

Keywords: Copyright Infringement; Trademark; Patent; Industrial Design

A. Introduction

Authors, artists, inventors and designers consider the result of their creative efforts their valuable property. The law concedes this sentiment and protects them from the theft of intellectual property. It has been decided long ago by the Indonesia courts that whatever a person produces through his labour, intellect or skill is his property. Even from many centuries ago, this view has been clear that whenever a person mixes his labour with something in common he hereby makes it his property. Therefore, a person's labour belongs to him and the right of property is conditional upon a person leaving in the commons enough and as good for the other commoners.¹ It became fundamental that a person cannot take more out of the commons than they can use to advantage. This principle has been adopted in the Law Number 28 Year 2014 (Copyright Act), which treats copyright as a form of a moveable property as intellectual property, includes all (trade, patent, industrial design) that is produced or originated by labour, skill, judgement and efforts of a person.

Modern technology has made it difficult to enforce the intellectual property and copyright laws. Unlike trademark laws, copyright law at some degree tolerates the similarity of ideas and expression. If it doesn't, in the next 10 years none any of us can draw a scenery drawing with any shapes of mountins, lakes, not even the sun if every single item in the drawing of a scenery is protected and the use of them is prohibited on the base of similarity. And if, even if, the copyright law requires novelty of any works, we may start drawing a mountin upside down or floating lake in order to fullfil such legal requirement. But it does not mean we are allowed to copy and pirate creator's works.

Piracy of books, for instance, goes on almost freely at every street corner with the help of photocopy machines. With the help of our mobile device, maybe some of us keep and save copies of works. Music, films, computer programmes and other works are also copied illegally with equal ease. The law has not been able to keep up with the ingenuity of these copycats. Sometimes even governments shut their eyes to

¹ John Locke, *Two Treatises of Government*, ed. Peter Laslett (London: Cambridge University Press, 1988), pp. 116-131.

international piracy.² Those who consider the pirates as villains by the law think that they are there to make quick money, lazy enough to exercise their intellectual works through his labour, intellect or skill to avoid payment of taxes and royalties. On the other hand, those who sympathise with them argue that they make available books and other works cheaper and within the reach of common people, or the actions are simply his job that pay the bills and support many families that has great dependence on the income.

The Copyright Act has been amended to increase the punishment for infringement of copyright. At present, the punishment is imprisonment up to 10 (ten) years and/or fine up to four billion Rupiah. The offence has been declared as an economic offence and therefore the crime can be punished at any time. Abetment of the infringement of the copyright is also a crime. A police officer has the authority to seize copies of an offending work.

The author or copyright holder can also sue the violator in a commercial court for compensation for the loss he had suffered. He can seek an injunction order to restrain the selling the copies. Furthermore, he can ask for a court direction to get accounts of sales made by the offender and order the offender to deliver copies yet unsold.

Having this said, the aim of this writing is to have clearer understanding on: (i) basic principles of copyright; (ii) general provisions on assignment, license, and testamentary disposition in the form of legal protection of books as protected works; and (iii) the distinctive characteristics between copyright, trade marks and patents.

B. Research Methods

This paper uses a type of normative juridical research, utilizing the method of literature study of various legal materials. The legal materials used are primary legal materials and other related laws. As for secondary legal materials, namely publications that provide opinions on related laws such as expert publications.

² By Ezgi Oguz and Jamie Marsden, "Defending Against Copycat Packaging: The Role of Design from a Consumer's Perspective" 9, no. 1 (2023): 73–90.

Secondary legal materials are used as analysis knives for primary legal materials that are analyzed philosophically, theoretically, doctrinally, and conceptually.

C. Analysis and Discussion

C.1 Basic Principles of Copyrights

The law has been extended to cover video films and computer programmes. Those who want to know more about film copyrights must refer to the cinematograph and related rules in Copyright Act. Below are given only basic principles, without going into the prevailing complications.

The law provides for the establishment of a copyright office. Under declarative principle and first-to-create-system, automatic protection is given therefore registration is not compulsory, but optional. To satisfy evidence and proof of the creations, all titles may be registered in the copyright register and it shall be preliminary proof of copyright. The commercial court decides over the right of an author or publisher.

The Copyright Act defines copyrights elaborately. It deals with literary, dramatic or musical works, cinematograph and records. In the case of literary, dramatic or musical work, copyright means the exclusive rights to do and authorize the doing of any following acts:

1. To reproduce the work in any material form;
2. To publish the work;
3. To perform the work in public;
4. To produce, reproduce, perform or publish any translation of the work;
5. To make any cinematograph film or a record in respect of the work;
6. To communicate the work;
7. To make adaptation of the work;
8. To use a translation or adaptation in any of the ways mentioned above.

Moreover, there is no copyright on ideas or themes. If you discuss an idea of an article in an upcoming book chapter with a friend, and he goes about

writing it and publishing it, you would have no remedy because what he reproduced was not in ‘material form’. There is no right to the subject matter as such. Only if a person unlawfully copies an existing work (material form) or a substantial part of it can the author take action against the offender. If a person merely makes a few nominal changes in the name of the characters or places, it would be violation of the copyright. The test in such cases would be what a common reader or a movie-goer thinks about the two works. It is not necessary that the person infringing the copyright did it with intention. The motive is clear that leads to *mens rea*, the mere fact is enough to hold him guilty.³

In order to be protected, any works must be produced or originated by labour, skill, judgement and efforts of a person that requires intellect and intellectual process of thought. Having the fact that each person has different dimension and degree of *cipta* (produce), *rasa* (sense), and *karsa* (objective), it is strongly believed that every creation from each person indeed will have originality and creativity that is unique and distinctiveness from other works. You and I do speak and understand the same language, and may come from exactly the same academic disciplines and background. But with different intellectual process of thought, we definitely will not publish the same or similar books. Even if we both have to perform a simple presentation with the same general topic, you and I will certainly deliver two completely different designs, specific substances, and distinct language of presentation.

Another commonly used test against originality and creativity is the reasonableness theory. It goes very simple, without going into the prevailing complications. I have no music background and obviously show no ability and capability to produce musical works.

Although I may exercise my intellectual works to create it, what if one day I come out and declare a full composed jazz music with my name on it as the sole

³ Filippo Gilardi et al., “From Copycat to Copyright : Intellectual Property Amendments and the Development of Chinese Online Video Industries ABSTRACT,” *International Journal of Cultural Policy* 29, no. 2 (2023): 152–68, <https://doi.org/10.1080/10286632.2022.2040494>.

composer. Yes, under the declarative principle the jazz music is protected automatically and I have the option to register it. But what if, again, you found out that there is another substantially similar song with different genre, say *dangdut*.

It would be very convincing if I equipped my background by holding a CEO position of a company in the music industry, I may fool other people and made them believe I have composed a jazz music, meanwhile, the company requires my expertise in sales. In the eye of professional musicians or those who close enough have sufficient knowledge of music, under the reasonableness theory, it is reasonable enough that I possess no *cipta*, *rasa* and *karsa* and show no causal relation between creator and works, therefore I am not entitled to enjoy copyright protections. Here we understand that a person's position has nothing to do with the ability to produce or perform works. After all, Copyright Act does not complicate the essence of works, promotes the underlying principle of creations of persons minds (human works and intellect).

Certain circumstances listed in international treaties provide exceptions to the rules. Some such acts will not be infringement of the right are:

- a. Fair dealing with literary, dramatic, musical or artistic work for research, review, reporting of current events in the means media;
- b. Reproduction of the work for judicial proceedings or for legislators;
- c. In teaching or in examinations.

The Copyright Act gives a long list of acts which are similarly exempted.

If the original is copied in a different form, still it would be an offence. For instance, if a novel is serialized in the form of story telling Spotify without permission, or if it is made into a film, the person who did it would be guilty. The Court will have to decide whether the copy in dispute is a complete or substantial reproduction. For this purpose, it will look into the recordation of copyright to prove author's legal standing, type of works, similarities, common errors and other circumstances.

Furthermore, it is not necessary that the original work must be published. Even if the manuscript is copied, it will be an infringement. But mere copying alone will not make it an offence. It must be 'published' or in other words, the copies must be distributed in sufficient numbers.

Normally, the author has the original copyright of his work. He can transfer it to another person, usually the publisher, in the same way as moveable property is transferred. So it is not always the author whose copyright is infringed by the unauthorized copying, it could be that of the publisher.

In the event the work is produced in the course of the author's employment by the proprietor of a newspaper or periodical under a contract or apprenticeship, the proprietor shall be the first owner of copyright in absence of contract to the contrary. Work done in the course of employment by others (research institutions, for example) is also the property of the employer, unless there is a contract to the contrary. If the creative work produced by the employee was not done in the course of employment, he will hold the copyright. If, for instance, a journalist employed in a newspaper writes poetry or a novel, he will be the owner of the copyright.

There are a few ways in which persons other than the author (the publisher, for instance) can acquire copyright wholly or partially from the author. The author can determine the extent to which his publisher is entitled to use his work. The three methods are: assignment, testamentary disposition and license.

C.2. Assignment, License, and Testamentary Disposition

Assignment in law means transfer of property to another. The author of owner of the copyright can assign the right, wholly or partially to another person. Chapter XI generally covers that the owner of a copyright in an existing work assign to any persons the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof. The assignment must be in writing, signed by the assignor or his agent, and register it to the copyright office.

First, it is important to clearly state the assignor assigns and transfer to the assignee all his right title and interest in and henceforth acknowledges that the assignee is the owner of registered copyright.

Second, the assignor agrees to cease immediately and refrain from any use of the work in respect of which the work is registered nor to oppose against the assignees work application. It may include, the assignor's goodwill so that acquired goodwill by the use of the work shall inure to the exclusive benefit of the assignee. Thrid, all legal releases and discharge from the assignor must be given to the assignee so that there will not be any law suits.

Assignment is basicaly the right of the owner of the copyright to grant limited interest to another person through a writted agreement. For instance, it may be a license to a publisher to translate and publish his work without any interest in the copyright itself. Unlike an assignment, license ony permits one to do an act which would be unlawful without the license.

Normally the copyright holder has the authority to grant license for translation of the work. However, if that persin is not found, or if he denies the license, any person may apply to the copyright office for such a license after certain number of years. Along with the application, he may deposit the prescribed fee with the registrar of copyright. When such license is granted, the original owner should be given royalties for the translated work. If a person reproduces the work in any material form without license or against the conditions laid down in the agreement, he will be infringing the copyright.

The author has special rights in his work even after assignment of the copyright to another. Since his reputation is involved, any distortion, mutilation, or any other action, which would be prejudicial to his honour or reputation can be objected to. He can restrain the offender or claim damages from him for such acts.

The copyright extends to adaptations, selections, compilations and catalogues. When a work is published again in later editions, each edition acquires a fresh copyright. The Copyright Act does not deal with international

copyright. Governments and some common law countries are authorized to make an order to works published abroad by issuing some sort of international copyright order.⁴

The law grants the copyright office the power to resolve disputes over agreements and assignment. An author can ask the office to revoke his assignment if the terms are harsh or if the publisher unduly delays publication of the work. He can also seek recovery of royalty due to him.

C.3. Trade Marks, Patents, Industrial Design

Compared to copyright, trade marks get only temporary protection. A trademark is the name or symbol used by the manufacturer or trader to distinguish his product from those of his rivals. In order to be legally protected under Law Number 20 Year 2016, a trade mark must be registered trade (first-to-file-system). A manufacturer can register his trade mark with appointed officials and it will be entered in the register of trademarks kept for this purpose.

The registrar will not allow registration of identical or deceptive trade marks or which would tend to confuse the consumers. Moreover, scandalous, obscene words, or those which contain matter likely to hurt religious beliefs and feeling of any of citizens cannot be registered (against public order). The law provides for a procedure for registration. When an application is received, it shall be announce to the public and objections should be invited. Only then can it be registered. The duration of registration is 10 (ten) years and it can be renewed from time to time. If anyone violates the law, the punishment is upto five (5) years in jail and/or fine up to Two Billion Rupiah. The commercial court can also order forfeiture of the goods of the violator.

Since the law adopts first-to-file-system, an unregistered trademark is not protected. However, no person can 'pass off' his product as that of someone else.

⁴ Claresta Devina Sugianto, Fajar; Indradewi A, Astrid; Valencia, "BETWEEN VALUATION AND MONETIZATION OF EFFICIENCY IN ECONOMIC ANALYSIS OF LAW: IS IT POSSIBLE? Fajar SUGIANTO Astrid Athina INDRADEWI Keywords :," *Journal of International Trade, Logistics and Law* 10 (2024): 286–94.

Such ‘passing off’ is a civil wrong and the owner of the original trade mark can sue the imitator and claim compensation from him. The owner of a registered trade mark can use both remedies.⁵

The Patent Law deals with inventions of products and process. Such inventions can be registered with the registrar of patents and the inventor then gets exclusive rights. There are certain inventions cannot be registered. Frivolous inventions, those whose use would be contrary to law and morality or injurious to public health are in such category.

The Law of Industrial Design protects designs include shape, configuration, patterns or ornament applied to any article by manual, chemical or industrial process. They are judged solely by the eye. While the design is part of an article, trade mark is not. When a design is registered, its owner gets the protection for ten (10) years and it may not be extended. If any person violates the right, he may be sued for compensation. The court can also pass an order to stop the rival from continuing the violation.

With the advent of the internet for commercial purposes, the problem of copyright and trade marks has become more complicated. There is no uniform law yet which can compell all ‘netizens’ to follow fair practice. Although the Law of Information Technology deals with the right to domain names in the internet, companies and persons in any part of the world cannot register a domain name on a ‘first come first served’ basis.⁶ Another person in another part of the world may book the same name with or without knowing that it has already been registered in another part of the world. They may start a dispute over the name or the trade mark.

⁵ Fajar Sugianto, “EFISIENSI EKONOMI SEBAGAI REMEDY HUKUM” 9, no. 18 (2013): 61–72.

⁶ Tomy Michael**, Afdhal Mahatta Fajar Sugianto*, “Konstelasi Perkembangan Hermeneutika Dalam Filsafat Ilmu Atribusi Metode Penafsiran Hukum,” *The Cambridge Companion to Gadamer*, 2007, 36–51.

D. Conclusion

Copyright Act promotes the underlying principle of creations of persons minds (human works and intellect). In order to be protected, any works must be produced or originated by labour, skill, judgement and efforts of a person that requires intellect and intellectual process of thought. Having the fact that each person has different dimension and degree of *cipta* (produce), *rasa* (sense), and *karsa* (objective). Under declarative principle and first-to-create-system, automatic protection is given therefore registration is not compulsory, but optional. To satisfy evidence and proof of the creations, all titles may be registered in the copyright register and it shall be preliminary proof of copyright. on the other hand, trademark, patent and industrial design applies first-to-file-system and protect temporary in terms of time period.

REFERENCES

- Fajar Sugianto, Tomy Michael, Afdhal Mahatta. "Konstelasi Perkembangan Hermeneutika Dalam Filsafat Ilmu Atribusi Metode Penafsiran Hukum." *The Cambridge Companion to Gadamer*, 2007, 36–51.
- Gilardi, Filippo, Andrew White, Zhen Troy Chen, Shuxin Cheng, Wei Song, Filippo Gilardi, Andrew White, et al. "From Copycat to Copyright : Intellectual Property Amendments and the Development of Chinese Online Video Industries ABSTRACT." *International Journal of Cultural Policy* 29, no. 2 (2023): 152–68. <https://doi.org/10.1080/10286632.2022.2040494>.
- Locke, John. *Two Treatises of Government*. Edited by Peter Laslett. London: Cambridge University Press, 1988.
- Oguz, By Ezgi, and Jamie Marsden. "Defending Against Copycat Packaging : The Role of Design from a Consumer ' s Perspective" 9, no. 1 (2023): 73–90.
- Sugianto, Fajar; Indradewi A, Astrid; Valencia, Claresta Devina. "BETWEEN VALUATION AND MONETIZATION OF EFFICIENCY IN ECONOMIC ANALYSIS OF LAW: IS IT POSSIBLE? Fajar SUGIANTO Astrid Athina INDRADEWI Keywords:" *Journal of International Trade, Logistics and Law* 10 (2024): 286–94.
- Sugianto, Fajar. "EFISIENSI EKONOMI SEBAGAI REMEDY HUKUM" 9, no. 18 (2013): 61–72.