



HSM IP Copyright Client Guide

CAYMAN ISLANDS

Scope of this Guide

Copyright works are protected in the Cayman Islands pursuant to the *Copyright (Cayman Islands) Order 2015* and the *Copyright (Cayman Islands) (Amendment) Order 2016* which came into force on 30 June 2016. They extend a customized version of Part 1 of the UK's *Copyright, Designs and Patents Act 1988* (including Schedule ZA1 and Schedule 1 of the Act) to the Cayman Islands.

The Ministry of Financial Services, Commerce & Environment has released an Unofficial Consolidation of the new law which is available on the Cayman Islands Intellectual Property Office's (CIPO) website at: www.ciipo.ky/e-library. CIPO was formed in 2016 as a unit of the Cayman Islands General Registry responsible for administering Intellectual Property rights. The guide provides a brief outline of the new law, which aims to bring the level of copyright protection available in the Cayman Islands up to par with international standards.

Subsistence

Copyright subsists automatically in all **Protected Works** (see below) authored by a qualifying person. Qualifying persons are:

- Caymanians as defined in Section 2 of the *Immigration Law (2013 Revision)*; or
- Individuals domiciled or resident in the Cayman Islands; or
- Bodies incorporated or registered under the laws of the Cayman Islands.

Also, if at the material time the author was a citizen or subject of, an individual domiciled or resident in, or a body incorporated under the law of, a country to which *The Copyright (Application to Other Countries) Order 2016* relates, copyright protection will arise automatically.

Copyright does not subsist in a literary, dramatic or musical work (see examples below) unless and until they are recorded, in writing or otherwise. As it is not a requirement to register copyright works in the Cayman Islands, it is recommended that such works are either emailed to the author and saved in a safe location and/or sent by courier/registered mail to the author and left unopened until such time as it may become necessary to demonstrate proof of ownership. This way the recordal of the copyright work will be "date stamped".

Protected Works

The type of works protected are set out below. Literary, dramatic, musical and artistic works must possess a basic level of originality in order to qualify for protection.

- **Literary Works:** any work, other than a dramatic or musical work, which is written, spoken or sung, e.g. novels, poems, computer programs, databases, newspapers, advertisements, etc.
- **Dramatic Works:** e.g. dances and mimes.
- **Musical Works:** e.g. a work consisting of music, exclusive of words or actions intended to be sung, spoken or performed with the music.
- **Artistic Works:** graphic works irrespective of artistic quality, photographs irrespective of artistic quality, sculptures irrespective of artistic quality or collages irrespective of artistic quality, works of architecture being a building or a model for a building, or works of artistic craftsmanship.
- **Sound Recordings:** a recording of sounds, or of the whole or part of any literary, dramatic or musical work, from which the sounds may be reproduced. Copyright does not subsist in a sound recording which is, whether in whole or in part, a copy taken from a previous sound recording.

- **Films:** recordings on any medium from which a moving image may be produced.
- **Broadcasts:** any electronic transmission of visual images, sounds or other information to the public subject to certain qualifications.
- **Typographical Arrangement of a Published Edition:** a published edition of the whole or part of any literary, dramatic or musical works. Copyright does not subsist in the typographical arrangement of a published edition which is, whether in whole or in part, a reproduction of a typographical arrangement of a previous edition.

Ownership

Generally, the first owner of any copyright in a work is the author, that is, the person who creates the work. Where a copyright work is created in the course of employment, however, the employer is usually the first owner of any work made by an employee, subject to any agreement to the contrary. In contrast, in respect of commissioned works, the author is the first owner, subject to any agreement to the contrary.

Duration

The duration of copyright protection varies depending on the nature of the work at issue and is generally as set out below:

- **Literary, Dramatic, Musical or Artistic Works:** Copyright expires at the end of 70 years from the end of the calendar year in which the author dies. If the author is unknown, copyright expires at the end of 70 years from the end of the calendar year in which it was made or first made public.
- **Computer Generated Literary, Dramatic, Musical or Artistic Works:** Copyright expires at the end of 50 years from the end of the calendar year in which the work was made.
- **Sound Recordings:** Copyright expires at the end of 50 years from the end of the calendar year in which the sound recording was made or first made public.
- **Films:** Copyright expires at the end of 70 years from the end of the calendar year in which the film was made or first made public.
- **Broadcasts:** Copyright expires at the end of 50 years from the end of the calendar year in which the broadcast was made. Notably, the repeat of a broadcast does not generate a new term of copyright protection.

Exclusive Rights

The owner of a copyright work has the exclusive right in the Cayman Islands to:

- copy the work;
- issue copies of the work to the public;
- rent or lend the work to the public;
- perform, show or play the work in public;
- communicate the work to the public; and/or
- make an adaptation of the work.

Infringement

Anyone who, without a license from the copyright owner, does or authorises another to do anything that only the copyright owner has the exclusive right to do, infringes the rights of the copyright owner.

The rights of the copyright owner may also be infringed through acts of secondary infringement. Importing infringing copies, possessing or dealing with infringing copies, providing means to make infringing copies, permitting use of premises for infringing performance and providing apparatus for infringing performance are all examples of secondary infringement.

A copyright owner whose rights have been infringed may sue for copyright infringement. Civil remedies for infringement include damages or an account of profits, an injunction, and/or delivery up of any infringing copy or article designed for the making of infringing copies.

Assignment

Copyright is transmissible by assignment, testamentary disposition or by operation of law. An assignment or other transmission of copyright may be total or partial.

Licences

A copyright owner may grant an exclusive licence, authorising the licensee to the same rights exercisable by the copyright owner in the copyright work. Non-exclusive licences may also be granted authorising the licensee use the copyright, but not to the exclusion of the copyright owner.

Moral Rights

Several moral rights protecting copyright authors' non-economic interests, including rights of paternity, integrity and privacy, and the right to object to false attribution, are also available. Any infringement of moral rights is actionable as a breach of the statutory duty owed to the owner of that right. Notably, moral rights are not assignable.

Criminal Offences

The unauthorized making, hiring, possession or importation into the Cayman Islands of infringing copies of copyright work, or the making of articles specifically designed for making infringing copies, are criminal offences and subject to criminal penalties.

Criminal penalties may involve a fine not exceeding CI\$20,000 or a term of imprisonment not exceeding six months, or both, on summary conviction, and indictment to a fine or imprisonment for a term not exceeding ten years, or both, on conviction.

Protecting Copyright Works at Customs

The owner of a copyright in a published literary, dramatic or musical work, or sound recording or film, may give notice to the Collector of Customs that he is the copyright owner of that work and request the Collector of Customs to treat infringing copies of his work as prohibited goods for a specified period. The details of the expected importation into the Cayman Islands should be provided. Notice should be provided on the prescribed form found in Schedules 1 or 2 of *The Copyright (Customs) Regulations 2016* respectively and must be accompanied by a copy of the work and the appropriate fee.

Our Firm

HSM IP Ltd. provides worldwide intellectual property services.

Based in the Cayman Islands our experienced team of attorneys and paralegals deliver first class service to a broad client base which includes major Fortune Global 500 brand owners, international law firms and other specialist IP practices.

Our interactive database enables us to proactively manage each client's portfolio efficiently and cost-effectively in an environmentally friendly and substantially paperless workplace. It also enables us to fulfil our clients specific reporting and invoicing requirements, including multi-currency invoicing and e-billing.

We offer a competitive schedule of fixed fees, inclusive of both disbursements and official fees, which enables us to provide clients with an accurate estimate of their project costs before embarking on a filing programme for their portfolio. The growth of our firm has enabled us to establish a specialist Caribbean department whose members regularly contribute to leading IP publications.

Supported by HSM Chambers, an offshore law firm with experienced attorneys admitted in multiple jurisdictions, we have substantial experience in taking action to address the infringement of trade marks and patents and in the conduct of passing-off actions. We are also able to offer investigative services to identify the source of, and distributors of, infringing goods, working closely with police and customs officials as necessary.

Memberships: INTA, AIPLA, ITMA and IPCA.

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