

THE LEGAL PROTECTION OF COPYRIGHT IN THE CREATION OF WEBSITES IN ACCORDANCE TO THE PRINCIPLE OF *PRIMA FACIE*

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Abstract: *The trade developments in the world become increasingly advanced. The development not only in terms of quantity but also in terms of quality. Trade is usually done by face-to-face has begun to change. The change was aided by the Internet technology. To attract the attention of Internet users, the appearance of the website should be considered. The company or website creator, make website to be created very interesting, so it can make a lot of visitors. This website requires technique and how that can be a work of art that can be enjoyed and also attracts so many visitors. The manufacture of a website is unique and creative and of course contain an element of copyright. Copyright often creates legal problems. The legal problems that arise usually contain elements of copyright infringement. Settlement of these problems can be done with prima facie basis. Under Indonesian law on copyright had prima facie principle in which the registration of copyright is evidence that can facilitate for the proof until someone can prove otherwise before the court.*

Keywords: *Copyrights, infringements, prima facie*

INTRODUCTION

At the time this happens very rapid development in technology. Developments in various fields of technology, both quantitatively and qualitatively. A lot of people are flocking to use the technology, on the other hand the technology is developed, the better. Technological developments towards the better the community is very highlighted. Better technology was created with the aim to assist humans in performing all activities.

One of the activities is aided by technology trade. Intensifying globalization of the world, the greater the human effort to achieve it. Trade committed from face to face, by telephone and now the digital era that trades can be done via the internet. At this time in Indonesia itself is growing very rapidly with what is called an online shop. Where buyers only stay open internet and can make buying and selling on the internet.

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Buying and selling on the Internet requires an Internet page as a trader to trade. Internet page is called a website which can be opened by everyone. For the size of a shop then trader will for man interesting web page for people interested to go and visit their online stores. This makes the website can be a source of revenue and contain material value. This is where the website has a value that can be inserted into the right. In Indonesia alone, according to Law No. 28 Year 2014 Regarding Copyright mentioned in article 1 of his that copyright is the exclusive right of the creator that arises automatically on the basis of declarative after an invention is embodied in a tangible form without reducing restrictions in accordance with the provisions of the legislation.

Declarative principle in the law is what will be *Prima facie* or the first appearance in the copyright in Indonesia. Where copyright is registered and published in the public register of the directorate general of intellectual property rights and also endorsed by the certificate of copyright registration.

In The implementation of copyright is often a problem. The issue of who among the first who created so that it has difficulties in evidence. *Prima facie* principle is regarded as one settlement for copyright issues in Indonesia.

LITERATURE REVIEW

Intellectual property has various kind of type. One is the copyright. Copyright is a legal right for a person that created by the law of a country that grants the creator of an original work exclusive rights for its use and distribution. The protection time is have the period. The exclusive rights are not absolute but limited by limitations and exceptions to copyright law. These rights frequently include reproduction, control over derivative works, distribution, public performance, and “moral rights” such as attribution, including website

Typically, the duration of a copyright have period of the author’s life plus 50 to 100 years. Some countries require certain copyright formalities to establishing copyright, but most recognize copyright in any completed work, without formal registration. Generally, copyright is enforced as a civil matter, though some jurisdictions do apply criminal sanctions.

Copyright is a right that can be used as money and a right intellectual property that can be transferred to another person. Based on the provisions in force in the United Kingdom and the United States, throughout history, these countries emphasize the intellectual property rights of copyright. The term “copyright” in English is defined as a right copy and copyright is essentially the right to reproduce a work.

In comparison, other countries, such as France and Germany, more emphasis on the moral rights of the creator, which is a concept that influenced by the development of social thought in Europe. Therefore, the literal translation of the term of copyright in French and German is "Author's rights".

In short, these countries are more concerned with the concept of protecting the intellectual nature of the creator, the philosophy and principles, rather than the concept of raising the value of intellectual property rights on an invention by making a copy of lots and sell them. Therefore The idea that copyright has two characteristics, namely intellectual property rights and moral rights, grown mainly in Europe.¹ At the beginning the term for copy right is known is right the author in accordance with the literal translation of the Dutch language, namely *Auteursrecht*. Only in Indonesia Cultural Congress 2nd, October 1951 in Bandung, the use of the termpatent at issue because it is seen constrict.²

According to Law No. 28 Year 2014 Regarding Copyright mentioned in article 1 of his that copyright is the exclusive right of the creator that arises automatically on the basis of declarative after an invention is embodied in a tangible form without reducing restrictions in accordance with the provisions of the legislation.

The copyright protection system provides protection against the economic value of a work when it is done exploitation of an invention by way of doubling (copying), public performance, announcement or any other use. Copyright also known in English as the copyright also includes a number of rights as set forth inapplicable law.³

Indonesia was of the civil law system so it will be a little different copyright arrangements in countries with civil law in common law countries. Nevertheless, such arrangements also have in common. The similarities are:⁴

1. Copyrighted is an idea that has tangible and genuine.

One of the most fundamental principles of copyright protection is a concept that copyright only protects an invention embodiment example works writing, song or music, and dances that are not related or not to deal with substance.

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1. Tamotsu Hozumi, (2006), *Asian Copyright Handbook Indonesian Version*, p. 13.
 2. Eddy Damian, (2002), *Hukum Hak Cipta Menurut Beberapa Konvensi Internasional, Undang-Undang Hak Cipta dan Perlindungannya terhadap Buku serta Perjanjian Penerbitannya*, p. 111.
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 4. Hulman Panjaitan dan Wetmen Sinaga, (2011), *Performing Right Hak Cipta atas Karya Musik dan Lagu Serta Aspek Hukumnya*, p. 105.

2. Copyright arises by itself(automatic)
3. A creation does not always have to be announced to acquire the copyright.
4. Copyright of a work is a right that is recognized by law (legal right) which must be separated and must be distinguished from a physical mastery creation.
5. Copyright is not an absolute right(absolute) because it is limited by law

Author's rights are generally divided into two moral rights and economic rights. Moral rights are rights relating to the protection of creators personally and the integrity of creation. While the economic rights is matters concerning commercial control or control of economic exploitation of an invention.⁵

In Article 4 of Law No. 28 Year 2014 About Copyright her estated that copyright is the exclusive right of where in the exclusive rights is comprised of moral rights and economic rights. Copyright protection for its own website in Indonesia is 50 years from the first announcement made by its creator.

Moral rights is to guarantee legal certainty that the rights owners Copyright capable of controlling presentation creation and modification in accordance with the provisions of the Berne Convention, Article 6 bis:

“Article 6 bis (1)

Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation.

Article 6 bis (2)

The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorised by the legislation of the country where protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained.”

According to Madiha Nidabt Abdul Ghani Azmi that Essentially, the provisions of Article 6 bis of the above set some of the following:

5. J.A.L Sterling, (1998), *World Copyright Law; Protection of Authors' Works, Performances, Phonograms, Films, Video, Broadcasts and Published Editions in National, International and Regional Law*, (London: Sweet& Maxwell, 1998), p. 279.

- a. Author's rights to claim paternity rights, namely, that he is the creator on a creation.
- b. Rights of creators to make objections to any distortion, mutilation or Another form of modification or any other action against the work / creation. Because such measures may result in the honor and reputation of the creator.
- c. This moral rights regardless of the economic rights of creators. So that, in case transfer or diversion, licensing on a creation, moral rights will remain attached to the creator.
- d. Moral right there all the economic rights there.

In general, each state at least recognize and regulate The economy rights includes types:⁶

- a. Reproduction right, namely the right to make copies creation, UUHC use the term to refer to the reproduction right this reproduction.
- b. Adaptation right, namely the right to hold the adaptation of the existing copyright (Article 12 of the Berne Convention).
- c. Distribution right, namely the right to distribute the community every creation in the form of sale or lease. Of distribution rights that may arise possible new rights in the form of foreign right, which is a right protected outside the country. For example, one creative works such as books, because it is an interesting book, then very popular in other countries. Thus, the book was distributed to other countries, thereby getting protection as foreign right.
- d. Performance rights, namely the right to disclose art work in the form of performances or appearances by musicians, playwright, artist, model, also involves broadcasting the film, and voice recording on the medium of television, radio, and other places. The present appearance. Any person or entity that displays or displaying a copyright work, must request permission from the owner of the right performance. This situation was difficult for people would ask permission of the show, to facilitate it is then formed an institution that takes care of the right This show is known as the Performing Right Society.
- e. Broadcasting rights, i.e. the right to broadcast creations through transmission and retransmission.

6. Muhammad Djumhana dan R. Jubaedillah, (1993), *Hak Milik Intelektual, Sejarah, Teori dan Prakteknya di Indonesia*, p. 67-73.

- f. Cablecasting right, namely the right to broadcast creation via cable. This right is almost the same as broad casting rights, but not through the transmission through the cable.
- g. Droitde Suite, ie additional rights creator is immaterial.
- h. Public lending right, the rights of creators over payment of creation stored in public libraries borrowed by the public.

Copy right has two kinds of rights, because it is a lot of people who have a bad faith attempt to have the copyright in any unlawful manner. After that then begin of the copyright infringement. Copyright infringement has many forms and actions taken.

Copyright infringement involves any violation of the exclusive rights of the copy right owner. It may be unintentional or intentional. When unintentional, it is called innocent infringement. An example of innocent infringement occurred when former Beatle George Harrison created his song "My Sweet Lord." Harrison was found to have unconsciously copied the tune of another song, "He's So Fine," by the Chiffons, and thus was liable for in fringement (*Bright Tunes Musi cCorp. v. Harri songs Music*, 420 F. Supp.177[S.D.N.Y.1976]). Vicarious or related infringement refers to those who profit indirectly from the infringement of copyright, as in the case of a the ater owner who profits from booking a band that illegally performs copy righted works.

Since evidence of direct copying or Plagiarism of an authored work is difficult to obtain, infringement of copyright is usually established through Circumstantial Evidence. Such evidence typically musts how a *substantial similarity* between the original and the copy, as well as prove that the copier had *access* to the original. This means that where two works are similar or identical, there is nevertheless no infringement if each work was produced through the original and independent work of its creator. An infringer is not relieved of liability by crediting the source or the creator of the infringed work. Although infringement does not require that even a large portion of the work be similar, it does require that a substantial part be similar. It is irrelevant if the copied work is an improvement of the original work.

In the USA The Copyright Act of 1976 recognizes a copyright not only in a publisher's collective work, but also a separate copyright for each author's contribution to the work. With the growth in the use of electronic databases and disk to store data, some freelance authors began to object to their articles being sold to companies that produced these databases and disks. The Supreme Court, in *New York Times v. Tasini*, 533U.S.483, 121 S. Ct.2381,150 L. Ed. 2d 500(2001), held that the Act protects the copyrights of the writers, rejecting an argument by the publishers that the conversion of the original works to an electronic format

constituted a “revision” of the collective work, which would have been permissible under the Copyright Act.⁷

Changing technology impels copyright holders to seek more protection from the law for their increasingly valuable products. In an effort to retain control over distribution systems, industries that publish or deliver copyrighted material join in those efforts. Consumers, who want to exercise their traditional rights under copyright law and to utilize the new technology, exert an opposing pressure on lawmakers, as do the manufacturers of devices that deliver information and knowledge. Although it is unclear what form a new order will take, the potent combination of technological development and economic incentives is difficult to resist. History teaches that change in the old order is a practical certainty.⁸

At this point in the unfolding story, Congress appears to have embraced the old order. Since the early 1980s, Congress has strengthened existing rights in copyright and created a plethora of new rights.⁹ Two new laws expand criminal liability for infringing copyrights. The No Electronic Theft Act of 1997 (NET) reaches infringement of copyrighted material for personal as well as commercial use.¹⁰ The

7. <http://legal-dictionary.thefreedictionary.com/Copyright>

8. See DEBORA L. SPAR, *RULING THE WAVES: CYCLES OF DISCOVERY, CHAOS, AND WEALTH FROM THE COMPASS TO THE INTERNET* (2001) (tracing cycles in which technological pioneers first break the rules, then pursue profit through commercialization, and finally pressure the state to enforce new property rights, standards, and competition laws).

9. See, e.g., Digital Performance Right in Sound Recordings Act of 1995, Pub. L. No. 104-39, 109 Stat. 336 (1995) (codified as amended at 17 U.S.C. § 106(6) (2000)) (granting copyright owner the exclusive right to perform the copyrighted work by means of digital audio transmission); Sonny Bono Copyright Term Extension Act of 1998, Pub. L. No. 105-298, 112 Stat. 2827 (lengthening the term to life of the author plus seventy years) (codified at 17 U.S.C. § 302); Copyright Renewal Act of 1992, Pub. L. No. 102-307, title I, § 102 (a), (d), 106 Stat. 264, 266 (codified as amended at 17 U.S.C. §§ 304 (a), (c) (2000)) (making copyright renewal automatic); Semiconductor Chip Protection Act of 1984, Pub. L. No. 98-620, 98 Stat. 3347 (codified as amended at 17 U.S.C. §§ 901-14 (2000)) (extending copyright protection to “mask work[s]”); Digital Millennium Copyright Act of 1998, Pub. L. No. 105-304, 112 Stat. 2860 (1998) (codified at 17 U.S.C. §§ 1201-1205 (Supp. IV 1998)). For criticism of this trend, see sources cited in LAWRENCE LESSIG, *CODE AND OTHER LAWS OF CYBERSPACE* 269 n. 68 (1999).

10. See No Electronic Theft (NET) Act, 17 U.S.C. § 506 (a)(2) (2000) (providing criminal punishment for reproducing or distributing, “including by electronic means, during any 180-day period, of 1 or more copies or phono records of 1 or more copyrighted works, which have a total retail value of more than \$1,000”). See also *infra* text accompanying notes 18-29.

Digital Millennium Copyright Act of 1998 (DMCA) takes a more proactive stance by providing criminal penalties for acts that may lead to infringement.¹¹

Treating purposeful infringement of copyrighted material as a crime seems, at first appraisal, like an easy case. As members of Congress reasoned, a copyright is a type of property, and knowingly taking or using property without permission is a crime. Yet a lingering doubt creates uneasiness when unauthorized use of knowledge, ideas, and information is treated as common theft. The common understandings that underpin theft law do not transfer easily to the realm of information, knowledge, and ideas.¹² The products of intellectual effort and the progress of the entire community are linked in significant ways, and knowledge and ideas, even those in popular music and business software, have not been subject to the more absolute rules that govern physical property.¹³

Creators can ask for the registration of its creation. This is done to prevent copyright violations that occur and also can be considered as the first appearance of the results of his creations. It can be canceled if there are a first appearance of the others that were canceled by the court that the creation turns are owned by other parties. Here was that prima facie really seen.

Article 52 the TRIPs Agreement: "Any right holder initiating the procedures under Article 51 shall be required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is prima facie an infringement of the right holder's intellectual property right and to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs authorities. The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, where determined by the competent authorities, the period for which the customs authorities will take action."

According to Article 58 the TRIPs Agreement: "Where members require competent authorities to act upon their own initiative and to suspend the release

11. See Digital Millennium Copyright Act (DMCA), 17 U.S.C. §§ 1201 et seq. (barring circumvention of encryption codes designed to bar access or to prevent copying). See also *infra* text accompanying notes 30-39.

12. See *Dowling v. United States*, 473 U.S. 207, 217 (1985) ("[I]nterference with copyright does not easily equate with theft, conversion, or fraud."); Stuart P. Green, *Plagiarism and the Limits of Theft Law: Some Preliminary Thoughts on Norms and the Criminalization of Intellectual Property Law*, 54 HASTINGS L.J. 167 (2002) (stating that criminal penalties for violation of intellectual property rights "seem out of place").

13. Geraldine Szott Moohr, *The Crime of Copyright Infringement: An Inquiry Based on Morality, Harm, and Criminal Theory*

of goods in respect of which they have acquired prima facie evidence that an intellectual property right is being infringed:

- a. The competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers;
- b. The importer and the right holder shall be promptly notified of the suspension. Where the importer has lodged an appeal against the suspension with the competent authorities, the suspension shall be subject to the conditions, mutandis, set out at Article 55.
- c. Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith."

METHODOLOGY

The method used for this study is the juridical-normative research method. Normative juridical research method used to find the truth in a legal research carried out by way of deductive reasoning and coherent criterion of truth. Truth in a study has revealed reliable without having to go through the process of testing or verification. Verification at the normative juridical method is done by testing ways of thinking(logic) of the results of research by peer groups parcel or group of peers.

RESULTS AND DISCUSSION

Copyright entered the era developed very quickly copyright developments may evolve in the right direction and can also develop to the worse. One of the fastest growing industry is the creation of websites. This website is very rapidly as more and more people doing activities on the internet.

The development of website creation is of course made a lot of progress towards the better progress towards better is where the makers increasingly creative website and can also be petrified man to lighten his work with just opening a page from the internet then the community can do a lot of things. Unfortunately this development is also accompanied by the development of the poor. This poor development toward copyright infringement. Where more demand for the creation of websites and make a lot of people doing a bad job and not creative is by taking or plagiarizing other people's websites.

Law provides protection to this copyright infringement. One is the principle of prima facie which in principle is explained that assessed is the first appearance of the website. In addition to further confirm the existence of this principle, in Indonesia

is done with registration and manufacture of certification of works of copyright which in this case is the website which is protected since the announcement and ended after 50 years thereafter.

Prima facie be the first occurrence in Indonesia is made with a certificate may be canceled by the court if it is found that there has been a violation of another person who can prove that copyright is not valid and no prima facie first appearance or other.

CONCLUSION

The creation of websites containing copyright and may be registered. In practice in the manufacture of a copyright society that is often the case of copyright infringement. Copyright infringement is the form of the creation of websites with the same shape when the website was created by someone else. One of the legal protection of copyright for the creation of these is the principle that prima facie assessed or seen from the first appearance of the website created.

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