



COPYRIGHT IN MONGOLIA



Background

A copyright is a legal device that gives the creator of a literary, artistic, musical, or other creative work the sole right to publish and sell that work. Copyright owners have the right to control the reproduction of their work, including the right to receive payment for that reproduction.

We have summarized the current legal framework of copyright in Mongolia. Mongolia is a member of WIPO from 2002 and acceded to the number of international conventions in regards with to Intellectual property right including copyright whereas the article on copyright issues included in the Mongolian Constitution, the basis for copyright development was established in Mongolia towards international standards of treatment and practice. Based on this legal precedent, the particular law on copyright was enacted in 1993 and its revision was approved in January 2006.

Under this legal briefing, we have analyzed 50 court decisions of 3 levels of the courts of Mongolia. The court made 3 types of decision that namely judge made a decision in favor of the claimant, or returned the claim to the first instance court or dismissal of the claim by the claimant. If there is a copyright infringement, a defaulted citizen and the legal person shall be imposed sanction under the Criminal law and Law on Offence and shall be demanded to liquidate damage by the Civil code.

Nowadays, Mongolia has joined in 14 Conventions on the Intellectual Property. There are four following International Conventions on the Rights of the Copyright:

1. Berne Convention for the Protection of Literary and Artistic Works (1886);
2. World Intellectual Property Organization (WIPO) Copyright treaty (1996);
3. Trade-Related Aspects of Intellectual Property Rights (1995); and
4. WIPO Performances and Phonograms Treaty (1996).

What are the requirements for copyright?

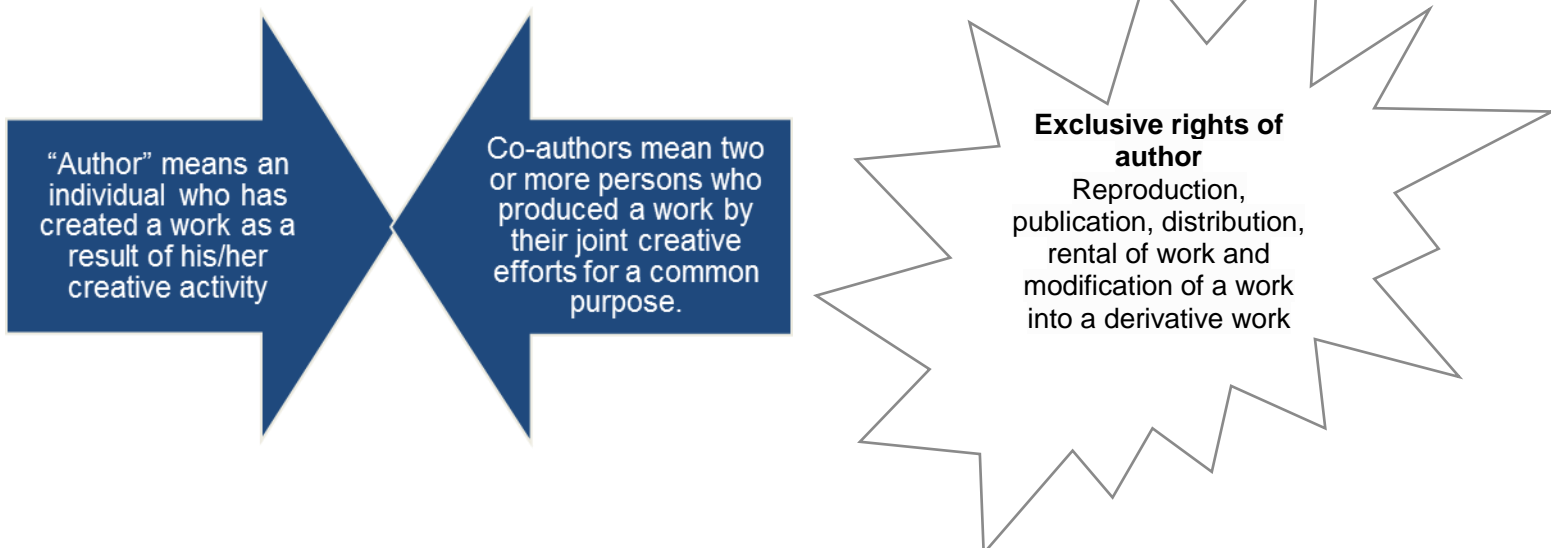
Any and all relations of copyright is regulated by Law on "Copyright and Related Rights" of Mongolia. This law relates copyrights of scientific and literary works whether in verbal or written form, including computer programs, musical works whether with or without lyrics, fine art, decorative, applied and theatrical arts, architecture and sculptures, choreographic works, works of contortionists and pantomime, plays and musical works created for the stage art, photographic works and works created by methods similar to photography, glossaries, references, compilations and databases that are considered to be intellectual works by its structure and contents and have been created through creative activities such as selection and placement of materials and audiovisual works, derivative work don't protected by copyrights.

Copyright holder

The following person shall hold the copyright under this law:

1. Citizens of Mongolia, foreign nationals and stateless persons permanently residing in Mongolia, who have created work regardless of whether their works were not published or not.
2. Foreign nationals whose work has been first published in Mongolia.
3. Authors who placed their sculptures, architectural works and/or works of fine arts being component of buildings permanently placed in the territory of Mongolia.
4. Legal persons who are entitled to copyright under the legislation on copyright.

How is ownership of the copyright determined between the author and the co-author?



The author has the rights of the material and the non-material wealth for his work. The author's non-material wealth is not limited to the time, nor can they be separated from the author, and cannot be transferred to others.

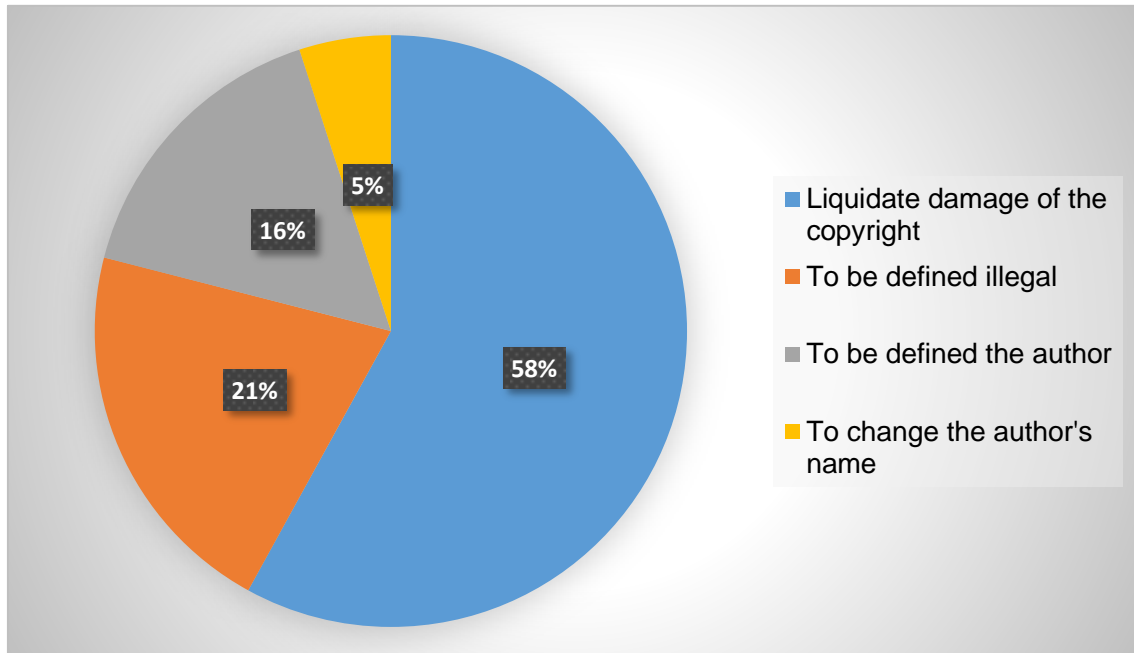
Establishment and certification of copyright

The copyright in scientific, literary and artistic works shall be started from the actual creation of the work. The author has the exclusive right to be assigned fully or partially on the basis of the agreement. And author shall enjoy the exclusive rights for his/her lifetime and 50 years after his/her death. The exclusive rights of an author in a copyrighted work shall pass to his/her heirs in accordance with the rules set forth in the Civil Code of Mongolia.

The inheritance shall be deemed accepted if the successor who lived with the testator prior to his or her death fails to produce within three months after the date of opening the testament a document certified by notary or, in the absence of such, by soum or bag(administrative unit of Mongolia) governor and expressing his or her refusal to accept the inheritance.

Copyright enforcement analysis on Court decisions

We have analyzed around 50 court decisions of the first instance court, appellate court and the Supreme Court of Mongolia which are dated from 2003-2017. Based upon court decisions, the demand of claim on copyright has been categorized into 4 groups:



58,8% of claimants or copyright holder demanded to liquidate damage that gained profits using the same name of company and website partially or entirely from his creations without his permission from the defendant. The court issued 3 types of decisions that judge made decision in favor of claimant, returned to the first instance court due to lack of sufficient evidence and dismissed the claim due to the following legal grounds:

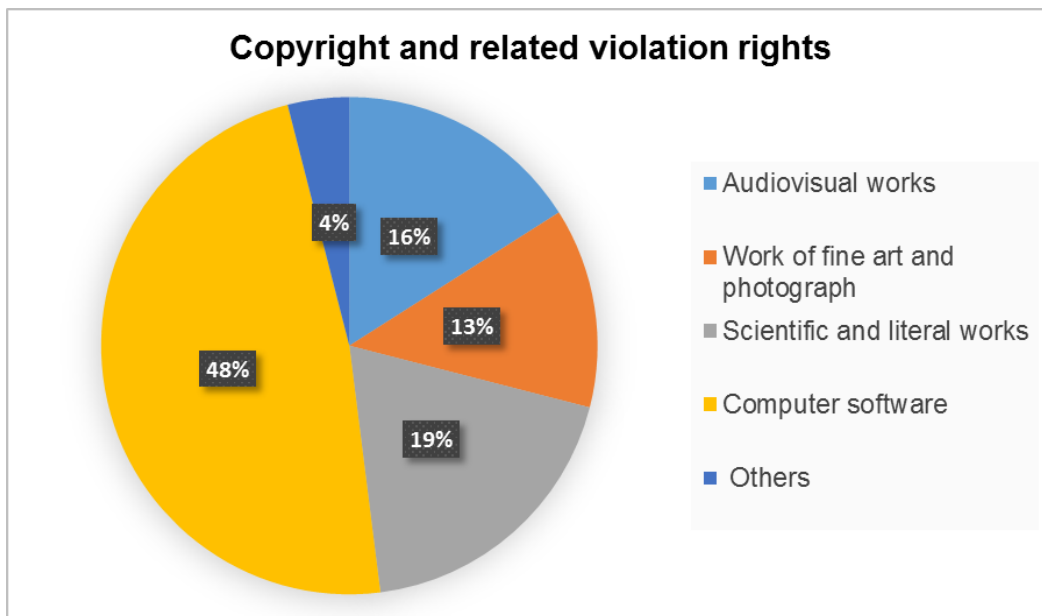
1. Legal grounds of dismissing the claim have been defined by the court are on basis of paragraph 1 of Article 24 of the Law on "Copyright and Related Rights" of Mongolia. The works were used without contradicting the normal use of published works and without affecting the legal interests of the copyright holders shall not be deemed as copyright infringement. They are:

1. To quote from published works in order to prepare a press review;
2. To quote from and to use parts of published works for research works, criticisms and information;
3. To reproduce parts of works used in the archives, museums and libraries;
4. To publish or broadcast works on current economic, political and religious issues, which were published in press or broadcasted through media, if the reproduction of such works is not specifically prohibited, and to inform them to the public through wire and wireless communications;
5. To publish speeches and presentations delivered at meetings for the purpose of information;
6. To publish works of architecture, fine arts and photography located in public places in order to show the surrounding areas of events while reporting the events to the public;
7. To use works for the visually impaired and people with hearing problems;
8. To reproduce works for private use; and
9. To reproduce works for criminal, civil and administrative procedures.

2. In court practice, the judge made his decision in accordance with paragraph 1 of Article 230 and paragraph 1 of Article 479 of the Civil code of Mongolia on copyright related litigation in favor of claimant. They are:

- A claimant shall be entitled to demand to eliminate the non-material harm; or
- A legal person who caused damage to others’ rights, life, health, dignity, business reputation or property deliberately or due to negligent action (inaction) shall compensate for that damage.

The below chart is shown copyright infringement types on basis of court decisions. The computer software related infringement is 48% or almost half of total copyright related infringement.



Sanctions to the Copyright infringement

In accordance with Law on Offence and Criminal Code, the following sanctions are imposed on the copyright related infringement.

Criminal Code	Law on Offence
The Copyright holder may file a claim to the court in order to protect its exclusive rights if violation of copyright and related rights on goods and products which manufactured, stored, transported, sold and passed through by the customs and caused loss that is more than maximum amount (caused loss of more than 50,000,000MNT or (app 18,796USD), a defaulted party shall be punishable by a fine ranging from 450,000MNT or (app 169USD to 5,400,000MNT (app.2,030USD) or do community beneficial work between 240 and 700 hours, or restrict travelling from 6 months up to 1 year.	<p>The state inspector of the intellectual property authority can impose one or more of the following liabilities to the copyright infringement if any individual or legal entity has violated copyright holder’s exclusive rights.</p> <ol style="list-style-type: none"> 1. The items used to conduct offence, illegally earned income and illegally earned property as result of offence shall be confiscated, 2. To suspend the operation of defaulted individual or legal entity; 3. To indemnify or recover aggrieved individual or entity’s loss; and

<p>If this crime has been committed consistently and by the organized criminal group, a defaulted party shall be punishable by a fine ranging from 5,400,000MNT (app. 2,030USD) up to 27,000,000MNT (app. 10150USD) or restrict travelling from 1 year up to 5 years, or imprisonment from 1 months up to 5 years.</p>	<p>4. To impose penalty with amount of to 500,000MNT (app 188USD) a defaulted individual and 5,000,000MNT (app 1880USD) for a legal entity for breach of the copyright holder's rights unless the copyright violation shall not be liable for criminal sanction.</p>
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Copyright protection organization

The Intellectual Property Office shall be responsible for implementation of the public policy to protect copyright. It shall register works of copyrights and related rights at the requests of authors and copyright holders, to issue certificates and to establish a database of registered works.

Authors and right holders may establish a Collective management organization for the purpose of protection of their rights. The Collective management organization shall be established at the initiative of authors and right holders.

Current Developments

Nowadays, a draft of the Law on "Copyright and Related Rights" is under public discussion. There are some new articles and expanded its content. For example;

1. More definition of terms that what does it mean record their broadcasts, make a reproduction of their broadcasts, rebroadcast its programs through wireless communication, transmit broadcasts simultaneously, etc;
2. Maps, drawing, sketch, tables, and three-dimensional expressions of science and technology shall be protected by copyright;
3. The right to use photograph and work of applied art shall be valid for 25 years that begin from the day of its creation;
4. Protect copyrights on other electronic and telecommunications networks;
5. When taking a quotation to the work in accordance with this law, the rights and legitimate interests of the author and copyright holder of the work shall not be affected and do exceeding its intentions;
6. Restrict copyright to architecture, sculpture, and architecture
7. Establish copyright council that is a non-executive council with the functions of mediating parties;
8. Expand the activities and obligations of the Collective management organization;
9. Added more provisions on rights transfer agreement and license agreement; and
10. The loss of property rights due to compensation of material and non-material damages shall be resolved according to the civil code of Mongolia.

Conclusion

The copyright relations are regulated by the Civil code, the Law on Copyright and Related Rights and an International treaty to which Mongolia is a party to, provides otherwise than this law.

The court made 3 types of decision that namely judge made decision favor of claimant, returned the claim to the first instance court and dismissal of the claim. 51% of court decisions were in favor of claim and 36% of court decisions were dismissed the claim in basis of paragraph 1 of Article 24 of Law on

"Copyright and Related Rights" of Mongolia. 13% of court decisions returned the claim to the first instance court due to lack of sufficient evidence from the appeal court and the Supreme court.

The Intellectual Property Office protects the interests of authors and copyright holders, to support their creative activities. Authors and right holders may establish a Collective management organization for the purpose of protection of their rights.

Draft law on Copyright and related rights are under public discussion. This draft has more detailed regulation than current law for definition of terms, electronic and telecommunications networks and works to be protected by copyright.

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