

Amazing Grace — the Ambit of Section 42 of the Copyright Act

Some of us perform these activities regularly, even religiously (no pun intended). But have you ever wondered about the copyright issues behind religious acts? This article examines s 42 of the Copyright Act (Cap 63).

One of Singapore's founding tenets is that it is a multi-religious society with the constitutional guarantee of religious freedom.¹ Singaporeans are also deeply religious people — over 85% of the population professes at least one of the four main religions.² There is also evidence that more and larger religious places of worship have been built over the last decade³ than in previous decades. It is now common to find bookstores and little stalls selling various religious books, audio discs and paraphernalia. More Singaporeans are also taking part in religious activity on a regular basis.

This belies the trend around the world. Internationally, according to the Gospel Music Association, 47.1m gospel music albums were sold worldwide in 2003, representing some 6% of all music album sales. Various religious groups have advertised their services in the print media. In addition, religious charities have been steadily moving into the public eye with their fund-raising activities and social work. The Singapore Soka Association, with its 25,000 members, is a regular contributor to mass-display events like the National Day and Chingay parades while the Singapore Buddhist Federation-supported Ren Ci Hospital organises the hugely popular annual Ren Ci Charity Show.

These factors indicate that significant religious activity takes place on a regular basis in Singapore. Such activities include reading and study of various religious materials, singing, chanting, praying and dancing. Copies, reproductions and even broadcasts of

these activities are then made available for the benefit of members who are unable to attend the 'live' service.

None of these religions are indigenous to Singapore. They all originate from another part of the world and are widely practised around the world. Some of the religious material used must, therefore, originate from outside Singapore. As such materials constitute literary, dramatic or music works, they enjoy copyright protection. With such widespread and varied usage, the question must then be — what is the ambit of the permitted use of such religious material, if such material is protected by copyright law?

Purpose

Given the benefits of religious activity, an argument can be made for more freedom to use religious material than commercial non-religious material. Should religious material enjoy similar treatment as material for educational use or for current news reporting? The answer has been statutorily provided for in Singapore's Copyright Act.

Section 42 of the Copyright Act provides that 'A performance of a literary, dramatic or musical work of a religious nature, or an adaptation of such a work, in the course of services at a place of worship or other religious assembly shall not constitute an infringement of the copyright in the work'. Simply put, a defence to infringement has been created in relation to such performances. To qualify for this defence, the act must satisfy four criteria:

- (a) it must be a performance;
- (b) in respect of a literary, dramatic or musical work;

- (c) of a religious nature; and
- (d) in the course of services at a place of worship or other religious assembly.

Performance

In s 22 of the Copyright Act, performance shall:

- (a) be read as including a reference to any mode of visual or aural presentation, whether the presentation is by the operation of wireless telegraphy apparatus, by the exhibition of a cinematograph film, by the use of a record or by any other means; and
- (b) in relation to a lecture, address, speech or sermon, be read as including a reference to delivery.

In addition, broadcasting, or the causing of a work to be included in a programme in a cable programme service, shall be deemed not to constitute performance or to constitute causing visual images to be seen or sounds to be heard.⁴

Where visual images or sounds are displayed or emitted by any receiving apparatus to which they are conveyed by the transmission of electro-magnetic signals (whether over paths provided by a material substance or not), the operation of any apparatus by which the signals are transmitted, directly or indirectly, to the receiving apparatus shall be deemed not to constitute performance or to constitute causing visual images to be seen or sounds to be heard but, insofar as the display or emission of the images or sounds constitutes a performance, or causes the images to be seen or the sounds to be heard, the performance, or the causing of the images to be seen or

sounds to be heard, as the case may be, shall be deemed to be effected by the operation of the receiving apparatus.⁵

The requirement of performance in s42 precludes broadcast of the material. This is unfortunate as the definition of performance in the Copyright Act was intentionally drafted narrowly in order not to overlap with the rights of broadcasting — a consequence of the separation of the broadcast right from the public performance right.⁶ While it is noted that special provisions in the Copyright Act⁷ have been enacted to provide for this problem, these provisions typically exempt the performance of a work as a result of the broadcast, but not the other way around. Thus, even though s 42 exempts the performance of a work from copyright infringement, it does not exempt the broadcast of such material in the course of a religious service. A similar treatment is also extended to include cable programme service. This may pose a problem with large religious organisations which hold their services in multiple venues or in different locations within the same venue and subsequently broadcast or cable-cast their services to such venues and locations. While performance of such works is exempted under s 42, broadcasting is not. The issue regarding multi-venue broadcasting is by no means settled as it has been suggested that wireless transmission intended to be received by only one or a few recipients may not amount to broadcasting in the sense used in the Copyright Act.⁸

Literary, Dramatic or Musical Works

The nature of artistic works (typically paintings and sculptures) preclude any concept of performance to which a meaningful exception can be created. For example, the scope of the s 42 exceptions does not extend to the so-called neighbouring rights — cinematograph films, television broadcasts, sound broadcasts and cable programmes. This means that there is no defence under s 42 for the public performance of a television broadcast of a religious nature. In addition, the scope of the s 42 exceptions does not extend to sound recordings as sound recordings

do not, in the first place, enjoy public performance rights in Singapore.

Of a Religious Nature

As the burden of proving a defence falls on the infringer, it is for the infringer to prove that the works in question are of a religious nature. Little guidance is offered by intellectual property case law on this subject. However, the law relating to charities may provide some guidance. Religion has been described as including the principle of gratitude to an active power who can confer blessings.⁹ More recently, it was held that the essential elements of a religion are belief in and worship of God and man's relation with God but not man's relation to man.¹⁰

This poses an interesting scenario — what if the musical work is an arrangement of Elvis Presley's 'Amazing Grace'? Can a musical work, which has been arranged and exploited in a commercial manner, be 'of a religious nature'? Or can a commercial musical work such as 'My Girl'¹¹ be cleansed with a religious treatment¹² and hence qualify as a work 'of a religious nature'?

This problem cannot be ignored with the advent of cross-over performers¹³ such as Amy Grant, Michael W Smith and the Benedictine Monks of the Gregorian chants as well as religious stars who are producing material for both commercial and religious markets,¹⁴ religious groups have to determine which works would be exempted and which would not. A plain reading suggests that the test is of the work and not of its subsequent treatment. The ambiguity in this requirement may still persist because other than verbalising the nature of the work, one would be hard pressed to present the religious nature in a musical work.

In the Course of Services at a Place of Worship or Other Religious Assembly

This curiously worded requirement poses a few questions:

- (a) what if the performance is made as a prelude to the religious service in the same location?

- (b) does a temporary place of religious assembly, such as the staging of a Christmas play at a public shopping mall, qualify?

An appropriate analysis of this issue may be to look at the performance from the point of view of the commercial interests of the copyright owner to protect the commercial value of his work.¹⁵ Therefore, an expansive reading of the requirement would include performances as preludes and temporary places of religious assembly. This interpretation is also supported below. Conversely, a similar reading would exclude the performance of work of a religious nature in a concert with a fee-paying audience.

Place of Worship

Lord Denning had instructive words on the definition of the words 'Place of worship' when interpreting the Places of Worship Registration Act 1855:

It connotes to my mind a place of which the principal use is as a place where people come together as a congregation or assembly to do reverence to God. It need not be the God which the Christians worship. It may be another God, or an unknown God, but it must be reverence to a deity. There may be exceptions. For instance, Buddhist temples are properly described as places of meeting for religious worship. But, apart from exceptional cases of that kind, it seems to me the governing idea behind the words 'place of meeting for religious worship' is that it should be a place for the worship of God. I am sure that would be the meaning attached by those who framed this legislation in 1855.¹⁶

In Australia, Starke J¹⁷ made the following comments:

The noun 'worship' is defined in the Shorter Oxford Dictionary ... as follows: 'Reverence or veneration paid to a Being or Power regarded as supernatural or divine; the action or practice of displaying this by appropriate acts, rites or ceremony'.



This definition rather suggests to my mind the observance of a standard ritual or practice in the nature of divine service, although not necessarily conducted in a church or other fixed place.

It is submitted that in a multi-religious society like Singapore, a place of worship would be even more widely interpreted. Mosques, churches and temples are widely accepted as places of worship and not regarded as exceptional cases.

Religious Assembly

Another pertinent fact is to consider the status of religious groups such as the Jehovah's Witnesses. While such groups are commonly accepted as religious assemblies elsewhere, in Singapore, such groups are feared as undermining the tenets of Singapore society.¹⁸ The Singapore response towards such religious groups has been the de-registration of their status as a registered society¹⁹ and the banning of their publications.²⁰

However, the limitations placed on the practices of such religious groups does not strictly per se amount to an outright ban on the practice of their religion. Therefore, it is certainly arguable that a performance in the course of services by a small group of Jehovah's Witnesses falls within the ambit of s 42.

Comparison With Other Jurisdictions

A noteworthy point to mention is that the s 42 exemption is present in the copyright legislation of some Commonwealth jurisdictions, albeit in different forms. Canada's Copyright Act does state that 'No religious organisation or institution, educational institution and no charitable or fraternal organisation, shall be held liable to pay any compensation for doing any of the following acts in furtherance of a religious, educational or charitable object:

- (1) the live performance in public of a musical work;
- (2) the performance in public of a sound recording embodying a musical work or performer's performance of a musical work; or
- (3) the performance in public of a communication signal carrying:
 - (a) the live performance in public of a musical work; or
 - (b) a sound recording embodying a musical work or a performer's performance of a musical work.²¹

In addition, the US Code does contain in s 110, Title 17, the exemption from copyright infringement of a 'performance of a non-dramatic literary or musical work or of a dramatico-musical work of a religious nature, or display of a work, in the course of services at a place of worship or other religious assembly'.

Conclusion

The purpose of s 42 is obvious. It was created in an era where the distinction between church and the clergy was clear. In today's context where such distinction is blurred, then, in the absence of definitive guidance, we may have to adopt a purposive approach to the definitions of religion and place of worship. The same care must be extended to the limited exceptions created by s 42. Not every act done in the name of religion would fall under the exception allowed by s 42. Religious organisations would do well to scrutinise their practices.

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Endnotes

- 1 See Art 15 of the Constitution of the Republic of Singapore.
- 2 According to a paper issued in 2000 by the Singapore Department of Statistics.
- 3 Eg <http://www.chc.org.sg/version3/building.cfm#fact>.
- 4 See s 22(2).
- 5 See s 22(3).
- 6 See Wei, *The Law of Copyright in Singapore*, at page 551.
- 7 Such as s 199(1) of the Copyright Act provides that 'A person who, by the reception of a television broadcast, sound broadcast or cable programme, causes a literary, dramatic or musical work, or an adaptation of such work, to be seen, heard or seen and heard, in public does not, by doing so, infringe the copyright, if any, in the work'.
- 8 See Wei, *The Law of Copyright in Singapore*, at page 555.
- 9 *Baxter v Langley*, 38 LJMC 5.
- 10 *Re South Place Ethical Society; Barralet v AG* (1980) 3 All ER 918.
- 11 Popular song by the Temptations.
- 12 As was done in the 1992 movie *Sister Act*.
- 13 Artistes who were formerly classified as religious performers who began giving non-religious performances.
- 14 Such as *Jars of Clay*.
- 15 Following a similar approach by Lord Wright MR in *Jennings v Stephens* [1936] 1 Ch 469.
- 16 *R v Registrar General, ex p Segerdal* [1970] 3 All ER 886.
- 17 *Macrae v Jolliffe* [1970] VR 61.
- 18 See comments by Chan Sek Keong (Attorney General), 'Culture and Crime', 2000 12 SALJ 1.
- 19 Resulting in its ability to meet or propagate its tenets as a society (defined as an association of 10 persons or more).
- 20 Under the Undesirable Publications Act (Cap 338).
- 21 See s 32.2(2).