



Arts Marketing in Derbyshire Programme

An introduction to *Copyright*



Cultural Consortium

Copyright Introduction

What is copyright?

Copyright is a legal framework that protects **the expression or form that ideas take**. It does not, however, protect ideas.

It is the legal embodiment of **intellectual property**. Intellectual property is not intangible, it has to exist as any other property would do, but in specialised ways such as a painting, poem, film or musical notation.

Copyright exists through a number of UK laws, the most important being the Copyright, Designs and Patents Act, but there are also international agreements that means copyright once protected in one country, shares protection in almost every other country around the world. The EU also harmonises copyright and intellectual property legislation throughout the member states.

Copyright allows the owner of the copyright in a work to prevent any other person or organisation doing anything to or with the work without the owners consent. This includes copying the work, performing the work, transmitting the work through broadcasting or other electronic means.

What is protected by copyright?

The following broad areas of work are covered by copyright law:

- Literary, dramatic or artistic works
- Sound recordings, films, broadcasts/narrowcasts, cable programmes (including internet transmission)
- Typographical arrangements of published editions
- Computer aided (but not computer generated) images

When a work contains a number of elements, multiple copyrights can exist to protect the separate elements.

How does copyright come into existence?

Copyright comes into existence the moment that the work is fixed in any material form. It does not have to be formally registered.

If you choose, you can put the symbol © with your name and the date of creation on the work although this is not legally necessary and is not foolproof as a legal test of copyright ownership.

Who owns copyright?

In most circumstances, the creator of the work owns the copyright but there are some exceptions:

- If the creator is an employee and the work is created as part of their employment, the copyright is owned by the employer.
- Commissioned works could be contracted so that the commissioner owns the copyright

Copyright can also be sold, assigned or licensed by the owner.

How long does copyright last?

Within the EU, copyright for literary, dramatic, musical and artistic works last for the creator's life plus seventy years. This does change in other parts of the world.

Sound recordings, films, broadcast and cable programmes are protected for fifty years from the date of making or the date of release, if that is within the first fifty years.

Typographical arrangements of a published edition lasts for twenty five years following the end of the year in which it was published.

Multiple copyright

On many occasions, one work can have several copyright holders with an interest in it. For example, a dance work has the choreographer owning the performance but if a photographer takes an image for publicity, the photographer will hold the copyright of that work (subject to the agreement of the choreographer in recording their work). The photograph may then be reproduced in a magazine and the article will also be subject to copyright. (Also see the section on moral rights).

A work can also be **jointly owned**, where the copyright is equally invested in two or more persons or it can have **different owners** of specific parts of the work, as in a video where the image has one owner and the sound another.

Legal Benefits granted through Copyright

What are the benefits?

If a work is copyrighted it gives the owner two 'rights' - main areas of benefit in law:

- Rights of exploitation
- Moral rights

In essence the rights of exploitation are the commercial rights that give the creator of the work the right to economic advantage from their creative endeavours. Moral rights give protection to the creative integrity of the work.

Exploitation

Owners can exploit their copyright in a number of ways which can be linked to financial or other benefits that will apply to the work in perpetuity or will have restrictions on the scope of the licence granted. This is dealt with in detail later.

Moral rights

There are a number of rights granted within the Copyright Acts that are personal to the creator which are:

Paternity right which is the right of the creator to be identified whenever the work is published, exhibited or broadcast etc. This right has to be asserted in any agreement or licence to be operative.

Right of integrity which protects the creator from '**derogatory treatment**' of the work (legally defined as any addition to, deletion from, alteration to or adaptation from the work which amounts to a distortion or mutilation of the work or is otherwise prejudicial to the honour or reputation of the author) This does not relate however to criticism (see later) or where a criminal offence such as obscenity or defamation may result.

False attribution is the right not to be attributed as the creator of a work created by someone else.

Right of privacy which is different to other moral rights in that a *commissioner* of a work for private purposes may insist that the work is not exhibited, broadcast etc. *In a similar way, it is always prudent to get a 'release form' signed if any members of the public (or private property) appear in any images that are likely to be exhibited or exploited commercially.*

Moral rights cannot be assigned but can be waived. There are some exceptions to moral rights as well, mainly relating to the reporting of current events and entries in dictionaries, encyclopaedias etc.

Infringements of Copyright

Legal rights of copyright holder

The copyright holder has a legal right to prevent infringements of their copyright which fall into two main categories:

Primary infringement where somebody commits a 'restricted act' by copying, performing, broadcasting or in any other way using a work without the express permission of the copyright holder

Secondary infringement where someone knowingly uses, possesses, deals, imports or exports illegal copies of copyrighted material.

Primary infringers can be liable even if they are not aware they are infringing copyright. To succeed in legal action, the copying must be 'substantial' translated not in physical terms but in the essential use of the 'skill and labour' of the work.

If an infringement takes place, the copyright legislation allows for both civil and criminal proceedings, particularly related to the sale or public exhibition of copyright works for profit.

If the holder does take legal action, the court may offer a range of remedies based on the following:

- Injunctions that prevent further exploitation of the copyrighted material
- Damages in consideration of the loss of earnings or royalties to the holder
- The destruction of any materials that infringed the law
- Possibly damages that took into account the profits generated by the individual or organisation through their general trading as well as the specific criminal activity or exemplary damages for 'flagrant breaches' of the legislation.

For breaches of the moral rights, similar penalties are available but an injunction is only available in cases of the right of integrity.

Any possible breach in copyright law really needs the services of a solicitor specialising in intellectual property law.

Permitted Acts

Fair dealing

There are a small number of exceptions and specific circumstances where copying is permitted known as 'fair dealing' in legislation.

Research and private study

Research means research under any circumstances including commercial research and private study means study outside of academic institutions. Only single copies may be made and separate rules govern sound and broadcast media.

Criticism and review

This covers copying works for the purpose of critical study or review of work for journalistic or academic purposes. There are limits on the length of extracts that can be used.

Reporting of current events

Anything that is newsworthy or of public interest can be copied for contemporary reporting purposes, with the exception of photographic works.

Incidental inclusion

Where works are included but are not central to the work, they may be considered outside the scope of the legal framework as would anonymous works if reasonable steps were taken to ascertain their authorship.

Other non copyright works

There are a small number of other examples where copyright is not applicable.

Works of art, craft or design permanently sited in public places, although moral and other rights remain.

Copies made for the purposes of selling but not subsequent to any sale taking place.

Copies of previous works if the original work is not imitated.

Monitoring and Exploiting Copyright

Monitoring Copyright

Once a work has copyright established, the holder needs to make sure that it is **exploited** in the most advantageous aesthetic and economic ways. Licensing of copyright can be undertaken and administered in different ways.

- The **owner** can be responsible for their own works
- **Publishers** of works can act on the owner's behalf
- **Collecting Societies** can act on behalf of members who own copyright

Modern technology can make tracing use or misuse of works extremely difficult. It can be equally difficult for potential users of copyrighted material to find out where permission can be obtained.

There are a number of well established mechanisms that have been developed over the years that provide the main ways for the copyright holder to exploit their intellectual property.

Licences

A licence is really a contract between two or more parties that set out the terms of the agreement. There are two main types of licence for copyright contracts.

Exclusive licenses grant sole reproduction rights to one legal entity, for specific purposes and/or in defined geographical locations. This also has the effect of excluding all others, including the copyright holder, from exploiting the works for those purposes for the duration of the licence. Such agreements must be made in writing.

Non exclusive licences do not give sole reproduction rights but simply permit somebody to use the copyrighted work for defined purposes. Several similar agreements could be in place at one time even for precisely similar arrangements.

Blanket Licences

These are again contracts for use of copyrighted material but are issued by a licensing body for use across a defined copyrighted material user group. The most well defined scheme is that operated by the Copyright Licensing Agency that confers permission on staff and students at academic institutions to use copyright material under certain well defined limits.

Assignments

An assignment is the permanent transfer of copyright from one person (initially the creator) to another. This essentially removes all interest in and influence over the work from the creator and so should only be done when there are clear benefits.

Contracts

One of the most important pieces of advice that can be given is that even for the most simple of agreements regarding copyright, there should be a basic contract setting out the terms of the agreement and any financial arrangements. Many of the problems relating to copyright could be simply resolved by having a contract in place at the start of the relationship.

Although contracts need to be drawn up to reflect the needs of each agreement, they need not be excessively complex. Some professional bodies have model contracts for use by their members and Collecting Societies will undertake the negotiations on behalf of their members for a fee.