

What do I need to know about copyright?

Copyright is an intellectual property. The law recognises that the copyright owner has certain exclusive rights which may be assigned or licensed.

These rights were granted to protect the interests and investment of creators of original dramatic, musical, literary or artistic work. But the work must exist in a material form (in writing or as a recording). There is no copyright in an idea.

History & Legislation

The *Copyright, Designs and Patents Act 1988* sets out the rights of copyright owners, remedies for infringement of copyright and (for the first time) moral right. It supersedes the *Copyright Act 1956* and the *Performers Protection Acts 1958-72* although these Acts continue to apply to ownership of copyright and to infringement before 1989. Changes to the 1988 Act were implemented on 31st October 2003 to comply with an EU Directive on the harmonisation of certain aspects of copyright.

Ownership & Duration

In the case of joint authorship, 70 years after the death of the last surviving author. Unpublished and published works are both protected for the same period.

Material	Duration	First owner of copyright
literary works	70 years after the death of the author	author
dramatic works	70 years after the death of the author	author
musical works	70 years after the death of the author	author
artistic works	70 years after the death of the author	author
films	70 years after the death of the last to survive of the following: director, author of the screenplay, composer of any music created especially for the film	principal director and film producer (joint)
sound recordings	50 years	record producer
broadcasts	50 years	broadcaster
published editions	25 years	publisher

Copyright and your employment

If you create a work in the course of your employment then your employer is the first owner of the copyright unless there is some agreement to the contrary. Accordingly, if you are employed as a composer or writer in a school or college, your contract should stipulate who will own the copyright of your work.

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Copyright of sound recordings is first owned by the person who makes the arrangements necessary for the making of the recording. Thus an independent record company who makes use of another company's recording facilities will own the copyright

Registration

There is no requirement in the UK legislation to register copyright, and there is no facility to do so. The rights of copyright are automatically conferred on the copyright owner as defined by the 1988 Act. It is standard practice to indicate the owner of copyright in work by writing or printing at the bottom of the title page or in another prominent position (copyright symbol) followed by the owner's name and the year.

If there is likely to be a dispute over the date of authorship of a work, it is possible to validate a date by which the work existed. The easiest way to do this is to post a copy of the work to yourself and retain the sealed envelope. Alternatively, you could lodge a copy with your solicitor.

Transferring copyright

Like physical property, copyright can be bought and sold and ownership can be transferred. However, just owning the material itself does not mean that you own the copyright.

Economic Rights

The copyright owner has the exclusive right to do the following in the UK:

- copy the work;
- issue copies of the work to the public;
- perform, show or play the work in public (including making a recording);
- broadcast the work or include it in a cable programme;

- make an adaptation of the work, for example an arrangement of a composition.

This list of permitted acts is not exhaustive but these are the main rights which can be commercially exploited.

Moral Rights

In addition to these economic rights, the 1988 Act introduces two moral rights: the right of paternity and the right of integrity.

The right of paternity is the right to be identified as the creator of the work. It must be asserted in writing before it can be enforced. This right cannot be assigned, but can be waived by the creator. For musical works it applies where the work is published commercially, recorded or used in the soundtrack of a film. It does not apply to broadcasts of musical works.

The right of integrity is the right to object to derogatory treatment of a work, that is distortion or mutilation of a work by adaptation or arrangement which is prejudicial to the honour or reputation of the creator. It does not require assertion in writing.

In general, moral rights do not apply where a work is made for publication in a newspaper, magazine, encyclopaedia, anthology or other similar publication, or made available with the consent of the creator for these purposes. Composers are under increasing pressure from broadcasters and film producers to waive moral rights for the purposes of editing and dubbing.

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Permitted Acts

The law permits various acts which do not generally constitute infringement of copyright, the principal ones being:

- use of a work for research and private study
- criticism, review and news reporting
- incidental inclusion
- things done for the purposes of instruction or examination
- time shifting of video recordings for private and domestic use

Copyright in a musical work is not infringed by incidental inclusion in an artistic work, sound recording, film, broadcast or cable programme. Musical works and words spoken or sung with music which are deliberately included in another work do not fall within this exemption.

The provision for 'time-shifting' allows a viewer to record a programme and watch it at a more convenient time provided that it is for private and domestic use and that no permanent copy is kept.

Copying of one page to avoid page turning is accepted practice. *The Code of Fair Practice* published by the Music Publishers Association sets out exemptions and permissions for use of copyright material.

Infringement and Remedies

Copyright is infringed by a person who, without the licence of the copyright owner, does, or authorises someone else to do, any of the following which are acts of primary infringement:

- copies the work;
- issues copies of the work to the public

- performs, shows or plays the work in public
- broadcasts the work or includes it in a cable programme
- makes an adaptation (arrangement) of the work

There is also secondary infringement, which is done by a person who knows or has reason to believe that he is infringing copyright by:

- providing the means for making an infringing copy;
- importing an infringing copy into the UK for purposes other than domestic private use;
- possessing or dealing with infringing copy;
- permitting use of premises for infringement.

Remedies

Remedies for infringement include damages, additional damages for flagrant infringement and injunctions to prevent that and further infringement. Other remedies include the right of seizure of the infringing copies and the delivery of goods by court order.

Claiming damages

If you are claiming damages, you must prove that you have suffered loss and this must be quantifiable. A normal starting place is the amount of income (not just profit) received from wrongful exploitation of the copyright. Exclusive licences are entitled to the same remedies as the copyright owner, but double compensation in the form of damages to both is not permissible.

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Infringement of moral rights is actionable as a breach of statutory duty. In assessing damages for infringement of the right of paternity the court will take into account any delay in asserting that right. With regard to the right of integrity, the court may grant an injunction unless a satisfactory disclaimer is made to disassociate the creator from the treatment of the work.

Licences

The consent of the copyright owner must be obtained for the use of a work covered by the rights of copyright (eg copying or arranging). Consent is normally given in the form of a licence which gives authorisation for use of the copyright material for a particular purpose.

A number of central licensing bodies exist to facilitate the issuing of licences and the collection and distribution of royalties due. (See further information and resources)

Performers Rights

The 1988 Act gives performers the right (enforceable under criminal law) not to have their performance recorded for commercial exploitation. Performers, and those with whom they have exclusive recording contracts, have civil rights where a recording of a performance is made, or subsequently exploited, without the performer's consent. In a recording contract it is therefore important to give or obtain consent not only for the original recording but for all further recordings.

The Internet

In the UK, all copyright material posted, downloaded or sent via the internet is protected under the copyright legislation. Generally, when you put your work on a website, it is probably a good idea to mark each page of the website

with the international © mark followed by the name of the copyright owner and year of publication. In addition, you could include information on your website about the extent to which you are content for others to use your copyright material without permission. Although material on a website is protected by copyright in the same way as material in other media, websites are accessible from all over the world and, if material on your website is used without your permission, you would generally need to take action for copyright infringement where this use occurs.

Using Copyright Material

Since copyright material cannot be used without permission, you need to get the copyright owner's permission before using the material. There are several organisations which act collectively for groups of copyright owners and which offer 'blanket' licences to users. However, the copyright owner may decide not to give permission for use of his or her work.

Central Licensing Bodies

Performing Right Society – The PRS administers the non-dramatic performing rights in copyright musical works. Composers assign the performing right to the PRS, which licenses radio and television stations, concert halls and a wide variety of other premises at which music is performed. The licence fees collected by the PRS are distributed to its members (composers, lyricists and publishers) and to its affiliated societies overseas, having regard, as far as is practicable to the extent to which each work has been performed www.prs.co.uk

Mechanical Copyright Protection Society – The MCPS issues licences for making mechanical copies and synchronisation of copyright music.

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Like PRS, the MCPS collects licence fees and distributes the income to composers and/or their publishers. MCPS and PRS have formed an alliance although their functions remain distinct. www.mcps.co.uk

Educational Recording Agency – The ERA offers licences to educational establishments to make off-air recordings of cable and broadcast programmes to be used for the educational purposes of that establishment. www.era.org.uk

Phonographic Performance Ltd – PPL licences the broadcasting and playing of recorded music in public on behalf of the owners of the copyright in the sound recording. The organisation collects and distributes airplay and public performance royalties in the UK on behalf of over 3,500 record companies and 40,000 performers. www.ppluk.com

Copyright Licensing Authority - CLA is responsible for looking after the interests of rights owners over the copying of books, journals, magazines and periodicals. CLA's licences also include artistic works through its agency agreement with the Design and Artists Copyright Society. www.cla.co.uk Tel: 020 7400 3100

Further Information

We would like to thank the Incorporated Society of Musicians and the UK Patent Office for their information and assistance in the production of this Information Sheet.

The UK Patent Office has a detailed guide online with current updates and links -

www.patent.gov.uk/copy

The British Copyright Council – a good site with plenty of information and links -

www.britishcopyright.org

IP – the Government's intellectual property portal, www.intellectual-property.gov.uk

Music Publishers Association -

www.mpaonline.org.uk

Incorporated Society of Musicians –

www.ism.org

Arts Council of England have produced a helpful fact sheet on Copyright which can be downloaded from their website for free.

www.artscouncil.org.uk

Developed with thanks to

Voluntary Arts Network www.voluntaryarts.org



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