



Client guidance note

Guide to the Law Relating to Copyright: Ownership and Protection

This publication gives general guidance only. It may not always apply and should not be relied on in place of specific legal advice.

As more content is shared online, the public profiles of businesses can leave them exposed to content theft. This note considers what types of work copyright protects, how the right arises and how ownership of it is likely to be determined.

Copyright is an intellectual property (IP) right which prevents the unauthorised copying of original work. Copyright is infringed when the whole or a substantial part of a copyright protected work is copied without permission.

The law concerning copyright is governed by the Copyright Designs and Patents Act 1988 (the CDPA).

A copyright owner can enforce their rights against the infringing party in various ways, including by way of an injunction and/or a claim for damages. Copyright infringement can constitute a criminal, as well as a civil, offence.

What does copyright protect?

Copyright is a versatile IP right and as such, protects a variety of creative original works, including:

- Literary works (for example, books, articles);
- Dramatic works (for example, dance or mime);
- Musical works (for example, a song, musical composition);
- Artistic works (for example, photograph, painting, work of architecture); and
- Sound recordings, films or broadcasts.

To qualify for copyright protection, a literary, dramatic, musical or artistic work must be original. Originality means that it is not copied from other works and is created through the author's own skill, judgment and individual effort.

It's important to note that copyright protects the representation of the idea, not the idea itself.

Ownership

Unlike many other intellectual property rights, Copyright does not require registration to be enforceable.

Copyright accrues automatically upon creation. For example, in writing this guidance note, or in the taking of a photograph, copyright is created in the corresponding text and image.

The Author

The default position in UK law is that the first owner of copyright in a work will be the author: for example, the writer of an article, the photographer in respect of a photograph, and so on.

The Employer

Where the law deviates from the above is in circumstances of employment. The first owner of copyright created "*in the course of employment*" is the employer, not the employee.

Disputes can arise between employees and employers if they both stake respective ownership claims in what may be valuable work. Where an employee's role changes from what was originally set out in their employment contract or if they create work outside of what is expected of them "*in the course of their employment*", ownership can become unclear.

Therefore, to reduce the risk of dispute, regular employment contract audits are recommended. Specific IP clauses can also be included in employment contracts which clearly set out the rights position. Managing employee expectations at an early stage can invariably be more cost effective than arguing the issue in court, when it could be too late.

The Contractor

Outside of employment, when third party independent contractors are commissioned/retained to produce content for a business, copyright disputes can also arise.

One of the highest potential risks of dispute is in regard to the creation of a website. A new website will often involve creating text, graphics, images, and video content, authored by the contractor. Who owns that content?

Absent any contractual terms agreed between the parties, the first owner of copyright in the content is the contractor, not the paying party. Ownership of copyright does not automatically transfer upon payment. It matters little how much has been paid to the contractor for the work.

In most scenarios, this may not be a problem: provided that the contractor is paid, they may have little interest or value in retaining/reusing or restricting use of the content.

However, when disputes arise over payment for example, the commissioning party can be denied permission to use content for which they believe they have already paid.

Therefore, it is recommended that clear contract terms (T&Cs) are put in place beforehand so that each party's responsibilities are set out and, in the case of copyright, rights transfer upon payment.

Moral Rights

When discussing copyright, it is important not to overlook moral rights.

Moral rights seek to protect the integrity of work and like copyright, arise automatically upon creation of a piece of work. However, unlike copyright, their ownership cannot be transferred.

Moral rights include the right to be recognised as the author of a work and the right to object to the derogatory treatment of the work (the right to object to any editing or adaptation of the work).

Moral rights can be important because they give the owner an element of control over the work, even if their ownership of copyright in that work has been transferred (assigned) to another party. In the circumstances of employment, the moral rights will vest in the employee unless there is a waiver of rights inserted into the contract of employment.

It is therefore recommended that moral rights are also addressed in clear terms of business or contract of employment from the outset, before the relevant work is created.

Duration

In respect of literary, dramatic, musical or artistic works, copyright will last for 70 years from end of calendar year in which the author died.

Copyright in sound and music recordings will last 70 years from first publication. For films, it will be 70 years after the death of the director, screenplay author and composer.

The duration of time that copyright lasts in a work will generally depend upon the type of work in question. The periods of duration below are set out as general guidance and if specific advice is required, it should be sought from a lawyer with expertise in this field.

Databases

Data is now referred to as the world's commercially most valuable resource, so it's rational that the owners of data will want to protect it.

Copyright can be used in certain circumstances to protect the unauthorised copying and misuse of data. However, Database Rights can also provide protection for the compilation of information comprising a database.

There can be a crossover between the two rights, so it's recommended that legal advice is sought on this issue.

Conclusion

The law relating to copyright is complex and constantly developing. The purpose of this note is to assist in providing an overall understanding of the legal context within which such rights operate.

This note is designed to be read in conjunction with second note, "*Copyright: Infringement and Enforcement.*"