



Information Sheet

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Copyright

What do I need to know about Copyright?

Copyright is an issue that worries everyone from time to time. However, the law governing it is based on a series of simple guidelines specifically designed to safeguard the economic and moral rights of the creator, whilst also providing clear guidance for anyone who wishes to use someone else's material. This briefing will explain your rights as a copyright owner, along with your responsibilities when using the copyright material of others. It will also provide contact details of relevant legislative organisations and central licensing bodies.

A. Background

The Copyright, Designs and Patents Act 1988 (UK) sets out the rights of copyright owners, remedies for infringement of copyright and (for the first time) moral rights. 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. The Republic of Ireland's equivalent of the UK's 1988 Act is the Copyright and Related Rights Act 2000.

B. Your rights as copyright owner

Economic rights

Copyright is granted to protect the interests and investment of creators of original dramatic, musical, literary or artistic work.

The work must exist in a material form (in writing or as a recording), as copyright does not apply to ideas. The law recognises that a copyright owner has certain exclusive rights (which may be 'assigned' or 'licensed') 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 that can be exploited commercially.

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 (i.e. clearly stated in written form) before it can be enforced. This right cannot (unlike economic rights) be granted to another person, but it can be waived by the creator. For musical works it applies to work that is published commercially, recorded or used in the sound-track 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, distorting or mutilating the work by adapting, changing or arranging it in a way which is harmful 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 now finding themselves under increasing pressure from broadcasters and film producers to waive moral rights for the purposes of editing and dubbing.

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. For that reason, 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.

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 under UK legislation to register copyright, and there is no facility to do so. The rights of copyright are automatically granted to the copyright owner as defined by the 1988 Act. For

written work it is standard practice to indicate the owner of copyright by writing or printing at the bottom of the title page or in another prominent position the © 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 the date at which the work first came into existence. The easiest way to do this is to post a copy of the work to yourself and retain the sealed envelope. Alternatively, you could give a copy to 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.

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.

Ownership and Duration

Material	First owner of copyright	Duration
Literary works	Author	70 years after the death of the author
Dramatic works	Author	70 years after the death of the author
Musical works	Author	70 years after the death of the author
Artistic works	Author	70 years after the death of the author
Films	Principle director and film producer (joint) especially for the film	70 years after the death of the last to survive of the following: director, author of the screenplay, composer of any music created
Sound recordings	Record producer	50 years
Broadcasts	Broadcaster	50 years
Published editions	Publisher	25 years

In the case of joint authorship, copyright is retained until 70 years after the death of the last surviving author. Both unpublished and published works are protected for the same period.

C. Using the copyright material of others

Since copyright material cannot be used without permission, you need to get the copyright owner's permission before using their material. Consent is normally given in the form of a licence which authorises the use of the copyright material for a particular purpose.

There are several organisations which act collectively for groups of copyright owners and which offer 'blanket' licences to users (see further information and resources). However, note that the copyright owner may decide not to give permission for use of his or her work.

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. However, musical works and words spoken or sung with music which are deliberately included in another work do not fall within this exemption.

For television, 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.

For printed works, copying 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

Primary infringement is when a person, without the licence of the copyright owner, does, or authorises someone else to do, any of the following acts:

- copy the work;
- issue copies of the work to the public;
- perform, show or play the work in public;

- broadcast the work or include it in a cable programme;
- make an adaptation (arrangement) of the work.

Secondary infringement 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 an infringing copy;
- permitting use of premises for infringement.

Remedies

Remedies for infringement include damages, additional damages for 'flagrant' (blatant or deliberate) infringement, injunctions to prevent this and further infringement, and the right to seize the infringing copies.

Claiming damages

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

Infringement of moral rights can also result in the payment of damages. In assessing damages for infringement of the right of paternity the court will take into account any delay in your 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 way the work has been treated.

D. 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 information on a web site, it is probably a good idea to mark each page of the web site with the

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

Further Information & Resources

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

- 🌀 The UK Patent Office has a detailed online guide with current updates and links – www.patent.gov.uk/copy
- 🌀 The British Copyright Council – www.britishcopyright.org
- 🌀 The Copyright Association of Ireland – their frequently asked questions section provides a good overview of the issues in Ireland – www.cai.ie
- 🌀 The Irish Copyright and Related Rights Act 2000 – www.gov.ie/bills28/acts/2000/a2800.pdf
- 🌀 IP is 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's free factsheet on copyright – www.artscouncil.org.uk
- 🌀 Own It – free advice on intellectual property, copyright, patents and licensing for creative people in London – www.own-it.org

Central licensing bodies

- 🌀 Performing Right Society – www.prs.co.uk – 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.
- 🌀 Mechanical Copyright Protection Society – www.mcps.co.uk – issues licences for making mechanical copies and synchronisation of copyright music. 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.
- 🌀 Educational Recording Agency – www.era.org.uk – 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.
- 🌀 Phonographic Performance Limited – www.ppluk.com – 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.
- 🌀 Copyright Licensing Authority – www.cla.co.uk – 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. Tel: 020 7400 3100.

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