

Copyright Law - An Introduction



The following pages outline some basic facts about copyright law and answer various questions, such as 'how long does copyright last?' 'When does infringement occur?'... and more. There is also a brief overview of the different ways in which the MCPS and PRS deal with copyright in carrying out their functions as collecting societies.

PLEASE NOTE: the following information on copyright is intended as a general guide only. This material is not intended to constitute legal advice and should not be relied on as such. The Alliance, on behalf of itself and MCPS and PRS excludes any responsibility or liability for reliance on this information.

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Introduction

Copyright is a *property* right that subsists in a number of works. It is not necessary to register copyright it arises automatically. The copyright work must be in a material form, however, in order to be protected - copyright is not a right in ideas, it protects the *expression* of an idea.

The Copyright, Designs and Patents Act (CDPA) 1988 gives authors certain economic and moral rights in their works.

Copyright subsists in the following works:

- Original literary works (including computer software)

- Original musical works
- Original artistic works
- Original dramatic works
- Films
- Sound recordings
- Broadcasts, including broadcasts by wire or cable.
- Typographical arrangements of published editions

It should be noted that in the United Kingdom the lyrics of a song and the musical score are protected separately being literary and musical works respectively.

How long does copyright protection last?

Copyright in original musical, literary, dramatic and artistic works lasts until 70 years after the death of the author. The copyright in films also lasts for 70 years after the death of the last to survive of the principal director, author of the screenplay and dialogue and the composer of the music created specifically for the film. Copyright protection in sound recordings and broadcasts exists for 50 years from the end of the calendar year in which it was made or released. Copyright in the typographical arrangement of published editions exists for 25 years from first publication.

Where the work has originated from outside the European Economic Area (EEA) or the author is not an EEA national the situation is slightly different. In this situation the copyright will generally last for as long as the work attracts copyright protection in the country of origin (usually the country where the work is first published) or if not published, the author's national country as long as that period does not exceed the period for which UK copyright law protects works of EEA origin.

Authorship and Ownership of Copyright

Authorship

The author of a copyright work is generally the person who creates it. In relation to sound recordings this is the producer. In films the principal director and producer are joint authors. The author of a broadcast is the person who made it. Finally the publisher of a typographical arrangement of a published edition is the author of it. Where two or more people collaborate in creating a work and their individual contributions are not distinct they are joint authors of that work. So where two or more persons do collaborate but it is possible to determine the separate parts attributable to each author it will not be a work of joint authorship.

Ownership

Generally the author of the work is the first owner of copyright and therefore those people mentioned above are also the first owners. If a literary, musical, dramatic, artistic work or film is made in the course of employment, however, the employer is the first owner of the copyright, unless there is any agreement to the contrary. It is important to distinguish ownership of a physical product with the ownership of the copyright embodied within it. For example the purchase of a CD does not mean that the purchaser owns the copyright in the musical or literary work within it or the copyright in the sound recording. Therefore purchasing a CD alone does not entitle the purchaser to copy the work or do any other acts which are restricted to the copyright owner.

Rights of a Copyright Owner

Economic Rights

The economic rights of a copyright owner are expressed in the Copyright Designs and Patents Act (CDPA) 1988 as a series of 'restricted acts' that only the copyright owner can do or authorise. These are:

- To copy a work
- To distribute copies of a work
- To rent or lend a work
- To perform, show or play a work in public
- To communicate a work to the public (which is any electronic transmission and includes broadcasting)
- To adapt a work (and all the other acts with that new work)

All these rights include the right to do any of these acts with a substantial part of the work; this is assessed qualitatively and therefore can be a very small part of a work if it is distinctive.

Moral Rights

The author of a copyright literary, dramatic, musical or artistic work and the principal director of a film have the following moral rights in relation to their work:

- **Paternity right** - The right to be identified as the author, such as having his name printed on his work. The right has to be asserted by the author in order to have effect.
- **False attribution** - A person has the right not to have a work, which they have not created, falsely attributed to him.
- **Integrity Right** - The author has the right not to have his work subjected to derogatory treatment, he can object to any distortion or mutilation of his work prejudicial to his honour or reputation or of a director.

There is a further moral right which is not granted to an author of a work:

- **Privacy in photographs**

This is a very specific moral right and relates to the situation where a private photograph has been commissioned for private and domestic purposes. In such a situation the copyright of the photograph will vest in the photographer, but this moral right allows the subject of the photograph to prevent any general distribution, exhibition or communication of it. Generally moral rights exist for as long as copyright exists in the work, with the exception of false attribution which lasts until 20 years after a persons death. Moral rights may be waived but cannot be assigned and so do not pass with any assignment or licence of the copyright.

Dealing with Copyright

There are essentially two ways in which the copyright owner can deal with his copyright. Firstly, by assignment and secondly by licensing.

Assignment

Copyright is a property right and therefore like physical property it can be assigned. Assignment is akin to selling all or part of the copyright. It is possible for the copyright owner to assign his copyright in its entirety to another party. However, it is also possible to assign merely one part of the copyright, such as the right to copy, and the assignment may be further limited in that the assignment may only be for a certain period of time. Assignment may also take place by will in the same way as any other personal property. To be valid, any assignment of copyright must be made in writing and signed by or on behalf of the copyright owner.

Future Assignment

The Copyright, Designs and Patents Act 1988 allows a copyright owner to agree to assign the copyright in works that he will create in the future. When such works come into existence they will automatically transfer to the assignee in the agreement. The ability to assign copyright in future works is particularly useful in relation to members of The Performing Right Society (PRS) as it ensures that they do not have to make a separate agreement to assign their rights to PRS each time they create a new work.

Licensing and Exclusive Licences

It is possible to license a right instead of assigning it. In granting a licence the copyright owner merely gives another person permission to use that right for the particular purpose as agreed in the licence terms. Licensing is more flexible than assignment as it is possible to licence many people to use copyright simultaneously (a non-exclusive licence). Licences can be limited as to what can be done and can be limited in time. It is also possible to give an 'exclusive licence'. This means the copyright owner grants a person permission to exercise a particular right exclusively (even to the exclusion of the copyright owner themselves). An exclusive licence can be limited in the rights given and the time period. An exclusive licence must be in writing and signed by or on behalf of the copyright owner granting the licence.

Infringement of Copyright

If a person carries out one of the restricted acts without the authorisation of the copyright owner this constitutes copyright infringement. These acts are strict liability which means that it is not necessary for the copyright owner to demonstrate that the person conducting the acts knew that he was infringing copyright. Indeed it is possible to infringe copyright subconsciously. The copyright owner's rights are not limited by the amount of work used, thus if a 'substantial part' of the work is, for example, copied or broadcast this will still constitute an infringement of the work. A substantial part is assessed qualitatively and could be a very small part of the work if that part was distinctive and thus substantial. The copyright owner is also able to take action against persons who subsequently deal with an infringing copy or facilitated the infringement itself. These acts are known as acts of secondary liability. The copyright owner is able to take civil action for copyright infringement where a number of remedies are available (see below under 'Remedies'). Some acts of copyright infringement also constitute a criminal offence and therefore criminal

proceedings can be taken by the copyright owner, Trading Standards or other law enforcement agencies.

Secondary Liability

The Copyright, Designs and Patents Act 1988 provides that there are certain acts that constitute 'secondary infringement'. These acts are either subsequent dealings with an infringing copy or an act which facilitated the infringement itself.

The acts of secondary infringement are:

- Importing infringing copies
- Possessing or dealing with infringing copies
- Providing the means for making infringing copies
- Permitting the use of premises for an infringing performance
- Provision of apparatus for an infringing performance

The provision of these acts in the Copyright Act is very important. When enforcing the copyright owner's rights; often it is not possible to trace the person who conducted the original infringement by carrying out one of the acts of primary liability. An article is an infringing copy if its making constituted an infringement, for example, it was made without the consent of the copyright owner. If a person conducts any of the above acts, the copyright owner may take action. However, in relation to acts of secondary liability, it must also be shown that the person who conducted those acts knew or had reason to believe that he was infringing copyright. New regulations amending the CDPA 1988 which came into force on 31st October 2003 have also introduced the ability for copyright owners (and certain licensees) to take infringement proceedings against anyone that circumvents technological measures, such as copy control devices) which have been applied to a work or who removes or alters electronic rights management information associated with a work, or imports or sells devices for these acts to be done.

Permitted Acts

The Copyright, Designs and Patents Act 1988 allows a number of uses of copyright works without the permission of the copyright owner in certain specific circumstances. There are two distinct types of permitted acts, fair dealing and exceptions.

Fair Dealing

The fair dealing exceptions are fairly limited and exist for the purposes of:

- Non-commercial research and private study
- Criticism and review
- Reporting current events

Fair dealing acts differ from other exceptions to copyright in that these involve an assessment as to whether the dealing is fair. In determining this issue the courts have generally considered three main questions.

First is the person really using the work for the stated purpose? For example, if an entire work has been used and it is followed by two lines of vague review this will not constitute use for the purpose of criticism and review. If the use has not been for one of the stated purposes it will not fall within fair dealing and as such any use without permission will be an infringement. If the work has been used for one of the stated purposes the court will then consider whether the use of the work was fair in all the circumstances. Such an assessment will involve a number of factors and will depend upon the particular circumstances of each case. Finally in order to benefit from a fair dealing exception a sufficient acknowledgement must accompany the work (with the exception of reporting current events by means of sound recording, film or broadcast). This means that there must be a visible notice demonstrating the claim that the copyright owner has to his work.

Exceptions

There are also a number of general exceptions in the Copyright Act for a variety of purposes. Broadly these are:

- **Educational exceptions** - exceptions in relation to specific acts taking place in teaching and educational establishments.
- **Library and archiving exceptions** - exceptions relating to various aspects of libraries and archiving, such as; libraries making copies for use in non-commercial research, or for archiving material.
- **Public administration** - exceptions relating to various parliamentary/judicial functions and public information, such as reporting legal cases.
- **Incidental inclusion of the copyright work** - this exception relates to the situation where for example a documentary is being filmed and incidentally includes a passing car playing copyright music or a building or sculpture which is a copyright work. These incidental inclusions would be excepted from copyright liability. However, the Copyright, Designs and Patents Act 1988 provides that where music is in fact deliberately included, it will not be possible for a person to claim incidental inclusion.
- **Lawful use of a computer program/database** - a person who is lawfully using a computer program or database is allowed to make back-up copies and in certain circumstances de-compile programs, however, it must be noted this is only where the initial use is lawful.
- **Timeshifting** - a limited exception is allowed so that a person in *private and domestic* circumstances can copy a broadcast (and the copyright works embodied in it) to watch or listen to at a more convenient time.

Remedies

If a person carries out one of the restricted acts without the copyright owner's permission, the copyright owner is able to take action for infringement. It should be noted here that an exclusive licensee has the same right as the copyright owner in this respect and therefore can also take action for copyright infringement. There are a number of remedies that the copyright owner can obtain from the Court in a civil action for copyright infringement.

These are:

- Injunctions - this is a very important remedy as it allows the copyright owner to get a court order prohibiting any further infringement.
- Damages - in any action for copyright infringement it is possible for the copyright owner to obtain damages for his loss. This is often based on what would have been a reasonable licence fee. In the event that the infringement has been particularly flagrant he will be able to get punitive damages in addition to the basic amount. As an alternative, a copyright owner can elect to have an account of the infringer's profit.
- Order for 'delivery up' of infringing articles - the Court can order that the infringing party deliver all infringing articles into Court so that he no longer has them in his possession.
- Right to seize infringing copies - it is possible for the copyright owner after informing the police to seize infringing copies. The MCPS Anti-piracy Unit conduct raids on suspected parties to seize illegal product, such as counterfeit or pirate CD's.

Criminal Offences

A number of acts conducted without the copyright owner's permission are classified as criminal offences.

These are:

- Making an infringing article for sale or hire
- Importing an infringing article into the UK other than for private and domestic use
- Possessing an infringing article in course of business with a view to committing any act infringing copyright
- Selling, letting for hire, offering/exposing for sale or hire, exhibiting in public, or distributing an infringing article in the course of business
- Distributing an infringing article not in the course of business but to such an extent as to prejudice the copyright owner, for example, a large number of infringing copies are given away free therefore affecting the copyright owner's revenue
- Making/possessing an article specifically designed for making copies of a copyright work
- Communicating a work to the public in the course of a business or in such a way as to prejudicially affect the copyright owner.
- Causing an infringing public performance of a literary, dramatic or musical work
- Causing an infringing public showing of a sound recording or films
- Circumventing technological measures or removing or altering electronic rights management information or dealing in devices meant for that purpose.

A person commits an offence if they knew or had reason to believe that they were conducting any of these acts with an infringing article or that their actions would cause an infringement. These offences carry varying levels of possible punishment including fines and/or imprisonment with, for certain cases, a maximum term of imprisonment of ten years. In these cases, it is possible to apply to a Court to obtain a search warrant in order to seize infringing articles. It is also possible for the plaintiff to get an order for delivery up of infringing articles in criminal proceedings as is the case in civil proceedings. The infringing articles may also be destroyed. A company can be guilty of copyright infringement; Furthermore, it is shown that the offence has been committed with the consent or connivance of a director, manager, secretary or other similar officer of that company that person, as well as the company will be liable for the offence.

MCPS and Copyright

MCPS is a music industry collecting society acting on behalf of the vast majority of those who own, control or administer the copyright subsisting in musical works. MCPS represents composers and music publishers in the UK and also sister collecting societies overseas by virtue of reciprocal agreements.

The members of MCPS do not assign their rights to the Society. MCPS acts as an exclusive agent for its members. The basis of MCPS' authority derives from the Membership Agreement - the agreement between the member and MCPS. In the Membership Agreement a mandate is conferred upon MCPS to administer the following rights:

- To copy the work
- To issue copies of the work to the public
- To rent or lend the work to the public

These rights are known as 'mechanical rights' although this is not a term used in the Copyright, Designs and Patents Act (CDPA) 1988 or the Membership Agreement. MCPS acts in a number of different ways according to the authority given to it by its members. In several areas, such as licensing record companies for the reproduction of musical works into sound recordings, MCPS acts exclusively for all members. In some specific areas MCPS can only grant a licence where the member has given MCPS a specific mandate to do so, for example music used in videos or television advertisements. MCPS licences others for a particular use of a work or a catalogue in return for a royalty, which after deducting a commission it allocates and distributes to its members.

PRS and Copyright

As stated above, the owner of the copyright in a work may either exercise the rights in that work himself or transfer them to some one else, such as a publisher or collecting society to exploit them on his behalf.

The Copyright, Designs and Patents Act (CDPA) 1988 also enables the copyright owner to limit the scope of that assignment to one or more, but not necessarily all, of the restricted acts that collectively form the bundle of rights known as copyright. Composers assign the 'performing right' in their compositions to PRS in order that PRS can act effectively on their behalf. The composer is required to enter into this assignment upon election to membership. This means that PRS is then the owner of these rights. The following rights are assigned upon membership:

- To perform the work in public
- To communicate the work to the public, which includes the right to broadcast the work or otherwise make the work available by electronic transmission
- Film-synchronisation (copying on to the sound track of a specific film a musical work specially written by the Member for that purpose)

The CDPA allows a copyright owner to assign not only the copyright he has in his current works but also the rights that will arise in any future works which he creates. PRS stipulates in its Articles that the assignment given by the member must include these future rights – this means that the copyright owner does not have to enter into a new assignment every time he creates a new work.

Collectively the assignments that PRS takes from its members, together with the licences from its affiliated societies around the world, form the vast repertoire of copyright works which the Society is able to administer in the UK on behalf of its members and affiliates. As owner of the performing rights in its members' works and licensee of the rights otherwise vested in its affiliates, the Society is able to exploit its repertoire by granting licences for the public performance, broadcast (including transmission by cable) and other communication to the public. PRS grants such licences in return for royalties, which after deducting its administration costs, it then allocates and distributes to its members and affiliates in accordance with their respective interests in the works performed.