



## Copyright Protection and Remedies for Infringement

Copyright protection is regulated in the United Kingdom by the Copyright, Designs and Patents Act 1988, which came into force on 1 August 1989. It has since been extended and amended by various regulations including the Duration of Copyright and Rights in Performances Regulations which took effect from 1 January 1996 and the Copyright and Related Rights Regulations 1996 which came into force on 1 December 1996.

### What is protected by Copyright?

Copyright does not protect ideas. It is commonly said that it protects the expression or form that ideas take. The works that are protected by copyright are:

- Literary, dramatic, musical or artistic works. Artistic works include graphic works, photographs (see Fact Sheet 14), engravings (see Fact Sheet 13), sculptures (see Fact Sheet 8), collages (see Fact Sheet 15), works of architecture including buildings or models for buildings (see Fact Sheet 10) and works of artistic craftsmanship, (see Fact Sheet 11)
- Sound recordings, films, broadcasts or cable programmes and
- Typographical arrangements of published editions.

When a work contains a combination of elements – for example a multimedia art work, multiple copyrights can exist in the work to protect its separate elements.

### What is Copyright?

Copyright is a bundle of rights which allows the owner of the copyright in a work to prevent any other person from doing various things with the work without his or her consent. This includes copying the work (which would include any form of copying such as printing, or including it in a film or making a copy of a drawing), performing the work, broadcasting or transmitting by cable a copy of the work and issuing such copies to the public or distributing copies. Issuing copies to the public includes anything done by electronic transmission. So the right applies to posting works on the internet. In relation to artistic works copying includes making a copy in three dimensions of a two-dimensional work and vice versa.

There are certain exceptions and exemptions to copyright protection to allow fair use and fair dealing with works. (See Fact Sheets 3 and 20).

### How does Copyright come into existence?

Copyright protection is afforded to copyright works the moment that the works are fixed in any material form. In the United Kingdom and most other territories works do not have to be registered to be afforded copyright protection or to prove ownership. However, if you put the symbol © with your name and the year of creation somewhere on the work you will make people aware of your claim to copyright ownership, although of itself, it is not proof. It is, however, sometimes useful to be able to prove a time at which the work was in existence and in what form. Many creators of copyright works therefore send themselves a copy of the work by recorded delivery post and then keep the envelope with the date stamp unbroken. If there is any question that subsequently arises as to the time of creation of the work, this envelope can be opened in the presence of a solicitor or an appropriate official.

### Who Owns Copyright?

Generally speaking it is the author of the work (i.e. the creator) that first owns the copyright existing in it. One exception to this is if the creator of the work is an employee and the work is created in the course of employment, where the first owner of the copyright in the work will be the employer. In some circumstances a commissioner of a work might own the copyright. This depends upon the terms of the commission contract, so it is important to read these carefully. Copyright can be assigned (in writing signed by or on behalf of the copyright owner) and it can be licensed to third parties.

### How long does Copyright Protection last?

Copyright for literary, dramatic, musical and artistic works lasts for the creator's life plus 70 years from the end of the year in which he or she died. This period of protection applies throughout the European Economic Area. Other territories may give shorter periods of protection but usually not less than life of the creator plus 50 years. There are some special provisions which apply to older unpublished works. (See Fact Sheet 17).

Sound recordings, films, broadcasts and cable programmes are protected for 50 years from the date of making or the date of release if the release occurs within the first 50 years. Copyright in typographical arrangements of a published edition lasts for 25 years from the end of the year in which the edition was first published.

### **Remedies if someone infringes Copyright**

If someone infringes copyright by doing any of the so called restricted acts without the consent of the copyright owner (which is usually the creator). The creator may then be entitled first of all to an injunction to prevent further infringement, damages for the infringement that has already occurred, which is usually assessed on the basis of a normal licence fee that would apply or alternatively the creator can ask for an account of profits arising from the use of the work. Depending upon the flagrancy of the infringement a Court can award additional damages. The creator is also entitled to delivery up of any infringing items that may remain, and may opt to destroy them.

### **What to do if An Infringement is discovered**

If, as a creator, you discover that someone has been using your work without your consent, you should inform them that you are the copyright owner – this is called putting someone 'on notice'. You should then ask for an immediate undertaking that they cease the infringing activity and seek their proposal as to the payment of damages. If you do not get a satisfactory response within a very short time, then you will probably need to take legal proceedings. In all cases you should take specialist legal advice.

The content of this fact sheet is of benefit interest only and is not an exhaustive explanation of copyright protection and remedies for infringement. This fact sheet is not intended to apply to specific circumstances. The contents of this factsheet should not therefore be regarded as constituting legal or other advice and should not be relied upon as such. In relation to any particular problem that you may have, you are advised to seek specific and specialist advice.