

1 A Brief Introduction to Copyright

Governed in the UK by the Copyright, Designs and Patents Act 1988, copyright is an intellectual property right which bestows upon the creator and owner a number of exclusive rights including the right to permit or

Copyright protects various different types of material which can be broken down into the following categories:

- Literary, dramatic and musical works;
- Certain databases;
- Artistic works;
- Sound Recordings;
- Films;
- Broadcasts; and
- The typographical arrangement of published

It is important to bear in mind that these categories may become mixed in a real world situation. For example, multiple copyright works to form a single work.

Copyright protection, unlike patents, is not granted automatically. Although certain rights arise automatically, registration, no official registration is required. The use of the ® symbol in relation to a trademark is a formality in order to use the ® symbol. It is not to use this on your work, not to use the ® symbol, nor the name of the copyright owner.

Although there are no registration requirements, certain criteria in order to qualify for copyright protection. A work protected by copyright unless it is original. This reflects the notion that copyright protects the expression of an idea rather than the idea itself.

To further establish the date of creation of a work, it may be advisable to send yourself a copy of that work by post or to lodge a copy of it with a bank or solicitor. This can provide evidence in the event of later disputes as to the date of creation and originality of a work.

2 Infringement

Copyright owners have certain exclusive rights which are exercisable by them alone. Acts which infringe these rights are known as “restricted acts”. These are:

- Copying the work;
- Issuing copies of the work to the public;
- Renting or lending the work to the public;
- Performing, showing or playing the work to the public;
- Communicating the work to the public;
- Making adaptations of the work and doing any of the above acts in relation to such adaptations.

Under the Copyright, Designs and Patents Act 1988, copyright is an intellectual property right which bestows upon the creator and owner a number of exclusive rights including the right to permit or

Copyright protects various different types of material which can be broken down into the following categories:

tions.

These categories are, though clearly separate, not mutually exclusive. It is common, therefore, for a single work to be protected by multiple copyright works to form a single work.

Copyright protection, unlike patents, is not granted automatically. Although certain rights arise automatically, registration, no official registration is required. The use of the ® symbol in relation to a trademark is a formality in order to use the ® symbol. It is not to use this on your work, not to use the ® symbol, nor the name of the copyright owner.

Although there are no registration requirements, certain criteria in order to qualify for copyright protection. A work protected by copyright unless it is original. This reflects the notion that copyright protects the expression of an idea rather than the idea itself.

To further establish the date of creation of a work, it may be advisable to send yourself a copy of that work by post or to lodge a copy of it with a bank or solicitor. This can provide evidence in the event of later disputes as to the date of creation and originality of a work.

Copyright owners have certain exclusive rights which are exercisable by them alone. Acts which infringe these rights are known as “restricted acts”. These are:

ic;

ing any of the above acts in

If anyone other than the copyholder performs any of the restricted acts without the copyright owner's consent, that party will be infringing copyright.

It is important to note that the acts must be performed in relation to a whole copyright work in order to constitute infringement. Performing the acts in relation to a "substantial part" can be tricky as it is not defined anywhere in the Act. When determining whether a part is a substantial part of a work has to be a qualitative assessment will be qualitative rather than quantitative.

Certain acts are still permitted by the Act and do not constitute infringement. These acts fall under the following categories:

- The making of temporary copies;
- Incidental inclusion;
- Criticism, review and news reporting;
- Educational Use;
- Use by libraries, archives and museums;
- Use for public administration;
- Public interest;
- Copying for the visually impaired;
- Works permanently situated in public places.

Temporary Copies

Copyright is not infringed if a person makes a "transient or incidental copy" of a work which is an integral and essential part of a technical process, the purpose of which is to transmit the work over a communication system of the work. This is subject to the condition that the temporary copy must have no independent economic significance. It is also important to note that this exception does not apply to copies made for a program or database.

Incidental Inclusion

This exception applies to the inclusion of a copyright work in such a way that the work is "incidentally included" in such a work. This will be assessed on a case-by-case basis and will generally be taken to refer to little more than a fleeting glimpse of the work which is barely discernible in the background. The inclusion of a copyright work in a work can be "incidentally included" if the work is included in the background music delivered by a public place within this exception.

Criticism, Review and News Reporting

Another of the "fair dealing" exceptions is for criticism or review. This exception applies either to the work being reviewed or another work which is being reviewed. It is important to note that the work must have been made available to the public.

With the exception of the above, the Act provides that a sufficient acknowledgement is not required for the purpose of reporting current events.

of the restricted acts without the copyright owner's consent, that party will be infringing copyright.

It is important to note that the acts must be performed in relation to a whole copyright work in order to constitute infringement. Performing the acts in relation to a "substantial part" can be tricky as it is not defined anywhere in the Act. When determining whether a part is a substantial part of a work has to be a qualitative assessment will be qualitative rather than quantitative.

Certain acts are still permitted by the Act and do not constitute infringement. These acts fall under the following categories:

temporary copies which are made for the purpose of a technical process, the purpose of which is to transmit the work over a communication system of the work. This is subject to the condition that the temporary copy must have no independent economic significance. It is also important to note that this exception does not apply to copies made for a program or database.

For example, sound recordings, films and television broadcasts. A copyright work is "incidentally included" in such a work if the work is included in the background music delivered by a public place within this exception.

Another of the "fair dealing" exceptions is for criticism or review. This exception applies either to the work being reviewed or another work which is being reviewed. It is important to note that the work must have been made available to the public.

With the exception of the above, the Act provides that a sufficient acknowledgement is not required for the purpose of reporting current events.

required when reports or recordings where to give

ing film, broadcast or sound
ment would be impossible.

Educational Use

This category of exception

ed into the following

- Research and private study
 - This exception covers limited copying of material important to the individual, such as dramatic, literary, musical or artistic works or the typographical arrangement of published material.
 - Generally such copying should be acknowledged, however if it is for private study or examination, no acknowledgment is required.
- Things done for the purposes of instruction
 - This exception covers copying of literary, dramatic, musical or artistic works for educational purposes, provided reprographic methods (other than mass duplication) are used.
 - This applies to copying for example, a teacher writing on the board, students writing, typing or drawing.
 - This exception does not cover reproductions under this exception; however the copying of sheet music for performance is permitted.
- Anthologies for educational purposes
- Performing, playing or showing in an educational establishment
 - This exception covers copying for example, for performance, playing or showing in an educational establishment.
- Reprographic copying of published works;
 - Again, this exception is limited. Numerous copies of any work may be made, but copying is permitted for private study and the person making the copy must have been aware of the exception. The exception is extremely limited.
- Lending of copies by libraries and archives

Libraries and Archives

This exception is perhaps the most important. Libraries do not infringe copyright. Similar to the Copyright Right scheme. Similar to the Copyright Right scheme. Secretary of State do. Furthermore, such pre-works for lending to re. The borrowers of such the cost of producing the

mercial research and students. Short extracts are permitted. It is not applicable only to literary, dramatic, musical or the typographical

ed should be acknowledged (from a practical standpoint) to the extent that it is waived.

or examination; of literary, dramatic, musical or artistic works (provided reprographic methods (other than mass duplication) are used) is an exception. This applies to copying for example, a teacher writing on the board, students writing, typing or drawing

reproductions under this exception; however the copying of sheet music for performance is permitted.

the course of the activities of an

it may first appear. It will not, to which parents are invited. performance, playing or showing in an educational establishment, students and others directly connected with the educational establishment.

establishments of passages from

limited than its title suggests. notably, no more than 1% of any work may be copied in any calendar quarter. In any event, no copying is permitted where licences are available and the person making the copy either knew or ought to have known of the exception; therefore, this exception is of

ments.

complex. In simple terms, public libraries do not infringe copyright. Similar to the Copyright Right scheme. Secretary of State do. Furthermore, such pre-works for lending to re. The borrowers of such the cost of producing the

Public Administration

Copyright in works is not limited to the following headings:

- Parliamentary and Royal Commissions
- Material open to public inspection
- Material communicated in the course of public business;
- Public records; and
- Acts done under statutory authority

It is important to note that the copying of a work which is a Hansard report of parliamentary proceedings or a Parliamentary copyright work is not an infringement.

Public Interest

Another seemingly broad exception which is largely undefined is the *public interest exception* as a *defence*. This exception may be viewed as one which is not published in breach of the law to be obscene. On the other hand, in cases where it is in the public interest to disseminate widely. In such cases, the defence are both unclear and the public interest will often be limited to fraud or matters which are of national security, illegality, or the country or its people.

Copying for the Visually Impaired

Provided that a visually impaired person has the work in question 'inaccessible', they may make a copy for personal use. Certain approved bodies may also make a copy provided they have lawful possession of a 'master copy' of the work in question.

Works Permanently Situated in a Public Place

Finally, the copyright in a work of artistic craftsmanship which includes such a visual image of such a work that the work (building or structure) is permanently situated in a public place or in premises which are open to the public.

3 Computer Programs

Thus far, we have overlooked the computer program. Many restrictions are set out in licence agreements. Matters relating to the computer program, then, will be dealt with under the heading of 'Licences'.

Outside of the licence, however, the copyright that subsists in the computer program is not infringed by the following acts:

- Making back-up copies for the purposes of the law

which fall broadly under the heading of 'Licences'.

official register;
course of public business;

exception does not extend to the copying of such public administration. For example, are protected by the public interest exception.

public interest exception is also one which is not published in breach of the law to be obscene. On the other hand, in cases where it is in the public interest to disseminate widely. In such cases, the defence are both unclear and the public interest will often be limited to fraud or matters which are of national security, illegality, or the country or its people.

person who possesses a 'master copy' of the work in question. Certain approved bodies may also make a copy provided they have lawful possession of a 'master copy' of the work in question.

models for buildings and works of artistic craftsmanship which includes such a visual image of such a work that the work (building or structure) is permanently situated in a public place or in premises which are open to the public.

copyright work: the computer program. Many restrictions are set out in licence agreements. Matters relating to the computer program, then, will be dealt with under the heading of 'Licences'.

which may appear to infringe the copyright that subsists in the computer program is not infringed by the following acts:
which are necessary for the purposes of the law

- Decompiling computer programs in order to obtain information necessary to create a new program compatible with the decompiled program;
- Observing, studying and testing the ideas and principles underlying any program in question in order to determine any particular element of the program, without copying, running, transmitting or storing the program;
- Copying or adapting a program for lawful use (provided that such use is not contractually prohibited, for example, by the end user license agreement). A particular example in this case is error correction.

It is important to note that software licenses (or contracts or agreements) may not prohibit or restrict the first step. Any clauses which purport to do so would be held as void under the Copyright Designs and Patents Act 1988.

4 Dealing With Infringement

If none of the exceptions detailed above apply to your copyright, you may have grounds to claim for copyright infringement. This does not, however, mean you should immediately run to your lawyer's office and sue them.

The first step, in any event, is to establish that there is infringement.

- Firstly, be sure to establish that there is an infringing work. Ensure that you have as much evidence as possible in regard to prove the existence of the infringing work.
- Next, you should take steps to establish that there are similarities between your work and the infringing work. Clearly indicate where the similarities are and the infringing work. If you have previously taken steps to protect your work, clearly indicating where the similarities are and the infringing work. If you have previously taken steps to protect your work, clearly indicating where the similarities are and the infringing work. If you have previously taken steps to protect your work, clearly indicating where the similarities are and the infringing work.
- If you have any additional evidence that can be used to further prove your claim, and the date on which it was created, gather this evidence. Examples of such evidence may include letters, memos, sketches and previous (or developmental) versions of the work.

The next step is to contact the infringer by the most appropriate means of contact. A cease and desist letter is usually the best means of contact.

- Establish your own copyright in the work.
- Set out your allegations of infringement.
- Set out your requirements for a cease and desist letter.
- Establish a deadline for the infringer to respond.

The requests made by a cease and desist letter (in addition to the obvious) may include one or more of the following:

- The payment of a basic fee (which case, the infringer may continue to exploit the work under a licence);
- The payment of a licence fee (which case, the infringer may continue to exploit the work under a licence);
- The payment of a licence fee (which case, the infringer may continue to exploit the work under a licence);

- The attachment of the work (which, again, will likely mean that the work is used under a licence from you);
- The delivery-up of the work to you for destruction; or
- A written undertaking that they will cease and desist from infringing your work and that they will obtain your express written consent before they make any further use of your work.

Choosing the right combination of these remedies is the 'tone' of your letter. Simply demanding that the infringer cease and desist their actions and deliver-up the infringing work may be received rather differently to a letter which acknowledges the previous infringement and the infringer's on-going use of your work.

Ultimately, the requests made in your cease and desist letter comes based upon the circumstances of the infringement. No success, but if your requests are reasonable and supported by evidence, they will likely meet with greater success.

What if my allegation is disputed?
Depending upon the nature of the infringement, there may still be an opportunity to resolve the matter without resorting to the hands of the courts.

If the infringing party is open to negotiation, it may be advisable to turn to some form of alternative dispute resolution for infringement. Mediation, for example, may resolve the matter without incurring the considerable time and expense associated with taking the matter to court.

If neither private attempts at a settlement nor alternative dispute resolution methods have succeeded then you may need to seek legal advice on an action for infringement. Under the provisions of the Copyright Designs and Patents Act 1988, copyright owners may, under certain circumstances, obtain relief which may take the form of damages, injunctions, and delivery-up of infringing work.

work (which, again, will likely mean that the work is used under a licence from you);

The delivery-up of the work to you for destruction;

A written undertaking that they will cease and desist from infringing your work and that they will obtain your express written consent before they make any further use of your work.

Choosing the right combination of these remedies is the 'tone' of your letter. Simply demanding that the infringer cease and desist their actions and deliver-up the infringing work may be received rather differently to a letter which acknowledges the previous infringement and the infringer's on-going use of your work.

Ultimately, the requests made in your cease and desist letter comes based upon the circumstances of the infringement. No success, but if your requests are reasonable and supported by evidence, they will likely meet with greater success.

What if my allegation is disputed?
Depending upon the nature of the infringement, there may still be an opportunity to resolve the matter without resorting to the hands of the courts.

If the infringing party is open to negotiation, it may be advisable to turn to some form of alternative dispute resolution for infringement. Mediation, for example, may resolve the matter without incurring the considerable time and expense associated with taking the matter to court.

If neither private attempts at a settlement nor alternative dispute resolution methods have succeeded then you may need to seek legal advice on an action for infringement. Under the provisions of the Copyright Designs and Patents Act 1988, copyright owners may, under certain circumstances, obtain relief which may take the form of damages, injunctions, and delivery-up of infringing work.

S

A

M

P

L

E