



what you need to know to start and grow your business

copyright

What is copyright?

A right to stop others copying, reproducing, publishing, performing or broadcasting your written, artistic, musical or dramatic creation, film, sound or other recording or typographical arrangement, or recording or distributing recordings of your performance. This includes blogs, vlogs, magazines, books, photographs, artwork, architecture, designs, reports, drawings, software coding, databases, movies, music, choreography, screenplays etc.

When does it apply?

- The creation must be 'original', involving some intellectual input, can't be copied and must be more than just a few words (to protect a name or slogan, try trade marks)
- Copyright protects the particular expression of an idea, as recorded in any medium or format or embodied in any item: it does NOT protect the underlying idea itself.
 - Arises automatically on creation - no need to register in most countries (including UK)
 - Duration varies: see below

Written, artistic, musical, dramatic works and films: 70 years after death of author (film: death of director, screenplay author, composer)

Sound and music recording: 70 years from when first published

Computer generated works, broadcasts, recordings, live performances: 50 years from creation/1st broadcast/performance

Typographical arrangements/layout of written, dramatic or musical works: 25 years from when first published

Who owns it?

Author/creator of the work but employer owns copyright in employee's creation.

If you commission a work from a contractor, you won't own the copyright unless you agree this in the contract

Copyright in anything created by an employee in the course of his/her employment duties is owned by employer. Employer should still expressly capture this in employment contract.

Who is the author/creator?

Can be joint authors/owners if created together

Films: director and principal producer

Sound recordings & computer generated works: whoever made the arrangements

Make sure you can demonstrate ownership: mark each work "© [year] [copyright owner name]" and keep digital records on computer or send copies to yourself in the post to log date of creation.

When is copyright infringed?

When someone copies, reproduces, publishes, performs, broadcasts to public, or records without a licence a 'substantial' part of your work (qualitative or quantitative test: could be a small but key element) OR enables someone else to do this ('secondary' infringement)

Internet service providers may be required to remove/block infringing content.

Consider including watermarks or deliberate errors (eg in software code) to show copying

Possible criminal sanctions vs counterfeiting (trading standards, customs seizures)

What defences are there?

- Using for research or private study • for teaching or examination • for quotation or review • 'time shifting' of radio/TV broadcasts for personal use (record and watch later) • text/data mining for non-commercial research
 - ensuring interoperability of computer program with other independently created software
- news reporting • parody (such as internet memes) • have a licence (permitted under terms of use)
 - providing hyperlinks to home pages is OK (avoid 'deep links' to specific pages)

Just because text/images are publicly available on the internet, does not mean you are free to use them: check terms of use and if needed get copyright owner consent

Just because you paid for materials including design images or text, does not mean you are free to make and sell products using those materials: check terms of use and if needed get copyright owner consent

How to handle copyright infringement claims

Where to bring a claim

What to think about

Infringement:

- Online marketplace/social media internal take-down process
- Court: Initial claim (cease and desist letter) then
 - Intellectual Property Enterprise Court (<£500k damages claim)
 - High Court (damages >£500k); appeal to
 - Court of Appeal (on point of law); appeal to
 - Supreme Court (if of great public importance)
- Be ready to consider mediation/try to settle before you get to Court

Counterfeiting (criminal offence):

- Trading Standards
- HMRC
- Magistrates/criminal Court (need to show intentional copying 'beyond reasonable doubt')

- Don't panic
- Instruct IP attorney at least for court claims.
- Can claimant show all aspects of claim:
 - Does relevant copyright subsist (all criteria met)?
 - Does claimant have right to bring claim (owns the right/has exclusive licence, not left it too late)?
 - One or more infringing acts carried out?
 - No defence available?
 - Sufficient evidence to show it?
- Any possible counterclaim(s) by defendant?
- What do you want to achieve? (Claimant: stop others selling relevant goods/services, or licence fee, or access to their IP/products in return? Defendant: right to continue selling - prepared to pay licence fee?)
- Do you have time/energy/resources to fight all the way?

What Remedies are available?

- Online take-down: removal of infringing goods/content from relevant site/apps only
- Settlement agreement before court decision: maybe payment and/or licence grant
- Infringement: court order stopping infringing act; damages/account of profits; delivery up/destruction of infringing items;
- Counterfeiting: seizure of goods; fines; prison

What are moral rights?

In contrast to the above economic rights, these are rights that cannot be assigned to anyone else but they can be 'waived' (you agree not to assert them). They are:

- 'Attribution': author's right to be acknowledged as creator of a work.
- 'Integrity': author's right to object to any derogatory treatment of his/her creation.
- Right not to be wrongly attributed as author of a work.
- Right of commissioner of photo/film for private purposes to prevent it from being published without permission (eg wedding photographer's photos).

Also think about

- Software: Trade Secrets & Confidentiality, Patents
 - Brands & logos, names, slogans: Trade Marks
- Look and feel of 2D/3D designs: registered & unregistered Design Rights
 - Databases: database right
- Licensing Your Creations, Technology & Brands • Online Copying

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