

Title:

IP Briefing Note - Intellectual Property Law & Copyright

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Summary:

A briefing note on copyright law

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Article Body:

Copyright is a key area of intellectual property law - it grants a right to prevent others from doing what the copyright owner has the exclusive right to do. IP is intangible property - that is to say that it is not physical property that can be touched. Intellectual property is a legal expression to cover such areas as copyright, design right, patents, trade marks, service marks goodwill and registered designs and is an area of ever-increasing importance to businesses of all sizes. In Britain's economy in the 21st century, arguably the most important areas of IP are copyright and trademarks since the advent of the Internet.

What is Copyright?

Quite literally, copyright is the exclusive right for the author or creator of a piece of work to copy or use that work. It arises every time an original piece of work is created. It gives the copyright holder the right to prevent other people using the work or to let other people use it on terms that the copyright owner is happy with. Laws governing this intellectual property right vary in different countries - in the UK copyright lasts for the life of the author plus 70 years in most cases - after that anyone can use the work without having to get anyone's consent. The detailed laws are more complex, so do not consider using the material created by someone else, even 70 years after the end of the year the author/creator died, without getting expert advice.

Acquiring Copyright Protection

So, what do you have to do you acquire copyright and protect yourself from being ripped off? Nothing. The most common misconception is that you have to take positive action to acquire copyright in the UK. In fact, you have copyright in the your creations at the moment the work is done. The problem is proving that

it was your creation and not done by someone else earlier. However, it is important to note that copyright in material created during the course of your employment will automatically belong to your employer.

Protection of Copyright Material

The following simple steps are all you need to do to prove when you created the IP work in question:

put a copy or photograph of the work (possibly in digital format on disk or on CD-Rom) in an envelope;
address it to yourself;
mark the envelope so you can identify its contents without opening it when it gets back to you;
send the envelope by "Special Delivery" mail;
when it arrives by post, do not open it;
store it somewhere safe from both theft and damage.

Proving Ownership of IP

Remember that the envelope will not help prove your case if it has been opened as anyone could have put anything in at any time. You have to decide how valuable your work could be and whether it is worth the further expense of either having your own fireproof safe or paying someone else to keep it for you (e.g. your bank).

You have to put the question of copyright protection and other intellectual property rights in a practical context - there is no point in going to all the expense and trouble if it is unlikely that the work would have any value to someone else. It is also important to remember that protection will not give you copyright if you have copied someone else's material, however unwittingly, it is still copyright infringement - there is no innocence defence to copyright infringement.

Contrary to popular belief, you do not need to register copyright and indeed there is no official public register but you can always register with the privately operated "UK Copyright Service" for a small fee:
www.copyrightservice.co.uk (email: information@copyrightservice.co.uk).

Clarifying Copyright Issues

Although as a general rule copyright is retained by the author or creator of the piece of work, what happens where the work is created by an employee in the course of his/her job or a client commissions the work? In both cases, the issue of copyright ownership may become clouded.

Copyright in Material produced by Employees

In the case of an employee, certain terms are implied into the contract of employment but to avoid disputes later, it is vital that a contract of employment clearly sets out that copyright in all works produced by them will belong to the employer - this leaves the employer free to commit to contracts with clients which may run beyond the period for which the employee is employed and without it there would be contractual chaos. An example would be where an employee of a computer software company prepares a program for a client of the employer - clearly it would put the employer in an impossible position with the client if the employee left (or threatened to leave) and to take the copyright with him/her.

In the case of work commissioned by a client, usually the creator will retain copyright but trade practices may dictate that it is passed to the client. In order to avoid expensive disputes, the terms agreed with the client should expressly deal with this point.

If the terms state that copyright passes to the client, the client will then have the unrestricted right to reproduce the work. Copyright can be seen as a multi-layered cake that can be cut up and the pieces shared out. In other words, the copyright holder can retain copyright but allow (or "licence") someone else to use the whole or part of the copyright. The whole cake can be licensed or specific parts (i.e. rights) can be licensed - the parts may be defined by reference to time, purpose and territory.

For example, a freelance graphic designer was asked to produce artwork for posters and fly sheets for a low-budget theatre production at a small theatre. He was asked to do the work on a reduced-fee basis to keep costs low. He was prepared to do so but was concerned that if the play transferred to the West End they would have had a real bargain that he felt was unfair to him. He was able to agree (putting the agreement in a short contract letter) that his client could only use the artwork for the productions whilst running at the smaller venue so that the client would have to negotiate for its use elsewhere. This meant that the designer could be given a more reasonable reward for his efforts if the play was successful. In fact, it was and transferred to the West End and the designer made money as a result.

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