



Copyright

By Briffa, the intellectual property lawyers
and affiliated partner for Own It. (www.briffa.com)

A movie, a song, a desk, a dress. Copyright, which protects many types of creative work, is at the heart of legal protection for all these things. This guide sets out the basics of the copyright system so that you can take the proper steps and precautions in protecting your work.

Designers should read this information on copyright in conjunction with the Own It factsheet on registered designs.

Frequently Asked Questions

What is copyright?

Copyright gives creators of original work the right to prevent others copying them.

How do you get it?

Getting copyright protection is easy. All original works by an author (meaning any creator), set down in material form, have immediate copyright protection. ‘Original’ does not mean that the work is new, fresh and innovative, but simply that it originated from the author: in brief, that it is not copied from somebody else.

There is no copyright in ideas or concepts, but rather in the expression of these ideas in a material form. For example, a general theme for a TV programme has no copyright, but once it is made or written down, the recording of the TV show itself, the images of fictional characters, the script and the music will all benefit from protection by copyright.

It is vital that what is created is put into material form. If someone creates a new song but doesn’t write it down or record a performance of it, they have no copyright protection. Material form does not have to mean ‘writing on paper’ in a specific sense; it can include saving a work onto a disk or hard drive and recording it on a tape or CD.

What does © mean?

If you can obtain copyright protection simply by writing something on paper, why does the inscription ‘© first name + last name + date’ (for example, ‘© Jo Smyth 1970’) appear on books, drawings etc?

The use of the copyright symbol does not automatically create copyright protection, but it is important to put it on creative works for the following reasons:

- It shows who the author is, when the work was created and that the author is asserting their copyright;
- It puts others on notice that they are not entitled to copy the work without the author’s permission;
- It is a statement that all legal formalities have been complied with to allow copyright to exist in the work.

Remember, copyright protection not only exists in drawings and music, but also in sculptures, fashion garments, three-dimensional work and works generated by computer programs. A building and a model of a building can each be the subject of copyright.

It is often said that to get copyright protection, you should post a copy of your work to yourself in a sealed envelope. This does not give you copyright protection. Instead, it can help to prove the date that the work was created.

At present, there is no system for creative works to be registered in a central database. If you can show evidence that your work was created before that of someone else, this can become highly significant when you are trying to prove that they copied you. The best working practice is to carefully keep any rough drafts, sketches, scribbles and notes which led to your final work. Put the copyright symbol on these as well as the final work, as they are also subject to copyright protection, and thus they can help to show the date of creation of the final work.

What works qualify for copyright protection?

The following are the main areas:

- Literary works, such as books and poems. This also includes computer programs, or anything expressed in written form;
- Dramatic works. The most typical of these are plays, but this category can also include dance and mime choreography, plus film scripts;
- Musical works, meaning any musical composition, excluding any words (including the lyrics, which are protected as a literary work) or actions that may accompany it (which may be protected as a dramatic work);
- Artistic works: original works of art which are based on their visual impact. This includes graphic works (including, amongst other things paintings, drawings, and engravings), photographs, collages and sculptures irrespective of any subjective judgement regarding the artistic quality of the piece;
- Broadcasts: sound recordings (for example, CDs, LPs, minidisks, tapes) films, typographical arrangements (that is the typesetting, layout and printed format of a page. This may be in a book, a newspaper or any other printed matter.)

- Photographs;
- Sculptures, collages, architectural works; and
- Databases and computer-generated works.

How long does copyright last?

Copyright protection lasts for up to 70 years from the date of the death of the author; in the case of sound recordings, films, and broadcasts, it lasts for 50 years, running from the end of the year in which the work was created.

What rights does the copyright owner have?

The owner of the copyright has the right to prevent others from doing any of the following:-

- Copying* the work;
- Issuing copies of the work (otherwise known as ‘distribution rights’);
- Renting or lending the work;
- Performing, showing or playing the work to the public;
- Broadcasting the work; and
- Making an adaptation of the work.

The above list of rights are known as ‘restricted acts’, as other people are restricted from doing any of the above unless they have the permission of the copyright owner. By doing a ‘restricted act’ a person is said to infringe copyright.

*In the above list, ‘copying’ includes storing a work on a computer and making a three-dimensional object from a two-dimensional drawing. A copyright owner may take legal action to prevent others from making a ‘substantial copy’ of the work. What constitutes a substantial copy is a matter for the courts, but one general rule of thumb is that ‘if it is worth copying, it is worth protecting’.

Can the author of copyright and the copyright owner be different?

Sometimes the author of the copyright in a piece of work may not ultimately be the owner of the copyright. For example, employers will automatically own the copyright of all work that employees create during the course of their employment. While this occurs by default due to the law, it is normally good practice for employers, in their contracts of employment, to have provisions setting out this legal rule.

Also, the author can transfer his copyright by agreement for a set fee, or in return for a royalty payment. For example, this often happens with musicians who may assign the copyright in their songs to a music publisher, who then seeks recordings and other commercial exploitations of their work. This type of agreement must be made in writing to be effective. Alternatively, an owner of copyright may just license someone else to use their work rather than selling it to them outright.

What are moral rights?

Moral rights are a special set of rights which belong exclusively to authors of literary, dramatic, musical or artistic works and to the director(s) of a film.

Moral rights are designed to protect the artistic sensibilities of such authors.

They do not apply to works created during the course of employment. Moral rights cannot be transferred, but they can be waived and authors are often requested to do so where the work created is primarily of a commercial nature, such as a corporate logo or a jingle for a television or radio advertisement.

Moral rights give the author or director:-

- The right to be identified as the author (as long as the author or director asserts their rights);
- The right to prevent or object to the derogatory treatment of their work.

There are also moral rights for all individuals, not just authors or directors, which are:

- The right not to have literary, dramatic, musical or artistic works falsely attributed to them; or
- The right of privacy in photographs which they commission for private or domestic purposes, such as wedding photographs.

How do performers' rights fit into the copyright system?

Performers also have a set of rights specific to their performance. The category of 'performers' can include actors, opera singers, dance artists, comedians, variety artists, circus clowns and orchestral members. This definition does not include those involved in sports. Performers' rights are the rights of performers to prevent certain activities. The first set of rights relate to their live performance, and their rights can be infringed by the recording or broadcasting of their live performance, without their consent. (Records made at live concerts without official permission are often referred to as 'bootlegs').

Performers have certain rights in connection with any recordings they have made. That is, they can prevent the copying, issuing to the public, rental and lending of their recorded performances without their consent.

What happens if I put my work on the internet?

The laws of copyright apply equally to works on the internet as they do in the offline environment. As a result, it is an infringement of copyright to place a book, graphics or song on the internet without the owner's consent. There is always a certain amount of risk involved in placing your work in an environment that facilitates copying. However, by marking your work with the copyright notice (as outlined in this factsheet) and by regular surveillance of your competitors, the risk of loss due to infringement should be minimal.

Various aspects of a website will be protected by copyright. Firstly, there is copyright in the 'look and feel' of the website, that is the artistic aspects of the website, or otherwise known as the 'front end'. The copyright in the front end is an amalgam of the various copyrights in the text, drawings, video clips and music which makes up the whole website. There will also be copyright in the software which powers and operates the website, often referred to as the 'back end'. In website commission agreements it is normally the case that the commissioner will own the front end. However, the software which operates the back end will belong to the software developer, who will license it out to the website commissioner.

What should I do if someone steals my work?

If you think your work has been copied you should write to the suspected infringer and request that they stop their activity. You should also seek specialist legal advice if you feel that you have suffered commercial losses as a result of the infringement. Legal proceedings may also be an option.

Will there be protection in other countries as well?

Copyright is protected abroad under the international system called the 'Berne Convention'. Each country which subscribes to the Berne Convention (currently just under 150 countries), agrees to treat works coming from other member countries of the Berne Convention system as if they were originating in their home country. Therefore, an English textbook being sold in Germany would be protected in Germany, as if the work had originated in Germany.

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Advice, events and information for London's creative people on:

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- Confidentiality agreements
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- Copyright

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