

# **COPYRIGHT**

Copyright is one of the key branches of IP law which protects the expression of ideas. For a work to gain copyright, it has to be original and should be expressed in a material form. Copyright is thus effective upon the creation of the work. It arises automatically and in the UK one does not have to register the copyright in the work before it is protected.

## **3.1 Entitlement to Copyright**

A work will qualify for copyright protection if:

- It is of a type protected by copyright under the Act.
- It is recorded in some form – e.g. in writing, by a sound recording, on a computer disk, or in a printed form.
- The work meets the requisite degree of originality. A work is original if adequate skill, labour and judgment are spent on creating it.

## **3.2 Works Protected by Copyright**

The types of copyright works are broadly categorised into:

- Original literary, dramatic, artistic or musical works,
- Sound recordings, films or broadcasts and
- The typographical arrangement of published editions.

Literary work also includes:

- A table or compilation other than a database,
- A computer program,
- Preparatory design material for a computer program and
- A database.

Dramatic work includes a work of dance or mime. Musical work means any work consisting of music but excludes the words and music of songs.

### **3.3 Rights granted by Copyright**

Copyright grants certain rights that are exclusive to its owner. Based on these rights, the copyright owner

- Can copy the work
- Issue copies of the work to the public
- Rent or lend the work to the public
- Perform, show or play the work in public
- Communicate the work to the public – this includes broadcasting of a work and also electronic transmission and make an adaptation of the work or do any of the above in relation to an adaptation

Copyright can subsist separately and collectively in the building blocks of any particular work. For example, the elements that constitute a website may include the web page, title, sound effects, images or pictures on the page and the address or domain name. Apart from a copyright on the web site, each of these building blocks grants separate rights to their owners.

### **3.4 Copyright Ownership - Who owns what in a Copyright Work?**

Copyright ownership can arise automatically or by means of transfer of ownership through an assignment, assignation or license.

### **3.5 Copyright Owner**

The first owner of copyright in a work is the person who created the work. Joint ownership may arise where more than one author is involved in creating a work.

### **3.6 Copyright Ownership in Computer Generated Works**

In the case of computer generated works, the creator is the person by whom the arrangement necessary for the creation of the work is undertaken.

### **3.7 Copyright Ownership in an Employer-Employee Relationship**

Copyright of works created during the course of employment will be owned by the employer unless an agreement to the contrary is in place. Additionally, copyright ownership is also dependent on the question of whether the work in question was produced during the course of employment.

### **3.8 Ownership of Copyright by Staff**

Copyright ownership of works created by Further Education (FE) and Higher Education (HE) staff is principally dependent on the question whether the creation of the work was within the scope of his/her job specification. The rule applies irrespective of the question whether the staff had used the employer's resources to produce the work and whether the work in question was produced during the office hours of the staff. This issue has great significance within FE and HE. Many academics in the institutes produce content in the form of articles and other publications during office hours whilst using the equipment of the institution. In some cases, their primary job specification may only relate to their teaching or lecturing function. Here, the reality is that FE and HE institutes have by convention, expressly or impliedly, waived their copyright in materials produced out-with the remit of the academics job specification. The rationale of this may be is that allowing the academic to retain copyright in the work he or she is encouraged to produce more material thus raising the profile of the institution. It can also be observed that one of the common deliverables currently included in the job specification of most academic staff is to raise the research profile of FE or HE institutes through publications in journals. It is also worth pointing out that academics often give their copyright to academic journals and their institutions pay for subscriptions to the journals that may contain articles, which in law is the first owner.

### **3.9 Copyright Ownership in Collaborative Research**

In the case of collaborative research partnership between FE and HE institutes and an outside partner copyright ownership can be held jointly. It is often the case that an agreement regulates this partnership and so ownership rights are distinguishable.

### 3.10 Copyright Ownership by Students

Relationship between students and FE and HE institutes are based on a special type of contract. These agreements are the various terms and conditions in the documentation (e.g. prospectus) that passes between them. In the absence of special terms and conditions in these documentations, copyright ownership in a work created by the student normally rests with the student. FE or HE institutes would therefore be better protected if it were to state in the prospectus or student handbooks that it may own copyright in certain works created (e.g. databases, software, and thesis publications) by the students. A feasible option so that both FE or HE institutes and its students reap mutual benefits from this collaboration would be to allow the student to retain ownership in his work and be compensated by means of a reward or income and the FE or HE institute to have the rights to use the work (e.g. to publish the work or to use it as a teaching material).

### 3.11 Duration of Copyright Protection

The duration of copyright is dependent on the type of work in question. Given below are examples of some works.

- **Literary, Dramatic, Musical and Artistic Works:** The life time of the author plus a period of 70 years from the end of the year in which the author dies.
- **Computer generated works:** 50 years from the date of creation of the work. A work is deemed to be computer generated where there is “no human author”.
- **Sound recordings:** 50 years from the end of year in which it was made or published.
- **Broadcasts–** 50 years from the end of the year of broadcast.
- **Typographical arrangement of published editions:** 25 years from the year of first publication.

### 3.12 Infringement of Copyright

Copyright is said to be infringed when one of the exclusive rights of an author is performed by a party without the consent or authorisation of the author. This infringement is called

primary infringement. Providing accessories for infringing the exclusive rights or assisting in the making or distribution of infringing copies is also treated as an infringement and is referred to as secondary infringement.

### **3.13 Library Uses**

The making of copies from books in libraries by its users (staff or students) is fair dealing only if it is made for research or private study for non-commercial purposes. This would require the user to sign a copyright declaration form.

### **3.14 How to file a Copyright Application?**

- Classify Work
- Determine Ownership
- Identify Appropriate Form
- Complete Registration Form
- Comply with Deposit Requirements
- Payment of Fee