

Intellectual Property 1

Creative Computing Profession
COMP 07060

Property

- Hoebel (1972 quoted in Frow, J. 2008, p428) defines property as a: “network of social relations governing the conduct of people with respect to the use and disposition of things”.
- The owner of property possesses the property but what the owner owns is a collection of rights relating to the property and which affect how other people act
- Different rights are connected with property ownership “the right ... of using as one wishes, the right to exclude others, the power of alienating and an immunity from expropriation”. (Honoré, 1961, quoted in Frow, J. 2008, p428)
- Property rights are normally limited so car drivers may own their cars but they have to obey the Road Traffic Acts when driving

Culture as Property

Can culture be subject to property relations?

- Eagleton (2000 quoted in Frow, J. 2008, p431) states that culture relates to “affection, relationship, memory, kinship, place, community, emotional fulfilment, intellectual enjoyment, a sense of ultimate meaning”
- It is “not only what we live by” but also “what we live for”. If that is so then it follows that it has a universal quality that cannot and ought not to be reduced to a market commodity status. (Frow, J., 2008, p431)
- The universal quality is diluted when ownership of cultural goods has been restricted by, for example, making them exclusive.
- Not same with books because their universal quality has been undiminished since the advent of the printing press. No problem culturally because “possession didn’t create scarcity or exclusivity since, as with all information, increases in use increase rather than diminish their value”. (Frow, J. 2008, p431)

Culture as Property

- Ownership of cultural property gives rights in relation to the object itself and also to the information rights associated with the creation of that property known as, intellectual property rights.
- The Western system of intellectual property rights gives property rights to the creator, the creation made by the creator and the production of copies in a system where the creator's rights take precedence over other rights. (Frow, J., 2008, p432)
- Who benefits from intellectual property rights? Large corporations require that creators sign over their IP rights and IP has become a form of cultural commodity forming the “capital basis” of the cultural industries (Frow, J., 2008 p433)
- IP rights purport to protect creative work but in reality the protection granted (life of the creator + 70 years) gives rise to long-continuing property rights restricting, rather than encouraging, creative endeavour (Frow, J., 2008 p433)

Issues relating to Intellectual Property Rights

- Intellectual Property Rights (IPR)
 - Instruments of Protection / Reward – copyright, patent, trademark, design right
 - Copyright and patent protection ensures that creators, publishers, inventors are granted a certain amount of time between the public release of their work and the public being able to use that work
 - Policy mechanisms to regulate the sharing of information and not just simply methods of preventing information sharing
 - Two sides involved in the arguments relating to IPRs:
 - those proposing stronger IPRs – large content industries (e.g. Disney)
 - those proposing less strong IPRs – open source movement

What is Intellectual Property?

“The rights to, among other things, the results of intellectual activity in the industrial, scientific, or literary fields.”

(World Intellectual Property Organisation, 2002)

- WIPO divide intellectual property into:
 - industrial property – inventions protected by patent, trademarks and industrial designs
 - copyright – literary/artistic works e.g. books, films, photographs, art works
 - value of intellectual or artistic work much more than the cost of development or material used to produce it
- IP represents:
 - first, the efforts of the individual’s creativity, ideas, research, skills, labour and other nonmaterial labours
 - second, derives from the first element, i.e. by its nature intellectual property is the physical manifestation of something intangible

What is Intellectual Property?

- Use of word “property” suggests that the result of an individual’s creativity can be owned to the exclusion of society and that this “owning” is the same as owning “physical property” e.g. a house
- On this basis rights to intellectual property have evolved
- Ownership of tangible products gives owner rights, and the rights to ownership of intangible products (IPRs) gives the owner rights of exclusivity, rights to give the property away, lend or sell it
- Important to distinguish between owning a physical product – a music CD – and the copyright in the musical work on it
- If this was not able to be protected would anyone bother to put effort into being creative?

What is Intellectual Property?

“Although the use of physical objects is a zero-sum game in the sense that my use of an object prohibits others from using it, the same cannot be said of intellectual objects” (Spinello, 2000)

Important distinction between intellectual and physical property:

- inherent difficulty with IP protection – depriving owners of physical property deprives them of its use, unlike depriving the owner of intellectual property which does not deprive them of its use
- if someone steals your wallet, you are deprived of its use and its contents
- if someone copies a CD/DVD, you are not so deprived

Balance of Protection for Intellectual Property

- Problem is that new products may involve much money, time and effort during R&D
- Unless creators and developers are compensated for the time, effort and money spent in the development stages of work they have no incentive to develop
- To what extent are ideas really ours. Thomas Kuhn (1970) argues that in the field of scientific endeavour, the majority of what is novel comes from anomalies in normal science i.e. true invention is premised on all the scientific work that precedes it. In the creative industries sphere, many would consider that the highly successful film West Side Story is remarkably similar to Shakespeare's Romeo and Juliet.
- Policy-makers recognise this and grant time-limited monopolies for products – IPRs
- Balance is between granting reasonable IPR rights and not stifling competition because IPR rights are monopoly rights
- Many supporters of IPRs draw on arguments pertaining to ownership of physical property as justification for extending the principles to intangible property
- Is it appropriate to treat intangible property the same way as physical property?

Balance of Protection for Intellectual Property

- In the US and Western Europe support is given to those who invest their intellect in creation and invention by offering protection to the physical embodiment of this in the form of legislation to protect and reward. In the 1954 Supreme Court decision in *Mazer v Stein* credence is given to this argument “sacrificial days devoted to ... creative activities deserve rewards commensurate with the services rendered” and this sentiment is echoed in the 1985 decision in *Harper & Row v Nation Enterprises* “The rights conferred by copyright are designed to assure contributors to the store of knowledge a fair return for their labours”. Spinello (2003) p10
- There have been dissenting voices in 1918 the Supreme Court Justice Louis Brandeis argued in favour of the “intellectual commons” in his judgement in *International News Service v Associated Press* “the general rule of law is, that the noblest of human productions – knowledge, truths ascertained, conceptions and ideas – become after voluntary communication to others, free as the air to common use”. Stokes (2005) p3

Arguments For and Against Copyright

- Justification for Copyright
 - In return for their creativity authors are granted exclusive rights to exploit their work for a *limited* period – gives creators an incentive to create
 - Innovation needs to be protected on public policy grounds
 - The product of intellectual labour is property and it should be treated in the way same as property which is the product of agricultural or industrial labour
- Against Copyright
 - Creative work should be in the public domain for all to use freely and without restriction for the advancement of society
 - Copyright is a commercial right owned by the copyright owner who may not be the original author, artist or musician. The copyright owner may be a large corporation or if the creator is an employee, the employer
 - Copyright criminalises and punishes people who want to share and disseminate knowledge freely

Some Quotes in favour of copyright

- “...it is the means by which creators and those who invest in them can earn from their creative endeavours. It is the basis of the economic success of the creative industries. It underpins, supports and cements the entire music industry, from composition to consumption”.
- “...copyright empowers the creator to exercise a choice of if, how and when they exploit their creativity, and provide the opportunity for a return on investment to the entrepreneurial sector that invests in that creativity.”

Source: UK Music http://www.ukmusic.org/files/LC_BrochureDigital4.pdf

Some Quotes questioning copyright

- “... today’s copyright law does not differentiate sufficiently between distributing a literal copy of someone else’s work, and building on the work of others to create a new work based in part on what had come before. Surely this does little to stimulate creativity, when the only works that can be legitimately copyrighted cannot be based in any way on any previously copyrighted work without permission.”

Source: Kusek, D and Leonhard, G (2005) The Future of Music

- “official aim of the copyright system has been to find a balance to promote culture being created and spread. Today that balance has been completely lost, to a point where the copyright laws severely restrict the very thing they are supposed to promote.”

Source: www.piratpartiet.se/international/english

Some Quotes questioning copyright

The monopoly for the copyright holder to exploit an aesthetic work commercially should be limited to five years after publication. Today's copyright terms are simply absurd. Nobody needs to make money seventy years after he is dead. No film studio or record company bases its investment decisions on the off-chance that the product would be of interest to anyone a hundred years in the future. The commercial life of cultural works is staggeringly short in today's world. If you haven't made your money back in the first one or two years, you never will. A five years copyright term for commercial use is more than enough. Non-commercial use should be free from day one.”

Source: www.piratpartiet.se/international/english

Case Study – Happy Birthday to You

- In 1893 Patty and Mildred Hall published the melody of a song “Good Morning to All” which was patented (lyrics anonymous) by a company called Summy Limited in 1935
- It quickly became popular and the rights were enforced for public performances so that in the 1940s royalties were \$15,000 per annum
- The rights are currently owned by Warner-Chappell and Warner Music Group who collect approximately \$5,000 per day or \$2m per annum in royalties on the song
- The original composition was similar to a number of songs already in circulation at the time “Happy Greetings to All”, “Good Night to You All” and “A Happy New Year to All” so it was based on pre-existing compositions, what (Frow, 2008) describes as, the “musical commons”
- Music in the musical commons is free for all to use, adapt, sample and generally rework but because Happy Birthday to You is copyright protected, any adaptation, reworking, sampling etc is restricted by the exclusive rights conferred on the rights holders - in this case, Warner-Chappell - and those exclusive rights (as US law currently stands) do not expire until 2030 (Frow (2008, p435)

Additional Source: Brauneis, Robert, Copyright and the World's Most Popular Song. GWU Legal Studies Research Paper No. 1111624. Available at SSRN: <http://ssrn.com/abstract=1111624> and www.guardian.co.uk/education/2009/jan/06/improbable-research-warner-music-copyright

Copyright

History

- Copyright meaning - owner of a copyright work has the right to copy it and by inference to prevent its copying
- Until 1450, invention of the printing press by Gutenberg, copying of works was of no importance
- Introduction of mass publishing led to control and regulation:
 - Printing carried out by authorised printers
 - Publication of individual books licensed by the Crown
 - Copyright introduced into UK law by Statute of Anne 1709. The statute created two concepts:
 - author of a work had exclusive right to reproduce it
 - author's published work to be given a fixed period of protection (then 21 years for existing works and 28 years for new works)

Lloyd (2004) p 441

Copyright Historical Background

- Main UK legislation relating to copyright is the Copyright, Designs & Patents Act (1988) referred to as the CDPA or the 1988 Act
- Copyright gives authors of certain work the exclusive right to control the use or commercial exploitation of the work they have created. This includes control over the printing, publishing or selling copies of their work
- Copyright protects creative expression:
 - i.e. the author's expression of ideas rather than the ideas themselves
 - facts, procedures, methods of operation are not copyright protected
- Rationale behind copyright is to protect authors in their creation of original works
- Original works are those where the author has expended independent effort in the creation of the work

Copyright Protection

Copyright Protects:

- Original literary works (includes books, newspapers, catalogues and computer programs)
- Original dramatic works (includes plays, mimes, pantomimes)
- Original musical works (lyrics are protected as literary works)
- Original artistic works (includes graphic works, maps, charts, plans, photographs, sculptures)
- Sound recording (includes recordings of literary, dramatic or musical works)
- Film (includes videos and film of a live event)
- Broadcasts
- Typographical arrangements of published edition (literary, dramatic or musical work)

Copyright Protection

Originality

- Literary, dramatic, musical and artistic works original if created through author's independent creative effort.
- Original means that work originates from the author and not copied
- Some degree of skill and labour is required from the author for the work to be classed as original
- Two works that are very similar are still protected if created independently by their different authors
- Sound recordings, films, broadcasts and published editions do not have to be original – normally they involve other work e.g. sound recording will be record of another work (literary, dramatic or musical)
(Flint, FitzPatrick & Thorne (2006) p40)
- No copyright in sound recordings, films and published editions if they have been copied from existing sound recordings, films and published editions.
(Flint, FitzPatrick & Thorne (2006) p25 & 43)

Copyright Protection

Authorship

- Author for literary, dramatic, artistic or musical works is the creator of the work
- Author of sound recording is the person who makes the arrangements for the recording to be made (generally taken to be the person/company who paid for the recording to be made) (Harrison, p58)
- Authors for films are the producer and principal director (may be different people or the same person)
- Author of a broadcast is the person making the broadcast
- Author of a typographical arrangement of a published edition is the publisher
- Joint authorship where two/more persons associate to author work and their individual contributions are not distinct

Permanence

- Literary, dramatic, musical works have to be recorded in writing or otherwise i.e. work must have some material form
- Writing includes any type of notation or code - handwriting or otherwise
- Any type of method or medium of recording

Copyright Protection

Coming into effect of copyright:

- Copyright comes into effect when the work is created
- No registration system (no statutory register)
- No fees to be paid (unlike with other forms of IP)
- Downside is that there is no comprehensive database of copyright holders and how to contact them
- Gowers Report suggested the introduction of a voluntary register of copyright (Recommendation 14b)

Copyright Protection

To protect copyright in your work

- Use © followed by your name and the year of publication to show when the work was created and by whom. Not legal requirement in UK but, in some countries it is, and advisable and good practice to mark your work.
- Proving your work is original
 - A dated copy of the work can be deposited with a solicitor or bank to establish beyond doubt when you created the work.
 - Send copies to yourself by special delivery (gives a clear date stamp on the envelope) leaving the envelope unopened when it's returned to you
 - Either method can help prove that your work existed at a certain date.
 - Important if someone copies your work without permission ie infringes your right. If they created the work before you there is no infringement of copyright.

Copyright - Infringement

Economic rights and Copyright Infringement

- Economic rights of authors are protected in the CDPA as restricted acts
- If you do, or you authorise another to do, any of the restricted acts (as set out below) without consent or a license from the copyright owner you, or the person you authorised, are deemed to have committed a primary copyright infringement
- The restricted acts are:
 - Copying a copyright work
 - Issuing copies of a copyright work to the public
 - Renting or lending a copyright work to the public
 - Performing, showing or playing a copyright work in public
 - Communicating the work to the public (includes broadcasting the work via the internet, cable, satellite including on demand transmissions)
 - Adapting a copyright work or doing any of the restricted acts in relation to an adaptation

Copyright - Infringement

- When does copyright infringement occur?
 - Whole or substantial part of work must be copied
 - Substantial part relates to quality not quantity so a small, but very important part of copied material, could still be substantial
- Determining factor for substantial is level of skill and effort that author has put into producing that part of the work not if that relevant part is a substantial portion of the whole of the work
- Examples:
 - Four lines, of a 32 line poem, (literary work) by Kipling “If” were found to be substantial when used in an advertisement for Sanatogen (Flint, FitzPatrick & Thorne (2006) p126)
 - In a musical work, a 20 second clip (28 bars) from a popular song, Colonel Bogey was found to be substantial. Judge Slessor said: “Though it may be that it was not very prolonged in its reproduction, it is clearly, in my view, a substantial, a vital and an essential part which is there reproduced”. Hawkes & Son v Paramount Film Service Limited (1934) 1 Ch 593 (Harrison (2008) p271)

Copyright - Infringement

- Substantial part and sampling
- Sampling involves taking a portion of another sound recording and incorporating it in your own recording. If you do this without permission then it's copyright infringement of the original sound recording and also of the underlying music and lyrics.
 - Beloved used an 8 second sample from a recording of O Euphonia and repeated it several times in their track The Sun Rising. The sample was sufficient to constitute a substantial part (Harrison (2008) p271)
 - In 1999 Produce Records claimed that Los del Rio's hit Macarena released by BMG Entertainment infringed their copyright in a sound recording of the Farm's Higher and Higher. Los del Rio used a 7.5 second sample of Higher and Higher. BMG Entertainment settled the case out of court. (Salmon, R. 2008)
 - Robbie Williams Jesus in a Camper Van song used 2 lines of lyrics very similar to 2 lines of lyrics in Loudon Wainwright's song I'm the Way. The judge ruled that the copying was substantial but by very little. The track had to be removed from future pressings of Robbie Williams album I've Been Expecting You and 25% of the publishing income from the Jesus song went to the publisher of I'm the Way, Ludlow Music (Salmon, R. 2008)

Copyright - Infringement

- Unauthorised copying of work is a common infringement of copyright
- Copying involves reproducing the work in a material form, including storage of the work in any medium
- Also Secondary Infringement:
 - If a person possesses, deals or imports work into UK which infringes copyright and importer knew or had reason to believe that the work infringed copyright or
 - If a person makes, imports or possesses in the course of business or sells or lets for hire “an article specifically designed or adapted for making copies of that work knowing or having reason to believe that it is to be used to make infringing copies”

Copyright – Exceptions to Infringement

- Where use of work comes within one of the exceptions no copyright infringement :
 - Minor infringement – no infringement where unauthorised use does not relate to whole or substantial part of the work
 - Temporary copies – no infringement if temporary copy is transient or incidental and made as an integral and essential part of a technological process, the sole purpose of which is to facilitate transmission of the work in a network between third parties by an intermediary or a lawful use of the work and which has no independent economic significance e.g. where copy cached. Not applicable to computer programs or databases. ECJ ruled recently that an 11-word snippet from a newspaper snippings service can infringe copyright if snippet printed out. Creation of electronic files (image/text) of 11-word snippet may be transient as long as they are deleted automatically from computer memory but subsequent printing of snippet onto paper is not. Infopaq International A/S v Danske Dagblades Forening (2009). See www.out-law.com/page-10205

Copyright – Exceptions to Infringement

- Fair dealing – no copyright infringement where work used for certain uses e.g. non-commercial research and private study, news reporting, criticism or review (with provisos)
- Incidental inclusion – work incidentally included in artistic work, sound recording, film or broadcast. Passing shot e.g. if sound playing in the background when interview conducted
- Education – work used for instruction or examination if (and other conditions apply) for non-commercial purposes and author acknowledged
- Libraries, archives and public administration – exceptions apply to libraries and archives. Public administration covers judicial proceedings
- Public interest – defence (certain cases) to say publication or use of copyright material in public interest

Copyright – Duration

- Duration of copyright dependent on type of work being protected:
 - Literary, dramatic, musical or artistic works copyright ends 70 years after end of calendar year in which author dies
 - Films - copyright ends 70 years after end of calendar year of death of last to survive of principal film director, author(s) of the film screenplay and dialogue and composer of music especially composed for the film
 - Sound recordings - copyright ends 50 years after end of year in which the recording was made or, if the recording was released in that 50 year time time, 50 years from end of the year of release.
 - Broadcasts – copyright ends 50 years after end of calendar year in which broadcast made

Copyright – Duration

- Typographical arrangements – copyright 25 years after end of calendar year in which edition first published

Copyright – Duration Issues

- Some artists want the period of copyright protection on sound recordings to be extended to 95 years as in the US. Cliff Richard's earliest recordings are now outside the 50 year copyright protection period.
- Composers have copyright protection for life + 70 years which is longer than the protection given to performers and producers.
- Performers argue that they should have the same copyright protection period as composers because they are as responsible as song writers for the success of songs
- The European Commission have adopted the proposal to extend the term for performers to 95 years (Commission Proposal on a Directive for Term Extension (IP/08/1156). out-law.com(2009)
- Refer to Gowers Review (paras 4.20-4.40) for a full account of the arguments relating to copyright extension. Gowers recommended that the Commission should leave the term at 50 years for sound recordings and performers' rights (Recommendation 3)

Copyright – Public Domain

- When period of copyright expires work falls into the public domain:
 - Work is public
 - Work can be used without copyright owner's permission
- A single work can be protected by several forms of copyright and this is especially true of music
- If you want to use a piece of music it is important that you analyse the different forms of copyright that protect it e.g. composer of music, writer of lyrics, producer of sound recording
- Then calculate the duration of each form of copyright so that you can find out if copyright still exists. If it does you must seek permission from the copyright holder(s) before using the music

Performing Rights

Performing Rights

- Performing rights are rights that performers have in their performances (stage, concert, studio) to stop others recording performances and doing other things with their performances without their consent
- Performers can stop the making of a recording of a live performance and the broadcasting of live performances to the public – performer has to consent to these.
- Property rights - when recording made, the performer can refuse consent to the copying of a recording, the issue of copies of recordings to the public, rental and lending of copies of recordings to the public the playing of a recorded performance in public and the inclusion of the recording in a broadcast or cable programme service.

Harrison p59 and Stokes p31-32

Case Study – Sunday Times and Experience Hendrix

- On 10.09.06 Sunday Times Newspapers included a covermount CD of a recording of Jimi Hendrix' last concert in 1969 at the Royal Albert Hall. They did not have a valid license from the rights holders to issue the covermount
- Jimi Hendrix and his band, the Jimi Hendrix Experience, were on a European tour in January/February 1969 and at the end of the tour they played two concerts at the Royal Albert Hall. One on 18.02.69 and the other on 24.02.69. The 24.02.69 concert (the RAH concert) was filmed and recorded by Mr Goldstein (a record producer) with Jimi Hendrix and the other band members', Noel Redding and Mitch Mitchell, permission. Hendrix died in 1970 and the film project was put on hold. Goldstein's company, The Last Experience, were in dispute with Experience Hendrix (the Jimi Hendrix estate) about who owned the recording and performance rights
- In 2003 Goldstein agreed with Experience Hendrix that he would edit and release the film and its soundtrack. In 2006 the film project was well advanced and the final mix was scheduled for October 2006. For their part of the project, Experience Hendrix were preparing a CD for release to coincide with the film

Case Study – Sunday Times and Experience Hendrix

- The Sunday Times had a longstanding business arrangement with TCP, a well-established and reputable marketing communications agency to provide content and promo ideas for the paper – covermounts are a standard marketing tool used by newspapers and magazines
- In August 2006, TCP acquired a licence for the Jimi Hendrix Experience RAH concert tracks for a covermount for the Sunday Times via a company called LicenseMusic. LicenseMusic had acquired a licence from Charly Acquisitions Limited who acquired a licence from Everest Records Group who had a licence from The Last Experience
- The Sunday Times had a warranty from TCP that it had the necessary consents and had paid the necessary fees for the promotion and TCP indemnified The Sunday Times against any breaches for up to £5m.
- In the event, the licence acquired for the Sunday Times via TCP, LicenseMusic and Charly Acquisitions Limited and Everest Records and the Last Experience was not good

Case Study – Sunday Times and Experience Hendrix

- Experience Hendrix found out about the Sunday Times covermount and Experience Hendrix and the Last Experience solicitors wrote to the Sunday Times on 08.09.06 warning that they were the recording and performance rights holders and the Sunday Times title was not good. They tried to get The Sunday Times to delay distribution of the covermount but production of the newspaper was too far advanced and the covermount was released on 10.09.06
- The film project was put on hold in September 2006 and the film has not yet been released
- The copyright notice on the covermount CD read “Licensed from LicenseMusic.com ApS courtesy of Everest Records Group/Last Experience Inc. The producers of this CD have paid the composers and publishers for the use of their music. All rights of the producer and of the owners of the recorded works reproduced reserved.”
- The MCPS logo was displayed on the CD next to the copyright notice.

Case Study – Sunday Times and Experience Hendrix

- Experience Hendrix and Last Experience claimed damages from The Sunday Times on the basis that they could not release the film because of the covermount
- The judge found that the film could still be released and calculated that the film was likely to make \$5.8m in its first year of release and awarded them the US rate of interest plus 1% on \$5.8m

Sources: www.out-law.com/page-11290 and
www.bailii.org/ew/cases/EWHC/Ch/2010/1986.html

Copyright – Moral Rights

- Moral rights borrow from continental ideas (France and Germany) relating to authors' right, *droit d'auteur*, and are designed to give copyright-type protection to the personality of the author as expressed in his creative work.
- An author's work must not be changed or distorted in a way that is derogatory to the author because to alter or distort the work is to mistreat the author and injure his personality
- Authors must be identified when their work is published or exploited
- European principles of moral rights are set out in Article 6 of the Berne Convention:
 - Right to be identified as the author of work
 - Right not to have your work distorted, mutilated, or otherwise modified in a way prejudicial to your honour or reputation.

Stokes (2005) p65 and Harrison (2008) p252

Copyright – Moral Rights

- Moral rights protect author's reputation and his relationship with his creative work and are:
 - Paternity right
 - author of literary, dramatic, musical or artistic work or film director has right to be identified as author or director
 - authors of literary, dramatic and musical work have right to be identified when their work is published commercially (further rights apply according to category of work).
 - authors have to assert their right of paternity in writing (e.g. see inside cover of books "The right of Jane Doe to be identified as the author of this book has been asserted by her in accordance with the Copyright, Designs and Patents Act 1988)
 - No paternity right if your copyright work is created by you as part of your employment - your employer and anyone taking rights from your employer does not have to identify you as the author of the work Harrison (2008) p255

Copyright – Moral Rights

- Integrity right
 - author or director has right not to have the work subjected to derogatory treatment
 - treatment is an addition or alteration to, deletion from or adaptation of the work (subject to exceptions)
 - treatment is derogatory if it is a distortion or mutilation of the work or otherwise prejudicial to author's honour or reputation
- What amounts to treatment
 - Megamix sound recording produced taking music and lyrics from five of George Michael's songs and interspersing these with other music. George Michael was the author of the songs and his lyrics had been altered slightly. The judge decided that this was definitely a treatment. *Morrison Leahy Music v Lightbound Ltd* 1993 EMLR 144 Stokes (2005) p68 and Harrison (2008) p256
 - To infringe the integrity right treatment must be distortion or mutilation that prejudices the author's reputation or honour. It is not enough that the author doesn't like something done to his work – work must be distorted or mutilated to prejudice of his honour or reputation *Pasterfield v Denham* 1998 Stokes (2009) p77

Copyright – Moral Rights

- False attribution
 - author of literary, dramatic, musical or artistic work and film director has right not to have work falsely attributed to them
 - attribution is a statement of the identity of the author or film director (it need not be in writing and can be verbal)
- Performers' Moral Rights
 - performers have the right to be identified as the performer when live performances or sound recordings of live performances broadcast or a sound recording is communicated to the public or copies of a sound recording are issued to the public (with exceptions if not reasonably practical and if performance for advertising or news reporting)
 - have the right not to have performances subject to derogatory treatment (distortion, mutilation or other modification prejudicial to performers' reputation (not honour)
 - rights came into effect on 1.2.06 and apply to live performances and sound recordings of live performances (don't apply to films)
 - rights have to be asserted (there are exceptions)
 - performers' moral rights cannot be assigned

Stokes (2009) p77/78

Copyright – Moral Rights

- Privacy right
 - owner of copyright in commissioned photograph is photographer and photographer can sell copies/license reproduction of photograph in magazines
 - person commissioning photograph may not want this use
 - where person commissioned taking of photograph or making of film for private and domestic use they have right to prevent copies being issued to the public, public exhibition and showing of the work to the public and communication to the public

Harrison (2008) p257/258

Copyright – Moral Rights

- Privacy Right (contd)
 - intended to protect against unauthorised use of photographs by newspapers and magazines
 - any person who does or authorises the doing of any of the acts (subject to exceptions) infringes the right of privacy
- Duration of moral rights
 - moral rights, except false attribution, subsist for as long as there is copyright in the work.
 - false attribution subsists for 20 years after the death of a person.

Copyright – Moral Rights

- Copyright and moral rights are different sets of author's rights.
- Moral rights are personal rights and cannot be assigned but can be waived by authors so that they agree not to assert the right of paternity or their other rights. Waiver must be in writing, signed by the author relinquishing the rights and it can be for a specific work or a category of works or works generally. Waiver can be with/without conditions, can apply to existing and future works and can be revocable Harrison (2008) p259
- Copyright often referred to as an economic right and can be sold (assigned) or licensed
- The owner of the copyright in a work may be different to the owner of the moral rights. The author may have assigned the copyright to a 3rd party but the author will retain the moral rights.

Who owns copyright?

- Basic copyright rules re authorship and ownership – author is creator of the work and first owner of copyright work is author
- Where literary, dramatic, musical or artistic work commissioned, author will be copyright owner. Any change to this should be in writing e.g. persons commissioning the work may want copyright vested in them
- Exception to rule that person creating work is the first owner of copyright where the work is created in the course of employment
- Where literary, dramatic, musical, artistic work or film created by employee in the course of employment then the employer (unless otherwise agreed) will own the copyright
- Where employees produce copyright work in their own time then employee will own the copyright
- If work produced by the collaboration of two or more authors, where the contribution of one author is not distinct from that of the other authors, then it is jointly authored

Stokes, S. (2009), p48-49

Who owns copyright?

- With a piece of music, if one person composes the music and another writes the lyrics (e.g. music produced by the partnership of the composer Elton John & lyricist Bernie Taupin) it is not jointly authored
- If the lyricist and composer co-write the words, then the words will be jointly authored as long as the contributions of either co-writer are not distinct
- If one writer writes the words and another the chorus (some Lennon/McCartney songs) then the contributions will be distinct and not jointly authored
- Hadley v Kemp involved the members of the band Spandau Ballet and they claimed a right to publishing royalties from the band's songs. Band members agreed that Gary Kemp had written the lyrics to all the songs but argued that they were joint authors since they had contributed to the composition of the music in rehearsal. Judge decided, while the other band members contributed to the performance and interpretation of the compositions, to be a co-writer required contribution to the creation of the composition. "Melody, choral structure, rhythm and groove" were Gary Kemp's creation and result of his skill and labour. Flint, FitzPatrick and Thorne (2006) p 10.08 and Harrison (2008) p85/86

Who owns copyright?

- Rule about employers first ownership of copyright of employees' work does not cover sound recordings. In practice, the copyright owner of a sound recording is the person who made the arrangements for the recording to be made
- Developer who has commissioned work for a project from a sub-contractor (freelance contractor) should obtain necessary rights in the work under the terms of the contract with them.
- Where agency involved check situation because creator of work may be employee of agency and then agency will own the rights in the work and developer will obtain necessary rights from agency

Dealing in Copyright

- Authors can licence use of their work. In copyright licence is permission granted by the copyright owner for a set period of time (the licence term) to another to do one/more acts restricted by copyright
- Licences usually contractual and can be exclusive. In music industry 3-5 years licence term is common
- Licence can be worldwide or limited to individual countries e.g. you can license recording rights to a company in US under one licence and to a company in a European country under a separate licence. Europe-wide deals including the UK are quite common Harrison, p61
- Authors can assign their copyright to others
- Assigning in copyright is outright transfer of ownership of copyright to another person
- Assignment is not the same as licence
- In an assignment, copyright owner transfers all or part of his rights to another person. Assignment must be in writing
- Copyright can be inherited under a will or on intestacy

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