

A photograph of a desk with papers, a glass of water, and a hand holding a pen over a notebook. The background is slightly blurred, showing more papers and a book. A dark purple rectangular box is overlaid on the right side of the image, containing text.

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Copyright Protection – A Brief Guide for Clients



AdamsonJones

Copyright Protection

A summary of the issues surrounding copyright protection in the UK and overseas

What is copyright?

Copyright is a form of Intellectual Property Right (IPR) covering works that fall into three classes:-

- i) original literary, dramatic, musical, and artistic works;
- ii) sound recordings, films, broadcasts, or cable programs; and
- iii) the typographical arrangement of a published edition.

It is important to note that copyright protection does not depend on the artistic or literary merit or quality of the work. However, in order to attract copyright, the work must be original, ie the work must not itself be a copy of an existing work, and the author must have demonstrated sufficient skill, labour and effort to produce the work to justify copyright protection.

In many cases, a work may be protected by more than one class of copyright. For example, a cinema film can contain at least four separate copyrights, ie a literary work (for the original book), a dramatic work (for the film script), a musical work (for the music score), and a film (for the film recording itself).

How is copyright obtained?

Unlike other forms of Intellectual Property, copyright does not generally have to be actively applied for, as there is no registration system. Copyright is therefore free to acquire. Copyright arises automatically as soon as a work is created. Nevertheless, in spite of this, it is prudent to register a copyrighted work, for example with us or with a solicitor, as it may make it easier to prove that copyright existed in the work on a particular date. This could be important should infringement occur, as you will need to establish, possibly in a Court of law, that copyright does subsist in the work.

In addition, we recommend that copyright owners safely store at least the first original copy of any copyrighted work. Such copies should ideally be dated, signed by the author and also witnessed by an independent witness (such as a Notary Public).

What is an original literary work?

Literary works refer to any original work, which includes words which may be expressed in print or in writing, for example, an article for a newspaper or magazine, a novel or book, a short story, a poem, a review article, or a work of reference. Literary works also include computer programs, tables and compilations.

What is an original dramatic work?

Dramatic works require a performance or some action, and include works of acting, dance or mime. The dramatic work must be expressed in writing, for example, by explaining the performance in each scene on stage.

What is an original musical work?

Musical works are heard, and combine musical tones and sound in some form of arrangement, ie music. Musical works, however, are defined merely as consisting of music, without any words or action intended to be sung, spoken or performed with music. Therefore, in a song, separate musical and literary works will exist.

What is an original artistic work?

Artistic works have visual impact, and therefore must be seen. Artistic works include graphic works (ie paintings, drawings, diagrams, maps, charts, plans, engravings, etchings, lithographs, and woodcuts), photographs, sculptures, collages, works of architecture (buildings and model buildings), and works of artistic craftsmanship.

Who owns copyright?

The author of a copyrighted work is the person who actually created the work. In most circumstances, the author of the work is also the owner of the copyright, although there are some exceptions. For example, where a work is created in the course of employment, the author's employer will normally own the copyright, subject to any agreement to the contrary.

For commissioned works, the ownership of the copyright belongs to the author who produced the work, ie the person who was paid to produce the copyrighted work. Therefore, in order for

the person who commissioned a work to own the copyright in that work, the copyright must be transferred from the author to that person.

Does the copyrighted work have to be in writing?

Copyright protects the tangible expression of work, and not ideas, function or information *per se*. Therefore, a work must be fixed either in writing or as a recording in order to attract copyright. This is particularly important for literary, artistic, musical, and dramatic works.

How long does copyright last?

For literary, dramatic, musical, and artistic works, the term of protection expires at the end of 70 years from the end of the year in which the author of the copyrighted work dies. For sound recordings, the normal term is 50 years from the end of the year in which it was made. For films, copyright expires at the end of 70 years from the end of the year of the death of the last of the principal director, the author of the screenplay, the author of the dialogue and the composer of the music. For broadcasts, copyright expires at the end of 50 years from the end of the calendar year in which the broadcast was made.

What rights does a copyright owner have?

The copyright owner may give permission to third parties to use the copyrighted work on mutually agreed terms. This is called licensing, and is used to generate revenue via licensing fees. Copyright is also transmissible by assignment, either as a whole or in part. This is particularly important in respect of commissioned works in order to transfer ownership in the copyright from the author to the commissioner. Therefore, we suggest that an agreement to the effect that copyright will be transferred from the author (or the author's employer) to the commissioner should be in place before the work is begun.

What kind of protection does copyright offer?

The owner of the copyright has the legal right to stop a third party from copying the copyrighted work in any form without the owner's consent. The owner can prevent:-

- reproduction of the work in various forms, eg printed publication or sound recording;
- its public performance, eg for plays or musicals;
- recordings of it, eg CDs, DVDs, videos;
- its broadcasting, eg by TV or radio;
- its translation into another language; and
- its adaptation, eg of a novel into a screenplay.

Such unauthorized acts amount to copyright infringement. Infringement may occur when the whole or a substantial part of the work is copied, and this is judged in qualitative (ie the substance of the work that has been copied) rather than quantitative (ie the amount of the work that has been copied) terms.

Furthermore, infringement can occur if the copyrighted work is copied in any form, ie either in 2D or 3D. For example, if the copyrighted work is a 2D drawing of a character, then infringement would be found if the character was copied in 2D or reproduced in 3D, eg as a doll or puppet.

Copyright is usually enforced in a Court, which has the authority to stop copyright infringement. Copying must be demonstrated by the copyright owner for infringement to be found. Therefore, copyright cannot be enforced should a third party coincidentally produce the copyrighted work completely independently.

We strongly recommend that you obtain our advice before doing anything that may amount to copyright infringement.

When do I use the copyright symbol, © ?

We recommend copyright owners include a copyright notice, which clearly indicated that the work is protected by copyright. The notice should include the copyright symbol, ©, the date (usually just the year) the work was produced, and the name of the copyright owner, although the precise order is not important. For example, at AdamsonJones, we mark all our copyrighted work as follows:

© AdamsonJones 2011.

What are permitted acts?

Some acts, which would otherwise constitute copyright infringement, are permitted in order to ensure that the rights of the copyright owner and the public are balanced. For such permitted acts, the user is entitled to make the permitted use of the work, or a substantial part of it, without infringing.

For example, it is possible to use a copyrighted work for non-commercial research and private study, and also for the purposes of reviewing or reporting current events, provided sufficient acknowledgement of the source material is provided. Such permitted acts are referred to as “fair dealing”.

We recommend that you obtain our advice before doing anything that may constitute fair dealing, so that we can advise you whether it is safe to do so.

How do I obtain copyright protection overseas?

There is no such thing as international copyright protection that will automatically protect a copyrighted work around the world. However, most countries are party to various international Treaties, such as The Berne Convention, which enable copyrighted works to be recognized overseas, for example in the United States.

Therefore, a copyrighted work in the UK would be recognized as a copyrighted work in the US. In contrast to the UK however, the United States does have a system of copyright registration. While copyright registration is not essential in the US, it has several advantages. For example, registration of copyright in the US facilitates infringement actions taken against a third party. Also, statutory damages and US attorney's fees will be available to the copyright owner in US Court actions. Otherwise, only an award of actual damages and profits is available to the copyright owner. Therefore, if your copyrighted work has, or may in the future have, considerable value in the US, we recommend that you register the copyright at the United States Copyright Office. We can assist you to do this.

How can AdamsonJones help?

We would be happy to discuss your work, whether it be a literary, artistic or musical work or otherwise, and advise you concerning copyright protection in the UK and overseas. Please feel free to contact us to arrange a meeting.

NB: We have endeavoured to ensure that the information in this note is accurate and up-to-date. However, this note is for general guidance only, and is not a substitute for professional advice.



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