

COPYRIGHT

General

Copyright is a right to prevent copying and other mis-use of something which has been created by an artistic process. It is not protected by registration; its enforcement arises through court action.

There is a separate legislation in relation to registered designs which gives protection for a shorter period than copyright. A registered design right is 25 years. Copyright for artistic items which are mass produced is also restricted to 25 years.

The classic works that attract copyright protection are literary, dramatic, musical, and artistic works. Sound recordings, films, broadcasts, cable productions and typographical arrangement of published editions are also protected.

Literary work includes any table or compilation other than a database and computer programmes (which are separately protected). It covers books, plays and shorter works but also a wide range of written matters which merit protection. There are also so called “entrepreneurial” copyrights for films, sound recordings, published editions, broadcasts and cablecasts.

A dramatic work includes a work of dance or mime. A musical work means a work consisting of music exclusive of words or actions intended to be sung, spoken or performed. An artistic work is a graphic work, photograph, sculpture or collage or work of architecture be it a building or model for a building or a work of artistic craftsmanship. Graphic works include paintings, drawings, diagrams, charts, plans etc. engravings, etchings, lithographs etc. A photograph means a recording of light or other image.

In the case of literary, dramatic, musical and artistic works, the copyright will only exist if the work is original i.e. is the author's own work and is not itself copied. It is the

originality of expression and form and not the idea that is protected. This is the critical aspect of copyright.

Copyright protection can exist where work is original, even if the work involved may be trivial. There must be some minimal originality involved, but this is quite low. There is no test of artistic merit. Any writing will attract copyright e.g. a child's essay or a business letter. It does not have to be a work of art as such. Copyright is not available for single words, logos although these can may be protected by trade mark or passing off.

Compilations of information may attract literary copyright. Phonebooks or directories may be protected by copyright although there is now a separate copyright for compilations and database.

There can be different types of copyright in one work. For example, the words of a song will have literary copyright and the music which have musical copyright. They can be separately owned. Sometimes they are protected in different ways by the law.

Artistic works are divided into works that are protected irrespective of artistic quality (that is graphic works, photographs, sculptures and collages) and works for which there is a degree of artistic quality is required (that is architecture and works of artistic craftsman) For the first category, the element of effort is low and can be found in a simple picture or diagram. A completely simple matter such as a circle or square is unlikely to be substantial enough to constitute a work and would be unlikely to be original.

Some artistic merit is required for architecture. It must be more than common. For example, mass produced estate of similar houses might not qualify but a small development of bespoke houses might. The reason why artistic merit is required for certain types of works is that three dimensional items or structures which are not sculptures should be protected by industrial designs rather than copyright law which has different criteria.

Literary, dramatic and musical copyright works will only have a copyright if they are recorded. This means they are put in writing or in any medium e.g, recording on tape or word processor.

The normal duration of copyright is 70 years plus the life of the author. The period used to be 50 years until 1995. Copyright works produced in the course of employment belong to the employer.

If copyright work is exploited by making articles industrially, the term of copyright is cut down to 25 years from the end of the calendar year in which they were first marketed. An example would be designs on wallpaper. Industrial exploitation means making more than 50 articles or making things in lengths by an industrial process. The copyright is only cut down in relation to industrially produced articles. The design could still be subject to copyright infringement after 25 years but it would not be an infringement to use it on articles.

Moral Rights

A “moral right” is the idea that the creative author should retain rights in relation to the creation even after he has sold the copyright. These rights are not transferrable. The rights are as follows:

- the right to be identified, if the author so asserts

- the right to object to derogatory treatment; this would allow a novelist to object to some modification or abridgement of a work that would compromise his artistic integrity

- the right against false attribution; this is a right to ensure that third parties are not misled into believing that the works belong to the author

- the right to privacy in private photographs and film

Moral rights will only generally be relied on after copyright has been sold. Moral rights can be waived. They do not apply to computer programmes or to works created by an employee.

Entrepreneurial Rights

There is a distinction between so called "classic copyright" which protects artists and entrepreneurial copyright which protects investors in creativity such as production companies, broadcasters, publishers. In the case of "entrepreneurial" copyright there is no requirement for originality and minimum effort is required. The rules are different for each type of right.

Entrepreneurial rights cover sound recordings, films, broadcasts, cable programme and published editions. Sound recordings include any recording of sound which may be reproduced or a recording of the whole or part of the literary, dramatic or musical work regardless of the medium on which the recording is made or the method by which it is produced or reproduced.

Film means recording in any medium from which a moving image may be produced. Film sound track is included as part of the film. Broadcast means a transmission by wireless telegraphy of visual images sound or other information which is capable of being lawfully received by the public or is transmitted for publication to members of the public.

Cable programmes are any items included in the cable programme services. Cable programme service is a service consisting of the sound or vision and visionary information by a communication system other than wireless telegraphy reception in two or more places or for presentation to members of the public. The cablecast is through a cable e.g. NTL/Chorus.

The ownership of entrepreneurial copyrights belong to the creators. They could for example be joint ownership in the case of a t.v. programme produced by an independent company and broadcast by a broadcasting authority.

Standard broadcasting and cable programmes copyrights last for 50 years from the broadcast. Film copyrights last some 70 years from the end of the life of the last to die of the principal director, author and screenplay author of dialogue or composer of music. Typographical arrangements are protected for 25 years from publication.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.