

## **INFRINGEMENT**

“Infringement” refers to breach of copyright. There is so called primary infringement and secondary infringement. The primary infringer is liable regardless of the state of knowledge. The secondary infringer is only liable if he knew or had reason to know that he was dealing with an infringing copy.

Copying of a copyright protected work or a substantial part comprises infringement. A parody of a work would infringe the copyright if it amounts to a substantial copy of it. Copying does not have to be an exact copy. Copyright could be infringed if a drawing looks similar to another; a novel with a very similar plot is written or a computer programme is copied by copying its structure and organisation. Copyright in a literary or dramatic work can be infringed by translating into another language.

It will not usually be infringement simply to use the works. However, reading or playing a book or recording in public will constitute infringement. Including a work in a broadcast or cablecast will be infringement. Therefore the permission of the owner of the copyright is necessary.

The usual method of infringement is copying. However, if it can be shown that something is independently produced without access to the original then it will not be copying. If the defendant did have an opportunity to copy and the work is so similar that copying is the most likely explanation, there would be an inference of copying. The defendant would have to prove he did not copy. Copying can also be indirect. It can be derived from seeing a copy of the work or something derived from it.

Secondary infringement relates to dealing with infringing copies. A trader who imports copies into the UK or distributes infringing copies, secondly infringes the copyright.

A wholesaler or retailer who knows that he is dealing in infringing copies will be a secondary infringer. For example, if it is pointed out to wholesalers and distributors that

particular copies are in breach of copyright, then they will not be liable if they cease selling and distributing the goods. They will be liable if they carry on as they can no longer argue that they were innocent.

A copyright owner is entitled to seize offending articles. This does not include a right to enter business premises but could be used against market or street traders. There is criminal liability for a persons infringing. A Court may order delivery up or destruction of infringing copies. A Court may make an order preventing importation of infringing copies.

There are defences of “fair dealing” in relation to the use of copyright without permission. The principle defence is for fair dealing for the purpose of research, private study, criticism or for reporting current events.

### **Miscellaneous**

Collecting societies exist to issue licences and facilitate collection of licensing fees on behalf of copyright owners. The Performing Rights Society and the Mechanical Copyright Protection Society act for writers of music and lyrics and their publishers. They incorporate under the name The Music Alliance. Photographic Performance Limited (PPL) acts for over 3,000 record companies. VPL is responsible for music video.

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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.