

Frequently Asked Questions

Denise Swanson - British Copyright Council CEAWG 09/03/2021

1. What is Copyright?

In its simplest form, copyright is the right to copy. It is a legal right that, in the UK, is given without charge or the need to register, to authors of original literary, dramatic, musical and artistic works, including novels, poetry, plays, songs, operas, paintings, drawings, photographs, illustrations, sculptures, articles, reports and computer programs. Films, sound recordings and broadcasts also have copyright and performers enjoy related rights. Copyright is automatic, irrespective of media, providing the work is original, shows creativity, uses a degree of skill, labour and judgement, is recorded, is not merely a copy.¹ Except in certain limited and legally defined cases, some of which are known as **fair dealing**, (see point 9) permission from the copyright owner is needed before anyone else can copy or use the work.

2. Who is the copyright owner?

The 'first owner' of copyright is normally the creator of the work unless it is produced during the course of employment, when that would normally be the employer (if no contract to the contrary exists). Copyright in freelance or commissioned work belongs to the author, unless the terms of contract specify otherwise. They decide who may make use of their work, how and where.

3. Can ownership be transferred?

Copyright can only be transferred ("assigned") to another party under a signed written agreement and usually, upon payment of an appropriate amount. Permission to copy or use material does not require a transfer of ownership and is granted using a licence, the terms of which may stipulate territory, media, duration etc and whether on an exclusive or non-exclusive basis. Court proceedings for infringement are initiated by the copyright owner, or an exclusive licensee.

4. Can a copyright work be changed?

The basic rights of copyright include **moral rights** such as the right to attribution, to be identified or not as the author as well as the right to object to any derogatory treatment of the work or to retain privacy. Unlike economic rights, moral rights cannot be sold or otherwise transferred but must first be asserted in order to apply. **Economic rights** control who can publish, perform, broadcast or show the work to the public, or adapt or change the work, with permission. This covers distributing copies, renting, lending, sub-licensing or otherwise communicating the work to the public, in print or on the Internet, social media, etc.²

¹ Differences in copyright law may apply in countries outside the UK. In the US for example it is necessary to register works first published in the United States to bring an infringement action in certain cases.

² International protection, subject to national laws, is covered by Conventions or Treaties in most countries.

5. Can someone copyright an idea?

It is not possible to copyright an idea, instead copyright applies to the recorded expression of an idea, not to the idea itself. Effectively you cannot stop someone copying an idea providing they do not infringe copyright or engage in “passing off”, providing some protection for the true source.

6. How do I get permission to use copyright material?

Contact the rights owner or their representative, publisher or collecting society, explain exactly how and where the work will be used, how long for, whether exclusive and whether the use is commercial. Once agreed a Licence will be issued, under the terms of which you will be bound.

7. How do I find the owner and what if I can't find them?

The Internet has lots of resources available to help track down owners, for example published books, magazines and journals carry ISBN numbers that will reveal details. Images should carry credits but if not, try contacting the magazine/book/website publisher. The IPO also provides some useful guides. If, having performed the required diligent search³ you are unable to trace any rights holders, you may apply to the IPO for a licence under the **Orphan Works**⁴ scheme.

8. Do I really need permission or a licence to use something?

The apparent lack of a copyright symbol or notice does not mean the work is not protected and it is usually safer to assume that it is. If you didn't create it, someone else did, so before using or copying any material, you should find out whether it is protected and by whom, then contact the copyright owner to obtain permission and a licence. Licences may be issued only for a specified period of time and/or limited use and fees normally apply for any commercial use.

9. What is Fair Dealing?

Some (limited) use of copyright material is permitted to a certain extent without infringing copyright, clearly defined in UK law as **exceptions**⁵. 'Fair dealing to relate that exceptions those to refers ⁶ research and private study, criticism and review or news reporting but use must be fair and not exploitative. It is recognised in common law countries such as the UK, Canada, Australia, New Zealand and Singapore although the legal definition may vary, so should always be checked.

10. I need more advice - who do I ask/where can I go?

If you can't find a direct answer to your query, sometimes it is helpful to think in less specific terms. In other words, thinking of copyright as a concept rather than a specific rule allows you to apply

³ See <https://www.gov.uk/government/publications/orphan-works-diligent-search-guidance-for-applicants>

⁴ The EU Orphan Works exception will no longer apply to UK-based cultural heritage institutions from 01/01/2021. See <https://www.gov.uk/guidance/orphan-works-and-cultural-heritage-institutions-copyright-after-the-transition-period>

⁵ Further information including a current list of copyright exceptions is available from the IPO at <https://www.gov.uk/government/publications/changes-to-copyright-law>

⁶ Fair Dealing should not be confused with Fair Use, a doctrine in United States copyright law that permits limited use of copyrighted material without first seeking permission from the copyright holder. If in doubt, check.

that concept to a variety of scenarios. Most copyright queries are actually quite generic in nature so disregarding the more specific aspects might help identify the solution, as the principal of what applies in one sector or media will usually also apply in another.

The various Copyright Highway Code (CHC) leaflets on this site should provide answers to most queries. Other options include the IPO, trade or professional organisations. Some home insurance policies may offer advice. Otherwise you may need to seek specialist legal guidance.