

### Copyright Myths and Tips

**If something is posted on the internet, it is in the public domain and I am free to use it**

- The position regarding copyright in works on the internet is no different to that regarding other work. Someone who posts material on the internet can be taken to have given permission for people to read it, but the owner of the material retains their rights in it and can object to it being printed, adapted, distributed.
- In some cases, a website may expressly say that the material contained on it can be freely used. Beware, however, that the person behind the website may not be the true owner of the copyright in the materials on the website, and therefore may not be entitled to grant such permission.

**It is permissible to copy up to 10% of a copyright work**

- The idea that up to 10% of a work can be copied probably arises from the Copyright Licensing Agency's standard licences granted to public libraries, which permit library users to copy a proportion (maximum 5%) of a work.
- In the absence of such a licence, however, there is no strict guideline as to how much may be taken before infringement occurs. The law states that copyright is infringed if the whole or a substantial part of a work is used without permission. The issue of what is a "substantial part" has been held by the courts to depend upon the quality, rather than the quantity, of what has been copied. Consequently, the copying of even a small part of a work can infringe copyright if what has been copied is an important part of the work.

**If I pay for work to be done, I will own the copyright in the work**

- An employer is entitled to the copyright in works created by its employees in the course of their duties.
- However, in respect of non-employees (e.g. independent contractors), unless you have a contractual provision in place, the default position for copyright (and most other IP rights) is that the creator rather than the commissioner owns the IP rights in question.
- It is vital, therefore, when commissioning work, to ensure that the contract with the person creating the work includes an assignment of the copyright.

**It is necessary to apply for copyright in order to obtain protection**

- Under English law, copyright arises automatically upon the creation of a work, and does not require registration.
- The advantage of this is that protection is automatically available, without the need for payment of any fees or the completion of any documentation. The disadvantage is that there is no comprehensive database showing which works are copyright – it is the responsibility of anyone wishing to use a work to track down the copyright owner and seek permission, which may be difficult in practice.

**If a work does not include the © symbol, it is not copyright and I am free to use it**

- Copyright arises automatically upon the creation of a work, and does not require any formality such as the inclusion of a © symbol.
- It is however advisable to mark your own work with the © symbol, the name of the copyright owner and the year of publication. This will alert third parties to the fact

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<p>that the work is copyright, and will also let them know who to contact if they wish to obtain a licence. Inclusion of this information also creates a presumption that you are the owner of the copyright – to rebut this presumption, anyone seeking to challenge your entitlement to the copyright would need to produce evidence to the contrary e.g. to prove that you copied from someone else.</p>
<p><b>If the author gives me permission to use his work, I am OK</b></p> <ul style="list-style-type: none"> <li>• This is true provided that the author is the owner of the copyright. Beware, however, that in some cases the copyright may belong to someone else. For example, if the author created the work in the course of his duties as an employee, his employer will own the copyright. Similarly, the author of a published work may have assigned his copyright to the publisher. It is therefore important to verify who the actual owner of the copyright is, and seek permission from that person/organisation.</li> </ul>
<p><b>It is permissible to copy something if it is for educational purposes</b></p> <ul style="list-style-type: none"> <li>• Whereas there is a limited exemption for educational purposes, it is applicable only in respect of instruction for a non-commercial purpose. Consequently, if you are a commercial organisation, you will not be able to benefit from this exemption, even if the copying is done in connection with internal training.</li> </ul>
<p><b>If the author has died, I am free to use his work</b></p> <ul style="list-style-type: none"> <li>• In fact, copyright subsists in the UK for the life of the author plus 70 years.</li> </ul>
<p><b>If I change some of the words in a passage, I will not infringe copyright</b></p> <ul style="list-style-type: none"> <li>• It is not so simple to avoid infringement. The test is whether a substantial part of the copyright work has been taken. If you read an article, and then seek to express the ideas contained in it in your own words, you will probably not infringe. If however you copy the actual text used, just changing some of the words, you will almost certainly still be infringing.</li> </ul>
<p><b>If I do not realise that a work I have copied is a copyright work, I have a defence to an infringement action</b></p> <ul style="list-style-type: none"> <li>• In fact, ignorance of the existence of copyright is not a defence. Even if you have made reasonable efforts to ascertain whether a work is copyright, and (wrongly) concluded that it is not, you can still be liable. Ignorance can, in limited cases, lead to a reduction in the amount of damages you might have to pay, but the copyright owner can still take action against you.</li> </ul>

If you are concerned about the training materials your company uses, dls offer a copyright checking service. If you want to talk about this service, contact us.

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