
factsheet

PROTECTING CREATIVE WORK

Creative work can be protected in various areas through **copyright and related rights** which can be applicable to the extent they exist and are set down in proper form, principally:

1. Copyright in literary works such as books, stories and lyrics.
2. Copyright in music.
3. Copyright in film, tv and theatre scripts, choreography, and stage directions.
4. Copyright in set/costume and lighting/sound designs.
5. Copyright in individual works of artistic craftsmanship, and interior and architectural design.
6. Copyright in pictures, photographs, materials created for promotional purposes such as artwork, advertising copy, and brochures, and graphic designs generally.
7. The performance right which accrues to musicians/performers in respect of their right to receive remuneration for any recordings and broadcasts of their performance. However, session musicians for example are usually required to contract on the basis of a one-off fee in return for which they give up any future claim.
8. The recording right which exists when a person has an exclusive recording contract with the performer(s) concerned, which thus entitles that person to prevent anyone else making or using a recording of the performance in question by such performer(s).
9. Copyright in audio or audio-visual recordings of such performances, and in films generally.
10. Copyright in computer programs.
11. Moral rights which authors may have to be identified as such and to be able to prevent mistreatment of their work.

There is no copyright in an idea, only in its expression in tangible form – so that for example a character in a play or film does not enjoy copyright, but his or her expression in script, lyrics and music will. The name/appearance of that character may also attract common law rights in **passing off** if goodwill and reputation is built up in them, and possibly be capable too of valid **trade mark registration** if used as badges of origin to promote goods and/or services.

As copyright arises automatically as soon as the work is documented in tangible form, and none of these rights require registration in any way, their exploitation is largely controlled contractually by means of appropriate agreements between the parties concerned.

All copyright material should bear the correct copyright notice, that is © and/or ® (for phonograms) with the year of first publication and the legal name of the copyright owner.

The initial owner of the copyright in a work is generally its author/creator, except for example in the case of an employee where ownership of copyright will be vested in their employer in the case of any work created under their contract of employment, or in the case of a sound recording its producer (i.e. the person by whom the arrangements necessary for the making of the recording are undertaken – so that a recording studio is not normally the copyright owner if it does nothing more than providing facilities for the recording to be made), or in the case of a film the producer and principal director (or their employer).

The initial owner of the copyright can assign (or license) or be obliged to assign (or license) his or her copyright to someone who has commissioned them to produce the work in question. For example, a photographer will be the first owner of the copyright in the photographs, but a customer can make it a condition of placing the order that the photographer assigns all copyright. If nothing is agreed as to copyright, the customer is likely to have at least an implied licence from the photographer to use the photographs for the purpose for which they were commissioned (but not to make further copies or use them for other purposes).

Creative work in the area of **industrial design** is protected, however, chiefly by the different forms of registered and unregistered design right. Industrial designs are those applied by the production of articles to the design.

Industrial designs are normally excluded from copyright except in certain circumstances, for example if the original design drawing is copied simply as a two-dimensional artistic work and not by the production of three-dimensional articles to the design.

Protection is afforded by UK unregistered design right, which subsists in original industrial designs as to the design of any aspect of the shape or configuration (whether external or internal) of the whole or part of an article, other than surface decoration. This right exists without registration. It does not apply to a method or principle of construction, or to features which enable an article to fit to another article, for example as a component or accessory. For UK unregistered design right to exist, the design must also not be commonplace. It protects against copying of the design to produce for commercial purposes articles exactly or substantially to the design.

The initial owner of the UK unregistered design right is, in the case of commissioned works, the person commissioning the design. This is different from the copyright position.

Another form of industrial design protection is registered design, which applies to the appearance of the whole or part of an industrial or handicraft product resulting from features of, in particular, lines, contours, colours, shape, texture or materials of the product or its ornamentation.

To qualify for registration, a design must be new, that is different from anything already made publicly available. It must also have individual character, i.e. the overall impression it produces on an informed user must differ from that produced by any design already made publicly available. In assessing this, account is taken of the degree of freedom of the designer in creating the design.

Registration is not available for industrial designs dictated by the product's function, to features which enable an article to fit to another article - for example as a component or accessory (but not as part of a modular system), to parts of complex products hidden in normal use, or to designs contrary to law or morality. It is not, however, limited to three dimensional articles.

The protection afforded by registration is the exclusive right to use the design and any design which does not produce on the informed user a different overall impression. Thus, deliberate copying is not needed in order to infringe.

There is also a separate short-lived unregistered Community (EU) design right which applies to the appearance of the whole or part of an industrial or handicraft product resulting from features of, in particular, lines, contours, colours, shape, texture or materials of the product or its ornamentation.

Lastly, you should consider what any creative work will be called, and the extent to which its name (or any logo) should be cleared and protected from a **trade mark** perspective.

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