Advice on copyright (2017)

Copyright protects expressions of ideas, not the ideas themselves.

It is governed by the Copyright, Designs and Patents Act (1988). In the UK a work must be definable under one of eight headings if it is to receive protection.

These are:

1. Literary works

A 'literary' work means any work, other than a dramatic or musical work, which is written, spoken or sung, and includes:

   - a table or compilation other than a database
   - a computer program, including preparatory design material
   - a database

2. Dramatic works

Dramatic works include the scenarios and scripts for plays and films, dance, mime and choreographic works. It must be 'a work of action' and 'capable of being performed'. It has been concluded that a 'jump cut' film with scenes incapable of actual performance could be a dramatic work (with a correspondingly greater depth of copyright protection as a dramatic work than as a film – see films below). It will not include the very loose format of many television programmes, such as quizzes and 'reality' shows.

3. Musical works

A work consisting of music exclusive of any word or action intended to be sung, spoken or performed with music. It covers 'performing editions' including ornamentation and directions of out of copyright works where sufficient added creativity is demonstrated. It may also include silence. For example, the copyright in “4 mins 33 secs” by John Cage, was allegedly infringed by the Planets version lasting 60 seconds. Prior to settlement it was suggested that the latters’ version was an improvement as they had achieved in only 60 seconds all that Cage had accomplished in 273.

4. Artistic works

   - graphic works (including painting, drawings, diagrams, maps, charts, engravings), photographs, sculptures and collages
   - a work of architecture or a model of the same
   - a work of artistic craftsmanship

1-4 together form the so-called 'copyright works' which receive protection for the lifetime of the author plus 70yrs.

5. Sound recordings

Sound recordings may be:

   - a recording of sounds
• a recording of a literary dramatic or musical work, regardless of the recording medium

6. Films
• a recording in any medium from which a moving image can be produced by any means
• a soundtrack accompanying a film will be treated as part of that film

7. Broadcasts
• electronic transmission of visual images, sounds or other information
• capable of reception by members of the public and is capable of being lawfully received by them
• transmitted at a time solely by the person making the transmission for presentation to members of the public

Broadcasts covers free and subscription broadcasts of all types and it includes broadcast-like (scheduled) internet transmissions and internet coverage of live events. There is no requirement for fixation as such.

8. Typographic editions
• represents the product, ‘between the covers’, that a publisher offers to the public
• relates to the layout and arrangement of a work
• is only infringed by the facsimile copying of a published edition

5-8 comprise the so-called ‘entrepreneurial works’.

Sound recordings are protected for 50 years, films for the life of the author (producer and director) plus 70 years, broadcasts for 50 years and typographic editions for 25 years.

A given work may attract a number of distinct copyrights, for example a sound recording may hold literary (lyrics), musical and sound recording copyrights. A film musical may be based on literary (the book), dramatic (the script), musical (the score) and film copyrights.

Minimal creativity is usually necessary for UK copyright, although some degree of the correct type of ‘labour, skill and judgment’ by the author is required for copyright works. The only requirement for entrepreneurial works is that they are not directly copied from the original recording. Thus an exact remake of a film will not infringe any copyright in the original, although it may require licences from the authors of any original copyright works on which it is based.

Copyright comes into existence at the moment the work is fixed in any material form. No registration or formalities are required, although proof of date of creation is advisable. The addition of a copyright notice such as © Royal Holloway 2007 (or ® Royal Holloway 2007 in the case of recordings) will provide prima facie evidence of date of fixation in the UK, will replace formalities in some Universal Copyright Convention countries and will facilitate protection in the US.

Copyright does not confer a monopoly on the owner, it simply prevents copying of all or a substantial part of the work. A substantial part is measured by quality as well as by quantity.

Copying normally represents literal copying of all or part of a work, but it may also mean the copying of the themes and plot of a work if sufficiently well expressed, or the ‘look and feel’ or the
‘structure, sequence and organisation’ of a computer program. Thus, the film The Charge of the Light Brigade, was found to copy the sequence of scenes as well as the dialogue of a book describing the same incident. In contrast it was held that The Da Vinci Code did not infringe copyright in The Holy Blood and the Holy Grail, as the ideas used from the latter were expressed at too great an abstraction.

In addition to the right to prevent copying, the copyright holder may also control: distribution; lending and rental; performance; broadcasting; making available on the internet; adaptation and authorising of any of the above. Except in the context of computer copyright, adaptation means the conversion of one type of copyright to another, for example the preparation of a script from a novel.

The author is the first owner of the copyright unless the work is done in the course of employment and there is no agreement to the contrary affecting ownership. College policy attempts to retain necessary copyright in research deliverables and in commercial applications of research whilst giving authors freedom for academic publication. Unless otherwise expressed in a contract, a consultant will own all copyright in his/her work.

**Infringement**

To infringe copyright, a person must take all or a ‘substantial part’ of a copyright work. A substantial part will represent the ‘skill, effort and judgment’ of the author in terms of either quantity or quality and so may represent fewer than 10 percent of the author’s work.

**Permitted Acts and Defences**

The strong rights given to the owners of copyright may be modified in favour of legitimate users of a work. For example under TRIPS, certain exceptions are permitted in special cases which do not conflict with the normal exploitation of the work and which do not unreasonable prejudice the legitimate interests of the rights holder.

The range of permitted limitations and exceptions is given in the Information Society Directive. These include provision for UK ‘fair dealing’ and a large number of more specific exemptions relating to situations such as educational and library use or use by the blind, and to specific classes of copyright, such as computer programs or databases.

**Fair dealing:**

- For research and private study
- For criticism and review
- For news reporting

Fairness will depend on the number and extent of quotations, the use made of them and the proportion of original material added to the work. If applied, fair dealing will permit a larger amount of a work to be copied. For example, the guidelines of the Society of Authors permit reproduction of: up to a quarter of a poem or 40 lines or a single extract of 400 words, or extracts of 800 words in total of which no single extract exceeds 300 words, for the purpose of literary review or criticism. Fair dealing does not apply uniformly to all classes of work. Thus, fair dealing for research will never apply to the use of sound recordings for research or private study, although it would apply to criticism or review. Work done for any commercial purpose can never come within the research and private study category. It is assumed that commercial organisations will obtain the appropriate licences.
Provision is also made in the CDPA 1988 for compulsory licences and for the collective administration of rights through such agencies as the Copyright Licensing Agency. Thus the acquisition of a CLA Higher Education Licence will permit the multiple analogue copying of most UK publications by a university. Copying of up to 5% of a work, comprising one chapter or one journal article is permitted under the terms of a licence.

Moral Rights

Moral rights comprise:

- Paternity Right - the right to be identified as author or producer, if published commercially, performed/exhibited or made available to the public, if previously asserted.
- Integrity Right – the right to object to derogatory treatment of work that is published commercially, performed or otherwise communicated to the public
- False Attribution Right – the right to prevent another's work being falsely attributed as your own
- The Privacy Right – the right to prevent publication of certain private photographs

Copyright in Computer Programs

Computer programs and preparatory design materials may be protected as literary works. To qualify for protection they must be fixed, 'in writing or otherwise'. This includes saving onto CD, HD or incorporation into firmware. Object code and source code may be protected, as may operating and application systems.

The standard of originality in the EU Computer Directive is 'the author's own intellectual creation' although as no legal precedent has yet been set the UK standard of 'skill, labour and judgment may still apply.

What Will Copyright Protect?

Copyright will protect literal copies of the whole or a substantial part of the code.

Copyright may be infringed by some forms of non-literal copying if, for example, a substantial part of the programmer's skill, labour and judgment has gone into protectable elements. These may include the architecture of a program, and potentially algorithms and elements behind the program.

What will Copyright not Protect?

- Expressions that have no connection with literary copyright
- Commonplace or non-original programming techniques/modules
- Expressions of ideas that may only be expressed in a single form

Restricted Acts

1. Temporary or permanent copying where needed to load, store, run or display the program
2. Translating, arranging adapting or otherwise altering the program.
3. Distribution or rental
4. Putting into circulation a copy knowing or having reason to believe it to be unlawful
5. Possessing an unlawful copy for commercial purposes
6. Putting into circulation a device for the sole purpose of circumvention or removal of technical device to protect a computer program

Exceptions:

1. Use - a lawful acquirer may use the program for its intended purpose, including error correction, unless agreed otherwise.
2. Back-up - a lawful user may make a back-up copy regardless of contract.
3. Study - a lawful user may use a copy of the program to observe, test or study the functioning of the program so as to determine the ideas and principles behind it, but only while loading, displaying, running, transmitting or storing the program as permitted. Any contractual restrictions are void.
4. Decompilation - reproduction and translation is permitted where indispensable for achieving interoperability with other independently created programs. The acts must be performed by the licensee or by somebody on his behalf, they must be confined to the parts of the program required for interoperability and the information must not be otherwise available, for example from the owner on request.

Databases

A database is:

- A collection of works, data or other materials
- Arranged in a systematic or methodical way
- Individually accessible by electronic means

It may vary in form from an anthology of poems to a multi-media work to an electronic database or even a website. It does not include a computer program.

Databases that achieve the standard of the ‘author’s own intellectual creation’ may be protected by copyright. Copyright will protect the structure and organisation and the selection and arrangement of the database.