The Game is On!

AN INTRODUCTION TO COPYRIGHT

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A free resource from the makers of *The Game is On!*

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INTRODUCTION

This booklet provides a quick and easy introduction to copyright. It has been produced to accompany the web resource *The Game is On!* (although it can be used independently of that resource). We have also produced a *Copyright Handbook for Teachers* to supplement this introductory guide. The *Copyright Handbook* provides further detail and explanation, and features more examples, case studies and illustrations to help explain the points of law being discussed. The *Copyright Handbook* is available as part of the Teacher's Kit accompanying *The Game is On!*

Both this introductory guide and the accompanying *Copyright Handbook* are intended to ensure that you, as a teacher, have a straightforward explanatory text to rely on when planning or delivering lessons about creativity, copying and copyright.

USING THIS INTRODUCTORY GUIDE WITH *THE GAME IS ON!*

This booklet is intended to be used in association with *The Game is On!* resource – as a tool for copyright education. With that in mind, throughout this introductory guide, we signpost connections with the **CASE FILES** that accompany each episode of *The Game is On!* series.

BUT WHY USE *THIS* RESOURCE?

Other copyright education resources exist, so why use this one?

Other resources are often very imaginative and can be very informative about certain aspects of copyright law. But they tend to focus on what rights exist and when you need permission to make use of someone's work. And yet, the copyright regime allows for lots of situations in which you can make use of another person's work without the need for permission or paying any kind of fee.

We try to cover all these issues.

That is, we believe it is essential to appreciate the importance of copyright for authors and other creators, and it's important to learn to respect the economic and moral rights those authors and other creators enjoy. But, at the same time, we also believe students should learn about the opportunities for creative copying that copyright allows, and about the public policy goals that copyright enables – such as, reporting the news in a free and democratic society, carrying out scientific or other forms of research, or, indeed, improving the quality of the learning experience in the classroom by allowing teachers to make use of other people's work for illustrative purposes.

So, with *The Game is On!* and its accompanying educational materials we hope to help teachers help students understand copyright from a more well-rounded perspective.

COPYING AND CREATIVITY

Copying is a perfectly normal aspect of creativity and the creative process. This was another reason for developing *The Game is On!* We wanted to produce a resource that provides an opportunity to explore, discuss and debate the relationship between copyright law, creativity, and the lawful limits of copying and reusing other people's work.

But we do more than this. Through *The Game is On!* we **demonstrate**, in practice, how copyright enables creative possibilities. We use **appropriation as a creative technique**. As such, our films speak to the positive, expressive power of the copyright regime by embracing and evidencing the creative reuse of other people's work, whether it is in or out of copyright.

For example, across all six films, in just over 20 minutes, we have copied, borrowed from and been influenced by other people's ideas and copyright works around 500 times (or, on average, approximately twice every five seconds). Moreover, each film is accompanied by a comprehensive set of **ANNOTATIONS**, identifying all the source material that we have been influenced by, or have copied from. In these annotations, you'll also find a lot of additional information about some of the source materials.

COPYRIGHT: WHERE TO FIND THE LAW

UK copyright law is set out in the **Copyright, Designs and Patents Act 1988** (which has been updated many times). We will refer to the 1988 Act as **the CDPA** throughout.

At 327 pages long, the **CDPA** cannot be described as an easy or enjoyable read. Some of the provisions, and the language used within the Act, can be quite complicated. We have tried to strip away much of that complexity, and to make key ideas and aspects of the law as accessible and understandable as possible. That said, at times, you may find it helpful to refer to the Act, or to make copies of specific sections of the Act for use in the classroom (this is perfectly permissible). You can find the entire Act here.

OTHER INTELLECTUAL PROPERTY RIGHTS

The Game is On! resource is primarily concerned with copyright law. But copyright is just one type of intellectual property right. There are many others including, for example, patents, trade marks, design rights, and more. We do not address these other types of rights, except for **performers rights**. Performers rights provide musicians, actors and other live performers with the right to control the making and sale of live performances. Performers rights are similar in nature to copyright. (For more on performers rights, see **CASE FILES #26 and #27**.)

0. INTRODUCING COPYRIGHT

Copyright touches almost every aspect of our daily lives, whether you realise it or not. When you watch television, listen to the radio, or stream films, box sets or music online, copyright interests are at play. Copyright exists in newspapers and magazines, graphic novels, comics and books. The websites and blogs that you read are copyright-protected, although the very act of reading them involves making copies of those works (on your screen and in the cache of your computer). The photos you take on your phone, to share with friends or to post online, are almost certainly copyright works. If you tweet, those tweets might also be protected.

Copyright applies to most of the works created by teachers and students, such as teaching resources, essays, correspondence, video recordings or publications. And very often these works are based on or reuse other existing materials that are protected by copyright themselves.

But copyright is not just a set of rules indicating what you can do with existing content, and who owns the work you create. It also offers interesting topics and points of discussion to complement and enhance the subjects you are teaching, whether it is English, Citizenship, Media Studies, Law, and others.

This booklet provides authoritative and accessible guidance on what you can do under UK copyright law, while signposting connections with educational materials that allow you to introduce copyright into your own teaching.

1. WHAT COPYRIGHT DOESN'T PROTECT

Before asking what types of work copyright protects, it is worth first considering **what copyright does not protect**. There are four issues to think about here.

1.1. THE DIFFERENCE BETWEEN A WORK AND THE COPYRIGHT IN THE WORK

Owning the copyright in a work does not necessarily mean that you own the work itself (and vice versa). They are **two distinct forms of property**. For example, if you purchase a painting in a gallery you buy a physical object – the painting itself. But, owning the painting does not mean you have the right to make copies of the painting; that lies with the owner of the copyright in the painting (the artist).

1.2. IDEA AND EXPRESSION

Copyright does not protect the idea for a work, only **the expression of that idea**.

An original novel is protected by copyright. To reproduce the novel in its entirety without permission would clearly infringe the author's copyright. However, consider the following plot:

> *Boy meets girl and they fall in love; but they come from two very different backgrounds (rival families, if you like); they conceive a plan to marry in secret; the plan goes wrong; the young lovers die tragically.*

Is this basic plot – this idea for a novel, or a play, or a musical, or a film – protected by copyright? No. But while the basic idea for the story may not be protected, how an author **expresses that idea** will be protected – whether in a novel, a play, a song, a musical, a film, and so on. (See **CASE FILES #1, #7, #16 and #21**.)

1.3. COPYRIGHT IS NOT A MONOPOLY RIGHT

Copyright does not provide the copyright owner with a true form of monopoly protection. Copyright prevents others from copying your work (whether they have copied consciously or not), but it does not prevent others from making use of very similar or even identical works **they have independently created** (however unlikely that may be). That is, copyright only prevents others from **copying** your work.

1.4. PUBLIC POLICY

As a matter of public policy, the courts have refused copyright protection to works they consider to be immoral, obscene, scandalous, or irreligious. In *Attorney-General* v. *Observer* (1988) the courts also refused copyright protection to *Spycatcher*, a book written by Peter Wright, a former member of MI5, in breach of the *Official Secrets Act* (they said Wright had acted **disgracefully** in publishing his book). (See **CASE FILE #8**.)

2. WHAT COPYRIGHT DOES PROTECT

UK copyright law only protects certain types of work. The CDPA sets out eight different categories of work protected by copyright (s.1):

- original literary works
- original dramatic works
- original musical works
- original artistic works
- sound recordings
- films
- broadcasts
- the typographical arrangement of published editions

If you create something that does not fall within one of these eight categories (for example, a perfume) it will not be protected by copyright. (See **CASE FILE #23**.)

It is also important to appreciate that different types of copyright work can exist in the same creative work. For example, a pop song might involve different people owning different copyrights in:

- the lyrics (as a literary work)
- the music (as a musical work), and
- the recording of the song (a sound recording)

2.1. LITERARY WORKS

In the CDPA, a literary work is defined as 'any work, other than a dramatic or musical work, which is written, spoken or sung,' including tables, compilations and computer programs.

Literary works include those things we normally think of as literature (novels, short stories, poetry) as well as works that are ordinary or mundane, such as a trade catalogue, a 25-letter grid for a newspaper-based bingo game, an instruction manual for a toy, and so on. (See **CASE FILES #13, #20, #27 and #31**).

2.2. DRAMATIC WORKS

The only definition the CDPA provides for a dramatic work is that it includes 'a work of dance or mime' (s.3(1)). (See **CASE FILE #23**.)

2.3. MUSICAL WORKS

A musical work is defined as 'a work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music' (s.3(1)).

However, copyright protects more than the actual notes in a piece of music; other elements that contribute to the sound as performed, such as musical notation concerning tempo and volume, will also be protected as part of the musical work. (See **CASE FILE #28**).

2.4. ARTISTIC WORKS

The CDPA defines artistic works to include (s.4(1)):

- graphic works, photographs (excluding a film), sculptures and collages irrespective of artistic quality
- works of architecture being a building or a model for a building
- works of artistic craftsmanship

Graphic works are further defined to include paintings, drawings, diagrams, maps, plans, charts, engravings, etchings, lithographs, woodcuts, or any similar works (s.4(2)). (See **CASE FILES #1, #3 and #30**.)

2.5. SOUND RECORDINGS

The CDPA provides protection for all forms of sound recording, so long as the sounds can be reproduced from that recording (s.5A(1)). So, the Act provides protection for vinyl records, tapes, compact discs, digital audio tapes as well as any other media used to embody recordings, such as a pin roll from a music box or punched tape used in a barrel organ. (See **CASE FILES #28 and #29**.)

2.6. FILMS

In the CDPA a 'film' is defined as a recording on any medium from which a moving image may be produced by any means (s.5B(1)), a broad definition which encompasses celluloid films, video recordings, disks, and so on. (See **CASE FILES #13, #22, #23 and #29**.)

2.7. BROADCASTS

Broadcasts are different from all other categories of copyright work. A broadcast does not involve the creation of a work *per se*; rather, it involves **the provision of a service** (an action). Broadcasts are not fixed (although they can be) but are ephemeral acts of communication. What is protected by copyright is **the signal which is transmitted**.

2.8. TYPOGRAPHICAL ARRANGEMENTS

Typographical arrangement concerns how a published work is laid out on the page (rather than the text itself, which is protected as a literary work). This prevents others from copying the specific typographical layout and arrangement of the words on a page, the margins, the font, and so on, used by a publisher.

3. PROTECTION CRITERIA: WHEN IS A WORK PROTECTED?

As well as falling in one of the eight categories discussed above, for a work to enjoy copyright protection it must satisfy certain criteria. These criteria sometimes differ depending upon which type of work you are dealing with but, in general, there are three requirements to bear in mind:

- **fixation**: that the work is recorded in material form
- **originality**: that the work is 'original'
- **qualification**: that the work 'qualifies' for protection under UK law

When a work satisfies the relevant criteria for protection it is **automatically** protected by copyright. That is, **copyright arises at the point of creation**.

3.1. FIXATION

Generally, a work should exist in some permanent form before it can be copyright-protected. That is, it should be fixed in some way (s.3(2)). With artistic works, the point of creation and the point of fixation occur in the same moment (although not always). However, this is not necessarily true for literary or musical works. For example, a teacher may improvise a short poem in front of their class, but, until the work is fixed in writing or some other form, it will not be protected by copyright. (See **CASE FILE #14**).

3.2. ORIGINALITY

Not every literary, dramatic, musical or artistic work will qualify for copyright protection – to be protected they must be **original** (s.1(1)). But what exactly does originality mean? How high (or low) is this threshold set?

While the case law on the concept of originality is not always consistent, the courts agree that so long as the author has expended a certain amount of **labour, skill and judgment** when making the work, the work will be protected by copyright. That is, in the UK, the threshold for protection has been set at a very low level – even the expenditure of **non-creative skill and labour** can result in copyright protection. (See **CASE FILE #14**.)

3.3. QUALIFICATION

Before a work will be protected within the UK it must **qualify for protection**.

If the author is a British citizen or was living in the UK at the time when the work was created, the work will qualify for protection. Alternatively, if the work was first published in the UK it will also qualify for protection.

4. AUTHORSHIP AND OWNERSHIP OF COPYRIGHT WORKS

Authorship and ownership are two discrete, but related, concepts. The author of a work and the owner of the copyright in that work need not be the same person. And, while the authorship of a work will never change, the ownership of copyright in that work might change hands many times while the work is in copyright. (See **CASE FILE #13**.)

4.1. AUTHORSHIP

The CDPA (s.9) defines who the author of each category of work is as follows:

- original literary work: 'the person who creates it'
- original dramatic work: 'the person who creates it'
- original musical work: 'the person who creates it'
- original artistic work: 'the person who creates it'
- sound recording: 'the producer'
- film: 'the producer and the principal director' (joint authors)
- broadcast: 'the person making the broadcast'
- the typographical arrangement of published edition: 'the publisher'

4.2. WORKS OF UNKNOWN AUTHORSHIP

Occasionally it may not be possible to identify the author of a literary, dramatic, musical, or artistic work is (particularly when the author of the work does not wish her identity to be revealed). To address this, the CDPA includes the concept of a work of **unknown authorship**.

A work is of 'unknown authorship' if the identity of the author is unknown and it is not possible for a person to ascertain her identity by reasonable inquiry (s.9(4)(5)). For example, most works of graffiti are works of unknown authorship – would you be able to find out who the author was by making reasonable inquiries?

4.3. WORKS OF JOINT AUTHORSHIP

What happens when there is more than one author involved in creating a work?

The CDPA defines a work of **joint authorship** as 'a collaboration of two or more authors in which the contribution of each author is not distinct from that of the other author or authors' (s.10(1)). (See **CASE FILE # 22**). So, when considering if a work is a work of joint authorship, ask yourself whether:

- each of the authors contributed in some way to the making of the work
- the work has been produced through a process of collaboration (were the authors working to some form of shared plan)
- the respective contributions are not distinct or separate from each other

If the answer to each of these questions is yes, the work has been jointly authored.

Determining that a work is jointly authored is important for various reasons. For example, when there are two or more authors the duration of the copyright term is based on the date of the death of the last of the authors to die (s.12(8)).

4.4. AUTHORSHIP AND OWNERSHIP

Because copyright in a work exists from the point of creation, generally, **the author of the work will also be the first owner** of the copyright in the work (s.11(1)). While ownership of the copyright in a work may change hands many times while the work is in copyright, the authorship of the work will never change. (See **CASE FILES #12 and #13.**)

4.5. JOINT AUTHORSHIP AND JOINT OWNERSHIP

Joint authors of a work will also be the joint owners of the copyright in the work.

Interestingly, it is not necessary for joint authors to contribute equally to the creation of the work to enjoy equal ownership of the work. That is, even if joint authors make unequal contributions when making the work they are normally entitled to an equal share in the copyright. (See **CASE FILE #22**.)

One important consequence of joint ownership is that all joint owners need to agree on how the work will be used, and who can use it. For example, getting permission from one joint owner to make use of the work is not enough – you need to get permission from them all.

4.6. WORK CREATED BY EMPLOYEES

In general, the author of a work will be the first owner of the copyright in that work (s.11(1)). But, there is **one important exception** to this rule – copyright in work created by employees is presumed to belong to the employer (s.11(2)). (See **CASE FILE #12**.)

Who owns the copyright will depend on what the contract of employment says (if anything), and whether the work was made **in the course of the employee's duties**. For example, if an employee creates a work at home in the evenings and at the weekends, that work is highly unlikely to have been made during her employment. As such, the employer would not be able to claim rights in the work.

4.7. FREELANCE WORK

Unlike the typical situation of an employee, when work is carried out on a freelance basis, as a one-off event, or on terms that the individual is responsible for her own time, equipment, tax and so on, then the employer will not automatically own the copyright in the work that has been created.

5. ECONOMIC RIGHTS AND INFRINGEMENT

Copyright does not prohibit all forms of copying. It only prohibits certain types of copying, in certain ways, and under certain circumstances. So, while copyright protects the economic interests of copyright owners by preventing unlawful copying and use, at the same time it enables and encourages many forms of lawful copying and reuse.

5.1. INFRINGEMENT

Copyright infringement takes one of two forms: **primary infringement** or **secondary infringement**. Primary infringement involves the unauthorised performance of any of the 'acts restricted by copyright'; secondary infringement provides protection against those who assist the primary infringer, or who import or sell infringing copies.

5.2. PRIMARY INFRINGEMENT AND THE ACTS RESTRICTED BY COPYRIGHT

The **acts restricted by copyright** are the **bundle of economic rights** a copyright owner enjoys in her work (s.16). They include the right to:

- Copy the work: the reproduction right (further defined in s.17 of the CDPA)
- Issue copies of the work to the public: the distribution right (see s.18)
- Rent or lend the work to the public: the rental right (see s.18A)
- Perform, show, or play the work in public: the public performance right (see s.19)
- Communicate the work to the public: the communication right (see s.20)
- Make an adaptation of the work or do any of the above in relation to an adaptation: the adaptation right (see s.21)

Doing any of these acts without permission will infringe copyright in the work, and the owner will be entitled to some form of relief or compensation (unless, that is, your use falls within one of the exceptions to copyright).

It will not make any difference if the infringing copy takes a different form to the original. For example, converting a two-dimensional image into three dimensions and vice versa, will still be infringement. Moreover, it makes **no difference** that the person infringing copyright **did not intend** to infringe or was even aware that she was infringing someone's copyright. Intention and knowledge of wrongdoing are irrelevant. Ignorance is no defence.

5.3. INFRINGEMENT AND THE 'SUBSTANTIAL PART' OF A WORK

Section 16 of the CDPA sets out the various acts restricted by copyright. But the legislation also states that infringement only occurs when copying the whole work or '**any substantial part of it**' (s.16(3)(a)). Logically, this means you can copy an **insubstantial** part of a work without infringing copyright. (See **CASE FILE #7**.)

But how do you draw the line between a substantial and an insubstantial amount? This will depend upon the **quality** of what has been taken rather than the **quantity** – that is, the courts consider the importance of the parts that have been copied (rather than just the quantity). (See **CASE FILE #19**.) For example, the courts have indicated that copying a sentence, or even part of a sentence, from a newspaper article might amount to copying a substantial part of the work. (See **CASE FILE #9**.)

5.4. INFRINGEMENT AND NON-LITERAL COPYING

Copyright infringement often arises because an entire work has literally been copied. For example, copying a photograph on the internet and using it on your own website. But, the issue of non-literal copying is also important to consider. For example, the protection afforded to a literary work may extend beyond the reproduction of the words on a page to prevent others from copying a complicated storyline or plot, or perhaps even characters that form part of the work. In other words, copyright can provide protection that reaches **beyond** the original author's **literal expression** to encompass other non-literal elements of the work. (See **CASE FILES #16 and #21**.)

5.5. SECONDARY INFRINGEMENT

As noted in section 5.1, the CDPA outlines various forms of secondary infringement, which are more relevant to individuals or organizations that deal with infringing copies or facilitate the infringement of the copyright work (ss.22-27). These include:

- importing an infringing copy (s.22)
- possessing or dealing with an infringing copy in the course of a business (s.23)
- providing the means for making an infringing copy (s.24)
- permitting the use of a premises for an infringing performance (s.25)

Unlike instances of primary infringement, here the **knowledge** of the alleged infringer **is relevant** to the commission of an offence. That is, liability turns upon the defendant **knowing or having reason to believe** that the activities in question are unlawful.

5.6. CONSEQUENCES OF INFRINGEMENT: LEGAL REMEDIES

If a claimant successfully establishes that their copyright has been infringed, there are various remedies available to address the infringement. Broadly speaking, they involve the grant of an injunction (to prevent any further infringement), the award of some form of financial settlement, or both. (See **CASE FILE #4**.)

For example, recently, in the US, Pharrell Williams and Robin Thicke were ordered to pay **$7.4M** to Marvin Gaye's family over their unauthorised use of his 1977 hit *Got to Give it Up* in their phenomenally successful 2013 track *Blurred Lines*. (Not all financial awards are as generous as this, and especially not in the UK.)

6. DURATION OF PROTECTION: THE COPYRIGHT TERM

The **term of protection** for all types of copyright work is **time-limited**. Once copyright in a work expires, the work enters the **public domain** and it is free to be used by anyone for any purpose. (See **CASE FILE #2**.)

When considering the rules on the copyright term, we can draw a distinction between those categories of works for which duration is calculated by reference to an **author's life** (literary, dramatic, musical and artistic works, and films) and **those which are not** (sound recordings, broadcasts, the typographical arrangement of published editions and certain films). These rules are set out in sections 12 to 15 of the CDPA, however, the table below provides a basic overview.

TYPE OF WORK	DURATION OF PROTECTION
Literary, dramatic, musical or artistic work	Life of the author + 70 years from the end of the year in which the author dies
Co-authored musical works, such as songs	70 years from the end of the year in which the last co-author dies
Film	70 years from the end of the year of the last of four designated persons to die; these persons are: the director, the author of the screenplay, the author of the film dialogue (if different), and the composer of any specifically created film score
Sound recording	50 years from the end of the year in which the film was made HOWEVER: if, during that 50-year period, the work is published or made available to the public, then 70 years from the end of that year
Broadcast	50 years from the end of the year of transmission
Typographical arrangement of a published work	25 years from the end of the year in which the work is first published
Computer-generated works	50 years from the end of the year in which the work was made
Works of unknown authorship	70 years from the end of the year in which the work was made HOWEVER: if, during that 70-year period, the work is published or made available to the public, then 70 years from the end of that year

7. MORAL RIGHTS

In addition to the bundle of economic rights that copyright provides, the CDPA also creates moral rights in relation to certain types of work (sections 77-89). (See **CASE FILE #11**.) There are two main moral rights to be aware of:

- the right of attribution: the right to be identified as the author of the work
- the right of integrity: the right to object to derogatory treatment of a work

These moral rights last for as long as copyright lasts in the work, but they **only** apply to literary, dramatic, musical and artistic works, and films. They do not apply to sound recordings, broadcasts or the typographical arrangements of published editions.

7.1. THE RIGHT OF ATTRIBUTION

Before an author can benefit from their right of attribution, she must **assert their right**. If you look at the front of almost any book published in the UK, you will see a statement to the effect that the author has asserted her moral rights.

Once the right has been asserted, the author can prevent others from making use of her work in certain circumstances without proper attribution. For example, when dealing with literary, dramatic, musical and artistic works, if you commercially publish someone's work, or make it available online, you must attribute the author.

But, if you are making use of a work in your classroom, you don't need to worry about the right of attribution (although, for educational purposes, or as a matter of good practice, you might always want to do so).

7.1.1. ATTRIBUTION: EXCEPTIONS TO THE RIGHT

Even when the moral right of attribution exists in relation to a work, the CDPA also provides for some exceptional circumstances in which attribution is not required.

For example, attribution is not required when the use of the work relates to the reporting of current events (as defined by s.30 of the CPDA), or when the work has been incidentally included in an artistic work, sound recording, film or broadcast (as defined by s.31 of the CDPA).

7.2. THE RIGHT OF INTEGRITY

The right of integrity ensures that authors can prevent others from making use of their work in certain ways, if it would be prejudicial to their reputation. Unlike the right of attribution, the right of integrity does not need to be asserted – it exists as soon as the work is created.

7.2.1. DEROGATORY TREATMENT THAT PREJUDICES REPUTATION

In *Confetti Records* v. *Warner Music* (2003) the court commented that simply distorting or altering a work per se will not infringe the right of integrity **unless** that distortion is objectively prejudicial to the author's reputation. (See **CASE FILE #11**.) So, there are two issues to consider here:

- is there a derogatory treatment?
- is it prejudicial to the author's honour or reputation?

The concept of **treatment** involves making additions to a work, deleting something from it (for example, cropping an image), or altering it in some way (s.80(2)). The treatment will be derogatory if it amounts to a **distortion or mutilation of the work** (s.80(2)(b)).

There is no simple test for establishing that a work has been treated in a derogatory manner, although the courts have indicated that this should be determined **objectively**. That is, it is not enough that the author thinks the work has been subjected to a derogatory treatment (a subjective perspective); instead, one should ask whether a reasonable person would regard the treatment as derogatory (an objective perspective).

Whether a derogatory treatment does prejudice an author's reputation will always be a question of fact for the court to decide.

8. GETTING PERMISSION TO USE

One obvious way to manage copyright issues, and to avoid liability for infringement, is to ask the copyright owner for permission to make use of the work.

Copyright owners enable the use of their work by a third party either by assigning the copyright in their work to a third party, or, more commonly, by granting a licence to the third party to make use of the work for certain purposes and often in accordance with certain conditions. (See **CASE FILE #15**.)

8.1. ASSIGNMENTS

An assignment of copyright involves a transfer of the ownership of the copyright from one person to another. To be valid, an assignment must be in writing and must be signed by or on behalf of the assignor (the person making the assignment) (s.90(3)).

Not all the economic rights in a copyright work need to be assigned at the same time to the same person (s.90(2)). Each economic right can be sold separately if the copyright owner so wishes. For example, an author might sell the right to publish the work to her publisher, while retaining other economics rights (such as performance or adaptation) for herself.

8.2. LICENCES

A licence is essentially a permission to make use of a work in a way that, without that permission, would constitute copyright infringement. In other words, the grant of a licence means the licensee (the person to whom the licence is granted) can make use of the work without infringing the copyright in the work. (See **CASE FILE #29**.)

A licence will often be contractual in nature, but it does not have to take the form of a written contract. For example, simply giving someone verbal consent to make use of the work can amount to a licence, and without the parties entering into a formal contract.

Licences can be exclusive or non-exclusive. An exclusive licence grants use of a work **only** to the person acquiring the licence; by contrast, a non-exclusive licence enables the owner to license the use of her work to more than one person at the same time.

8.3. CREATIVE COMMONS AND OPEN LICENCES

Creative Commons (CC) is a non-profit organisation that enables the sharing and use of copyright content by providing easy-to-use copyright licences for authors and other interested organisations. Further information about CC licences can be found on the Creative Commons website.

You will also find lots of open, free-to-use content, on Wikimedia Commons, including images, sound recordings and audio files, and videos. Wikimedia Commons aims to make available public domain and freely-licensed educational media content for use and

re-use in any context, not just in the classroom. You can find out more here: commons.wikimedia.org/wiki/Commons:Welcome.

8.4. COLLECTING SOCIETIES

Authors often authorise a specialist organisation – a **collecting society** – to manage their work on their behalf. Essentially, the collective management of rights simplifies the process of securing permission so that **entire categories of copyright works** can be licensed for specific uses by specific institutions or organisations.

For example, this might involve permitting photocopying certain parts or portions of published works by students enrolled at a school or a university. The collecting society (in this case, the Copyright Licensing Agency) grants a blanket licence to the school or university on behalf of its members, collects the fee, and redistributes it as royalties to its members.

You can find further information, including a list of collecting societies currently operating within the UK here: www.gov.uk/guidance/licensing-bodies-and-collective-management-organisations.

8.5. COLLECTING SOCIETIES AND SCHOOLS

There are various licensing schemes that apply to schools and other educational institutions. These schemes allow you to copy and make use of works in certain specified way, when carrying out the activities of the school. Here are some examples:

- CLA Schools licence: this allows you to copy and reuse content from print and digital publications
- PRS for Music licence and the PPL licence deal with the non-curricular use and performance of print and recorded music
- Educational Recording Agency licence: this allows schools to create libraries of radio and television broadcasts to be used for educational purposes
- Public Video Screening licence: this allows schools to show films for entertainment purposes on their premises

It is also worth noting that the Department for Education (DfE) buys copyright licences for all state-funded primary and secondary schools in England. You can find guidance on what is covered by these licences here: www.gov.uk/guidance/copyright-licences-information-for-schools.

9. LAWFUL USE WITHOUT THE NEED FOR PERMISSION

Getting permission to make use of someone's work in certain ways is an important aspect of respecting copyright, whether you get permission directly from an author or an artist, or your school has secured permission under a licensing scheme. But there are also many ways in which you can make use of another person's work, without their permission, whether it is for creative, informative, educational or other purposes. Much will depend on the context: what you are doing, why, and where.

So, while copyright **prevents** doing certain things without permission, at the same time, it **permits** doing certain things without permission. For example, you can make use of:

- ideas, facts, or information from someone's work, so long as you don't copy the expression of those ideas, facts or information
- an insubstantial part of the work
- the work in accordance with one of the many statutory defences to copyright infringement (these are otherwise referred to as 'the permitted acts')

9.1. IDEAS, FACTS, INFORMATION, THEORIES AND THEMES

Although copyright will protect against copying non-literal aspects of literary, dramatic, musical and artistic works, there will always be elements of the work that remain unprotected and so free to use. (See **CASE FILES #16 and #21**.) For example, copying ideas is lawful, although copying the way in which an idea has been expressed by another author is not (see **section 1.2**).

In *Baigent* v. *Random House* (2007) the claimants argued that Dan Brown had copied a substantial part of their non-fiction book, *The Holy Blood and the Holy Grail*, when writing his blockbuster novel, *The Da Vinci Code*. The court stated very clearly that copying information, facts, ideas, theories, arguments, themes, and so on, from someone else's work does not infringe copyright in that work. (See **CASE FILE #18**.)

9.2. INSUBSTANTIAL COPYING

As discussed above, you can copy insubstantial parts of copyright works without the need for permission (see **section 5.4** for further discussion).

9.3. THE PERMITTED ACTS: LIMITATIONS AND EXCEPTIONS TO COPYRIGHT

Every copyright regime throughout the world limits the copyright owner's rights in specific ways by allowing certain things to be done with their work without need for the owner's permission. These **permitted acts** (or **copyright exceptions**) try to strike a balance between the economic rights of the owner and other uses considered to be socially, culturally, politically, or economically beneficial (ss.28-76).

There are general exceptions that allow the use of work by anyone, for example, for the purposes of research and private study, for criticism and review, or for reporting current events. Other exceptions are intended to enable the use of copyright material within certain institutional contexts, for example, by schools, by libraries and archives, or as part of parliamentary or judicial proceedings.

We deal with the exceptions relevant to private study, research and education in the next chapter.

9.4. FAIR DEALING

Some exceptions to copyright allow for the use of the **entire copyright work**; for example, performing a literary, dramatic or musical work before an audience of teachers and pupils at an educational establishment (s.34).

Other types of permitted act depend on the notion of **fair dealing**; for example, fair dealing with a work for the purposes of reporting current events will not infringe the copyright in that work (s.30(2)). While the concept of fair dealing is not defined within the CDPA it is relevant to consider:

- whether your use of the work commercially competes with the owner's work?
- whether the work has already been published by the owner or not?
- how much of the work you have used, and how important that part is to the work overall?

The courts will generally not allow a defence of fair dealing if they consider the real motivation behind the use of the work is to create a commercially competing product. (See **CASE FILE #25**.)

9.5. SUFFICIENT ACKNOWLEDGEMENT

Some exceptions require you to make a **sufficient acknowledgement** (s.178) when using the work. Essentially, this means identifying and acknowledging the author of the work (if their identity is known). However, this **only applies to the author**. That is, you are **not required to acknowledge the current owner of the copyright**, if that is no longer the author.

9.5. EXCEPTIONS FOR QUOTATION, CRITICISM AND REVIEW (s.30(1))

Before October 2014, copyright law permitted use of a work for the purposes of criticism and review, but it did not allow quotation for other more general purposes. Today, the law also allows quotation for other purposes.

So, there are two exceptions to be aware of, one specifically for criticism and review and a more general exception for quotation. (See **CASE FILE #6**.) Both exceptions apply to all

types of copyright work, and both depend on many of the same criteria; so, you can only rely on each of these exceptions if:

- the material used is available to the public
- the use of the material is fair
- where practical, the use is accompanied by a sufficient acknowledgement

However, as well as the three criteria set out above, the exception for criticism or review only applies if the purpose genuinely is for criticism or review. On the other hand, the quotation exception applies to any purpose (including artistic and expressive purposes) but the use of the quotation must be **no more than is required** to achieve your purpose.

What amounts to 'no more than is required' is not defined in the legislation. As with determining whether use is fair or unfair, what amounts to a reasonable or proportionate quotation under this criterion is an issue that will be resolved by the courts on a case by case basis.

9.7. EXCEPTION FOR REPORTING CURRENT EVENTS (s.30(2))

Section 30(2) of the CDPA states that fair dealing with a work (other than a photograph) for the purposes of reporting current events is permitted, so long as it is accompanied by a sufficient acknowledgement whenever reasonably practical to do so.

Unlike the exceptions for quotation, criticism and review, this exception is not limited to work that has been made available to the public. So, any work – published or unpublished – falls within the scope of this exception. That said, while the published or unpublished status of the work will not be relevant when determining if the use of the work was for reporting current events, it may still be relevant when deciding if the use was fair (see above, section 9.4). (See **CASE FILE #19**).

9.8. EXCEPTION FOR PARODY (s.30A)

Section 30A provides that '[f]air dealing with a work for the purposes of caricature, parody or pastiche does not infringe copyright in the work.' This exception applies to every type of copyright work. (See **CASE FILE #5**.)

The meaning of parody was considered by the European Court of Justice (the CJEU) in *Deckmyn* v. *Vandersteen* (2014) which concerned a modified version of a comic book cover that satirised the mayor of Ghent. The court commented that the essential characteristics of a parody are, first, to evoke an existing work while being noticeably different from it, and second, to constitute an expression of humour or mockery. If these two criteria are satisfied, the work in question is a parody.

10. LAWFUL USE WITHOUT PERMISSION: EXCEPTIONS FOR EDUCATION

In this section, we consider the copyright exceptions that are specifically relevant to private study, research and education.

10.1. ENABLING RESEARCH AND PRIVATE STUDY

Fair dealing with a work for non-commercial research does not infringe copyright in the work, provided it is accompanied by a sufficient acknowledgement (s.29(1)). Similarly, fair dealing with a work for private study does not infringe (s.29(1C)).

In addition, the CDPA includes an exception that **allows librarians to make copies of published works for students** and other persons (s.42). If your school has a library, it will also have a librarian – that is, the person who is responsible for the library (whether they have been specifically trained to work in a library or not). Your school librarian – or a person acting on their behalf – can make and supply a **reasonable proportion** of a published work for any student or teacher in the school, provided certain conditions are met (these conditions are set out in s.42A(2)).

10.2. MAKING ACCESSIBLE COPIES

The CDPA allows a disabled person to make an accessible copy of the whole or part of a work, so long as she has 'lawful possession or lawful use' of the work (s.31A(1)), and so long as the copy is made for her personal use. Moreover, the accessible copy can be made either by the disabled person or by another person acting on their behalf.

The exception applies to all types of work, whether published or unpublished, but it does not apply if accessible copies of the work are already commercially available on reasonable terms (for example, if a Braille edition of a book is available for purchase at a reasonable price) (s.31A(2)).

In addition, the CDPA allows schools and other not-for-profit bodies (such as libraries) to make and supply accessible copies of work for the personal use of disabled persons (s.31B(1)).

10.3. EXCEPTIONS FOR EDUCATION AND INSTRUCTION

10.3.1. ILLUSTRATION FOR INSTRUCTION

Perhaps the most important exception for education is the one that permits the use of any work for the sole purpose of illustration for instruction, including setting examination questions (s.32). The exception only applies when the purpose of the use is non-commercial, when it is accompanied by a sufficient acknowledgement (wherever practical), and when the use is fair.

Importantly, this exception applies to all types of teaching and instruction, not just teaching that takes place within a traditional educational institution or environment. Also, it draws no distinction between analogue and digital copying. That is, posting material on an interactive whiteboard, or within a virtual learning environment, is permitted in the same way as writing on a blackboard.

10.3.2. PERFORMING, PLAYING OR SHOWING A WORK IN THE COURSE OF THE ACTIVITIES OF AN EDUCATIONAL ESTABLISHMENT

This exception allows performing, showing and playing works as part of the school's curriculum (s.34).

Performing or playing a literary, dramatic or musical work before an audience of teachers and pupils is permitted in two situations: for the purposes of instruction; and, in the course of other activities of the establishment. However, playing or showing a sound recording, film or broadcast before such an audience is only permitted for the purposes of instruction.

10.3.3. LENDING OF COPIES BY EDUCATIONAL ESTABLISHMENTS

The CDPA allows school and other educational establishments to lend works (s.36A). For example, when a school lends books to pupils for homework, study or other purposes, this exception ensures that the school does not infringe copyright.

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