

CASE FILE #22: THE TWO HEADS

LEARNING AIMS

- Understand the concept of joint authorship
- Understand how joint authorship affects the copyright term
- Understand how joint ownership of a work affects how it can be used

KEY QUESTIONS

The following key questions should be discussed to address the learning aims:

- When is a work jointly authored?
- When does a work of joint authorship enter the public domain? (That is, when does copyright come to an end?)
- How is the duration of copyright in a film calculated?
- When a work is jointly owned, do the owners have to agree on how the work is used?

Students will be expected to use Case File information to analyse ideas, to give opinions, and to justify opinions. Other questions posed within the Case File can be used to generate further discussion.

WHEN IS A WORK JOINTLY AUTHORED?

- See **TEXT BOX #2**
- The law defines when a work has been jointly authored. There are three key criteria to satisfy.
 - Did each of the authors contribute something to making the work?
 - Did they plan to create the work collaboratively?
 - Are their contributions distinct from each other?

- For example, if John writes the music for a song and Paul writes the lyrics they have collaborated to produce a song, but this is **not** a work of joint authorship.

Instead, John has authored the music on his own, and Paul has authored the lyrics on his own. Their contributions are distinct from each other. And, each will have a separate copyright in the music and lyrics respectively.

- However, if John and Paul collaborate on both the music and the lyrics, each working together, their work will be jointly authored. That is, each person's contribution to writing both the music and the lyrics cannot be untangled from the other.

WHEN DOES A WORK OF JOINT AUTHORSHIP ENTER THE PUBLIC DOMAIN?

- See **TEXT BOX #3**
- Copyright duration for creative works is calculated with reference to the life of the author. That is, copyright in literary, dramatic, musical and artistic works lasts for the life of the author plus 70 years.

So, 70 years after the author has died, copyright comes to an end. Another way of saying this is that the work enters the public domain: it can be freely used by anyone for any purpose without having to ask anyone for permission.
- If a work has been jointly authored, this affects how duration of copyright is calculated. That is, copyright will last for 70 from the end of the year in which the last of the joint authors dies.

HOW IS THE DURATION OF COPYRIGHT IN A FILM CALCULATED?

- See **TEXT BOX #4 and #6**
- Calculating the duration of copyright in a film is more complicated than for a literary, dramatic, musical or artistic work.
- The law defines the authors of a film as: the producer and the director (co-authors).

However, the duration of copyright in a film is calculated according to the last to die of four different persons: the director, the author of the screenplay, the author of the film dialogue (if different), and the composer of any specifically created film score.

That is, copyright lasts for 70 years after the last of these four people to die.
- Why is this the case? A cynical explanation would be because it is economically beneficial for the producer of the film (who almost always owns the copyright). If four people must die before the 70-year post mortem term starts to run, the film will likely stay in copyright for longer.
- In addition, the UK law provides for a category of films created without authors which only receive protection for 50 years from the year in which they were made.

The shorter term reflects the idea that these films do not really involve creative or imaginative choices on the part of a director or filmmaker. Spontaneous filming or the type of casual everyday footage we routinely take with mobile phones would fall within this category.

WHEN A WORK IS JOINTLY OWNED, DO THE OWNERS HAVE TO AGREE ON HOW THE WORK IS USED?

- See **TEXT BOX #5**
- In a word: **YES**. If you jointly author a work, then you will also jointly own that work with your co-author. All decisions about how a work is exploited economically – whether it is sold or licensed to someone else – must be jointly agreed. One joint owner cannot decide to do something with the work without the permission of the other joint owner.

SUGGESTED ACTIVITIES

Working in pairs, ask the students to produce a one-page outline for a new film, thinking about plot, setting and characterisation. Next, ask them to swap their pitch with another pair of students to receive feedback and suggestions for developing their ideas. Based on the feedback received, the students should revise their original outline.

When complete, ask them to discuss who has authored the one-page plan.

Have both students contributed equally to the creation of the work (perhaps, perhaps not)? Even if they haven't, are they both authors (almost certainly, yes)?

What have the 'reviewers' added to the creation of the work? Are they also authors (probably not – if anything, they have probably offered no more than ideas)?

Ask them to consider the following hypothetical scenario – one of the students (student A) is approached by a film producer to write a full screenplay for their film. But the producer does not want the other student (student B) involved in the project. Can student A proceed without student B's permission (a legal question)? Should student A proceed without student B's involvement (an ethical question)?

CASE FILE #22: THE TWO HEADS

1. INTRODUCTION

In *The Forger's Apprentice*, Sherlock and John recall meeting with a film producer who asks them to investigate the disappearance of the star of the film. In [Case File #13](#) we considered how the law defines the concept of the author in relation to different types of protected work, including films. We also considered how a film based on an existing screenplay or script constitutes a new copyright work with different owners, usually the producer and the principal director.

In this Case File #22 we consider the concepts of joint authorship and joint ownership of a copyright work.

2. JOINT AUTHORSHIP

Section 9(1) of the Copyright Designs and Patents Act 1988 (the CDPA) tells us that an 'author' of a literary, dramatic, musical and artistic work is the person who creates the work. However, the CDPA provides a specific definition of authorship when dealing with a film: the legal authors of a film are the producer and the principal director of the film (CDPA, s.9(2)(ab)). Together they are the joint authors of the film.

More generally, the CDPA defines a work of joint authorship as one 'produced by 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)). So, when trying to establish whether a work has been jointly authored, ask 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, meaning that, when setting out to create the work, the authors were 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.

The case of *Beckingham v Hodgens* (2003) provides a good illustration of when the law considers a work to be jointly authored. In this case, a session musician was hired to play the fiddle (the violin) at a recording session in 1984 organised by the band *The Bluebells*. The band were recording their version of the song *Young at Heart*, a song first recorded in 1982 by the female pop group *Bananarama*. The session musician contributed a new fourteen-note introduction to the song. Years later, he based his claim of joint authorship on the introduction he had contributed. The court held that he had jointly authored the new version of the work.

Have you ever created a work of joint authorship?

3. JOINT AUTHORSHIP AND COPYRIGHT DURATION

In [Case File #2](#) we saw that, generally, copyright in literary, dramatic, musical and artistic works lasts for the life of the author plus 70 years. After that time, copyright expires and the work enters the public domain.

However, one of the important consequences of establishing that a work is a work of joint authorship concerns how duration of protection is calculated. If a work has been

jointly authored, copyright lasts for 70 years from the end of the year in which the longest surviving joint author dies.

Consider, for example, the songs of John Lennon and Paul McCartney.

John Lennon was shot and killed on 8 December 1980. The best-selling single of Lennon's solo career was *Imagine*, first released in 1971. It remains in copyright for 70 years from the end of the year in which Lennon died: that is, until 31 December 2050. However, all the songs that Lennon co-wrote with McCartney during their time in *The Beatles* will remain in copyright for 70 years from the end of the year in which Paul McCartney dies. If, for example, McCartney were to die in 2020, the Lennon and McCartney songbook will remain in copyright until 31 December 2090.

4. CURIOSITY

Given that the legal authors of a film are defined by the CDPA to be the producer and the principal director, one might also expect the duration of copyright in a film to be calculated with reference to these two individuals. But in fact, copyright duration in a film is calculated in accordance with the last to die of four specifically designated persons: the director, the author of the screenplay, the author of the film dialogue (if different), and the composer of any specifically created film score (s.13B(2)).

Why do you think this is?

5. JOINT OWNERSHIP

Normally, the joint authors of a work will also be the joint owners of the copyright in the work. Moreover, joint authors will typically own the copyright in equal shares even if they have not contributed equally to the creation of the work. In the *Beckingham* case, discussed above, although the session musician's contribution to the creation of the song was based primarily on the new fourteen-note introduction, the court decided that he was entitled to an equal share in the copyright.

Another important consequence of joint ownership is that you cannot simply acquire permission to make use of a work from one of the joint owners only. You must get permission to use the work from all the relevant joint owners (CDPA, s.173(2)). And this applies to the joint owners themselves. One joint owner cannot grant permission to someone else to make use of the work without the agreement of the other joint owner(s). Indeed, if one joint owner – let's call him George – granted a licence to a third party to make use of the work without the consent of the other joint owner(s), George would actually be infringing the copyright of the other joint owners by authorising the use of the work without their permission.

6. FOR DISCUSSION: FILMS WITHOUT AUTHORS

We know that the duration of copyright in films is calculated in accordance with the last to die of four designated persons: the director, the screenplay writer, the author of any film dialogue, and the composer of the film score.

However, if a film does not have a director, a screenplay writer, an author of any dialogue, or a composer, the duration of copyright is calculated differently: copyright expires 50 years from the end of the year in which the film was made (CDPA, s.13B(9)).

What type of works would qualify for protection under this heading? What types of films do not have a director, an author or composer? And why do you think these films are treated differently when calculating duration of protection?

Imagine that you take some spontaneous footage of your friends in the park using your mobile phone. The footage you take is a film, according to the CDPA. But how long will copyright last in that work last?

7. USEFUL REFERENCES

Beckingham v Hodgens [2003] EWCA Civ 143 is available here:
<https://www.bailii.org/ew/cases/EWCA/Civ/2003/143.html>

The Copyright, Designs and Patents Act 1988 is available here: <http://www.legislation.gov.uk/ukpga/1988/48/contents>

For further information on copyright duration in the UK, see *Copyright Bite #1 – Copyright Duration*: <http://copyrightuser.org/copyright-bites/1-copyright-duration/>

For a resource to help you calculate whether a work is in the public domain in the UK or other EU Member States, see: www.outofcopyright.eu

If you are interested in films that are no longer in copyright (as well as links to those films) you could browse or search on Wikimedia Commons:
https://commons.wikimedia.org/wiki/Category:Films_in_the_public_domain