

CASE FILE #23: THE EIGHT CATEGORIES

LEARNING AIMS

- Understand that copyright does not protect all types of creative activity
- Understand that multiple rights can exist in the same work at the same time
- Accept that sometimes copyright law can be complicated and confusing

KEY QUESTIONS

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

- What eight categories of work are protected by copyright?
- Can the same work fall into more than one category?
- Why does it matter?
- Can more than one copyright exist in the same work?

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.

WHAT EIGHT CATEGORIES OF WORK ARE PROTECTED BY COPYRIGHT?

- See **TEXT BOX #2**
- The law protects eight discrete categories of work. Only these types of work are protected by copyright. Other forms of creative production are not. For example, creating a scent – a perfume – is not protected by copyright.
- The eight types of protected work are as follows:
 - Literary works
 - Dramatic works
 - Musical works
 - Artistic works
 - Sound recordings
 - Films
 - Broadcasts
 - The typographical arrangement of published books (how the page is laid out, the margins, the font, and so on)

CAN THE SAME WORK FALL INTO MORE THAN ONE CATEGORY?

- See **TEXT BOX #2 and #3**
- In a word: **YES**.
- While the legislation has tried to keep these categories quite distinct, the courts have indicated that the same work might fall into two different categories.
- This is well illustrated by the decision of the Court of Appeal in *Norowzian* (1999): they decided that film might be protected by copyright as a film *and* as a dramatic work.

WHY DOES IT MATTER? IF SO, WHY?

- See **TEXT BOX #2, #3 and #5**
- **It does matter.**
- For one thing, the economic rights that a copyright owner enjoys are different depending on which category of copyright work you are dealing with.

For example, if you own the copyright in a literary work, one of your economic rights includes performing or showing the work in public. However, this public performance right does not apply to artistic works.

For further details, see [Case File #0](#).

- Another way in which it matters is that it might affect how the duration of copyright protection is calculated. That is, the duration of protection might be different depending on which category the work falls into.

NOTE: This is explored further in **TEXT BOX #5** although this exercise should only be considered if the students also have access to, or have previously read, [Case File #22](#).

- The answers to the questions in **TEXT BOX #5** are as follows:

Under the CDPA, if a film is protected as a dramatic work who is the author of that work? The author is defined as **the person who creates the work** (this is likely to be the director).

If a film is also protected as a film, who is that author of that film? The author is defined as **the principal director and the producer** (that is, they are joint authors).

How is duration of copyright protection calculated in relation to the film as a dramatic work? Duration lasts for **the life of the author of the dramatic work** plus 70 years.

How is duration of copyright protection calculated in relation to the film as a film? Duration lasts for 70 years after the last of the following four people to die: the **director**, the **author of the screenplay**, the **author of the film dialogue** (if different), and the **composer** of any specifically created film score.

These provisions create a potentially very confusing situation.

One obvious way to simplify the law would be to implement a rule that works can only fall within one of the eight specified categories. That would, in turn, help to clarify who is the legal author of the work in question, and for how long it is protected.

CAN MORE THAN ONE COPYRIGHT EXIST IN THE SAME WORK?

- See **TEXT BOX #2**
- **YES.** This happens all the time.

Think about how music or films or theatre is created. They often involve multiple authors creating individual works that, taken together, make up the album, or the film, or the stage play.

- For example, a recording of a song: there may be copyright in the lyrics (written by one person), in the music (written by another person), in the musical arrangement (again, perhaps devised by someone else), and in the sound recording itself (arranged and coordinated by the producer).

Each of these elements might exist as separate copyright works that, once combined, is released to the public as one song.

(Although often, the contractual agreement between the producer or the music company and the artists will mean that the company holds the rights to all these elements.)

CASE FILE #23: THE EIGHT CATEGORIES

1. INTRODUCTION

Holmes and Watson are being interviewed and filmed at the same time. When the mysterious interviewer asks Sherlock to 'please sit down', we see him appearing in different parts of the room assuming various postures. We adopted this editing technique – known as 'jump cutting' – to refer to a famous case concerning a film: *Norowzian v Arks Ltd* (1999).

Filming an interview of someone will often simply involve setting up a single camera, getting it in the right position, checking the sound levels, and then pressing record. The film of the interview is protected by copyright. However, making a movie such as *The Forger's Apprentice* will involve various works created by different people and protected by copyright, such as texts, images and music.

In this Case File #23 we consider the different categories of work that can be protected by copyright in the UK, as well as whether the same work might sit in more than one category at the same time.

2. EIGHT CATEGORIES OF COPYRIGHT WORK

The Copyright, Designs and Patents Act 1988 (the CDPA) sets out a list of eight different types of work protected by copyright (s.1). These are:

- original literary, dramatic, musical and artistic works (s.1(1)(a))
- sound recordings, films and broadcasts (s.1(1)(b))
- the typographical arrangement of published editions (s.1(1)(c))

While all eight types of protected subject matter are referred to in the legislation as 'works', it is important to appreciate that more than one copyright may exist in a single cultural product or creation. For example, a recording of a song: there may be copyright in the lyrics, in the music, in the arrangement, and in the sound recording itself. With a film, there may be copyright in the original story, in the screenplay (as a dramatic work), in the musical score, as well as in the film (as a recording). It is important to be able to identify the different types of copyright that may be involved as each may have a different author and/or owner.

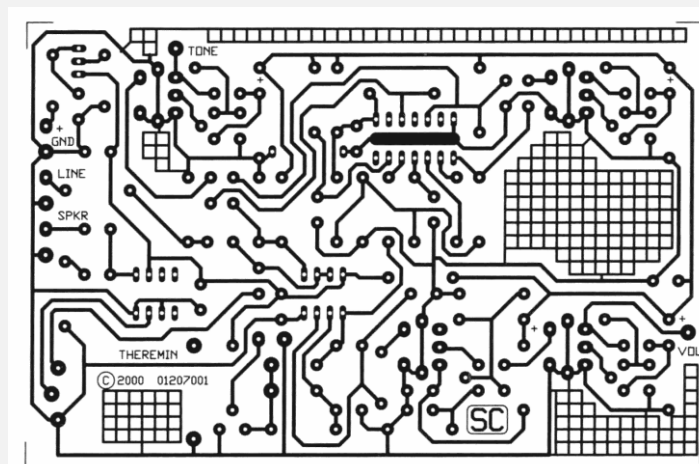


Image source: www.thereminworld.com/pics/schematics/SiliconChip/sc-pcb.gif

One question left open by the CDPA is whether the same work might fall into two different categories at the same time. Consider the above circuit diagram for a silicon chip. The author claims that it is copyright protected (see the bottom left-hand corner of the diagram). But what kind of copyright work is it?

It conveys information and provides a set of instructions that can be read by people skilled in the manufacture of silicon chips, so it could be considered a literary work. Or, is it an artistic work? It certainly has an obvious artistic aesthetic and appeal. Or perhaps it is *both* a literary work and an artistic work?

Whether something can fall into two different categories of copyright-protected work at the same time was considered in *Norowzian v Arks Ltd* (1999): this case concerned a film.

3. THE CASE: *NOROWZIAN v ARKS LTD* (1999)

In *Norowzian v Arks Ltd* (1999) the claimant had made a short film, *Joy*, with a single dancer as the protagonist. The film had no dialogue and made use of an editing technique referred to as 'jump cutting'.

Arks, who were the advertising agents for the Guinness group, approached Norowzian to make an ad campaign entitled *Anticipation*, influenced by *Joy*. Norowzian refused; Arks made their ad campaign anyway (you can watch the advert [here](#)).

Because Arks had not included any actual footage from *Joy* in their advert, Norowzian was not able to claim copyright infringement in his film *as a film*. Instead, however, he argued that in producing an advert influenced by *Joy*, Arks had infringed the copyright in his film *as a dramatic work*.

Under 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. In addition, the CDPA defines a dramatic work as including 'a work of dance or mime' (s.3(1)).

In the High Court, the judge held that *Joy* could not be a recording of a dramatic work as the editing technique employed created a visual image that could not be recreated in the real world. That is, a work of dance or mime had to be capable of being performed.

In the Court of Appeal, however, it was held that the expression 'dramatic work' should be given its ordinary and natural meaning, which was *a work of action, with or without words or music, which was capable of being performed before an audience*. The court continued that a film could be *both* a recording of a dramatic work but also a dramatic work in that it was a work of action that was capable of being performed before an audience.

In other words, a film might be protected by copyright as a film *and* as a dramatic work: that is, it could fall into two of the eight different categories of work protected by copyright.

4. CURIOSITY: FILMS MADE BEFORE 1 JUNE 1957

Whereas the 1988 CDPA protects eight different categories of work, earlier copyright acts did not. For example, under the 1911 Copyright Act copyright was not granted to a film as such. Instead, films were either protected as if they were a series of

photographs (for non-fiction and documentary films), or they were protected as if they were a dramatic work, like a play (fiction films).

This had an important consequence for duration of protection in films at that time. That is, under the 1911 Act fiction films (as dramatic works) were protected for the life of the author of the film (at that time, the director) plus 50 years. By contrast, non-fiction and documentary films were protected (as photographs) for 50 years from the year in which they were made.

Under the CDPA today, certain types of films still only receive 50 years protection from the end of the year in which the film was made. Read [Case File #22](#) to find out more.

5. FOR DISCUSSION: LIFE IS A DRAMA (OR MAYBE A FILM) (OR MAYBE BOTH)

In general, the fact that a film might fall within two different categories of protected work – as a film and as a dramatic work – does not give rise to many contradictions or problems, in that both types of work enjoy the same economic and moral rights. One difference, however, concerns duration of protection.

Read [Case File #22](#) and try to answer the following questions:

- under the CDPA, if a film is protected as a dramatic work who is the author of that work (as defined in law)?
- if a film is also protected as a film, who is that author of that film (as defined in law)?

Now ask yourself:

- how is duration of copyright protection calculated in relation to the film as a dramatic work?
- how is duration of copyright protection calculated in relation to the film as a film?

Do think the law is too complicated? Does it make sense? What steps could be taken to simplify the law of copyright in relation to the protection of films?

6. USEFUL REFERENCES

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

Norowzian v Arks Ltd [1999] EWCA Civ 3018 is available here: <http://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Civ/1999/3018.html>

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