

CASE FILE #7: THE MATCHING WALLPAPER

LEARNING AIMS

- Understand that copyright does not protect ideas
- Understand how a person’s work is protected by copyright

KEY QUESTIONS

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

- Can you infringe copyright in a work that you have never seen?
- Does it matter if the designs look similar?
- Did the House of Lords decide the case correctly?

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.

CAN YOU INFRINGE COPYRIGHT IN A WORK THAT YOU HAVE NEVER SEEN?

- See **TEXT BOX #2 and #5**
- The answer here is **YES**. Unlawful copying can take place indirectly. The person creating the copy does not need to have seen the original work.

If you gave an illustrator very detailed verbal or written instructions, based on the design of an existing wallpaper, so that she could produce a new design that was almost identical to the original work, this would amount to copyright infringement by indirect copying.

Do the students think that the instructions we gave Davide were too detailed? Has he indirectly copied the original wallpaper? We don’t think they are, and we don’t think he has. But, other people may have a different point of view.

- Alternatively, you could argue that designing a wallpaper featuring vertical stripes with flowers and leaves does not involve copying a work. Instead, you are simply copying ideas from someone else’s work.

As discussed below, the idea or ideas for a song, a novel, or a wallpaper design are free for anyone to use and take inspiration from. But what you cannot copy is the original way an author has expressed his or her idea(s) in that song, that novel, or that painting.

However, it is not always easy to draw the line between the lawful borrowing of simple ideas and when borrowing becomes unlawful because you have copied, for example, too many ideas from the plot of a play or a film or have copied just one or two ideas but in too much detail.

DOES IT MATTER IF THE DESIGNS LOOK SIMILAR?

- See **TEXT BOX #4 and #6**

- The **Court of Appeal** thought that **it did matter**.

They thought that, when dealing with artistic works, if the allegedly infringing work does not look sufficiently similar to the original work, then it did not infringe.

- However, the **House of Lords disagreed**.

From their perspective, even if the two designs don't look very similar, so long as you have established that copying has taken place, then copyright has been infringed.

- What do the students think?

DID THE HOUSE OF LORDS DECIDE THE CASE CORRECTLY?

- See **TEXT BOX #3, #4 and #6**

- First, it is worth noting that the House of Lords is now called the Supreme Court.

- As explained, there were three different decisions taken in this case, with different judges taking different views on whether the defendant's copying was substantial and so infringing.

Copyright litigation often involves borderline decisions about which reasonable people might disagree.

Ultimately, the decision of the House of the Lords (now the Supreme Court) is the most important. It takes precedence.

- Did the Lords decide the case correctly?

There is plenty of room for discussion and disagreement here. Even today, academics and lawyers still disagree over the correctness of the decision.

But, on balance, we think the decision is **probably correct**.

The defendants did set out to copy the claimant's wallpaper design, although they did introduce some changes and variations. But, even though they changed the design – creating their own new design – they still copied too much from the original work.

- What do the students think?

SUGGESTED ACTIVITIES

Before discussing the *Designer Guild* case, you might ask the students to create their own wallpaper design based on the points of similarity between the two wallpapers identified in the case itself.

- Vertical stripes with spaces between the stripes equal to the width of the stripe
- Flowers and leaves scattered over and between the stripes

THE GAME IS ON! – CASE FILE #7: THE MATCHING WALLPAPER

- The centre of the flower should be represented by a strong blob, rather than a realistic representation
- The flowers should be painted in an impressionistic style [the impressionists]

You could even suggest a colour scheme, whether similar or different to the existing wallpapers.

Once they have created their designs, show them the designs from the case, and discuss the **KEY QUESTIONS** set out above. In theory, have the students also infringed the original wallpaper design? Have they copied indirectly? Are their designs visually similar? Does it matter whether they are?

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1. INTRODUCTION

In the background of Holmes and Watson's apartment you can see wallpaper with 'flowers scattered over it in a somewhat impressionistic style'.

There is a famous copyright case involving the design of two different wallpapers: *Designer Guild Limited v Russell Williams (Textiles) Limited* [2000]. In this case, the judge identifies seven points of similarity between the claimant's wallpaper and the defendant's infringing copy. We gave our illustrator Davide Bonazzi the same seven points as a guideline for creating the wallpaper in our video.

This Case File #7 offers points of discussion about fundamental copyright concepts, such as the difference between an idea and the expression of an idea, and what it means to copy a substantial part of an existing work. The *Case File* also reminds us that judges do not always agree on how these issues should be resolved, or whether a particular instance of copying is unlawful or not.

2. IDEA AND EXPRESSION

When creating new work it is natural to be inspired by the work of others. Indeed, one of the ways that copyright promotes the creation of new work and the spread of knowledge is by providing authors with rights in their work while, at the same time, allowing the public to make use of that work in certain ways.

One way in which copyright does this is by protecting [only the expression of ideas](#) and not ideas themselves. This means that the idea or ideas for a song, a novel, or a painting are free for anyone to use and take inspiration from. But what you cannot copy is the original way an author has expressed his or her idea(s) in that song, that novel, or that painting. In this way creators are given the opportunity to benefit from their own personal expression, while the general ideas underpinning a work remain available for others to use.

However, it is not always easy to draw the line between the lawful borrowing of simple ideas and when borrowing becomes unlawful because you have copied, for example, too many ideas from the plot of a play or a film, or have copied just one or two ideas but in too much detail.

So, feel free to be inspired by other people's ideas but make sure you bring something new to those ideas and express them in your own individual way.

For an interesting video on copyright and the balance between protecting creative works and allowing the public to use them [click here](#).

3. SUBSTANTIAL TAKING

Infringement of a copyright work occurs when the whole or a [substantial part](#) of a protected work is used without permission or without the benefit of a [copyright exception](#). Therefore, taking an *insubstantial* part of a copyright work without permission is allowed. This is because the law recognises that no real injury is done to the copyright owner if only an *insignificant* part of the work is copied.

Under UK copyright law substantial taking is considered by the courts to be a matter of quality, not quantity. So it is not just about how much you copy from someone

else's work, it is about the importance of the parts that you take from that work. This makes it difficult to define exactly what amounts to a substantial part of a work.

For example, copying one table or a graph from a textbook on mathematics might be regarded as substantial copying – even though it is only one from hundreds of pages – on the basis that it took considerable effort to produce and that it conveys a lot of important information in a simple and easily digested form.

In one case making use of 50 seconds of a song was found to be a substantial part because that particular part was recognisable by the public. The 50-second sequence within the song does not need to have copyright protection in its own right, but, taken as a whole, it was understood by the courts to be a substantial part of the work.

4. THE CASE: *Designer Guild Limited v Russell Williams* [2000] UKHL 58



Designer Guild (the claimant's work)



Russell Williams (the defendant's work)

In this case the claimant, Designer Guild, designed and manufactured fabrics and wallpapers. One of their wallpaper designs, called the *Ixia*, had been inspired by the work of the French impressionist painter Henri Matisse and was a great commercial success. Designer Guild sued Russell Williams for copying the *Ixia* design. The defendants denied any copying.

Identifying seven similarities between the two wallpapers, the trial judge held the defendant had copied the *Ixia* design, and that the copying was substantial.

Russell Williams appealed, arguing that if there was copying they had not copied a substantial part of the claimant's work. The Court of Appeal agreed and overturned the trial judge's decision: the court considered that while the defendant had borrowed ideas and artistic techniques from the *Ixia* design, their copying had not been substantial. One of the Court of Appeal judges said the wallpapers 'just do not look sufficiently similar'.

Designer Guild then appealed to the House of Lords (what is now referred to as the Supreme Court). On a technical point of law, the House of Lords unanimously agreed to overturn the Court of Appeal's decision and reinstate the trial judge's original ruling: the defendant had infringed the claimant's copyright.

However, a number of the judges in the House of Lords did also say they thought the defendant's copying had been substantial. Lord Hoffman commented that substantial copying did not have to involve *literal* copying. One could infringe copyright by copying a particular feature or a combination of features from someone's work without slavishly copying the work itself. He also pointed out that it was irrelevant

whether the defendant's wallpaper looked like the claimant's wallpaper: all that mattered was whether a substantial part of the original work had been copied.

5. A CASE OF INDIRECT COPYING?

As we mentioned, we gave our illustrator Davide Bonazzi the same seven points of similarity from the *Designer Guild* case as a guideline for creating the wallpaper in our video. For example, we asked Davide to produce a design consisting of 'vertical stripes, with spaces between the stripes equal to the width of the stripe', with flowers and leaves 'scattered over and between the stripes', and that the centre of the flower heads should be represented by 'a strong blob, rather than by a realistic representation'.

When Davide created his wallpaper design he had never heard of the *Designer Guild* case (we didn't tell him about it) and he had never seen the wallpaper designs from the case. But in producing a design in accordance with the seven points of similarity, has Davide created a work that potentially infringes the Designer Guild wallpaper?

Can you copy a work without ever having seen it simply by following a set of instructions describing the essential features of that work?

6. FOR DISCUSSION: THE SIMILAR AND THE DIFFERENT

One of the Court of Appeal judges commented that the wallpapers 'just do not look sufficiently similar' whereas one of the judges in the House of Lords said that 'they looked remarkably similar to me.'

What do you think? Do you think the two wallpaper designs look similar? Does it matter whether they look similar?

As explained there were three different decisions taken in this case, with different judges taking different views on whether the defendant's copying was substantial and so infringing. Copyright litigation often involves borderline decisions about which reasonable people might disagree. Ultimately, though, the decision of the House of Lords (or what is now the Supreme Court) is the most important. It takes precedence.

What do you think about the different decisions in this case? Do you think that the Court of Appeal or the House of Lords made the decision in the correct way? Why is it challenging for courts determine copyright infringement in something like wallpaper?

7. USEFUL REFERENCES

Designer Guild Limited v Russell Williams (Textiles) Limited (Trading As Washington Dc) [2000] UKHL 58 is available here: <http://www.bailii.org/cgi-bin/markup.cgi?doc=/uk/cases/UKHL/2000/58.html>