

Dispelling some of the myths – Copyright

Copyright is one of the three main branches of the law of Intellectual Property, along with Patent Law and Trademark Law. The law of copyright was originally conceived to provide protection against unauthorised reproduction of books and gives the owner of Copyright the exclusive right to authorise or prohibit certain uses of his works by others. In the words of a famous High Court Judge, “Intellectual Property rights are simply the rights to stop others doing things”. The law of Copyright has now been extended to include moral rights, unregistered design rights, software, data bases and semi conductor topographies.

Copyright springs into life immediately on creation of the work. So, for example, as soon as an article is recorded in writing or otherwise on paper or other recording medium from which it is capable of being reproduced. One of the common myths of Copyright is that like Patents and Registered Trademarks there are registration formalities required for Copyright to subsist. Although there are in fact today no requirements for registration for copyright to exist, as is so often the case, myths spring sometimes out of substance and this was not always the case. Registration was initially required to acquire Copyright under the first copyright law, the Statute of Anne of 1709. After the Copyright law was revised in 1842, the requirement for registration was maintained but not as a precondition for Copyright but as a condition precedent to taking an enforcement action. The requirement of registration was finally abolished in 1911 to comply with certain of the UK’s International obligations. The requirement of registration does remain in certain countries outside the UK, for example, in the United States, where it is a condition precedent in certain circumstances for the recovery of Lawyers’ fees in a copyright action.

The existence of Copyright and its principles still remain, anyone who has by their own skill, labour and judgment created an original work of whatever character enjoys for a limited period the exclusive right to copy that work. The period of Copyright varies considerably, depending on the type of Copyright work, so for example the Copyright period of an artistic work is the lifetime of the owner and 70 years thereafter, whereas design rights protection lasts for a maximum of 15 years.

As the Copyright owner, who is very often the author, of the work has an exclusive right to do certain acts, it follows that the owner is in a position to stop others from doing the acts concerned without his permission. The protected uses are wide and varied, and include issuing copies of the work to the public, renting or lending copies of the work to the public, performing, showing or playing the work in public, communicating the work to the public and making an adaptation of the work. The person who does any of the acts restricted by Copyright without the permission of the Copyright owner infringes the Copyright and is liable to have legal action taken against him.

Another myth concerning Copyright is that such legal action is slow and expensive, whereas the truth is that such action can be extremely speedy and cost effective. Remedies include applying to the Court for an immediate injunction, damages or an account of profits and recovery of a proportion of legal costs.

In essence, all individuals and businesses that record original works have Copyright in such works which can be protected and are of economic value. In these exceptionally difficult financial times, all individuals and businesses should be looking hard at what rights they may have in respect of Copyright and what steps they can take to protect those rights to their financial advantage.

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