

# Intellectual Property Law Essentials

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## Introduction

This essentials guide on intellectual property law is intended to provide readers with a brief, point-by-point guide, focussing on copyright law and its application to further and higher education (FE and HE).

### I. Introduction to Intellectual Property Law

#### (1) What is intellectual property law and what are its principal branches?

- Intellectual property (IP) law is the law protecting the rights of creators and owners of intellectual creativity.
- IP law also regulates the creation, use and control of a protected work.
- The main branches of IP law are copyright, patents, trademarks, designs, passing off and the law of confidential information.

#### (2) What is copyright and why is it important to FE and HE?

- Copyright is a branch of IP Law and it protects the expression of ideas.
- Copyright is important to FE and HE because colleges and universities are users, producers and disseminators of copyright material. Infringing use of a copyright work may incur liability, and failure to protect IP may result in lost income.

## II. Copyright Law in the United Kingdom

### (3) What is the law regulating copyright within the United Kingdom?

- Copyright law in the UK is governed by the Copyright, Designs and Patents Act 1988 (CDPA) as amended.

### (4) What are the conditions to gain copyright protection?

Copyright protection is automatic if

- the work is of a type capable of protection under UK copyright law
- the work is expressed in some material form
- the creator of the work is a British citizen or the work was first published in the UK and
- the work is original.

### (5) What are the works protected by UK copyright law?

- Copyright law protects original literary, artistic, dramatic and musical works.
- Sound recordings, films and broadcasts are also covered.
- The typographical arrangement (the layout) of published editions is also protected.

## III. Copyright Ownership and Rights of a Copyright owner

### (6) Who owns copyright in general, and who owns copyright of works produced in the FE and HE sectors?

- The first copyright owner is usually the author or creator of a work.
- If a copyright work is created by a member of FE or HE staff in the course of employment, the employer is the first owner of copyright in the work subject to any agreement to the contrary.
- In the case of works created by students in FE and HE, copyright ownership rests with the student unless there are terms and conditions in student contracts (e.g. prospectus) that confer ownership on the institution. These terms and conditions must be reasonable, and students must be given reasonable notice of them.

### (7) What are the rights of a copyright owner?

- A copyright owner has the following rights:
  - the right to copy a work
  - the right to issue copies of a work
  - the right to rent or lend the work to the public
  - the right to make an adaptation of the work.

- A copyright owner has also
  - the right to perform, show or play the work in public
  - the right to communicate the work to the public.
- The author of a copyright work has certain “moral rights” that always remain with the author, regardless of subsequent transfers of copyright. These are the right to be identified as the author of the work, the right to object to derogatory treatment of his work and the right to object to false attribution of a work.
- However, the above moral rights are substantially reduced where a copyright work is created in the course of employment.

#### **(8) How can the right to use a copyright material be obtained?**

- The right to use a copyright material can be obtained
  - by an assignment or assignation of copyright in writing from the copyright owner.
  - with the permission (known as a licence) from the copyright owner.
  - by the use of a licence from a collective licensing society to whom authors have licensed specific uses of the material.

### **IV. Copyright and the Internet**

#### **(9) Is it legal to use freely the information available on the Internet?**

- Material on the Internet is usually copyright material. Therefore permission to copy (or do another copyright restricted act) the material is needed.
- Material on the Internet is rarely covered by a collective or ‘blanket’ licence.
- A website may give explicit permissions in a copyright or usage statement. These must be complied with.
- It can be argued in certain cases that an implied licence is given, where the circumstances suggest that this would be reasonable.

### **V. Duration of Copyright**

#### **(10) How long does copyright last in various works?**

- In the case of literary, dramatic, artistic and musical works, copyright lasts for 70 years following the end of the year in which the author dies.
- Films and video recordings have a copyright term of 70 years.
- Sound recordings have a copyright term of 50 years.
- Copyright expires at the end of 50 years in the case of broadcasts.
- The typographical arrangement of published editions has a copyright term of 25 years.

### **VI. Permitted Acts**

### **(11) When is the use of a copyright work not an infringement?**

- Copyright is not infringed where a work is copied for the purpose of non-commercial research, private study, education, criticism, review or library use and if the source is acknowledged. This is for single copying only.
- It is not an infringement to use a copyright work if the use is permitted by a licence. The licence can be a 'blanket' licence from a collecting society, a notice given by the copyright holder, or specific permission.
- Copyright in a work is not infringed by its incidental inclusion in an artistic work, sound recording, film or broadcast.

### **(12) Can copies of a copyright work be made for visually impaired persons?**

- Copies of a copyright work can be made to meet the accessibility needs of individual visually impaired persons. Multiple copies may need to be made using the appropriate CLA licence, if held.
- The work can be copied if the work is not commercially available in the format needed for the visually impaired person.
- In addition, the author of the work must be acknowledged and the making of the copy must not interfere with the legitimate exploitation of the work.

## **VII. Enforcement of Copyright**

### **(14) How can a copyright owner enforce his or her copyright?**

- A copyright owner can enforce his copyright by approaching the court for the award of damages. A court can also serve an injunction or interdict restricting the infringer from carrying out the infringing activity.
- An order can be passed by a court for the payment of profits. The court also can order that the infringing materials be destroyed or delivered up to the copyright owner.

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