

**BCC  
WIPO**

**General Principles of UK Copyright Law**

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**Overview**

- Background/ justification of copyright
- National/ Regional/ International framework
- Copyright
  - Subsistence
  - Works
  - Authorship and ownership
  - Term
  - Economic and moral rights
  - Exceptions and Limitations
  - Management of rights
  - Enforcement

Introduction Copyright

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**Copyright relevance economy – society/ mental health**

- Study October 2016 (EU): IPR-intensive industries defined as those having an above-average use of IPR per employee generated more than 42% of total economic activity (GDP) in the EU, worth € 5.7 trillion.
- UK Music Measuring music October 2020. The music industry in the UK is worth £5.8 billion to the economy and generated exports of £2.9 billion in 2017 constituting over half of GVA. The industry now employs over 190,815 people.
- Department for Digital, Culture, Media and Sport (DCMS): £111bn; (2018)

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**Copyright definition**

'Copyright is the sole right of multiplying copies' (Jeffery v Boosey, [1854])

'The general policy of copyright is to prevent the unauthorised copying of certain material forms of expression (literary, dramatic, artistic and musical, for example) resulting from intellectual exertions of the human mind.' (Mummery LJ, in Sawkins v Hyperion Records, 2005

Examples copying [music](#)?

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**Intellectual Property contextualisation**

- Patent – exclusive right for an invention (new and not obvious)
- Trademark – sign/ mark to identify source of product
- Copyright – protecting literary, artistic and other creative works
- Other – design right; database sui generis (EU); passing off; unfair competition; contract; confidentiality

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**History/ Justification**

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Historical developments - International

Renaissance/ Reformation: Individuum (Kant- personality/ Locke - property)

18<sup>th</sup>/ 19th Century: National copyright

19<sup>th</sup>/ 20<sup>th</sup> Century: International copyright

21<sup>st</sup> Century: Trade Agreements ??? Withdrawal from the European Union

International copyright provides the international framework for the protection of copyright by setting **minimum standards** of copyright for countries and providing rules for the recognition of copyright of authors performers in other countries (**national treatment**).

Horizontal lines for notes

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Horizontal lines for notes

UK Copyright

Horizontal lines for notes

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Chalice of Creativity ©

Individual consumers  
 ©  
 Commercial users/ aggregators  
 (eg. TV; download; stream; search engines)  
 ©  
 Collective management organisations  
 (e.g. PRS for Music; CLA; PLS)  
 ©  
 Publishers/ Record companies  
 (e.g. Hachette; Universal)  
 ©  
 Writers/ Performers

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Copyright Subsistence

- Ideas are not protected only their expressions (Idea –expression dichotomy)
- There are no forms to fill out or fees to pay
- E.g. copyright in the UK exists if the work is:
  - ORIGINAL (i.e. not merely copied from someone else’s work) and
  - RECORDED in some fixed form

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Works

Closed list of original fixed works

<u>Copyright</u>	<u>Entrepreneurial (related) rights</u>
Musical works	Sound Recordings
Literary works	Performances
Artistic works	Broadcasts
Dramatic works	Films
Special case Databases	

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**Originality**

Infopaq v Danske Dagblades Forening  
2008

Feist Publications v. Rural Telephone  
1991

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University of London Press v University  
Tutorial Press 1916

George Hensher v Restawhile 1976  
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**Authorship**

Section 9 CDPA Authorship of work  
"Author, in relation to a work, means the person who creates it."

Special cases

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**Authorship**

Section 9 CDPA Authorship of work  
"Author, in relation to a work, means the person who creates it."

Special cases

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**Term**

International minimum standards/ Free trade Agreements

European Union

UK

- Author: 70 years after their death
- Producer of a sound recording: generally, 70 years after the release of the sound recording
- Performer: generally, 70 years after the performance

US

- Complex but generally 70 years pma and 95 after performance
- Reversion of rights

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**Rights**

Economic rights



Moral rights



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**Economic rights**

To do or authorise someone else to do:

- Copying the work
- Communicating the work to the public (radio, internet)
- Making an adaptation of the work
- Performing, showing or playing the work in public
- Issuing copies of the work to the public
- Renting or lending the work to the public

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**Reproduction**

Definition: copying, duplication, print, literal and non literal; duration

- CJEU Infopaq v Danske Dagblades Forening: Case 5/08 «any material fixation of a work regardless of the function or the economic value of the copy.»
- CJEU Karen Murphy v MPS Case 429/08 – 403/08) Reproduction right protects the material act of copying, including transient copies in cache memories, satellite decoders or television screens. provided that those fragments contain elements which are the expression of the authors' own intellectual creation, ...”
- But Brexit?

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**Communication to the public**

UK approach (implementing EU law)

- Broadcasting
- Internet (The making available ... in such a way that members of the public may access it from a place and at a time individually chosen by them)

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**Distribution right**

The distribution right describes the right of the author to disseminate physical copies of the work.

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**Artist Resale Right**

- Authors of original works of art (including paintings, engravings, sculpture and ceramics) to receive royalty each time one of their works is resold through an auction house or art market professional.
- Compulsory collective management

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**Moral rights**

Copyright also protects the personality of the creator – Berne 1928

Two unassignable main moral rights

- The right to be identified as the author), **Paternity right**
- The right to preserve the integrity of the work against acts which are prejudicial to the author's honour or reputation, **Integrity right**

Term

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**Exhaustion**

Distribution Right

The Distribution Right describes the right of the author to disseminate physical copies of the work.

Exhaustion

The Exhaustion or First Sale doctrine (U.S.) states that the author cannot prevent further distribution of a particular physical copy of a work put on the relevant market with his consent.

- National,
- Regional, or
- International

UK?



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### Exceptions

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### Exceptions

Balance

- Value of culture to creator (WIPO: dignified economic existence)
- Widespread, affordable access to content for the public

Creator Performers                      Commercial users  
Public domain



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### Exceptions international

Berne Convention three step test (updated in TRIPS)

Exceptions to be limited to

- certain special cases, provided that such reproduction does
- not conflict with a normal exploitation of the work and does
- not unreasonably prejudice the legitimate interests of the author

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**Exceptions UK**

- Temporary copies
- Criticism and review (subject to acknowledgement)
- Quotation
- Parody (fair dealing)
- Visually impaired persons
- Educational and library uses
- Private copying – No after judicial review

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**Exceptions UK Fair dealing**

- Three elements
  - (i) a Dealing;
  - (ii) that dealing must be "fair"; and
  - (iii) there must be sufficient acknowledgement
- Fairness is assessed in relation to the actual purpose; it is a question of degree and impression whether "a fair-minded and honest person would have dealt with the copyright work in the manner in question."

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**Management**

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**Management**

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**Management**

- Individual contracts
  - "sell": Transfer legal ownership "assignment"
  - "rent": Issue licences – exclusive or non-exclusive
- Collective rights management
 

Collective management when individual rights management is not economic, e.g. pubs, hairdressers or secondary rights

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**Individual licensing**

- UK basic contract principles (e.g. definition, consideration, jurisdiction)
- Specifics for each creative sector
- Copyright contract specifics: in writing; independent legal advice
- UK Courts: Unreasonable restraint of trade

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**Enforcement**

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**Remedies Overview**

Offline

- Damages
- Injunction
- Seizure

Online

- Damages
- Injunction
- Seizure

Civil and criminal

- Technological Protection measures
- Website blocking
- Safe harbours – limitation of liability

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**Industry approach**

- Legal framework (copyright)
- Enforcement/ Code of Practice/ search engines
- Business models
- Education/ Get it right from a genuine side
- PIPCU  
Operation Creative and the Infringing Website List

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**Limitations of liability or ISPs – EU e-Commerce Directive - UK**

- Mere conduit
- Caching
- Hosting
- No Monitoring obligation (but duty of care?)

Take down notice

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**Withdrawal from the European Union**

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**Withdrawal from the European Union**

- Status of political developments
- Copyright – international Treaties
- Trade Agreements
  - Current discussions Canada Mexico CPTPP India
  - Touring
  - Market access
  - Non discrimination
- British Copyright Council

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**Thank You**

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British Copyright Council

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Introduction Exhaustion

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