

# Burgess Salmon

## Copyright

This note sets out brief guidance on UK Copyright, Copyright protection and Copyright infringement by third party rights under the UK Copyright Act (Copyright, Design and Patent Act 1988).

### What is copyright?

Copyright is a form of Intellectual Property (IP) which rewards owners of creative works. Copyright is essentially an expression of facts or ideas and some examples of this are as follows:

- Literary works
- Dramatic works
- Musical works
- Artistic works
- Recordings
- Broadcasts

Ideas and facts cannot be protected, as Copyright protection is dependent on the creation of a physical piece of work.

Like other forms of IP rights, Copyright is an intangible asset and as such can be sold or licensed.

Copyright protection is automatic and there is no requirement for registration. In addition to this a © symbol isn't required to evidence that a piece of work is Copyright protected, although, it is recommended that a © is shown in order to deter third parties from using a Copyright work without authorisation. If the year of creation and the owner is added, this is a clear signal to any potential infringement.

While logos are protected by Copyright, it is highly recommended that they are also protected by way of a trade mark (where possible). This strengthens an IP owner's protection and makes it easier and more cost effective to enforce an IP owner's rights.

### How long does Copyright last?

Copyright protection varies dependent on the particular type of protection. Under UK legislation the length of copyright protection is as follows:

- **Literary, dramatic, musical or artistic work** - life of copyright owner plus 70 years from the end of the year in which the owner dies
- **Film** - 70 years from the end of the year in which the last survivor of either the director, authors, screenplay, dialogue or composer (of any music specifically created for the film) dies



- **Sound** - 70 years from the end of year of making the initial broadcast.

### Employers, universities and copyright

In most circumstances if a Copyright work was created by an employee, in the course of employment, the created work is owned by the employer.

However, if the work was commissioned, the author of the copyright will own the copyright unless an assignment has been effected.

Similarly there are rules surrounding IP ownership with regards to students and universities and it is often the case that all IP is owned by the university.

Therefore, it is key to understand and identify who owns the Copyright at the outset.

### Fair Dealing

Fair Dealing allows limited freedom for third parties to use or refer to Copyright protected works in the UK. In particular, it allows a person to review and offer critique of a Copyright protected work, however, sufficient acknowledgement of the Copyright owner is required. It is also essential that the Copyright material is in the public domain.

The main exception to this rule is that photographs (or similar forms of Copyright protected work) cannot be used unless permission has been sought from the Copyright owner.



In the event that the Copyright owner cannot be located, it is recommended that the Copyright work is not used, as this may give rise to a future complaint.

Note that the term “fair dealing” should not be confused with the US Copyright term “fair use” which has no effect under UK legislation.

## Pitfalls

Copyright can be infringed if a whole piece or a substantial piece of copyright is copied/used by a third party without authorisation.

The term ‘substantial’ has been debated for years and remains a case-by-case assessment as this is not defined under UK legislation.

There are many opinions on this and there are a number of publications which state that if you only copy for example 10% of a piece of Copyright then this does not constitute as infringement. This is not an accurate way of assessing potential risk and it is advised that this type of strategy is not adopted by an individual or business.

Each case has to be assessed on its own facts. For example, although a third party might only be using a small part of a Copyright protected work, this small part could be the “substantial” element of the piece or work, e.g. an introduction to a song or a contents page of a report identifying the main content.

Given this, it is recommended that individuals and businesses work to create original and novel content instead of reworking pre-existing Copyrighted material.

## Overview

Almost all creative physical content is considered to be protected by Copyright. Copyright is protected automatically (upon creation) in the UK and it is not necessary to use a © symbol to evidence an owner’s protection.

It is highly recommended that third party Copyright is not copied/used without prior authorisation from the Copyright owner. Should the third party not be contactable, it is recommended that the content is not copied/used.

If an individual or business has concerns in relation to Copyright protection, it is recommended that the individual or business seeks legal advice.

For further information or assistance on Intellectual Property law please contact a member of the Intellectual Property Team.

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