



Copyright advice leaflet for Equity Members

What is copyright?

Copyright is a legal right of an owner of a 'protected work' not to have it copied, reproduced, published, adapted, distributed and used in other specified ways without the consent of the copyright owner.

To qualify for copyright there must be an original work which is recorded in a material form, that is 'fixed', in some tangible way. 'Original' here means the author's own work and not 'copied'. The work does not necessarily have to have been created recently.

Copyright is independent of the physical object which embodies it, for example, a book, a drawing, a CD or a DVD, where the text, image or music would be the copyrighted material. The physical objects themselves have separate property rights applying to them such as ownership of the object itself. There will usually be additional copyright applying to its design and layout etc. For example, with a puppet, you may own the actual puppet, but the copyright of it would lie with its designer and you would not necessarily be able to use it for any desired purpose without the copyright owner's consent.

What kind of works can copyright protect?

The work must generally fit into one of the following categories:-

- Literary – books and written works including text for leaflets or text on websites
- Dramatic – plays, dance works (including the choreography, direction artistic interpretation, movement direction, fight direction)
- Musical – songs and music
- Artistic – paintings, drawings, sketches, sculpture, set designs and properties, photographs ('recording of light or radiation'), architecture, 'works of artistic craftsmanship' eg. costume design.
- Film
- Sound Recording
- Broadcast
- Typographical Arrangement – such as the layout of a theatre programme

Consent of the copyright owner is also required to make and adaptation (which includes translation) of a literary, dramatic or musical work.

Where does copyright apply and for how long?

UK copyright law is currently enshrined in the **Copyright, Designs and Patents Act 1988**. Copyright applying to works created in the UK is also recognised internationally in those countries who have signed up to the relevant international agreements such as the Berne Convention. Most Western European countries, the USA, Australia are signed up.

For most protected works such as literary, dramatic, musical, artistic and film, copyright normally lasts for the life of the author plus 70 years in EU countries but as little as only 25 years in some other countries. For computer generated works, sound recordings and broadcasts the length is 50 years. For typographical arrangements it is 25 years.

What protection does it give?

Copyright is essentially a negative right in that it gives the owner the right to prohibit or restrict the use of a work by others. Legally there are two categories of restricted acts.

Primary Infringement, this is the making or publishing of copies (and also authorising others to do so). This applies even if the copier doesn't know that there is copyright in the work.

Secondary Infringement, this applies to those 'dealing in infringing copies' and engaging in similar activities. Secondary infringement only occurs where the infringer has knowledge or reason to believe that what he is doing he is doing with an infringing copy. For this reason warning letters can be important and should not be ignored as they impart that knowledge.

In the case of dance / choreography the reproduction of the choreographed work by another is a primary infringement. Placing a recording of a performance of a choreographed work on a website without the owner's consent would also normally be a primary infringement.

Other rights

There are also '**Moral Rights**' which go with copyright. These are such as:-

- The right to be identified as the author
- The right not to have the work subjected to derogatory treatment, 'right of integrity'
- The right not to have authorship of works falsely attributed to you
- The right of privacy of commissioned photographs

There are also a family of rights known as Performer's Rights also regulated by the Copyright, Designs and Patents Act 1988, which this leaflet does not address.

Who owns the copyright?

Normally the copyright is owned by the 'author' who is the creator of the work. In the case of computer generated works, sound recordings and films, however, the author is the person who makes the arrangements for the work to be produced. Also, where the author is an employee and the work is created in the course of that employment, the employer is the copyright owner. Care must be taken to distinguish between PAYE employees and independent contractors. A freelance contractor may retain the copyright unless the terms of his appointment make clear that copyright in what he produces is to belong to the person for whom he undertakes the work.

There may be Joint Ownership of copyright if a number of separate collaborators have worked on a project and each individual contribution cannot be identified. This is not the case if several people have defined roles such as choreography, direction, costume design as each individual will have copyright in their part. The commissioner of a work does not necessarily own the copyright, despite what many would expect, but there would normally be at least an implied term in their contract that the commissioner had a licence to use the work. The exact terms of such a licence can be an issue for hot dispute, thus it is sensible to define the position clearly in writing before any work is undertaken.

How is copyright registered?

In the UK there is no requirement to register copyright – it arises automatically upon creation of the work. The work, however, does need to be fixed in some tangible form. This could be written, in the case of literary works or choreography or direction or recorded if an audio or physical performance. It may be helpful for the purposes of proving copyright at some point in the future if the date of creation of the work is somehow recorded. It is advisable to place a copy of the work in a tamperproof envelope and send it recorded delivery to yourself or possibly your solicitor and then retain it unopened. Keep a separate record of the contents of the envelope for your own reference. In the event that you have to prove the date of creation of your work in a court of law (say because someone else has copied it) this may help although it rarely happens that way in practice. Although it is not necessary, written work can be marked with the © symbol along with the year it was created and the name of the copyright owner. This can demonstrate to others that the work is protected and from when. Although there is no official copyright register, there are private companies offering copyright registration for a fee. Careful consideration should be given before using such services to

ascertain whether they provide anything in addition to the standard registration method detailed above. Would they, for example, assist in enforcing copyright if you believed it had been infringed?

What use of a work can be made without infringing copyright?

There are various uses that are referred to as 'fair dealing'. A work can be legitimately used (copied or reproduced) for private study, critique, news reporting and non-commercial research. There is a limited right to copy for educational purposes. Whether use is classed as fair dealing would depend on the proportion of the work used, the context in which it is used and the genuineness of intent of the user. If a documentary about a film showed the whole film then that would not be fair dealing. If it showed only a few clips then it would be more likely to be fair.

What are the consequences of infringement of copyright?

Copyright law is a mixture of civil and criminal law. Some copyright infringement is a criminal offence and an infringer may be sued by the copyright owner or prosecuted by the police, HM Customs or Trading Standards and face a fine or imprisonment. Facilitating copying can also be an infringement. The main enforcement on copyright tends to be against those making and distributing CDs, DVDs and other forms of piracy as well as sale of fake designer goods.

If your copyright is being infringed and you need to take action to stop the other party then the first step is normally to advise them in writing that they are breaching your copyright and tell them to 'cease and desist' ie stop. If they do not do so then you may have to take legal action through the courts. In cases of urgency this may be by seeking an "interim injunction". Less urgent cases may simply require a conventional claim. Litigation concerning copyright involves a number of difficult issues. It can be difficult to decide and prove how much the breach is worth financially and gaining an injunction can also be expensive. Specialist advice should be taken before commencing any legal proceedings involving a copyright infringement claim.

Some claims which might seem to be 'copyright' claims may actually be instances of 'passing off'. This is where a company or another individual is deliberately trading off the back of your reputation, possibly by creating confusion by using say, a similar name. In this case you may be able to claim for work that you have lost through this trading but again it may be difficult to prove. A letter to the person or company telling them to stop is again the usual first step.

With moral rights, the English courts are not often that interested in awarding significant sums for breach of these so are rarely worth pursuing through legal action.

Be aware of infringing others' copyright.

In the same way that your copyright might be infringed you also have to be wary not to infringe others'. There are provisions, for example, for paying to use recorded music such as on websites, DVD recordings or in live performance or broadcast and for the performance of songs through the relevant agencies PPL and PRS. The public performance of dance to a copyrighted music track would require the copyright holder's consent as would the recording of such for commercial purposes or for showreels etc. It is also an infringement of copyright to use the text or photographs from another's website.

A common misconception is that it is permissible to start from someone else's work and then move far enough away that copyright in that work is not infringed. That is always a dangerous approach as infringement occurs where the whole or a substantial part of a copyright work is reproduced by copying. It is never clear when one is far enough away that there is no reproduction of any substantial part of a copyright work.

How can licence be given to use copyright?

You may want to give others licence to use your copyright material. This may include photographs or audio visual recordings of your work. It may be difficult to decide on a fee for this and may depend on where you are in your career and how much you value the particular work. You should define the permitted use, the length of time and where it should be used. For reasons of clarity a licence should always be in writing and should define exactly what acts the licensee may do, for how long and where.

Examples of things which aren't covered by copyright.

Names are not normally covered by copyright. Your professional name and or 'act name' are therefore not covered. Names are often directly linked to the acts which do qualify for copyright and may be part of the overall package that is protected. Protection of names may be possible through a trademark registration which cover such things as logos and strap-lines. These have to be actively registered as cover is not automatic. The law of passing-off may protect a name or 'act name'.

Equity names are protected from the point of view that others joining the union are not allowed to do so under a name that already exists. It is also possible to verify when someone joined Equity with a particular name which may be helpful in resolving disputes. The names, themselves, however are not automatically protected by copyright law.

Ideas are not protected by copyright. Something has to be taken very much beyond the idea stage and expressed in a material form in order to qualify. It

is therefore worth considering how and to whom you express ideas to if there is a possibility that they could be 'stolen' by others. Once an idea has reached the stage of being designed if it has been kept confidential it may be that it could be patented which does protect it. Patenting is a complex, lengthy and often expensive process beyond the scope of this leaflet.

It should also be remembered that it is not an infringement of copyright to express the idea of another work in an independent work providing there is neither direct or indirect copying of the earlier work.

Jokes cannot be usually be copyrighted as they are too insubstantial and by their nature are spread by word of mouth. It would also be difficult to prove originality as there may be many sources of a similar joke on a topical theme created simultaneously. Enforcement of copyright may also be impossible. A comedy act which includes jokes, sketches, character, costume and physical movements etc is more likely to be protected as this is part of a unified dramatic persona.

Copyright Examples applying to Equity members

Another act is using a similar name to me and has registered a website in that name which rates above mine on search engines and I am losing work.

- A name itself is not protected by copyright but in conjunction with the actual act it may be protected using the law of passing-off. An established act using a certain name over a period of time would gain some protection for that act against someone else copying it. It is possible that 'passing off' would apply to this situation and the original act may be able to claim damages and require the newer act to stop using the name and remove the website.

I have seen a photo of me on the front of a promotional brochure performing as a street performer at an event at which I was contracted to perform. I was not paid for the use of this photo and did not give my consent.

There would be a number of factors to consider in this scenario and some research may be needed. Who took the photograph and for what purpose? Was the photograph taken for a booking and did the contract for the booking have reference to taking photographs taken and permitted use? Who owns the copyright of the image? The photo may have been commissioned by the employer or could have been taken by a professional or amateur photographer attending the event.

If the original booking contract did not specifically buy out the right to use an image of the artist then the employer will not have the right to use it. If it was taken by a photographer attending the event, independent of the employer, then the photographer owns the copyright. He should have the artist's written permission to exploit the image, and failure to do so may amount to passing

off the promotional brochure or event to which it relates as one featuring or endorsed by the artist.

The end user of the image may have acquired it from a library without knowing the artist had not given their consent to the photographer. The photographer and the end user and possibly the library may be jointly liable. In some situations, however, the event and the photograph may be legitimately usable as news or other fair dealing such as where the artist's presence in the photograph is incidental. Other factors that may be considered are whether anyone has made money for this use, or the artist has lost money by its use, how widely circulated the image was or whether it was used to advertise an unrelated product / service. If it is the latter then it may well be worth taking advice on making a legal claim.

A recording of my song has been posted on YouTube without my consent.

- This is clearly a breach of copyright and there is a procedure to notify YouTube, through their website, and they will normally remove the offending clip.

Another dancer has copied my choreography, music and costumes and incorporated them into her own act which appears on YouTube. She has credited me as her 'inspiration'. Her performance is poor and I do not want to be associated with her.

- If someone has reproduced a substantial part of someone else's work, even if they have altered parts of it to make it appear different, then there is a breach of copyright. If the original artist has been credited as an 'inspiration' then this does not necessarily change that although it does make 'passing off' a less likely factor. The artist would also have the right not to be associated with the copying artist's inferior performance under Moral Rights so would have the right to have the credit and probably the whole clip removed from YouTube.

I was part of devising a play with some other actors which we performed in some fringe theatres. After I left the group the play was taken on by a major producer and may even become a film.

- Where a number of people collaborate to produce a piece of work such as this and their individual contributions are not distinct then all will collectively be joint authors. Where individuals do have distinct roles such as writing, directing, designing or are responsible for different scenes then the individuals concerned will each own their section. It is helpful, in either case, if an agreement between the individual collaborators is drawn up to avoid doubt in the future, such as when someone leaves the group and another, say, another joins. In this case

if there is no agreement between the individual collaborators it may make it more difficult to pursue.

I am a tribute act and recently received a letter from a representative of the original artist's record company saying I must change the name of my act and transfer my web domain to them.

- In general, when an artist wishes to perform copyrighted songs they obtain the relevant clearance by paying the Performing Rights Society. If their whole act involves performing the songs of one artist, in the original artist's style and type of costume as a 'tribute' then their publicity and marketing must make this clear. Even when marketed in this way and with clear signs that the act is not the original the tribute act could be infringing the original artist's copyright. The original artists have generally tolerated this as they are unlikely to have suffered damage and their reputation may actually be enhanced. Since use of the internet became more widespread, however, some original artists and their successors have recently clamped down on this, mainly because of similar domain names. The tribute act, unfortunately, has little choice but to comply.

I perform vocals to backing tracks which I buy from a company which also includes the rights to perform with them publicly. I have been asked by Performing Rights Society (PRS) to additionally purchase a 'prohub' licence if I copy the music from one format to another such as from audio CD's to mp3 or minidisc. Do I need to buy this licence?

- Prohub licences were designed specifically for DJ's who converted their music on CD to other formats such as MP3 for portability so that they could carry their music collections around on a laptop or other device. The structure of the licence reflects this in that the lowest fee covers up to 5,000 tracks. This fee is therefore legally required to be purchased for such 'digital dj's'. In general, however, backing tracks bought for performance with the relevant performing rights included should not attract further payments for a prohub licence. This is principally because those issuing the rights to these tracks are not represented by the collecting organisations concerned such as PRS. Where an act is using recorded music which does not come with these performance rights they are advised to buy the music in the format in which it will be used as it is only the change of format which requires a prohub licence to be purchased. Eg. if music is bought as an mp3 file, say as a download, and used in mp3 format then a prohub licence is not required.

The information contained in this document is for guidance only on the subject matter it covers. Although it aims to be accurate it should not be treated as a complete and definitive statement on the areas of law concerned. You are advised to seek specialist legal advice in the event of any dispute.

Appendix 1

Theatre Directors

The following is an extract from the West End Agreement for Theatre Directors to illustrate how copyright is retained and assigned by the theatre director across Equity's theatre agreements.

The copyright in the products of the Director's services under his/her Contract pursuant to this Agreement shall be and remain vested in the Director.

However, this clause shall be deemed to be an exclusive licence authorising the Manager to the exclusion of all other persons, to exercise those rights necessary for the purposes of theatrical presentation which would otherwise be exercisable by the Director as owner of the copyright in the products of his/her services, for the period of the initial run of the play in the West End of London (including any planned pre-West End tour, for which the Artists are engaged on the SOLT/Equity Agreement for West End Theatre Performers and Stage Management).

Provided that:

- i. The Manager may, at any time, seek the Director's agreement to extend this licence either in time or in scope or to transfer it in whole or in part to a third party.*
- ii. The Manager agrees not to enter into any agreement with a third party involving the extension or transfer of the Manager's licence from the Director without the Director's agreement, such agreement not to be unreasonably withheld.*
- iii. Further payments shall be payable to the Director should the Manager reproduce the play in the UK following the initial run in the West End. This fee shall be mutually agreed between the Manager and the Director. The Director agrees not to unreasonably withhold his/her agreement to such revival.*
- iv. The Manager shall provide the Director with the opportunity to make (and preserve for his/her own use) a copy of the Prompt Script and Production "Bible".*

Appendix 2

Theatre Designers

The following is an extract from the Theatrical Management Association (TMA) Agreement for **Theatre Designers** to illustrate how copyright is retained and assigned by the theatre designer across Equity's theatre agreements.

The copyright in the products of the Designer's services under his/her contract pursuant to this Agreement shall be and remain vested in the Designer.

However, this clause shall be deemed to be an exclusive license authorising the Manager to the exclusion of all other persons, to exercise those rights necessary for the purposes of theatrical presentation which would otherwise be exercisable by the Designer as owner of the copyright in the products of his/her services, for the initial performing period of the production or (for touring companies only) the planned touring period as defined in the Contract and, thereby, mutually agreed between the Manager and the Designer.

Provided that:

1.7.1 The manager may, at any time, seek the Designer's agreement to extend this license either in time or in scope or to transfer it in whole or in part to a third party.

1.7.2 The Manager agrees not to enter into any agreement with a third party involving the extension or transfer of the Manager's license from the Designer without the Designer's agreement, such agreement not to be unreasonably withheld.

1.7.3 Where such a third party, not being the original Manager, wishes to transfer the production to another Theatre or to a tour of Theatres (or to any other Theatre(s) not covered by this Agreement) following the contractually agreed licence period, then the Manager must negotiate with the Designer appropriate payments for the Designer's further work (if any) and for further use of the products of the Designer's services as referred to above. The Designer agrees not to unreasonably withhold his/her agreement to such a transfer.

1.7.4 Where a production is a pre-planned co-production between one or more companies who are a party to this Agreement, the minimum fee shall be as follows:

2 Co-producing companies- 125% of minimum fee relevant to originating company

3 Co-producing companies- 140% of minimum fee relevant to originating company

Where more than three companies are involved, the relevant minimum fee shall increase by 15% per company.

1.7.5 A further fee shall be payable to the Designer should the Manager reproduce the production in the UK following the expiry of the contractually agreed licence period. This fee shall be mutually agreed between the Manager and the Designer in the light of any further work required of the Designer, but shall not be less than 25% of the prevailing category minimum fee in any event. The Designer agrees not to unreasonably withhold his/her agreement to such revival.

1.7.6 The Designer agrees that the Manager may make an archive recording of the production provided that this recording takes place in accordance with the relevant provisions of the Performers' Agreements.

1.7.7 The Manager acknowledges that all original designs, models, working drawings and plans prepared by the Designer remain the Designer's personal property. The Designer undertakes to make all such items available to the Manager until such a time as the Production is abandoned. The Manager agrees to take all reasonable care of such items whilst in his possession and to insure the same for a sum to be mutually agreed between the Designer and the Manager.

1.7.8 The Manager shall retain the right to dispose of material used in the construction of the set and/or costumes for the production. Should the set and/or costumes be sold for use in a totally different production the Manager undertakes to ensure that the set materials will not be used in the form in which they were used in the original design nor shall the costumes be so used.

Appendix 3

Theatre Choreographers

The following is an extract from the Independent Theatre Council (ITC) Agreement for **Choreographers** to illustrate how copyright is retained and assigned by the Choreographer across Equity's theatre agreements.

Copyright [is vested] in the Choreographer but is assigned to the Manager for the purpose of (and for the period of) either –

- *The initial run in the Manager's theatre or (for touring companies only) or*
- *The planned touring period set out in the Contract and mutually agreed between the Manager and the Choreographer.*

Alteration: This assignment does not include the right to alter or cut the Choreographer's work after the press night without the written consent of the Choreographer, such consent shall not be unreasonably withheld. If the Manager makes substantial changes to the production without the Choreographer's consent, or if the Manager requires substantial changes which the Choreographer is not willing to implement, the Choreographer shall have the right to withdraw her/his name from the production. The withdrawal of her/his name shall in no way prejudice the Choreographer's right to payment up to and including the next third payment due under the contract. The Manager shall cause the Choreographer's name to be removed from bills and posters outside the theatre and from any printed matter on which her/his name appears on the first reprint.

Clearance of Underlying Rights: The Choreographer shall be responsible at her/his own expense for clearing any copyright interests in the Work (eg: where it is an adaptation of another work in copyright). Except that where the Manager has commissioned the Choreographer to adapt a copyright work, or where otherwise agreed prior to signing the contract, the Manager shall be responsible for clearing underlying rights at his/her own expense.

Clearance of Musical Rights: Where necessary, the Manager shall be responsible for clearing the rights for the use of music specified by the Choreographer in the Work. If the rights are not available the Manager, after consultation with the Choreographer shall have the right to change the music specified by the Choreographer.

Choreographers Warranty: The Choreographer declares that either he/she is the sole owner of all copyright in the choreography created under this agreement and is in full control of the rights conferred on the Manager or the copyright in the choreography includes other interests which are detailed in an attached schedule of copyright. Either clause must be deleted.

Appendix 4

Devised Plays – (extract from the Equity Fringe Agreement)

A Devised Play is a play for which no working script exists at the beginning of rehearsals. For the purposes of this contract a Devised Play is taken as being in one of the following categories:

1. A play developed under the writer's ultimate control as "author"
2. A play where the Director is employed for the specific purpose of being in creative control as "author"
3. A play where one or more specialist members of the Creative Team has ultimate control as "author"
4. A play where creative control is equally shared amongst all participants

Category 1.

After the Initial Run the Director shall retain the usual control over the copyright in the products of the Director's services as Director only. All participants in the devising process may negotiate a different billing to reflect a further contribution as agreed. This method of billing may be altered at the participant's discretion.

Category 2.

After the Initial Run the entire Copyright of the Devised Show shall rest with the Director. The Director shall, wherever the Devised Show is performed or published acknowledge the contribution of The Company and of The Company Members employed to take part in the devising of the show. The Director shall be billed as "Devisor and Director". In addition all other participants may be credited as co-devisors provided that the Director is named first. The method of billing may be altered at each individual's discretion.

Category 3.

After the Initial Run the entire Copyright of the Devised Show shall rest with the "authors". The "authors" shall acknowledge the contribution of The Company and of the Company Members employed to take part in the devising of the show. All "authors" shall be billed equally as "Devisor". In addition all other participants may be credited as co-Devisors. This method of billing may be altered at each individual's discretion.

Category 4.

After the Initial Run the entire Copyright of the Devised Show shall rest with all participants in the devising process. The Director shall be billed as "Devisor and Director". In addition, all other participants in the devising process shall be credited as co-Devisors provided that the Director's name is first. This method of billing may be altered at each individual's discretion.

Appendix 5

Sources of information:-

Intellectual Property Office
www.ipo.gov.uk

British Copyright Council
www.britishcopyright.org

Performing Rights Society
www.prsformusic.org.uk

PPL
www.ppluk.com

Copyright Licensing Agency
www.cla.co.uk

UK Copyright Service
www.copyrightservice.co.uk

Own it – Intellectual Property Advice for Creative Businesses
www.own-it.org

World Intellectual Property Organization
www.wipo.int

Copyright Designs and Patents Act
http://www.opsi.gov.uk/acts/acts1988/ukpga_19880048_en_1.htm