
Identifying copyright works

About this guidance note

This guidance note has been prepared to assist students of the University who are depositing a thesis in the Oxford University Research Archive (**ORA**). It is intended to be read alongside the guidance note for including third party copyright works in your thesis, which is available [here](#)¹.

The information in this guidance note is inevitably general in nature and provides only a selective summary of a complex area of law. This note should not, therefore, be considered or relied on as legal advice.

Structure of this guidance note

This guidance note is set out in 3 parts:

- Part 1 discusses the nature of copyright;
- Part 2 explains the process of identifying a copyright work; and
- Part 3 explains some of the key terminology.

Part 1: nature of copyright

Territorial scope

Copyright is a territorial right: each country has passed laws to protect copyright works within its territorial borders. While there is a long history of international treaties and agreements designed to promote greater harmony and mutual protection, considerable differences remain between the different copyright laws.

This guidance note is only concerned with the law in the UK.

¹ http://www.bodleian.ox.ac.uk/data/assets/pdf_file/0010/178228/Third-party-copyright-in-theses.pdf

² http://www.bodleian.ox.ac.uk/data/assets/pdf_file/0008/178226/Database-rights.pdf

Temporal scope

The law of copyright has undergone a number of substantial changes since its inception and continues to be the subject of developments. Some of these changes have retrospective effect, while others do not, and they are often accompanied by transition provisions. The level of protection therefore varies, depending on when a work was created.

This guidance note does not purport to offer a comprehensive review of copyright law throughout history, but rather a summary of certain aspects at the time of writing.

Exclusive rights

Copyright is essentially an exclusive right to do certain acts with a relevant work. The scope of this right does vary between the different types of copyright work, but may include:

- copying;
- issuing to the public;
- renting or lending to the public;
- communicating to the public; and/or
- making an adaptation, or doing any of the above in relation to an adaptation.

These rights are often described as “economic rights”, because they protect the uses by which the copyright owner may seek to earn a financial reward for their efforts. These rights may be licensed or transferred to another person.

Moral rights

In addition to economic rights, the law also provides for certain “moral rights”, which only ever belong to the author. These include the right:

- to be identified as the author; and
- to object to derogatory treatment of the work.

Part 2: identifying a copyright work

Establishing whether a work is protected by copyright involves asking a series of questions:

- Is it a type of work protected by copyright?
- Is it a work that qualifies for copyright protection in the UK?

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- Has the copyright protection expired?

Question 1: is it a type of work protected by copyright?

Types of copyright work

Copyright protects the following types of works:

- **literary works** – this means any work (other than dramatic or musical works) expressed in writing, but will include a table, a compilation (other than a database), a computer program and a database. It also includes secondary work carried out on existing works (e.g. translation, editorial work, critical annotation or explanation, compilation, addition, selection and abridgment) where they exhibit sufficient skill, labour and judgment;
- **dramatic works** – these can be quite difficult to define, but must exhibit some movement, story or action, and may include scripts for films and plays and works of dance and mime;
- **musical works** – this means a work consisting of music, but excludes any words or action intended to be sung, spoken or performed with the music (these are likely to be literary or dramatic works). It also includes secondary work carried out on existing works (e.g. arranging tunes and scores and orchestrating) where they exhibit sufficient skill, labour and judgment;
- **artistic works** – this means: (a) a graphic work (i.e. a painting, drawing, diagram, map, chart, plan, engraving, etching, lithograph, woodcut or similar work), photograph, sculpture or collage, irrespective of artistic quality; (b) a work of architecture being a building or a model for a building; or (c) a work of artistic craftsmanship;
- **sound recordings** – this means a recording of sounds from which the sounds can be reproduced, or a recording of any literary, dramatic or musical work from which sounds reproducing the whole or part of the work can be reproduced;
- **films** – this means a recording in any medium from which a moving image can be reproduced and includes the soundtrack when used to accompany the film;
- **broadcasts** – this means an electronic transmission of visual images, sounds or other information which is transmitted for simultaneous reception by members of the public (provided it is capable of being lawfully received by them) and is transmitted at a time determined solely by the person making the transmission for presentation to members of the public. It does **not**, therefore, include online demand services; and
- **typographical arrangements of published editions** – this means a published edition of the whole or part of one or more literary, dramatic or musical (but not artistic) works.

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Although a database may be protected as a literary work, the principles are slightly different and it may also be protected by a separate database right. You can read more information about the protection of databases [here](#)².

Originality and fixed expression

Copyright works must be original, in the limited sense that they must not be copied; and should demonstrate sufficient skill, labour and judgment (in practice, a low hurdle to overcome – see *Works that copy other works* below). They must also be recorded in some permanent form: copyright only protects the recorded expression of ideas rather than the ideas themselves.

Composite works

It should be noted that separate elements in a composite work will be treated as distinct copyright works. A published book in hard copy may, therefore, consist of one or more literary works for the text, artistic works for the cover design and illustrations, and a typographical arrangement; while a music track may consist of a sound recording, a musical work and a literary or dramatic work. Each separate copyright work may have a different author and be protected for a different period of time.

Works that copy other works

In many cases you will be working from, or seeking to include, works that reproduce other works. For example, you may wish to use a report of a speech appearing in a newspaper or a photograph of a painting. These secondary works may also be protected by their own copyright.

Few speeches are delivered *extempore*, and where they are written down in advance those written expressions will be protected as literary or dramatic works. However, a journalist will often rely on his or her own record of the speech (a handwritten note, sound recording or film). The journalist (or their employer) would own the copyright in that record, and the subsequent newspaper report. Accordingly, permission to reproduce the work may need to be sought from the newspaper or journalist, rather than the person who originally gave the speech. Indeed, if the speech was *extempore*, the person giving the speech could not claim any copyright in it.

A similar position arises in relation to photographs of paintings. A painting is a graphic work and therefore an artistic work capable of protection under UK copyright law, but a photograph is also an artistic work separately entitled to copyright protection. It does not matter that the photograph may infringe copyright in an earlier work. Accordingly, permission to reproduce the photograph may require the consent of the copyright owner in respect of both the painting and the photograph.

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Question 2: is it a work that qualifies for copyright protection in the UK?

As already explained, copyright is given effect by national laws, which restrict the use of qualifying works within a particular country. A work may qualify for copyright protection in the UK because of the author's personal status, or because of the work's place of publication or broadcast.

Personal status

A work may qualify for protection in the UK by virtue of the author's personal status if he or she is: (a) a British citizen or within certain other categories established by the British Nationality Act 1981; (b) a person domiciled or resident in the UK; or (c) a body incorporated in the UK. Protection is also extended to persons domiciled or resident, and bodies incorporated, in certain territories with a close connection to the UK (i.e. the Channel Islands, the Isle of Man and any colony of the UK).

Of much wider effect, however, is the extension of UK copyright protection to works created by an author who is a citizen or subject of, an individual domiciled or resident in, or a body incorporated under the law of a country that is a member of the European Economic Area, the Berne Convention or the Universal Copyright Convention.

An author's status may, of course, change from time to time, and therefore must be determined at the "material time". In relation to **unpublished** literary, dramatic, musical and artistic works, that is the date on which the work is made. Where any such work has been **published**, it is the date of first publication or (if the author has died before publication) the date of his or her death. In relation to sound recordings and films, it is the date on which it is made; for broadcasts it is the date of transmission; and for typographical arrangements it is the date of publication.

Place of publication or broadcast

A literary, dramatic, musical or artistic work, a sound recording or film, or a typographical arrangement may also qualify for copyright protection in the UK if it is first published in: (a) the UK; (b) the Channel Islands, the Isle of Man or any colony of the UK; or (c) a member of the European Economic Area, the Berne Convention or the Universal Copyright Convention. If publication occurs in two countries within 30 days, the second may be treated as first publication if this is in favour of UK copyright protection being granted.

A broadcast similarly qualifies for copyright protection in the UK if it is transmitted from a place in: (a) the UK; (b) the Channel Islands, the Isle of Man or any colony of the UK; or (c) a member of the European Economic Area, the Berne Convention or the Universal Copyright Convention.

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Convention countries

The Berne Convention and the Universal Copyright Convention do not have equal effect. If the author, publication or broadcast is only connected to a Universal Copyright Convention country, then works **published** before the country joined do not gain UK copyright. In contrast, once a country has joined the Berne Convention, all works still in copyright under its national law acquire UK copyright.

For more information about membership of the Berne Convention and the Universal Copyright Convention, you may wish to visit the website of the World Intellectual Property Organization: <http://www.wipo.int>.

Question 3: has the copyright protection expired?

Copyright does not provide indefinite rights in relation to a work: all copyright will expire with the effluxion of time. If you can establish that copyright has expired in a work, the legal restrictions will fall away and you would ordinarily be free to use such works.

Calculating duration

Determining the duration of copyright in a work is relatively straightforward in relation to contemporary works. It involves establishing the type of copyright work and either: (a) the identity of the author and (where applicable) the year in which he or she died; or (b) the date of creation or first exploitation. You then simply apply the applicable rule:

- **literary, dramatic, musical and artistic** works – 70 years from the end of the calendar year in which the author dies;
- **sound recordings** – generally 50 years from the end of the calendar year in which the work is made, but:
 - if during that period the recording is published, 50 years from the end of the calendar year in which the work was published; and
 - if during that period the recording is not published but made available to the public by being played or communicated to the public, 50 years from the end of the calendar year in which the work was first so made available;
- **films** – 70 years from the end of calendar year in which the last of the principal director, the author of the screenplay, the author of the dialogue, or the composer of the music specially created for and used in the film dies;
- **broadcasts** – 50 years from the end of the calendar year in which the broadcast was made (this is not affected by repeat broadcasts); and
- **typographical arrangements** – 25 years from the end of the calendar year in which the edition was first published.

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Older works

Determining the duration of copyright in all but the most recent works is, however, a much more complex matter. You would need to have regard not only to the current statutory regime, but also to each preceding statutory regime in force on or after the creation of that work. This is a considerable topic in itself and beyond the scope of this guidance note.

Works created outside the EEA

Where a work only qualifies for protection by virtue of the work's connection to a member of the Berne Convention or the Universal Copyright Convention, the period of copyright protection is reduced to any shorter period of protection in that Convention country.

Part 3: key terminology

In this part we have provided an explanation of some of the key terminology that we refer to throughout this guidance note.

Authorship and ownership

The expression “author” is used to identify the person (or persons) who created the relevant copyright work, whereas “copyright owner” is used in this guidance note to identify the person who owns the copyright in that work. These are not necessarily the same person.

The distinction is important, because permission to use a copyright work would ordinarily be granted by the owner, whereas the duration of copyright protection is often calculated with reference to the death of the author.

The first copyright owner is generally the author of the work, unless the work is a literary, dramatic, musical or artistic work or film made by an employee in the course of his or her employment; in which case his or her employer is the first copyright owner (subject to any agreement to the contrary). Of course, there are exceptions:

- in the case of a sound recording, the author is the producer;
- in the case of a film, the author is the producer and the principal director;
- in the case of a broadcast, the author is the person making the broadcast;
- in the case of a typographical arrangement, the author is the publisher; and
- in the case of a computer-generated literary, dramatic, musical or artistic work, the author is “the person by whom the arrangements necessary for the creation of the work are undertaken” (this can be difficult to apply in practice).

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It is important to note that the law only identifies the **first** copyright owner: that person may transfer ownership of the copyright or licence it to another person. Accordingly, you may need to seek permission to use the copyright from someone else if it has been transferred or an “exclusive” licence has been granted. Such dealings do not, however, affect the duration of copyright protection.

Publication

You may need to consider the “publication” of a work when considering whether it qualifies for UK copyright protection and the duration of that protection. The general position is that publication:

- means the issue of copies to the public; and
- includes (in the case of literary, dramatic, musical or artistic works) making it available to the public by means of an electronic retrieval system.

However, it does not include:

- any unauthorised act;
- in the case of literary, dramatic and musical works:
 - the performance of the work; or
 - the communication to the public of the work (other than for the purposes of an electronic retrieval system);
- in the case of an artistic work:
 - the exhibition of the work;
 - the issue to the public of copies of a graphic work representing, or of photographs of, a work of architecture in the form of a building or a model for a building, a sculpture or a work of artistic craftsmanship;
 - the issue to the public copies of a film including the work; or
 - the communication to the public of the work (otherwise than for the purposes of an electronic retrieval system); and
- in the case of a sound recording or film:
 - the work being played or shown in public; or
 - the communication to the public of the work.

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Further assistance

If you have any comments or questions about this guidance note, please contact ora@bodleian.ox.ac.uk. The University is not in a position to provide you with legal advice, but it will try to answer your questions where possible.

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