

# Copyright, Trademarks and Design Rights

## Examples of copyright in practice.

### Duncan Clark:

*Welcome to the third video in our series on copyright, trademarks and design rights. This series of videos is presented by Dr Hayleigh Boshier, of Brunel University London. This video, Examples of copyright in practice, will cover the following:*

- *Can you protect an idea?*
- *What do we mean by substantial part?*
- *What happens if you break copyright law?*
- *What's the difference between civil copyright infringement and criminal copyright infringement?*
- *What should organizations be doing to protect their IP?*
- *Should organizations be documenting the creative process?*

### Can you protect an idea?

#### Hayleigh Boshier:

That's actually a really good question, and it's probably one of the most common misconceptions about copyright. So, copyright doesn't protect an idea, all ideas are in the public domain for everybody to draw from. What copyright protects is the individual expression of that idea. It's quite a lofty concept that is hard to get your head around, but it basically means (relating back to what I said about the criteria for originality) if you have exerted your own skill, labor and effort then that would be your own individual expression of that particular idea.

So, for example, the story of a boy wizard who goes to wizardry school with his own wizard friends, that would be just an idea which is in the public domain and anybody can write that story. But Harry Potter and the Philosopher's Stone is J. K. Rowling's individual expression of that idea, you see how that's a little bit different? Sometimes it's not so clear cut, "what is an idea?" or "what is an expression of that idea?", but one way to think of it is that ideas are general, and the expression of the idea would be very specific.

### What does 'substantial part' mean?

When you're thinking about what copyright infringement is, substantial part and this concept of idea expression and originality, they all relate together. Because, if something is copyright infringement, the way we decide if it is or not is to consider if either the whole or substantial part has been taken. So, if we take the whole of someone's work that would be quite clear that would be copyright infringement if we didn't have permission or the benefit of exception.

To take substantial part of somebody's work, it means whether what you have taken relates to the original aspect of that work. Another common misconception is that I can take a certain number of lyrics from a song, or a certain clip of a film (like a sampled) and that would or would not be copyright infringement. But actually, substantial part is decided on quality not quantity. There is no set number of notes that you can and can't take, it's about what notes you take. The substantial part relates to the original element. If you took part of the originality of that particular thing then that would be considered a substantial part. If you took something that was more general, like I mentioned the story as an example, then that would not be a substantial part.

### **What happens if you break copyright law?**

So, there's different ways you can break copyright law. For example, if you are creating something and you use someone else's work as inspiration or copied it to make your work, that's one type of infringement. In that circumstance the creator of the original work might get in touch with you and say, "you're infringing my copyright – you've used my work without my permission", and that could lead to court proceedings or, as we talked about, different approaches of resolving the situation.

The other type of copyright infringement which is more commonly known to the public would be, for example, watching a film online without paying for it, or streaming music illegally or a football match, that kind of thing. I think it's important to recognize that on a day to day basis this happens a lot and, on more occasions than not, nothing happens. But that doesn't necessarily mean that what you're doing is legal and it also doesn't necessarily mean that one day you might get caught because the organizations that own the copyright (for example the broadcasters of the football match), they do pursue to protect their copyright. They do send letters claiming damages, for example, from the people that have watched their work without paying for it.

### **What is the difference between copyright infringement and criminal copyright infringement?**

Civil copyright infringement would be a situation between two individuals or companies where one feels that the other has taken whole of substantial part of their work without permission. That, as we mentioned, may proceed through mediation. It can go to court, that doesn't necessarily mean that it's not criminal. The remedies available would be things like damages or injunction.

Criminal copyright infringement is a different type of activity that warrants a harsher punishment and the court proceedings are slightly different. So, it might be things like importing goods like fake goods or creating an online website that enables secondary copyright infringement (so enables other people to access work illegally) and the remedies for that are much harsher. So, it would be a bigger fine or you can go to prison for up to ten years.

### **What should organizations be doing to protect their copyright?**

It's important that organizations have a copyright strategy within their company that is tailored to their particular field or industry. Recognizing what I was saying earlier about the nature of the digital age, knowing what they put online, what they don't put online, making sure that if they start a project, they agree at the beginning who knows what. Contracts are a really big part of managing IP, actually, because the contract then sets in stone who owns what, how much is being paid, when the thing is delivered by, that kind of thing. That should be a strong part of the strategy, what kinds of projects are needed, especially if you are creating a project where some people maybe work for the company or if you maybe freelance out. You might need several contracts, actually.

The strategy should involve understanding where the risk lies and what action is taken in order to minimize the risk, or at least make informed decisions about the risk that is taken, then, if something does become in conflict or a dispute arises, which action they would take.

### **Should organizations be documenting the creative process?**

It's a really good point, actually. I do, sometimes for companies, this thing called an IP audit, which is when we go into the company and we look at what IP they have and what IP they are actually utilizing and what IP they maybe have but don't necessarily have the permission for, documenting the whole creative process is really important for exactly that reason. I've worked with people before who have either a wealth of data, which they can't do anything with because they didn't get permission in the first place. Or some kind of creative output, whether it be like an app that they did freelance, didn't get permission and then the risk might be high for using that work without going back to fully agree who owned what. So, I think it's really important to document the process and to keep those. That's why a contract becomes very useful because then it's all formalized. Sometimes it's like tracing back emails to see what's agreed, but either way it's important to do something, but that would form part of their strategy.

### **Duncan Clark:**

*Thanks there to Dr Hayleigh Boshier. Join us in video four in which we cover the subject of trademarks. Thanks for watching, and see you next time.*