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LTN 39 | COPYRIGHT

1. The Copyright, Designs and Patents Act 1988 (the 1988 Act) confers rights and protections related to original literary, dramatic, musical, or artistic work. Literary/written material is the category of original work which is most likely to be relevant to local councils. The 1988 Act also protects the creation of sound recordings, films and broadcasts and the typographical arrangement of published editions of the whole or any part of one or more literary, dramatic or musical works. All references to section number are references to the 1988 Act unless otherwise stated.
2. “Literary work” is defined in the 1988 Act to mean any work, other than a dramatic or musical work, which is written, spoken, or sung, and includes (a) a table or compilation other than a database; (b) a computer program; (c) preparatory design material for a computer program; and (d) a database. Original literary work created by a local council such as newsletters, magazines or website content would be protected by the 1988 Act. “Dramatic work” includes a work of dance or mime. “Musical work” means a work consisting of music, exclusive of any words or action intended to be sung, spoken, or performed with the music. “Sound recordings”, “films” and “broadcasts” are also defined in the 1988 Act.

What steps does a person need to take to obtain copyright protection?

3. In the context of copyright, “persons” can mean individuals or bodies corporate such as local councils. There is no requirement for a person to take any formal steps to protect their original work because UK copyright law applies from the moment material is created. There is also no need to use the symbol ©. This is done by convention and the presence of the symbol serves as a reminder that the work is subject to copyright.

Who enjoys the benefit of copyright?

4. The author/creator of the work usually has the benefit of copyright protection. Where the material is created by a person under the terms of a contract of employment, the employer will usually be the copyright owner subject to any agreement to the contrary (section 11(2)). The author of a copyrighted work has the right to be identified as the author of the work in accordance with section 77. This is known as the author’s moral rights. The right is not infringed unless it has been asserted in accordance with section

78. The author of a literary work (other than words intended to be sung or spoken with music) or a dramatic work has the right to be identified whenever the work is published commercially or communicated to the public. Moral rights also include the right for an author to object to derogatory treatment of their work (section 80). “Treatment” means, except in some prescribed circumstances such as the translation of a literary/written work, any addition to, deletion from or alteration to or adaptation of the work. The treatment of a work is derogatory if it amounts to distortion or mutilation of the work or is otherwise prejudicial to the honour or reputation of the author.

What protection does copyright afford?

5. The owner of the copyright in a work has the exclusive right to do the following acts pursuant to section 16 (1):
 - a. to copy the work;
 - b. to issue copies of the work to the public;
 - c. to rent or lend the work to the public;
 - d. to perform, show or play the work in public;
 - e. to communicate the work to the public; and,
 - f. to make an adaptation of the work or do any of the above in relation to an adaptation.

Those acts are referred to as “acts restricted by the copyright”.

How long does copyright last?

6. In the case of written works, copyright lasts for the life of the author plus 70 years from the end of the calendar year in which the author dies (section 12).

What is a breach of copyright?

7. Copyright in a work is infringed by a person who, without the permission of the copyright owner, does, or authorises another to do, any of the acts restricted by the copyright as set out in paragraph 5 above. There are, however, exceptions, which are set out in Chapter III, and which detail the circumstances in which a person will not infringe copyright if they do any of the acts listed in paragraph 5. The list is set out in the Appendix to this Note.

Using copyrighted materials

8. Some copyright materials are available free of charge under a free-to-use Creative Commons licence. Under this arrangement, the council must give appropriate credit to the copyright holder, provide a link to the licence, and indicate if changes were made to the item. This may be done in any reasonable manner, but not in any way that suggests the licensor endorses the council's use of the material (e.g. for a project). Failure to provide a suitable credit will nullify the free-to-use licence and make the council subject to a breach of copyright action.
9. Unless a free-to-use licence is obtained, the council must obtain prior permission from the copyright holder. If prior permission is not sought, the copyright holder may sue for damages for breach of copyright. Other copyright infringement claims (e.g., infringement for commercial gain and making an article specifically designed or adapted for making copies of a particular copyright work) are also criminal offences.
10. If the copyright owner(s) cannot be contacted, the British Copyright Council may be able to assist.
11. Similarly, the Authors' Licensing and Collecting Society may also be able to help.

How does copyright law impact the work of local councils?

Council publishing information they are under a statutory duty to disclose

12. In some cases, local councils will have a statutory duty to disclose information, for example, further to a request made under the Freedom of Information Act 2000. Section 50 of the 1988 Act confirms that copyright is not infringed where the doing of one of the acts referred to in paragraph 5 above is specifically authorised by an Act of Parliament (unless otherwise provided by the 1988 Act). In the case of a response to a freedom of information request, a council would not infringe copyright by disclosing copyrighted materials as it would be doing so in accordance with its freedom of information obligations. Another example is that community councils in Wales are under a duty to make certain information available in an electronic format (section 55 of the Local Government (Democracy) (Wales) Act 2013 (the 2013 Act)). This includes the minutes of council's meetings and (in so far as is reasonably practicable) any documents which are referred to in the minutes. Councils in Wales would not infringe copyright by making copyrighted material available in accordance with section 55 of the 2013 Act.

13. In England only, transparency rules recommend that local councils publish specified materials on their websites or, if they do not have a website, on another local authority's website. The rules also provide that local councils with an annual turnover of less than £25,000 should publish meeting agendas, which are as full and informative as possible and associated meeting papers not later than three clear days before the meeting to which they relate is taking place. "Associated meeting papers" could mean expert reports or business plans, which could be copyrighted literary works. The transparency rules are contained in non-mandatory codes, and it is NALC's view that section 50 only applies to Acts of Parliament. However, section 47 (material open to public inspection or on official register), permits various acts to be carried out in relation to copyrighted material notwithstanding the existence of copyright.
14. Section 47 (2) provides that where material is open to public inspection because of a statutory requirement (for example, planning applications, minutes of local authority meetings) copyright in the material is not infringed by (i) the copying of the material, (ii) issuing copies of the material to the public or (iii) by making the material available to the public by electronic transmission so that it is publicly accessible. This is subject to specific criteria applying. This enables local councils to publish documents such as planning applications without breaching copyright.
15. Special rules apply to the provision of and publication of plans and technical drawings. Section 47 (2) is subject to the requirements of the Copyright (Material Open to Public Inspection) (Marking of Copies of Plans and Drawings) Order 1990 (the 1990 Order). This requires a particular form of wording to be marked on copies of plans and drawings. The 1990 Order requirements mean that local councils must mark the copies with the following when providing copies of plans and drawings to the public or publishing them on their websites:

"This copy has been made by or with the authority of [insert the name of the person required to make the plan or drawing open to public inspection] pursuant to section 47 of the Copyright, Designs and Patents Act 1988. Unless that Act provides a relevant exception to copyright, the copy must not be copied without the prior permission of the copyright owner."

Local councils are recommended to include a statement on their websites consisting of the above wording concerning the copyrighted use of plans and drawings.

Council publications

16. As set out in paragraph 2 above, council publications such as newsletters, could be copyrighted materials as original literary works. This means that a council could bring a claim against a person(s) infringing their copyright by reproducing the copyrighted works.

Council websites - content and creation

17. Local councils engaging third parties to create and design their websites are advised to enter into written contracts with those parties. It should be made clear at the outset which party owns the copyright in the design of the site (which may be the web designer) and the content (which is likely to be the council in respect of the original material it has created, for example, text or photographs). It is also advisable for council websites to contain a copyright statement.

Publication schemes

18. Local councils are required to make specific information available to the public as part of their publication scheme. Charges may be made for making datasets (or parts of datasets) that are relevant to copyright works available for re-use.

Council use of copyrighted music/sound recordings

19. Councils wishing to play live music, background music, music that is conditional upon an admission charge or restricted to employees are likely to require a licence from PRS for Music. This is a society of songwriters, composers, and music publishers. Councils will be likely to need a licence from PRS for Music if they play music controlled by them. In order to play recorded music in public, legal permission is needed from the copyright holders. A music licence from PPL gives this permission. Links to the respective websites are below:

<http://www.prsformusic.com/Pages/default.aspx>

<http://www.ppluk.com/I-Play-Music/Businesses/>

Other Legal Topic Notes (LTNs) relevant to this subject:

LTN	Title	Relevance
60	Copies of planning documents	Sets out the copyright provisions in respect of planning documents.

Appendix: Exceptions provided by Chapter III of the 1988 Act

- Making temporary copies
- Research and private study
- Copies for text and data analysis for non-commercial research
- Criticism, review quotations and news reporting
- Caricature, parody or pastiche
- Incidental inclusion of copyright material
- Disabled persons: copies of works for personal use
- Making and supply of accessible copies by authorised bodies
- Making and supply of intermediate copies by authorised bodies
- Accessible and intermediate copies: records and notification
- Illustration for instruction
- Anthologies for educational use
- Performing, playing or showing work in course of activities of an educational establishment
- Recording by educational establishments of broadcasts
- Copying and use of extracts of works by educational establishments
- The lending of copies by educational establishments
- The lending of copies by libraries or archives
- Libraries and educational establishments etc: making works available through dedicated terminals
- Copying by librarians: supply copies to other libraries
- Copying by librarians or archivists: replacement copies of works
- Copying by librarians: single copies of published works
- Copying by librarians or archivists: single copies of unpublished works
- Legal deposit libraries
- Parliamentary and judicial proceedings
- Royal Commissions and statutory inquiries
- Material open to public inspection or on official register
- Material communicated to the Crown in the course of public business
- Public records
- Acts done under statutory authority

- Computer programs; back up copies
- Computer programs; decompilation
- Observing, studying and testing of computer programs
- Other acts permitted to lawful users of computer programs
- Acts permitted in relation to databases
- Design documents and models
- Things done in reliance on registration of design
- Use of typeface in ordinary course of printing
- Articles for producing material in particular typeface
- Transfers of copies of works in electronic form
- Anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author
- Use of notes or recordings of spoken words in certain cases
- Public reading or recitation
- Abstracts of scientific or technical articles
- Recordings of folksongs
- Representation of certain artistic works on public display
- Advertisement of sale of artistic work
- Making of subsequent works by same artist
- Reconstruction of buildings
- Lending to public of copies of certain works
- Films: acts permitted on assumptions as to expiry of copyright
- Incidental recording for purposes of broadcast
- Recording for purposes of supervision and control of broadcasts and other services
- Recording for purposes of time-shifting
- Photographs of broadcasts
- Free public showing or playing of broadcast
- Recording for archival purposes