



INTELLECTUAL
PROPERTY OFFICE



Copyright

Essential Reading



This booklet provides information on copyright in the UK and abroad and highlights the processes involved in this important area of intellectual property



This booklet discusses general legal principles of copyright. This booklet is not intended to constitute legal advice on specific circumstances.

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WHAT IS COPYRIGHT?

Copyright rewards the making of, and investment in, creative works while also recognising the need for use to be made of those works. In the UK, the works covered by copyright are literary (e.g. song lyrics and computer programs); dramatic (e.g. dance and mime); musical (e.g. music composition); and artistic (e.g. painting and sculpture) works. Broadcasts, sound recordings (e.g. the recording on the CD or MP3), films and typographical arrangements of published editions (e.g. the layout of a book) are also granted copyright protection (see pg. 3-7).

If certain criteria are met (see pg. 3), copyright gives the creator ('the author') of the work exclusive rights over certain uses of those works. For example, the author of a work has the exclusive right to allow or prevent the copying of their work or the performance of their work in public. These rights are called 'economic rights' (see pg. 10). As well as economic rights over their works, authors of literary, musical, dramatic and artistic works (and directors of films) are given moral rights, for example, to be named as the author of the work (see pg. 11)

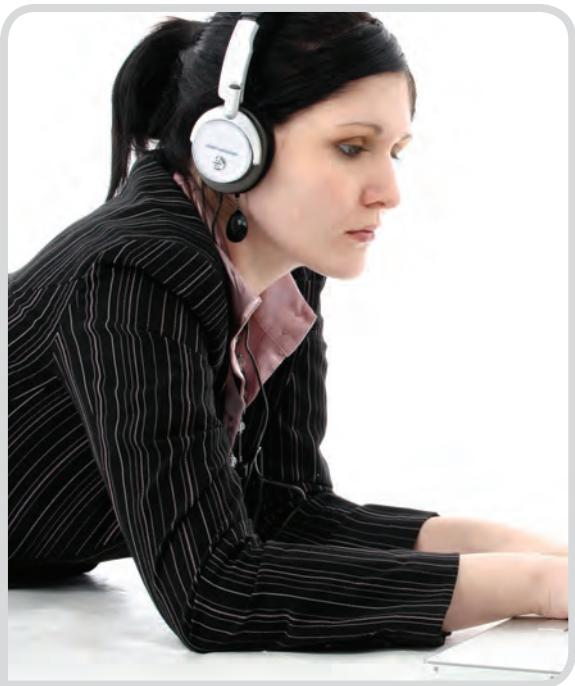
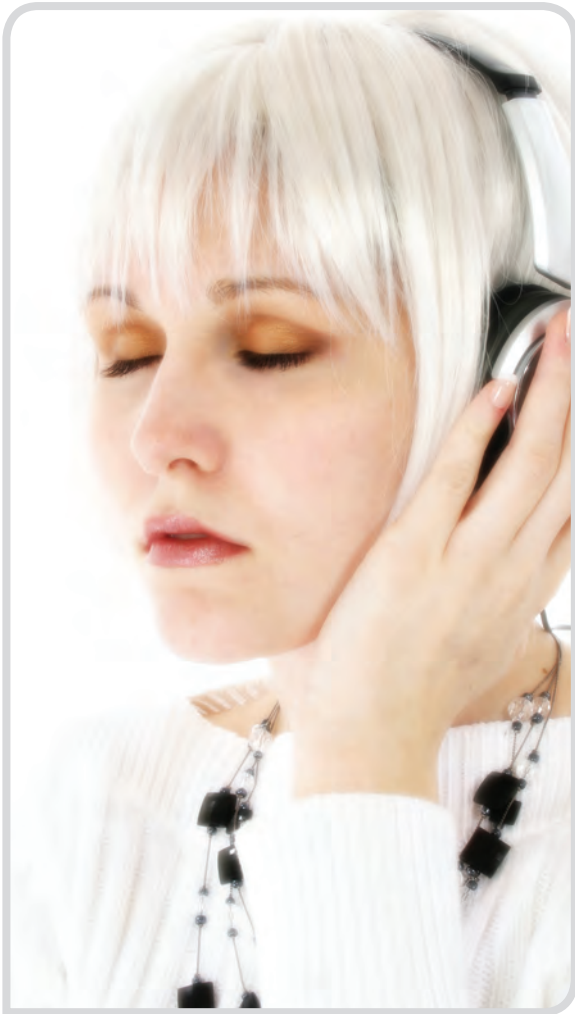
Economic rights can be treated like any other piece of property so may be sold or licensed (see pg. 10). Moral rights cannot be sold or transferred although they can be waived and are transmitted on the death of the author or director (see pg. 11).

Copyright applies for a limited time period or term, the length of which varies depending on the type of work (see pg. 14). In the UK, if certain criteria are met a work is automatically protected by copyright once it is created. The UK does not require a work to be registered or go through any formal process before protection is granted (see pg. 16).

Copyright is infringed if a person does (or authorises another to do) any of the exclusive acts restricted by the copyright without the permission of the owner (see pg. 17), in relation to the whole or a substantial part of a copyright work. Importantly, however, there are limited circumstances (copyright exceptions) where a user may use copyright works without infringing (see pg. 18).

Under the Rome Convention, the rights of the performers, broadcasters and producers of sound recordings are protected as related rights. A performance can take place at a live concert or it can also be recorded and broadcast. Performers are also granted moral rights (see pg. 23). Other rights under copyright include database rights, public lending rights and artist resale rights (see pg. 23).

In the UK Copyright law is mainly set out in the Copyright, Designs and Patents Act 1988 ('CDPA'). The CDPA has been amended substantially to implement European Copyright Directives which have the intention of harmonising some aspects of copyright across Europe.



WHAT IS PROTECTED BY COPYRIGHT?

Original Works

To receive copyright protection, literary, musical, dramatic and artistic works must be original. Ultimately, only the courts can decide whether a work is original or not.

However, broadly, two elements constitute originality in the UK. First, the work must not be copied. Second, an author must have expended more than negligible labour, skill and effort in the creation of the work.

To receive protection, films, sound recordings, typographical arrangements and broadcasts do not need to satisfy the originality criteria. Instead films, sound recordings and typographical arrangements receive protection if they are not copied from a previous work of the same kind. Broadcasts will receive copyright protection if they do not infringe the copyright of another broadcast.

Recorded

To receive copyright protection in the UK, a literary, musical or dramatic work must be recorded in writing or otherwise. Examples of this include a composer transcribing a musical work into a written score or an author dictating a novel into a recorder.

Other Qualification Requirements

To receive copyright protection in the UK a work must meet the qualification requirements, either through the nationality of its author or through its place of first publication. These qualification requirements are consistent with the UK's international obligations.

Literary Works

Copyright applies to recorded original literary works such as novels, newspaper articles, lyrics for songs, instruction manuals and exam papers. These creations are within the

Photocopying books in libraries

Photocopying books in a library, both in an educational establishment or a public library will generally infringe copyright. However, in certain circumstances photocopying will fall within the exceptions to copyright, depending on extent of copying, the uses for which it is intended, or other factors (see pg. 18).

Even where an exception does not apply, the library will often have a licence allowing reproduction of defined proportions of work covered by copyright, in exchange for ensuring some payment is provided back to rights holders for the copying of their works. The terms and conditions of this licence will often be displayed near the photocopying equipment (for example, the CLA licence for schools allows specific types of copying such as one chapter from a book or one article from a journal or a magazine).



definition of literary works in the CDPA, as are computer programs and databases. Databases are also protected by their own database right.

A name, title or slogan might not meet the criteria for copyright protection, however this is for the courts to decide. These may be eligible for registration as a trade mark, or a common-law action to prevent passing-off may give protection for unregistered trade marks. Logos may be protected under copyright as artistic works, and many trade marks may therefore also be copyright works.

If you wish to copy a copyright literary work in any way, for example, photocopying, reproducing a printed page by handwriting or typing it or scanning into a computer you need the permission of the copyright owner unless any exceptions apply (see pg. 18)

Dramatic Works

Copyright applies to recorded original dramatic works such as ballet, mime and plays. A dramatic work is different from a literary work because it requires action and must be capable of being performed. If you wish to perform a dramatic work, for example performing a play in public in an amateur theatre group you need the permission of the copyright owner, for example through a licence unless any exceptions apply (see pg. 13 and pg 18).

Musical Works

Copyright applies to a recorded original musical work such as a blues tune, an advertisement jingle or a sonata. It is important to note that a musical work must be recorded by being written in a score or by sound recording or on film.

If you wish to copy or perform a musical work, for example playing cover songs at a gig in a local pub or copying MP3 files onto CDs, permission of the copyright holders will be required unless any exceptions apply (see pg. 18).

Artistic Works

Copyright exists in original artistic works such as paintings, drawings, engravings, sculptures, photographs, diagrams, maps, works of architecture and works of artistic craftsmanship.

Dramatic performances within schools

Within schools, if the performance or concert is only being watched by teachers and pupils as part of the activities of the school then you do not need permission from the copyright owner(s). This falls within the scope of one of the exceptions to copyright.

However, if parents are invited to watch the performance or concert of a work which is still in copyright, then you probably will need permission from the copyright owner.

A pop song

A recording of a pop song may contain a number of copyrights. First, lyrics are protected as a literary work. Secondly, the music is protected as a musical work. The sound recording will also have copyright protection (see pg. 7). The rights of the performer must also be taken into consideration.

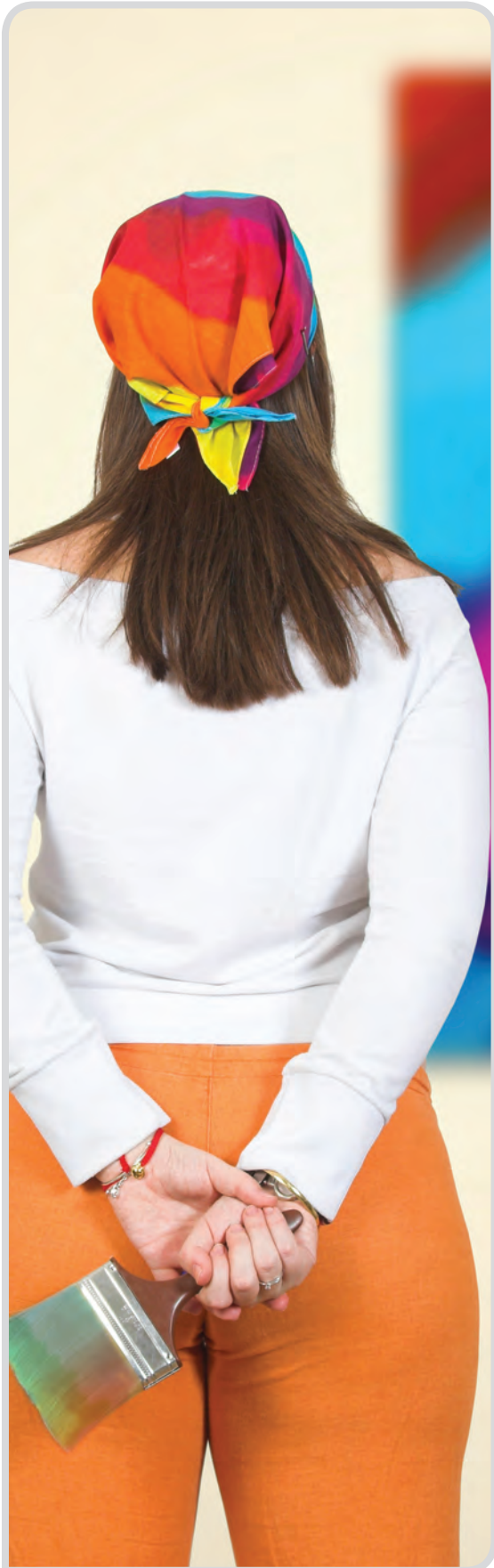


If you wish to use copyright protected artistic works, for example making a poster for a book club using a photograph from the front cover of the book you may need permission from the copyright owner if none of the copyright exceptions apply.

Artistic Works – Photographs

Photographs are protected as artistic works (see pg. 4). However, the exceptions to copyright in photographs are different to exceptions to copyright in artistic works e.g. the fair dealing provision for reporting current events does not apply to photographs (see pg. 18).





Film

Copyright protects films, defined as a recording on any medium from which a moving image may by any means be reproduced. Films are not just big budget cinema pictures but include home videos or the DVDs of television programmes.

A film may include a number of works which are protected by copyright. So for example, the score may be protected as a musical work, the screenplay may be protected as a dramatic work, and the script may be an adaptation of a book, both of which are protected as literary works.

If you wish to show a copyright protected film you will need to get permission from the owners of each of these separate copyrights unless there are any applicable exceptions (see pg. 18).

Typographical Arrangements

Copyright protection applies to typographical arrangements of a published edition of the whole or any part of a one or more literary, dramatic or musical works.

If you wish to use a copyright protected typographical arrangement you may need to get permission from the copyright owner.

Broadcasts

Copyright applies to broadcasts, defined as the electronic transmission of visual images, sounds or other information which (a) are transmitted for simultaneous reception by members of the public and are capable of being lawfully received by them, or (b) are transmitted at a time determined solely by the person making the transmission for presentation to members of the public. Some internet transmissions are excluded from this definition.

Copyright protection for the broadcast is not the same as the copyright protection of the content of the broadcast. The components that make up the broadcast will receive

protection individually. For example the recording of a song being played on the television show is still protected as a musical and literary work and a sound recording separate from the broadcast. Performers' rights also need to be considered.

If you wish to use a copyright protected broadcast you will need to get permission from the copyright owner unless copyright exceptions apply (see pg. 18).

Sound Recordings

Copyright applies to sound recordings; these are defined as (a) a recording of sounds from which the sounds may be reproduced or (b) a recording of the whole or any part of a literary, dramatic or musical work, from which sounds reproducing the work or part may be produced, regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced. So, a CD, an MP3 or a vinyl record may all be sound recordings.

Copyright protection for the sound recording is not the same as the copyright protection of the content of the sound recording. For example, the modern opera libretto or the modern opera score receives protection separately from the recording that is made of the modern opera.

If you wish to use a copyright protected sound recording you will need to get permission from the copyright owner unless an exception applies (see pg. 18).

WHAT IS NOT PROTECTED BY COPYRIGHT?

Works In The Public Domain

If the copyright in a work has expired (see pg. 14), use of the work will not infringe copyright.

Expression Over Ideas

Copyright, protects the expression of an idea, not the idea itself. However, it can be difficult to draw a distinction between idea and expression in some cases, and therefore between what will and will not be protected by copyright.

Copyright Exceptions

There are a number of specific circumstances where reproducing or otherwise using copyright works in a manner that falls within the exclusive rights of the copyright owner is not an infringement of copyright. Some exceptions to copyright regulations are considered in more detail later in this booklet (see pg. 18).

BUT WHO HAS COPYRIGHT?

The Author as First Owner

As a general rule of thumb the author of the work is the first owner of copyright and any moral rights which are contained within it (see pg. 11).

- (a) In the case of literary, dramatic, musical or artistic works, (including photographs) the author of the work meaning the person who creates it.
- (b) In the case of films, the author is the producer and the principal director (only the principal director has the moral rights)
- (c) In the case of broadcasts, the author is the broadcaster
- (d) In the case of a sound recording, the author is the producer
- (e) In the case of a typographical arrangement, the author is the publisher

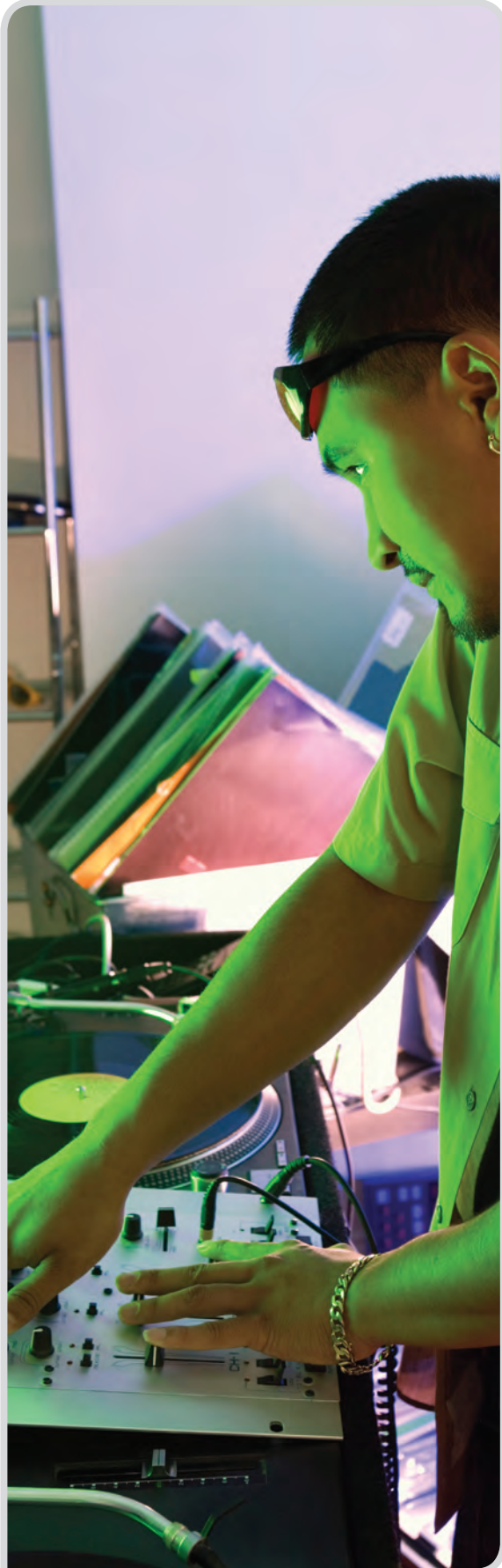
What if there is more than one author?

Where two or more people have created a single work protected by copyright and the contribution of each author is not distinct from that of the other(s), those people are generally joint authors and therefore joint first owners of copyright. For example, a computer program created by a team of programmers. This may not apply in certain situations (for example, when the authors are employees: see pg. 9). If someone wanted to copy or use a work of joint ownership, all of the owners would have to agree to such a request, otherwise an infringement of copyright could still occur.

Where individual contributions are distinct or separate, each person would be the author of the part they created. For example, where the music of a song is written by one individual and the lyrics by another each owns the copyright in the work they created and it would only be necessary to obtain the consent of the lyricist to use the lyrics without the music. The permission of both authors will be required if the song (that is, the music and lyrics together) is to be recorded or performed.

Exceptions to the authors as first owner rule: Employee created works

If a literary, dramatic, musical or artistic work or film is made by an employee in the course of their employment, the employer is the first owner of copyright in the work. However, this can be overridden by the specific contract of employment or any other agreement to the contrary. An employer should keep careful records of which employees create works in



the course of their employment, as well as the terms under which copyright material is produced on commission.

These records could be needed to prove ownership of copyright should this be disputed at a later date. Joint ownership might arise, for example, if a person was commissioned on a freelance basis to create a book together with one of the company's employees. If there is no contract governing ownership of copyright produced it is possible that both the person being commissioned, and the company, would be joint first owners of copyright in the book that results.

Exceptions to the author as first owner rule: Commissioned works

When you ask or commission another person or organisation to create a copyright work for you, the first legal owner of copyright is the person or organisation that created the work and not you the commissioner, unless you otherwise agree it in writing. However, in some circumstances, for example when copyright is not dealt with in the contract to commission the work, Courts may be willing to find that there is an implied licence from the contractor to the commissioner so that the commissioner is able to use that work for the purpose for which it was commissioned. This does not necessarily result in a transfer of ownership. Instead, the company commissioning the work may only get a limited non-exclusive licence. This situation demonstrates the importance of establishing who owns copyright through a contract.

Exceptions to the author as first owner rule: Crown Copyright

Copyright material produced by Her Majesty or by a Servant or Officer of the Crown in the course of his or her duties belongs to the Crown. The Office of Public Sector Information (OPSI) can provide more information about this. See: <http://www.opsi.gov.uk/advice/crown-copyright/copyright-guidance/index>.

IF YOU HAVE COPYRIGHT, WHAT RIGHTS DO YOU HAVE?

If you have created a copyright work, you have certain exclusive rights over certain uses of that work. Rights granted to authors fall into two categories: (a) economic rights and (b) moral rights. Copyright is infringed when any of the economic rights are utilised without permission of the copyright owner, whether directly or indirectly in respect of the whole or a substantial part of a work (see pg. 17).

Economic Rights

Economic rights give the copyright owner the opportunity to make commercial gain from the exploitation made of their works. It also allows an author to take action to claim compensation for and prevent infringing acts. There are six economic rights. These rights do not apply to all works, and we note some of the major distinctions below. The author of a copyright work has the right to control (by authorising):

- (a) The copying of the work in any way ('the reproduction right'). For example, photocopying, reproducing a printed page by handwriting, typing or scanning into a computer, and taping recorded music.
- (b) The issuing of copies of the work to the public or the right to put tangible copies into commercial circulation ('the distribution right'). For example, a book being sold to a retailer for sale in a bookshop. This right only applies the first time a work enters into commercial circulation and so would not apply to second hand or charity shops.
- (c) The renting or lending copies of the work to the public ('the rental and lending right'). For example, renting from a video store or loaning a CD from a library. However, some lending of copyright works falls within the Public Lending Right Scheme (see pg. 23) and this lending does not infringe copyright. The rental and lending right applies to literary, dramatic, musical works and to certain forms of artistic works; to sound recordings, films and broadcasts.



- (d) The performing, showing or playing the work in public ('the performance right'). For example, performing a play in the theatre, playing sound recordings and showing films or videos in public. This right is not applicable to artistic works or typographical arrangements.
- (e) The communication of the work to the public by electronic transmission ('the communication to the public right'). This communication can be through broadcasting or through making the work available through electronic transmission so that the public can access the work when and where they want. The best way to differentiate this from the performance right is to understand that the performance does not occur in the same location as the public, for example, the broadcast of a television program or an on demand music program. This right is not applicable to typographical arrangements.
- (f) The making of an adaptation of the work ('the adaptation right'). For example, making a comic book out of a novel, transcribing a musical work and converting a computer program into a different computer language or code. This is only applicable to literary, dramatic, musical and artistic works.

As well as economic rights, the authors of certain types of works are given moral rights over their works.

Moral Rights

Works often mean more than just the economic value they can generate from their exploitation, they can be very special to the person who creates them as they have invested a lot in the work, emotionally or intellectually. The works express a fundamental aspect of the author. As a result, copyright works need to be protected in ways that are different to traditional forms of property. Moral rights protect those non-economic interests. Moral rights are only available for literary, dramatic, musical and artistic works and film. Some performers are granted moral rights (see pg. 23). There are three moral rights recognized in the UK and if infringed, an author can claim damages:

- (a) The right to be identified as author/director ('the right of paternity or attribution'): The right to be recognised as the author of the work. For example, the name of the author appearing on the front cover of a book. This right needs to be asserted before it applies (e.g. in a contract selling the rights in a novel to a publisher, an author will state that they assert their right to be identified as the author of the work).

- (b) The right to object to derogatory treatment of a work ('the right of integrity'): This right only applies to particular types of work: original literary, dramatic, musical and artistic works and film. Treatment is defined as addition, deletion, alteration to or adaption of a work (and does not apply to translations of a literary and dramatic work or the arrangement or transcription of a musical work if it is no more than a change of key or register). Treatment is "derogatory" if it amounts to a distortion or mutilation of the work or is otherwise prejudicial to the honour or reputation of the author or director of the work. The Courts in the UK and elsewhere have interpreted 'derogatory' and 'treatment'. Derogatory treatment in the UK must be prejudicial to the honour or reputation of the author or director to be actionable. Simple changes to the size or colour of the work are unlikely to be sufficient.
- (c) The right to object to false attribution: The right not to be named as the author of a work, when the author has not created the work. For example, a well-known author being named as the author of a story they did not write.

There are also exceptions to moral rights.





IF YOU HAVE COPYRIGHT, WHAT CAN YOU DO WITH IT?

Although in most cases the economic and moral rights belong to the person who creates the work (see pg. 8), copyright is a form of property, which, like physical property, can be sold, bought, inherited or otherwise transferred, wholly or in part. A copyright owner can do a lot with their copyright.

Assignment: An assignment transfers the full (all economic rights) or partial (some economic rights) ownership of the copyright from the author to another person (the assignee) who will then become the owner of the rights transferred. The rights or right can be assigned for a limited time or for a particular territory. The copyright in works that will be created in future can also be assigned. The author may assign the copyright for a fixed sum. In some cases, royalties may be paid. The assignee can then transfer all their economic rights by assignment, licence or otherwise. For example, a writer can assign all their economic rights to a publishing house in order for their book to be marketed and sold by the publishing house. The publishing house could then sell the adaptation and communication to the public right to a film company who wants to make a television miniseries of the work to be broadcast in the UK, but still retain the right of reproduction.



Licence: A licence gives someone permission to do the acts which the copyright owner is entitled to authorise or prohibit without infringing copyright. The way in which a licence operates varies (can be limited to a particular, time or specific types of uses) and can be exclusive (only the person to whom the licence has been granted has permission to act and the copyright owner promises to no longer act) or implied (for example a Court may imply that a licence exists to use copyright plans commissioned from an architect to build a property to those plans).

Retain particular aspects of their copyright: A copyright owner can assign or license particular rights and keep others for themselves to assign or license at a later date e.g. license the right of reproduction but retain the right of adaptation.

Waive their rights: An author may still hold some rights in a copyright work despite having assigned or licensed other aspects. In addition, moral rights cannot be assigned or licensed and can only be waived (if an author chooses not to use these rights) or pass on death (see below). For example, an artist may license their copyright in a painting to a gallery that wishes to market this work and reproduce images of their work on advertising campaigns for an upcoming exhibition, for example on tea towels, mugs and calendars to be sold in the gallery gift shop or used in a television advertisement. However, if the artist has not waived their moral rights, they will still retain the ability to object to any derogatory treatment of their work (see pg. 11).

Testamentary Disposition: Economic rights and moral rights can be transferred in a will (or through laws on intestacy). In the case of joint authorship (see pg. 8), when one joint author dies, the share which belongs to that author may be transmitted through a will or under intestacy laws.

HOW LONG DOES COPYRIGHT PROTECTION LAST?

The term of protection or duration of copyright varies depending on the type of copyright work and when the work was created. The provisions which govern term are very complicated. The general principles are set out below.

Literary, dramatic musical and artistic works

The term of protection in the UK for an original literary, dramatic, musical or artistic work lasts for the life of the author plus 70 years from the end of the year in which they die. In the case of joint authorship (see pg. 8) the term of copyright protection in such a work is calculated with reference to the date of the death of the last surviving author.

Films

Copyright in a film runs out 70 years after the end of the year in which the death occurs of the last to survive of the principal director, the authors of the screenplay and dialogue, or the composer of any music specially created for the film.



Broadcasts

Copyright in a broadcast expires 50 years from the end of the year of the making of the broadcast.

Sound Recordings

Copyright in a sound recording lasts for 50 years from the end of the year in which it was made or, if published in this time, 50 years from the end of the year of publication. If the recording is not published during that 50 year period, but it is played in public or communicated to the public during that period, then copyright will last for 50 years from when this happens.

Typographical Arrangements

Copyright in the typographical arrangement of a published edition expires 25 years from the end of the year in which the edition was first published.

Unpublished Works

If, by the time the copyright expires, a work has not been published, a subsequent publisher of the work receives a “publication right” equivalent to copyright. This allows the communication to the public e.g. making the work available by means of an electronic retrieval system or broadcasting the work or including it in a cable programme service. The publication right lasts for 25 years after the first publication of the work.

Moral Rights

The moral rights of paternity and integrity last as long as copyright in the work lasts. The moral right to object to false attribution lasts for twenty years after the death of the author.

HOW TO GET COPYRIGHT PROTECTION

There is no official registration system for copyright in the UK and most other parts of the world. There are no forms to fill in and no fees to pay to get copyright protection.

If you have created a work that qualifies for copyright protection, you will have copyright protection once you meet the criteria for protection (see pg. 3). You do not, however, have to fill out any forms or pay any money to receive protection. In fact, it is a requirement of various international conventions on copyright that copyright should be automatic.

To help protect your copyright work, it is advisable to mark it with the © symbol, the name of the copyright owner and the year in which the work was created. Although this is not essential in the UK, it will let others know when the term of protection started and it should then be possible to calculate whether it has ended or not. It will also indicate who the owner was at that time in case it is then necessary to approach them should you need to ask permission to use the work.

Additionally, a creator could send himself or herself a copy by special delivery post (which gives a clear date stamp on the envelope), leaving the envelope unopened on its return (ensuring you also know what is inside each envelope in case you do this more than once). Alternatively you could lodge your work with a bank or solicitor. It is important to note, that this does not prove that a work is original or created by you. But it may be useful to be able to show the court that the work was in your possession at a particular date.

There are a number of companies that offer unofficial copyright registers. You should think very carefully whether this is a useful service for you before choosing this route. Some of the things to think about are:

- (a) How much does it cost and is it a one-off or regular payment?
- (b) Are you paying just for a registration, or does the cost cover more than this, for example help with a legal action should your copyright be infringed?
- (c) Is the registration likely to be better than the evidence you can create for yourself by sending a copy of the work to yourself by Special Delivery post and not opening the envelope upon its return?
- (d) Are you still likely to have a problem proving that you had the copyright material at a certain time which is all that registration can help to prove?

Neither registration nor sending a copy of the work to yourself shows that you were the author of the work. Keeping copies of all your drafts and any other material that shows your connection with the particular copyright material as you develop it could, however, be useful evidence if you ever have to prove that you are the author.

COPYRIGHT ENFORCEMENT

Copyright is infringed if the whole or substantial part of a work is used in a manner restricted by copyright. Only the owner of the copyright or exclusive licensee may bring an action for civil copyright infringement. The enforcement of criminal infringement is usually dealt with by public authorities. One of the many organisations representing copyright owners (see pg. 24) may also be able to give the author advice, or, if they are a member, sometimes act on your behalf.

If you do go to court, the courts can:

- (a) Stop that person making further infringing use of the material by granting an injunction
- (b) Award the copyright owner damages
- (c) Make the infringing party give up related goods to the copyright owner, for instance copies made.



EXCEPTIONS TO COPYRIGHT

As we have described, copyright gives authors and owners some significant rights to determine whether and how their works may be reproduced or otherwise used.

However, there are exceptions which allow use of copyright works within certain conditions and limits, without infringing copyright. You will not infringe copyright if you use less than a substantial part of a copyright protected work (although what is substantial can be difficult to determine and is not only considered in terms of the proportion of the work taken).

There are a number of provisions in the CDPA that allow use of copyright material without infringing. These are referred to in this booklet as permitted uses.

Please note that this list is not exhaustive and particular care should be taken if you intend to rely on an exception. Not all the exceptions apply to all sorts of works. For example, the exception for news reporting does not apply to photographs. Also in the case of some works, the exception may require you to acknowledge the author of the work.

Non-commercial research and private study

This exception allows the making of single copies or the taking of short extracts of literary, dramatic, musical and artistic works as well as typographical arrangements when the use is for research (from which no money is made) or for private study (for educational courses, or for use in connection with a hobby). These copies or short extracts must be supported by sufficient acknowledgment.

Criticism, review and reporting current events

This exception allows the criticism or review or the reporting of current events using copyright works. This criticism, review or reporting of current events must be with sufficient acknowledgment (although this requirement does not apply to sound recordings, films or broadcast) and the work must have been made available to the public (so, not an unpublished work). This exception does not apply to photographs.

Teaching in educational establishments

A number of exceptions apply to schools, universities and other educational establishments. These include:

- (a) copying a literary, dramatic, musical or artistic work in the course of teaching as long as a reprographic process is not used (reprographic process means using a fax machine, photocopier or any appliance which makes multiple copies). For example, teachers writing material on the board or an overhead projector and students making their own copies by writing, painting, typing, etc.

- (b) anything done for setting or answering examination questions (this does not include photocopying music that is to be performed in an exam).
- (c) performing, playing or showing copyright works in a school, university or other educational establishment for educational purposes. However, it only applies if the audience is limited to teachers, pupils and others directly connected with the activities of the establishment. It will not generally apply if parents are in the audience. Showing a video for English or drama lessons and the teaching of music would generally be likely to come within the exception. Playing a video during a wet playtime purely to amuse the children would not.
- (d) recording a broadcast for non-commercial educational purposes in an educational establishment.
- (e) reprographic copies (by an appliance that makes multiple copies, such as a photocopier) of passages from published literary, dramatic or musical works.

However, if an educational establishment wishes to record a broadcast or make reprographic copies of passages from literary, dramatic or musical works it will need a licence. A licence to record a broadcast for non-commercial education purposes can be obtained from the ERA (www.era.org.uk) or the Open University (<https://msds.open.ac.uk/ouwebshop/info/record.shtm>). A licence to copy passages from published literary or dramatic works can be obtained from the CLA (www.cla.co.uk).

Exceptions for the disabled

A number of exceptions exist for the visually impaired. For example:

- (a) A visually impaired person may have a literary, dramatic, musical or artistic work (which they are able to make lawful use of but cannot because of their visual impairment) made into a format that allows them access to the work. The work must not already be available commercially in a format that allows the work to be accessed. For example, a visually impaired person may commission for a book they own or have loaned from a library, to be made into a Braille copy.
- (b) If there is no way a licence can be obtained (through a licensing scheme or a collecting society), then an educational establishment may make or supply copies accessible to the visually impaired without infringing copyright.
- (c) An exception exists for those of poor hearing. If there is no licensing scheme in place, a designated body can make copies of broadcasts with subtitles or any other modification which will help those who are deaf, hard of hearing or physically or mentally disabled.

Time-shifting

A recording of a broadcast can be made in domestic premises for private and domestic use to enable it to be viewed or listened to at a more convenient time.

This time-shifting exception does not however cover the making of recordings for placing in a collection for repeated viewing or listening. The making of a recording for purposes other than to time-shift a programme for you or your family is likely to be an infringement.

EXPLOITING AND USING COPYRIGHT

If a person or organisation wishes to use a copyright work in a way which will infringe the exclusive rights of that owner and no exception applies, they cannot do so without the permission of the copyright owner. The way in which permission can be granted varies (see pg. 13). The copyright owner may refuse to give permission for use of their work.

It is important to remember that buying or owning the original or a copy of the physical form of the copyright work does not necessarily give you permission to use it however you wish. For example, buying a copy of a book, CD, computer program and so on, does not necessarily give you the right to make extra copies (even for private use) or to play or show them in public.

Some minor uses may fall within the scope of one of the exceptions (see pg. 18) to copyright, but for actions that infringe copyright and are not covered by those exceptions, you will usually need to approach the copyright owner and ask to purchase an assignment of copyright in the work or, as is more usual, negotiate a licence to cover the use you intend to make of the work.



LOCATING A COPYRIGHT OWNER

If you want to get permission from a copyright owner you will need to consider who owns or controls the rights in the material. This person could be:

- (a) the author of the material or his heirs, or
- (b) the author's employer, or
- (c) anyone else to whom the rights in the material have been sold, or otherwise transferred or exclusively licensed, or
- (d) a collecting society which has been asked to collect fees on behalf of the rights holder.

Copyright is an automatic right and no UK registers exist to locate the author or right holder in a work. If you wish to trace a rights holder, there is no official body that can help you directly, but you could try the following:

- (a) Contact the appropriate collecting society (see pg. 24)
- (b) Contact the author's publisher, agent, representative etc.
- (c) Carry out internet searches on various search engines
- (d) Establish any family connection to authors / owners
- (e) Use the WATCH file, (Writers, Artists and Their Copyright Holders) - a joint project of the University of Reading, in the United Kingdom, and the University of Austin, Texas, USA. WATCH holds a list of some right holder contacts for some authors and artists

Use of a copyright protected work without its owner's permission may be a civil infringement and/or a criminal offence depending on the circumstances. If you cannot trace the copyright owner you should take legal advice before using any material that may be in copyright.

COPYRIGHT INTERNATIONALLY

The UK is a member of many international agreements including the Berne Convention, which requires that the national law of each member state automatically extends minimum standards of copyright protection to nationals of all other member states.

Most Western European countries, and the USA and Russia, are now signatories of the Berne Convention. Under this agreement, you do not have to mark your work in any way for automatic protection to apply. However, despite marking your work not being a requirement of the Berne Convention, it is sensible to mark your work with the international © symbol, followed by the name of the copyright owner and year in which the work was created. In this way you can be identified as the copyright owner of the work and a person who wishes to use the work can contact you as well as broadly calculate whether the work remains in copyright.

The USA has an official register of copyright works, although registration is not actually needed to qualify for copyright protection in the USA (or indeed any country that is a signatory of the Berne Convention). However if you do register your work you will be entitled to enhanced protection in the USA.

Protection abroad can also arise from obligations in the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement. This forms part of the World Trade Organisation (WTO) agreement and may protect your work automatically. Details of the TRIPS agreement and a list of these countries are on their website.



RELATED RIGHTS

Internationally, related rights are covered by the WIPO Rome convention. Related rights are the rights of broadcasters, producers of sound recordings and some performers. In the UK, broadcasters and producers of sound recordings are granted copyright in their broadcasting and sound recordings, respectively. In the UK performers' rights are considered to be a separate category to copyright.

Performers' Rights

In the UK performers have property rights (e.g. right to make copy of recordings of their performance) non-property rights (e.g. right to authorise the recording of their live performance and rights to remuneration) and right of remuneration (e.g. when a sound recording is played in public, the performer in the sound recording has the right to claim equitable remuneration from the owner of the copyright in the sound recording). Performers also have moral rights to be identified as a performer and to object to the derogatory treatment of their performance. Performers' rights last for 50 years from the end of the year in which the performance takes place or, if during that period a recording of the performance is released, 50 years from the end of the calendar year in which it is released. Performers' moral rights can be waived or transferred by a will or other form of testamentary disposition.

OTHER RIGHTS UNDER COPYRIGHT

Public Lending Right

The lending of works can reduce the income of authors, because instead of their books being purchased, they are being borrowed from libraries. The public lending right entitles authors to remuneration where their works are loaned by public libraries, as a substitute to potential lost sales.

Artist's Resale Right

Currently in the UK, the artist's resale right gives artists of original works a right to claim a royalty when their work is resold during their lifetime, in a sale involving an art market professional. The royalty to be paid to the artist depends on a sliding scale of percentages. The percentage of the resale value depends on the amount the work is sold for. For example, when a painting is sold for €40,000 at an auction in the UK, the artist will receive 4% of that (€1,600). If the painting is sold for €500,000, an artist will receive 0.25% of that (€1250). The artist's resale right is managed by collecting societies; individual artists are not able to request payments directly. This means that the seller is required to pay all royalties to a collecting society who will then distribute them to the artist. From January 2012 the Artist's resale rights will apply to sales of work by deceased artists for the period of copyright protection.

LICENSING

If you want to use a work that is under copyright, it is likely that you will need to approach the copyright owner in order to obtain a licence.

Exclusive licence

An exclusive licence could be granted, but remember that this enables the licensee to use the copyright work to the exclusion of all others, including the copyright owner. Any licence agreed can relate to one or more of the economic rights and can also be limited in time or any other way. It is a contractual agreement between the copyright owner and user.

Limited use licence

Often a copyright owner will only give permission for some uses of a work, for example, publication of a photograph in a particular newspaper, and if you want to use the work in any other way, for example, by publishing the photograph in a magazine, you will need to seek further permission.

Creative Commons Licence

Some people prefer to allow limited access to their work without charge. One way to do this is by using a Creative Commons Licence www.creativecommons.org.uk

The Copyright Tribunal

The Copyright Tribunal is an independent body established under the Copyright, Designs and Patents Act 1988.

The main function of the Tribunal is to settle various types of disputes, where the parties cannot agree between themselves, mainly in the field of collective copyright licensing. Further information about the Copyright Tribunal can be obtained from www.ipo.gov.uk

USEFUL CONTACTS

Identified on the following page are some of the main organisations who have an interest in copyright and may be useful if you are a creator, copyright owner or a user of copyright protected works.

You may want to involve others to help exploit, develop or market your copyright. We do not give direct advice on this, but help is available from a number of organisations. These contacts are provided for your convenience. Inclusion here does not imply any warranty by the Government for the reliability, quality or effectiveness of any products or services provided by these organisations, or any endorsement of the views, information or products. This list of useful contacts is not intended to be exhaustive but can help identify some organisations that may be able to offer more assistance.

Copyright Advisory Bodies

These organisations are advisory bodies for owners, creators or performers of copyright works or to Government.

British Copyright Council www.britishcopyright.org

FACT – Federation Against Copyright Theft www.fact.co.uk

Business Advice Groups

These groups provide assistance and advice to businesses across the UK.

British Chamber of Commerce www.britishchambers.org.uk

Business Link www.businesslink.gov.uk

Flexible Support for Business www.business-support-wales.gov.uk

Scottish Enterprise www.scottish-enterprise.com

Invest Northern Ireland www.investni.com

HM Revenue & Customs www.hmrc.gov.uk

Collecting Societies

If you are an author or an owner of work who wishes to manage the use of your work or an organisation or an individual who wishes to get a licence to use works you can contact the agencies below.

PRS for Music – Performing Rights Society www.prsformusic.com

PPL – Phonographic Performance Limited www.ppluk.com

DACS – Design and Artists Collecting Society www.dacs.org.uk

ACS – Artist's Collecting Society www.artistscollectingsociety.org.uk

ALCS – Authors' Licensing and Collecting Society www.alcs.org.uk

CLA – Copyright Licensing Agency www.cla.co.uk

Directors UK (D-UK) www.directors.uk.com

ERA – Educational Recording Agency www.era.org.uk

MPLC – Motion Picture Licensing Corporation www.mplc.com

NLA – Newspaper Licensing Agency www.nla.co.uk

PLS – Publishers Licensing Society www.pls.org.uk

General Copyright Contacts

IPO – Intellectual Property Office enquiries@ipo.gov.uk

UKPATLIB – UK Patent Libraries www.ipo.gov.uk/whyuse/business/business-patlib.htm

Watch File – A database of copyright contacts for writers, artists and other prominent figures in creative fields
www.tyler.hrc.utexas.edu

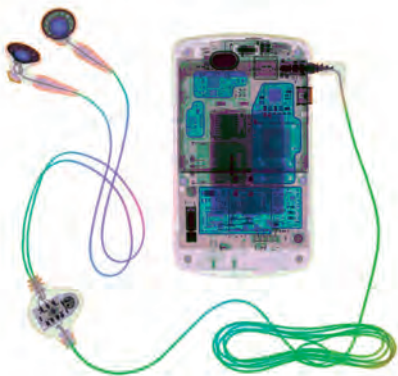
WIPO – World Intellectual Property Organisation www.wipo.org

UKIE – The Association for UK Interactive entertainment www.UKIE.info

Trading Standards Institute www.tsi.org.uk

IPInsight

IPInsight is the monthly E-Newsletter from the Intellectual Property Office, keeping you informed of current issues, law changes and case studies involving all areas of intellectual property.



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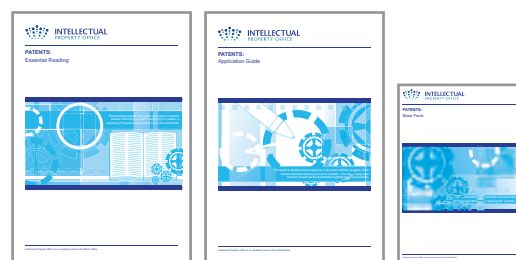
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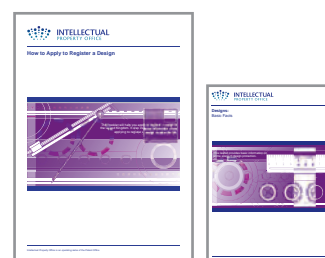
Patents

1. Patents: Essential Reading ☐
2. Patents: Application Guide ☐
3. Patents: Basic Facts ☐



Designs

4. How to Apply to Register a Design ☐
5. Designs: Basic Facts ☐



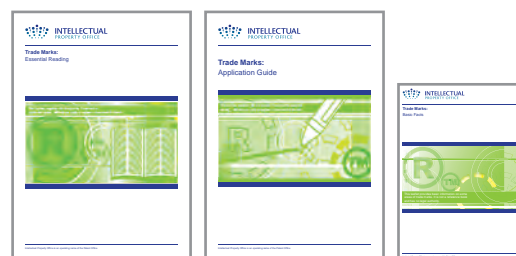
Copyright

6. Copyright: Basic Facts ☐



Trade Marks

7. Trade Marks: Essential Reading ☐
8. Trade Marks: Application Guide ☐
9. Trade Marks: Basic Facts ☐



Additional

10. Confidential Disclosure Agreements ☐
11. Licensing Intellectual Property ☐
12. Agreeing a Price for Intellectual Property Rights ☐
13. Search and Advisory Service ☐



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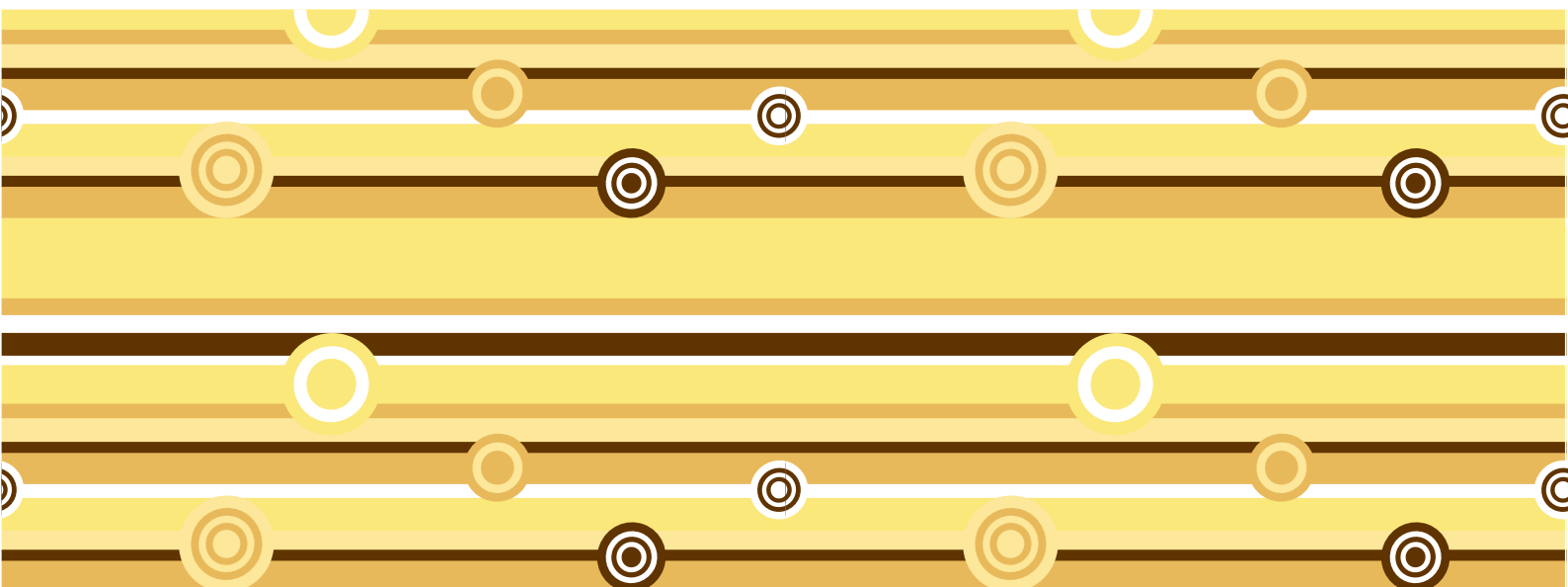
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