



FELICITY HARRISON IS A SPECIALIST INTELLECTUAL PROPERTY LAWYER WITH LEEDS-BASED SOLICITORS LEE & PRIESTLEY. HERE SHE OFFERS ADVICE ON WHAT YOU CAN AND CAN'T DO WHEN DEALING WITH OTHER PEOPLE'S WORK

Copy and paste with care

CAUTIONARY TALES

We've all done it – copied from the internet. It is so easy to save yourself time and hassle but what are the legal implications of those two little clicks and what action could you face as a result?

I believe that anyone using or publishing information that may, even in part, have been created by someone else, needs a basic grounding in some of the most important intellectual property rights that exist in what appears to be freely available information.

THE USE OF TEXT

the basics of copyright law

Copyright exists in literary, dramatic, musical and artistic works, among others, examples of which include newspaper articles, photographs, drawings, song lyrics, tables and diagrams. The right arises automatically as soon as the copyright work is created.

The key requirement is that the work must be original – originate from the creator (known as the author in copyright law) and not be copied from pre-existing works.

So what does this mean for a writer or editor who wants to find a snappy comment for their piece, or use a picture to illustrate their point? Unfortunately it means you could be infringing copyright.

Under the Copyright Designs and Patents Act 1988, the copyright owner has the exclusive right to copy, adapt, perform, issue copies to the public, rent or lend, or communicate to the public the copyright work. If anyone else does any of the above, it constitutes a restricted act and the owner has a prima facie claim if they can show an objective similarity between the two works and that their work was created first.

It is not just wholesale copying that is caught; it is an infringement to copy a

THE USE OF PHOTOGRAPHS

copyright, commissions and moral rights

The copyright in a photograph rests with the photographer.

Many businesses seem to think that if they commission a freelance photographer to take pictures for them they are free to use the images as they please, including their re-touching and circulation. This is not the case under copyright law.

Although the business has paid for the right to use the photograph for the stated purpose – marketing, inclusion in an article etc – the photographer retains the copyright and so has the exclusive right to copy it and issue copies to the public.

If the business wants to make wider use of the photograph it will need to negotiate a licence from the photographer, or obtain a written assignment transferring the copyright.

Although many images appear to be freely available on the internet, copying and pasting is not necessarily wise.

Before copying an image you should check the website's terms and conditions of use. These should specify the licence terms, which may exclude commercial use.

Certain websites do offer photographs for download for a small licence fee, or even for free – just make sure you check that your intended use falls within the terms and conditions.

If you do not want, or cannot afford to pay a licence fee, consider creative alternatives like taking your own photograph, which you can then use and distribute as much as you like.

Editors should be aware that any distortion of a picture, including cropping and retouch-

ing, may breach the photographer's moral rights in their copyright work. These are a special breed of rights that rest with the author regardless of any transfer of ownership of the copyright, or the physical work itself.

The author maintains the right to bring an action for breach of statutory duty if his or her work is subject to any 'derogatory treatment', which includes editing.

These provisions do not apply where an artistic work, such as a photograph, is made for the purpose of publication in a newspaper, magazine or similar periodical, or where the author gives consent for the purpose of such publication. So it is advisable to make the photographer aware of the intended use of their image and seek his or her consent for that use.

"substantial part" of a copyright work. Substantiality is judged by reference to the quantity and quality of the part that has been taken. So even if a short extract is lifted from an article, it could still be infringing if the part taken was important in creative terms. Arguably, the precise reason why a specific section was chosen is because it was the most memorable, so qualitatively substantial even if it represented a small part of the word count.

In simple terms the best way of avoiding a claim is not to cut corners.

Writers are free to use information in the

public domain as inspiration but they must make sure their piece is authentic. They can paraphrase, re-write, stylise but they must be able to demonstrate that their work is original.

As a cautionary tale, we are currently bringing proceedings against a former customer of our client who, in an apparent move to cut costs, stopped ordering training manuals from our client and started producing its own texts. These appear to be substantially similar to our client's manuals. Our client is seeking substantial damages as a result of this 'cost capping' exercise.



THE USE OF LOGOS AND COMPANY NAMES

registered and unregistered trade marks

You can apply for a registered trade mark for any sign that can be represented graphically and is capable of distinguishing your goods or services from those of another business.

Trade marks have been registered in words, logos, shapes, colours, sounds and even smells. The mark must be distinctive and must not consist of purely descriptive elements.

Trade marks are registered in certain defined classes, which relate to their use and the business sector in which the owner operates. Once granted, the owner has the exclusive right to use the mark. If anyone uses, in the course of trade, the same mark, or something similar that could cause confusion among the public, they could face proceedings for trade mark infringement, even if they were unaware of the mark's existence.

These provisions may not greatly affect

further than Talk Radio which, as a marketing ploy, superimposed a 'Talk Radio' on a photo of the racing driver Eddie Irvine, thus implying that he listened to and endorsed the radio station.

Talk Radio was ordered to pay Mr Irvine £25,000 following the unauthorised commercial exploitation of his name and image.

THE USE OF DEROGATORY ARTICLES

the basics of defamation

This is potentially a peripheral issue but nonetheless important given the repetition rule – that a separate publication takes place each time there is a separate communication of a defamatory article to a third party.

This means that if you simply copy a defamatory comment and republish it, then although that message is already in the public domain, the claimant can sue every publication that has communicated it to the public. This also applies to publications on the internet.

Internet publishers need to consider their potential liability carefully as articles can be accessed worldwide and the claimant may have a claim in any number of jurisdictions in which they have an obvious connection or reputation.

By way of example, in the case of *Dow Jones v Gutnic* [2002] HCA 56 an allegedly defamatory article appeared in the printed and online editions of an American magazine. The claimant brought proceedings in Australia, where only a few hard copies had been sold but where more than 1,000 subscribers to the online edition were based.

The court held that the claimant was entitled to bring proceedings in Australia, his home country, to vindicate his reputation.

People should, therefore, be wary of publishing derogatory or potentially false stories without checking their sources. As libel proceedings are so difficult and costly to defend it is always advisable to print with caution and to check your sources carefully.

So, next time you click on that copy button, just be aware of the toes that you could potentially be treading on and the possible rights that could be breached. In short, the easiest way of avoiding a solicitor's letter is to make sure that you are printing material that you have created yourself or material that has been pre-approved by the rights owner. ➡