



Copyright Notice: Assignment of copyright

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What is a Copyright Notice?

Copyright Notices are published by the Intellectual Property Office to help explain specific areas of copyright in the UK. This Notice is aimed at small businesses and individuals who may wish to assign their own copyright to another person or have been asked to assign their copyright as part of a contract or terms and conditions.

This Notice is not meant as a substitute for legal advice on particular cases, but it can help readers understand some of the issues involved. It is not a conclusive view of the law – only a decision of the court can deal with that.

Assignment of Copyright

The basics

Copyright is a proprietary right subsisting in original literary, dramatic, musical and artistic works, sound recordings, films, broadcasts and typographical arrangements. Ownership of copyright in a work comprises the exclusive right to do certain 'restricted acts' in respect of that work, and a copyright owner may authorise others to do those acts by licence. They may also transfer the ownership of their copyright to others. This is known as assignment.

Under UK law, the restricted acts are:

- copying the work;
- issuing copies of the work to the public;
- renting or lending the work to the public;
- performing, showing or playing the work in public;
- communicating the work to the public; and
- making an adaptation of the work.

It is an infringement of copyright to do any of these things without the permission of the copyright owner, so if you wish to do any of these acts you must seek permission, unless your proposed use falls within one of the exceptions to copyright. Usually this permission will take the form of a licence permitting the desired act, but sometimes the copyright owner will assign his rights to a third party altogether.

Just as with real property, you could choose to let your house to a lodger or tenant whilst retaining the freehold, or you could choose to sell your house outright and assign your proprietary rights to the purchaser - so too with copyright.

Presumption of first ownership

UK law presumes the author of a copyright work to be the first owner. The law also recognizes that copyright works may be the product of joint authors and co-authors. This means that as soon as the work is created, copyright in the work belongs to the person or persons who created it. This is true even if the author was hired to make the copyright work under a contract for services, such as a wedding photographer. In the absence of an assignment of copyright via contract, the wedding photographer retains copyright in the photographs, and the happy couple merely gains physical prints of the pictures, and a right to privacy preventing the issue, communication or exhibition of copies of the pictures to the public.

There are two exceptions to the presumption of first ownership:

1. The owner of copyright in a work created by an employee in the course of his employment will be the employer, unless there is an agreement to the contrary. This applies to literary, dramatic, musical or artistic works, and films. It is not sufficient for the work to have been created during working hours by an employee for the employer to own the work, it must have been created as part of the job that employee was hired to do. However, the employer may be able to make some claim to the work if the employee should have been working for the employer at the time when he created the work, or if the nature or subject matter of the work is so closely related to the type of employment that the line between employment and private time becomes blurred. For these reasons it is important to address copyright in employment contracts where employees are likely to be creating copyright works.
2. Her Majesty the Queen is the first owner of any copyright in works created by officers or servants of the Crown. This includes any copyright works created by civil servants, such as this copyright notice.

Automatic assignment

There are some circumstances where ownership of copyright is transferred automatically without any intervention by the first owner or the new owner. Examples of this include inheritance, and insolvency.

It is important to be aware that copyright, just like personal property, can be inherited, either by intestacy or via a will. Since in most cases copyright lasts for seventy years after the end of the calendar year in which the author died, it is common for copyright to be assigned in this way at least once or twice before its expiry. Therefore it is often necessary to trace the heirs of an author when seeking permission to use a copyright work.

If a person dies without any heirs, or a company is dissolved and its assets are not collected and disposed of, property in both these circumstances becomes bona vacantia (literally vacant possession) and reverts to the Crown. This means the Crown becomes the owner of any copyright, but it does not mean the copyright becomes Crown copyright. It is possible to buy unowned copyright which has been acquired by the Crown as bona vacantia, and this too would represent an assignment of copyright.

Elective assignment

This is where a copyright owner chooses to transfer ownership of copyright, either by sale or by gift. This can happen at any time before or after the copyright work is created.

To be a valid assignment, it must be made in writing and signed by or on behalf of the assignor. No other formalities are required and there are no special words to be used. In the event of a dispute the courts will look at the substance, rather than the form of the words used, to see if there was an intention to assign the copyright. A written assignment does not have to mention the copyright specifically. It could for example refer to things such as 'my intellectual property rights', 'the remainder of my property', or 'all assets'.

Except where the assignment is contained in a deed, it is common practice for the assignee to make a nominal payment for the copyright work, which could be as little as £1. This ensures that the contract can be enforced in the event of a breach by the assignor. Alternatively, consideration may be in the form of future royalties

Partial assignment

You can assign either the whole or part of your copyright. For example, you could assign the right to copy the work to one publisher, and assign the right to make translations of the work to another publisher so as to sell the work in foreign markets. Another common practice with literary works is to assign the right to copy the work to a publisher, and to assign the right to make adaptations of the work to a film company. It is possible to further subdivide the rights into, for example, TV, radio and film adaptations, or into hardback and paperback rights, and make separate assignments in respect of each. A partial assignment may also be limited in duration

Assignment by reversion

Some assignment contracts can provide for the copyright to revert to the assignor if certain criteria are met, such as breach of contract or the assignee going out of business. When copyright reverts in this way, this is also deemed to be an assignment.

Assignment clauses

Although there are no specific requirements as to the form of words used to assign copyright, it is advisable to seek legal advice over the drafting of contract terms.

It is important to read carefully any contract terms to which you agree to ensure that you understand whether you are being asked to assign your copyright. If you do not, you may find you have inadvertently assigned or waived your rights, for example when creating a work as part of a team, when publishing your work, or when agreeing to the terms and conditions of social media websites.

Infringement of rights

The assignee is the owner of whatever rights he has been assigned. If there is an infringement of copyright in respect of the rights which he has been assigned then he has a cause of action against the infringer, regardless of who created the work or who owns other rights in the work.

Acquiring a right by assignment does not automatically bring with it the right to bring legal proceedings in respect of past infringements preceding the assignment, but it may do so if it is expressly provided in the assignment.

Remedies

If you think someone has broken the terms of an assignment you may be able to take legal action against them. It is important that you seek legal advice as soon as possible, as any delay could be taken to be acquiescence to the breach.

The IPO has a mediation service, which may be able to assist you in reaching a negotiated settlement. Email mediation@ipo.gov.uk for more information.

Copyright works created by children

Children lack capacity to form contracts, and are therefore entitled upon reaching the age of majority to bring to an end an assignment of copyright made at a time when they were under age. However, case law suggests that where such an assignment was for the benefit of the child, such as enabling them to earn a living, the assignment will remain binding on the child after the age of 18.

Moral rights

The author of a copyright work has certain moral rights over his work regardless of the copyright having been assigned to a new copyright owner. These include:

- the right to be identified as the author of the work
- the right to object to derogatory treatment of the work

These rights cannot be assigned, but they can be waived by contract, so it is important to bear them in mind when drafting assignments of copyright. For example, if you are the assignee you may wish to ensure the assignor has waived these rights, or if you are the assignor you may wish to retain these rights to maintain some degree of control over your creation.

Although not capable of assignment, they can be transferred on the death of the right holder, either by will or by operation of the laws of intestacy, or if not so transferred they may nevertheless be exercised by the personal representatives of the deceased.

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