

# Report on the works in question

[Design](#), [Photography](#)



## **Introduction: the case**

According to Geiger (2013), a copyright arises when an individual or a company makes a work. The work is only subject to copyright protection only if regarded as original. The work must be evidence by a degree of skill, labor or judgment. Howard has added descriptions to the collection of photographs that were passed down to his father from his grandfather and eventually to him. The photographs of several sea vessels were taken by his grandfather and passed to Howard's father when his grandfather died. In addition to adding descriptions to the photographs, Howard has added five paintings depicting gods of the sea. Although Howard models for the paintings, they are done by Phil. Howard licenses Techno Ltd to create a digital database compilation to include the entire collection (photographs; their descriptions as well as the paintings of gods of the sea). The compilation of the collection is also done on DVD. Additionally, the database on DVD contains the timetables for all shipping lines and routes all over the world. The software that enables searching the database is provided by Boffin, an employee of Techno Ltd. Boffin also creates the DVD holder that houses the DVD for marketing by techno Ltd. Julian acquires a copy of the DVD and extracts the photographs and their descriptions as well as one of the several paintings, to use in a children's book that he wishes to publish. This implies that there are five key parties to this case. Howard is the owner of the photographs and the author of their descriptions (if he can provide proof of ownership) (Section 11 (1) of the 1988 Copyright, Designs and Patents Act). Phil creates the painting as Howard models for him. This makes them joint-authors of the paintings. According to the CPDA, s 12(2), for the duration of dramatic, literary, artistic

or musical work (the works in this case are artistic works, therefore, fall under this bracket), the copyright ends after a period of 70 years. This duration is counted from the calendar year during which the author dies (Geiger, 2013). In the context of this case, Howard should be able to prove ownership of the photographs and if he cannot, he will have to revert to establishing whether the copyright infringement claim on behalf of his grandfather (the author) is still valid (Geiger, 2013).

The second stage for Howard would be to determine whether the works in question (the photographs, descriptions and paintings) are covered by the copyright law. According to Stokes (2001), it is important to establish what type of works they are as provided for in the CDPA section 3 (8). Section 3 (8) of the CDPA recognizes Dramatic, musical and literary works. In this context, literary work is applicable. This is because “ literary work” comprises of any work, apart from musical or dramatic work, which is written, sung or spoken. According to Westkamp, (2006), this includes:

- A compilation or table (apart from a database);
- A computer program (as well as preparatory designs for the computer program);
- A database.

For Howard, this would qualify his artistic database for protection under copyright law. It is important to note that a copyright only subsists in a literary work if it is recorded in writing or through other means. According to Bently, Davis & Ginsburg (2010), the copyright protection remains relevant only with reference to the time of recording). For Howard the works in question are recorded in writing, in photograph form and as a painting.

The next question is that of ownership. Who owns the copyright of the photographs, the descriptions, the paintings and the database? The individual or company who authors the work is the first owner of the copyright under the CDPA of 1988. However, if the work in question is produced during employment, the first owner is normally the employer of the person who creates the work (Torremans, 2004; Legislation. gov. uk., 2013). In addition, commissioned or freelance work usually belongs to the author of the work. This is unless an agreement to the contrary exists. In this context, ownership of the intellectual property takes several dimensions. This is because there are different items whose copyright ownership is in question. Howard claims to own the copyright to the photographs. However, he should be able to show evidence that he is the rightful owner of copyright through transfer of copyright from his late grandfather who is the author. The photographs were passed from his grandfather, to his father and then to him. The descriptions, however, are undoubtedly his. This is because he was the first person to produce this material and is, therefore, the copyright owner. The paintings are jointly owned between him and the painter Phil if he can prove that he commissioned Phil to paint them. Alternatively, if Phil would have been an employee of Howard's, the copyright belongs to Howard according to CDPA (1988). Howard should liaise with Phil in this matter if they jointly own the copyright to the paintings.

In regards to the descriptions of the photographs, Julian will also be infringing on Howard's copyright by copying, distributing it to the members of the public; and creating an adaptation of the material therein. In regards to the painting, Julian will have infringed on the copyright. Howard should

also be aware of secondary infringement whereby his rights will be infringed if a person possesses or deals with an infringing copy of Howard's work. Secondary infringement will arise if a person, without the copyright owner's consent, possesses during the course of a business; lets for hire, sells exposes for either hire or sale or offers; distributes or exhibits in public during business or; distributes in a manner prejudicial to the rightful owner during a business process. Howard should also look out for people who have, without his consent, made; imported into the UK; possessed while undertaking business of; sold, hired, offered or exposed for hire or sale. In addition, secondary infringement involves a situation whereby someone provides an apparatus that will be used in performing infringement. The person who supplies the apparatus, according to CDPA section 26 (2), is liable for infringement if the person knew or had enough reason to believe that the supplied apparatus could be used to infringe a copyright.

### **Defenses against copyright infringement**

There are several defenses that exist regarding copyright infringement. If a literary work (with the exception of those held in a database or computer program) or musical, artistic or dramatic work are temporarily copied in a transient or incidental form that is crucial to a technological process whose sole purpose is to enable the transmission of work by an intermediary between third parties or lawful use of the work.

Another defense against copyright infringement is known as fair dealing (Yourrights. org. uk, 2013). An activity that would otherwise be construed as infringing on copyright law is considered as fair dealing if it is used for non-commercial purposes such as non-commercial research. No

acknowledgement is needed in regards to fair dealing for the reasons mentioned above (Section 29, subsection 1 of CDPA) where practicality or any other reason would render this impossible. Fair dealing does not constitute a copyright infringement. A typographical arrangement, for the purpose of private study, of an edition that has been published does not constitute a copyright infringement of the material. Fair dealing may also be considered as a defense if, for purposes of review or criticism, of a piece of work or performance, the review or criticism is accompanied by sufficient acknowledgement.

## **Conclusion**

Howard has a case against Julian if Julian proceeds to make copies of the database contents. This is because Julian will be violating the copyright that belongs to Howard if he can prove beyond reasonable doubt that first, the copyright of the photograph indeed belongs to him. Second, the descriptions of the sea vessels undoubtedly belong to Howard but he should also be able to accompany his claim with some form of proof. Thirdly, the copyright of the paintings is co-owned by Phil and Howard and so they can both pursue the case against Julian for infringing upon their copyright. According to section 16 of the CDPA, the person who owns the copyright has the right to make copies of the work exclusively (section 17); issue members of the public with copies of the work; lend or rent to members of the public; perform, play or show the work to members of the public; communicate the work to members of the public and to adapt the work in any way. These rights are restricted to people who are not owners of the copyright (Julian in this case is not an owner of the copyright). Copyright infringement occurs when the copyright

of an individual or company is violated. The database and its contents are covered under copyright law. Howard should, therefore, proceed with the case against Julian. He should be aware of the defenses that exist against copyright infringement. These include temporary copying of a material which is not intentional and is in a transient form. Another defense is fair dealing. Howard should establish that Julian did not hold the database copy in transient form and indeed intended to use it for business. It is also undoubted that Julian intends to use the copied material and is infringing on the copyright that belongs to Howard.

## References

- Bently, L., Davis, J., & Ginsburg, J. C. (2010). Copyright and Piracy an Interdisciplinary Critique.. Leiden: Cambridge University Press.
- Geiger, C. (2013). Constructing European Intellectual Property Achievements and New Perspectives.. Cheltenham: Edward Elgar Pub.
- Hoorebeek , M. V. (2004). Copyright Infringement And Potential Technological Prevention Measures In UK Universities. Education and the Law, 16(4), 217-248.
- Legislation. gov. uk. (2013). Copyright, Designs and Patents Act 1988.
- Legislation. gov. uk. Retrieved May 7, 2013, from <http://www.legislation.gov.uk/ukpga/1988/48/contents>
- Macmillan, F. (2006). New directions in copyright law. Cheltenham, UK: Edward Elgar.
- Stokes, S. (2001). Art and copyright. Oxford: Hart Pub..
- Torremans, P. (2004). Copyright and human rights: freedom of expression, intellectual property, privacy. The Hague: Kluwer Law International.
- <https://assignbuster.com/report-on-the-works-in-question/>

Westkamp, G. (2006). Multimedia Works And Categorization In UK Copyright Law. *Journal of Intellectual Property Law & Practice*, 1(5), 362-363.

Yourrights. org. uk (2013). Your rights - Defences to Infringement of Copyright. Your rights - homepage. Retrieved May 7, 2013, from <http://www.yourrights.org.uk/yourrights/right-of-free-expression/copyright-and-allied-property-rights/defences-to-infringement-of-copyright.html>