

## **Grey Paper No. 17 - A Guide to Copyright Problems**

### **1. What is copyright?**

- 1.1. Copyright is the protection of intellectual property rights from exploitation by others without the permission of the creator or agent. It originated in English common law, and has been covered by statute since 1709. The current act is the Copyright, Designs and Patents Act 1988.

### **2. What is covered by copyright?**

- 2.1. The law gives the creators of literary, dramatic, musical, artistic works, sound recordings, broadcasts, films, and typographical arrangements of published editions rights to control the ways in which their material may be used. In many cases the creator will also have the right to be identified as the author, and to object to distortions of his work. International conventions give protection in most countries, subject to national laws.

### **3. What types of work are protected?**

- 3.1. Literary – any written work, including novels, stories, librettos, lyrics, poetry, manuscripts, manuals, computer programmes, commercial documents, leaflets, newsletters and articles;
- 3.2. Dramatic – plays, playscripts, dance & choreography, fight sequences, lighting & sound plots;
- 3.3. Musical – original scores, new scoring of otherwise out-of-date copyright material, recordings(including recordings of out-of copyright work);
- 3.4. d) Artistic – original artwork, designs for stage and posters, photography, paintings, sculpture, architecture, technical drawings/diagrams, maps, logos;
- 3.5. e) Films – broadcasts, TV & cable programmes

### **4. When does copyright arise?**

- 4.1. Copyright is an automatic right, and arises whenever an individual or company creates a work. To qualify, a work should be regarded as original, and exhibit a degree of labour, skill or judgment. Interpretation is related to the independent creation rather than the idea behind the creation. Someone else is entitled to write a book around the same idea as yours, provided they do not directly copy or adapt yours to do so. Work that expresses the idea may be protected, but the idea behind it is not. Names, titles, short phrases and colours are not generally considered unique or substantial enough to be covered by copyright, but a creation such as a logo that combines these elements may be.

### **5. Who owns the copyright?**

- 5.1. Normally the individual or collective who authored the work will exclusively own the work, called in the Act 'the first owner of copyright'. However, if the work is produced as part of employment, then the first owner will normally be the company that is the employer of the individual who created the work. Freelance or commissioned work will usually belong to the author, unless there is an agreement to the contrary. Just like any other asset, copyright may be transferred or sold by the owner to another person. Rights cannot be claimed for any part of a work which is itself a copy taken from a previous work. The copyright in the copied part still remains with the original author. Only the author or his exclusive licensee can bring proceedings in the courts.

### **6. How long does copyright last?**

- 6.1. a) For literary, dramatic, musical or artistic works, 70 years from the end of the calendar year in which the last remaining author of the work dies. If the author is unknown, then the copyright lasts until 70 years from the end of the year in which the work was created, although if it is published after creation, then it is 70 years from the end of the year in which it was first published.
- 6.2. b) For sound recordings and broadcasts, 50 years from the end of the calendar year in which the work was created, or the end of the year in which it was first released, whichever is the later.

- 6.3. c) Films etc, 70 years from the end of the year in which the last principal director, author or composer dies; and if the work is of unknown authorship, 70 years from the end of the year in which the film was first made available.
- 6.4. d) Broadcasts & cable programmes, 50 years from the end of the calendar year in which the broadcast was made.
- 6.5. e) Typographical arrangements, 25 years from the end of the year in which the work was first published.
- 6.6. f) Crown Copyright, 125 years from the end of the year in which the work was made.

## **7. 7. What are you NOT allowed to do?**

- 7.1. Where copyright exists , it is an offence to perform any of the following acts without the consent of the owner –
  - 7.1.1.  Copy the work;
  - 7.1.2.  Rent, lend or issue copies of the work to the public;
  - 7.1.3.  Perform, broadcast or show the work in public;
  - 7.1.4.  Adapt the work.
- 7.2. Even if the author no longer owns the legal copyright, he may still retain moral rights, such as to be identified as the author, and to object to derogatory treatment.
- 7.3. What you MAY be allowed to do. Certain acts are permitted to a certain degree (called fair dealing), such as
  - 7.3.1.  Copying for private and research purposes;
  - 7.3.2.  Performance, copying or lending for educational purposes;
  - 7.3.3.  Criticism and news reporting;
  - 7.3.4.  Incidental inclusion
  - 7.3.5.  Recording for later viewing (time shifting);
  - 7.3.6.  Producing back-up for a personal computer programme;
  - 7.3.7.  Playing sound recordings for a nonprofit making organization, club or society. (This is a perhaps a grey area for LTG member theatres – profit making organizations and individuals have to obtain a licence from the Performing Rights Society for Music, and it might be argued that as charities LTG theatres are non-profit making bodies.)

## **8. 8. How do we deal with copyright problems?**

- 8.1. Looking at the areas most likely to pose a problem:
  - 8.1.1. Plays in public or private performance: Most theatres are familiar with the need to obtain permission to present plays on stage; all scripts will or should have the name and address of the copyright holder or agent available; and the 'royalties' have to be paid in accordance with the contract entered into. Don't forget that permission to film or record your performance has to be separately obtained.
  - 8.1.2. Rehearsed Readings of plays, for public or private performance: Again, copyright permission must be obtained, and the appropriate royalty paid.
  - 8.1.3. Unrehearsed and private playreadings, and auditions: This type of work would be protected, in our opinion, under the exemption for education.
  - 8.1.4. Poetry Readings: The copyright in poetry must be treated in the same way as the copyright in dramatic and musical works, but here the difficulty lies in the tracing of the owners of the copyright to the individual poems chosen for the reading. Where the owner of the copyright

is clearly indicated in the edition used, then best advice would always be to obtain permission. You can always start your enquiries with the publisher of course.

- 8.1.5. Musical Dramatic work: There is unlikely to be a problem here, as the copyright is notoriously strongly protected by the agents. Beware, however, of using show numbers in miscellaneous programmes without obtaining permission! The use of interpolated and incidental music, live and recorded, is also protected by copyright, but this is usually covered by your returns to the PRS, provided that you have made correct notes of all music used. Presumably this is to save you the job of obtaining the permissions in each and every case. Be careful to check the copyright position when you use recorded sound effects.
- 8.1.6. Music Hall songs, sketches and monologues: As with poetry readings, the difficulty will be in tracing if the copyright has expired, and if not, who owns it at the moment. Old, even original editions of the material will have a publisher's name somewhere, and even if this publisher no longer exists, the company's rights may have been purchased by its successor. Best advice would be to do some research into the date of the first performance of the piece, any published date on the copy, and into the date of death of the writer/composer. (Although some Victorian standards may be in modern print, they may well be out of copyright, as the printer already knows!)
- 8.1.7. Out-of-print scripts: Unless it is clear that the script itself is well out of copyright (ie: printed more than 70 years ago, and more than 70 years after the death of the author, when you should be free to copy the script you have, or have it retyped), you should obtain the permission of the printers/agents to copy it. This would invariably be granted.
- 8.1.8. Copyright graphics: Don't forget that photographs and graphics, blurbs and critiques are all subject to copyright, with the limited exception covered above. The fact that so much graphic material is so easily available over the internet does not mean that anyone is free to use it. One must not assume that copyright has been waived by the author. Best advice, if you feel that you must use such material, is to make reasonable enquiries into the ownership of the copyright, and retain the results of your research in case of future problems.

## **9. Collecting Royalties for Musicians**

- 9.1. It is important to distinguish between the PRS and the PPL. The Performing Rights Society (PRS) collects the royalties owing to the creators of music – composers, lyricists, songwriters and arrangers. Phonographic Performance Limited (PPL) collects royalties for those who recorded the music. For a more detailed discussion of copyright in music, please refer to Grey Paper No. 7, issued in April 2003.

## **10. Useful Addresses**

- 10.1. If your obvious enquiries are not getting anywhere, you can try the following sources of help:

Intellectual Property Office  
Concept House,  
Cardiff Road,  
Newport,  
South Wales  
NP10 8QQ  
Tel: 0300 300 2000  
[www.ipo.gov.uk](http://www.ipo.gov.uk)

PRS for Music  
29-33 Berners Street  
London W1P 4AA  
Tel: 0207 580 5544  
[www.prsformusic.com](http://www.prsformusic.com)

Copyright Licensing Agency  
Saffron House

6-10 Kirby Street,  
London EC1N 8TS  
Tel: 020 7400 3100  
www.cla.co.uk

PPL (Public Performance of Sound Recordings)  
1 Upper James Street  
London W1F 9DE

**11. Conclusion:**

- 11.1. Be careful. Be alert. Be aware of what you are doing. And especially with graphics, be inventive and use your own resources whenever possible. And make sure that your theatre purchases a comprehensive Theatrical Dictionary for easy and quick reference!

This Grey Paper has been prepared by Michael Shipley and Tom Williams, with assistance from the Guidelines issued on a website for “UK Copyright Service, a copyright registration facility, which protects the work of copyright owners”.