

**THE INSTITUTE OF BUSINESS ADVISERS
LONDON BRANCH**

**Creative Industries Workshop
– Key IPR Issues**

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Introduction

- Who We Are
- Overview of Intellectual Property
- Protection of Creative Arts
- Commercialisation of IPRs
- Our experience in Creative Arts Industry
- Conclusion

Who We Are



Who We Are

■ Full Service Law Firm in the City of London

■ Specialist areas:

- Media and Entertainment Law
- Intellectual Property
- Corporate Law
- Commercial Law

■ Our Clients Include:

- Record Labels
- Publishers
- Production companies (TV, Film and Music)
- Authors, Musicians, Photographers and Designers
- Directors and Producers
- Web Developers
- WAP, Pod-casting and Phone-casting (Mobile Content) companies
- Agents



Who We Are

- Rapidly expanding in the UK
- Expanding into other jurisdictions
- Work with a number of organisations in the Media and Entertainment Industry
- Network of investors
- Our connections are perfectly suited for those in the Creative Arts

Overview of Intellectual Property

Overview of IPRs

- Intangible **commercially valuable** assets
- Getting the best value for your IPRs
- ‘Registered’ and ‘Unregistered’ rights
- IP protects an ‘expression of an idea’ - not the actual idea
- Must be ‘recorded in tangible form’
- Various IPRs in one piece of work
- Territorial Protection

Overview of IPRs

REGISTERED RIGHTS

- ♦ **Patents** = inventions, processes & products
- ♦ **Trade marks** = badge of business, logos, names, smells, sound
- ♦ **Registered designs** = **functional designs** including whole or parts of products e.g. graphic symbols or packaging + **features** of lines, contour, shape, materials or textures of the product itself or its ornamentation e.g. logos, packaging

www.patent.gov.uk

UNREGISTERED RIGHTS

- ♦ **Know-how** = trade secrets
- ♦ **Copyright** = literary works, including digital works, music, software, artistic works, logos, dance, mimes
- ♦ **Sound recordings** = sound
- ♦ **Design rights** = shape and configuration of a product
- ♦ **Database rights** = databases
- ♦ **Brands** - goodwill and reputation

IPR: COPYRIGHT

- What is copyright?
- Ownership
- Duration
- Test for Originality
- Copyright Infringement
- Copyright, Designs and Patents Act 1988 (CDPA) as amended

http://www.opsi.gov.uk/acts/acts1988/Ukpga_19880048_en_1.htm

What is Copyright?

▪ **Bundles of rights** - to reproduce, rent, broadcast or to stop parties exploiting work

Includes:-

- **Original Literary works-** books, articles, drawings, digital works, computer programs
- **Original Musical works** – music
- **Original Dramatic works-** dance, mime
- **Original Artistic works** – sculpture, photographs, logos
- **Sound recordings** – sound, moving pictures
- **Computer generated** – computer program
- **No system of registration in UK-** protected as soon as created and recorded

What is Copyright?

Copyright and Regulated Rights Regulations 2003

- **New Copyright** - Copyright works communicated to the public by electronic transmission or broadcasting
- A copyright owner can stop a substantial part of his work being communicated to the public by electronic transmission, distribution or broadcast without a licence or consent. This includes digital copying and contents of books, articles or graphics made available on websites.

What is Copyright?

Fixation

- **Recorded in Writing** - for copyright to subsist in literary, dramatic or musical works they have to be recorded in writing
- **Writing** - “Any form of notation or code, whether by hand or otherwise and regardless of the method by which or medium in or on which it is recorded ...”
- E.g storing in a ROM, disk, other computer memory or machine readable medium
- **Conventions** – reciprocal protection of works in convention countries
- **Berne Convention** – no formalities required
- **Universal Copyright Convention** – copyright notice
© [Name of Copyright Proprietor] [Year of Creation]

Ownership of Copyright

- **Not a monopoly right**

- **Authorship and Ownership** *Cyprotex Discovery v University of Sheffield [2003]*

- **Author** - first owner of any copyright subsisting in a work

- **Author** - creator of the work is generally the author

- **Author** - individual, company or other incorporated body

- **Employer First Owner of copyright** - for literary or artistic works created by an employee in the course of employment

- **Computer Generated Works** – author is the person by whom the arrangements necessary for the making of the computer generated work (films and sound recordings)

- **Joint author** – work produced by the collaboration of two or more authors in which the contribution of each author is not distinct from the other authors

Originality

Originality

- **Test** – degree of skill and labour and judgement expended by the author or creator

Duration

- **Copyright**– life of the author plus 70 years
- **Printed Format of Publications** - 25 years from the end of first year of publication – e.g Magazine centre-spread layout
- **Sound recordings**– 50 years from the end of first year of publication

Copyright Infringement

- **Copyright Infringement** – under the CDPA

- right to stop a third party exploiting copyright work without permission – copying, issuing copies of the work to the public

- Not infringement of earlier work – Identical work created independently

IPR: COMPUTER PROGRAMS

- **Copyright Infringement of Computer program-reproduction in any form (require authorisation)**
 - right to stop a third party exploiting copyright work without permission – copying, issuing copies of the work to the public
 - Temporary or permanent reproduction by any means and in any form – loading, displaying, transmission or storage
 - Translation, adaptations or alteration
 - Distribution – in any form including rental

IPR: COMPUTER PROGRAMS

Copyright Infringement - Computer program

▪ Exceptions

- if no contract no permission required to use the program for its intended use
- to make a back up copy (security)
- for observation and study
- decompilation – conditions attached

Protection of Creative Arts

Why is IP relevant to Creative Arts?

- Must be able to protect works
- To stop infringement
- To realise commercial value i.e. commercialisation
- Brand recognition and maintenance
- Copyright in designs are protected - designs used for artistic purposes
- Costs of IP protection

Case Study

M has written a script. He sent the entire script to W (a production company) for W to review. They agree to make a film. Film is made and shown in the cinema. Ready to distribute world-wide? What are the issues?

- Consider copyright issues
 - Ownership of copyright?
 - Footage?
 - Music?
 - Sound recordings
- Performance Rights?
- Mechanical Rights – live recordings?
- Any trade mark issues?
- Distribution of rights?
- Clearance of Rights?
- Payment to M (see Commercialisation)

Music Copyright

- **Mechanical Copyright Protection Society**
(MCPS) - <http://www.mcps.co.uk/>
Collection and distribution of royalties – musical works professionally recorded
- **Performing Rights Society**
(PRS) <http://www.prs.co.uk>
Established for composers, producers and authors of all music styles. Collects royalties and provides licences for broadcasting and cable performance
- **Performing Arts Data Service**
<http://www.pads.ahds.ac.uk>
Serves the theatre, film and TV industries and collects, documents, preserves and promotes the use of digital resources in theatre, dance, music, film and the broadcast arts
- **MCPS-PRS Alliance**

Commercialisation of IPRs

What can be done with IPR's?

- IPR's can be handled as any other asset:
 - Sell (or Assignment)
 - Purchase
 - Mortgage
 - Licence

- It is important to handle your IPR's correctly because they ensure that your work earns you money!

What is Meant by Licensing?

- Authorising a third party to license your Media Rights/Product:
 - Market
 - Sell
 - Distribute
- Quality provisions in Licence – e.g how product to be reproduced in a design
- Find Licensor/distributor or agent in the UK
- Royalties
 - Negotiate levels of royalties
 - No fixed royalties

What Can you License?

- In return for royalties - third party to license your product, IPR's (trade mark, copyright, design, patent, know how):
 - Licence Agreement – include all terms and conditions of licence

- Assignment – sale or outright transfer of your intellectual property rights in return for a fee
 - Valuation of IPRs
 - Agreement

Legal Issues

- Confidentiality Agreements
- Head of Agreements – non binding
- Exclusive or non-Exclusive Agreements
- Registration of IPR's
- Scope of the Licence
 - Terms
 - Termination
 - Warranties
 - Indemnity
 - Limitation of Liability
 - Infringement of IPR's
 - Improvements
 - Competition Law
 - Taxation
 - Territory
 - Jurisdiction

Commercial Issues

- Who is going to be appointed
- Finding a lawyer
- Royalty payment –distribution or licensing agreement
- Distributor
 - Payment Structure
 - Quarterly payments
 - Statements
 - Audits
 - Quality controls
 - Performance Criteria
- Agent
 - Performance Criteria

Risk Management

- Ownership of IPR's
- Packaging – register as design, trade mark
- Names and logos – register as trade marks
- Patents – Obtain patents before going into territory
- Use Symbols - ®, ™, ©
- Websites – Terms and Conditions drafted; notices; Assignment of IPR from designer to your business
- Insurance
- Insurance of IPRs

Our experience in this industry?



What experience do we have?

- Leading experts in IP
- Dedicated IP department which deals with all aspects of IP
- Handle many cases involving copyright infringement in the Media and Entertainment industry
- We have specialist knowledge in:
 - Preparing agreements to License or Assign IPR's
 - Advising on how to exploit IPR's for commercial gains
 - Advising on how to prevent infringement of your IPR's
 - Advising on how to avoid infringing IPRs

Film Production

- Extensive experience in advising and assisting on feature film production
- The following should be considered:
 - Cast and crew agreements
 - Who owns the IPR's in a particular 'constituent part' of the film?
 - Is the title protected by trade mark?
 - Are all the IPR's in the film cleared before its release?
 - What are the terms of the licence or assignment of the final cut?
 - Potential problems with international release
- It is very important to obtain professional legal advice in the above areas – it is easy to make a mistake!
- Problems with IPR's = Problems with the film!

Music Production

- Music videos production incorporate IPR's for both film and music
- Licences and assignments of IPR's are often complicated
- Clearance of IPRs

Music Video Production

- Expert advice by RT Coopers in the following:
 - Drafting Agreements
 - recording contracts
 - remix agreements
 - publishing agreements
 - producer agreements
 - actors agreement
 - crew releases
 - extras releases
 - location agreement
 - Dealing with clearance of IPRs
 - Organising your receipt of royalties

Mobile Phones

- Creative Arts - Wallpapers, ringtones and video clips etc
- IPR's in mobile content have created a new area of law – few firms specialise in this area
- The IPR's in mobile content are as important as any other IPR – millions of people use phones everyday!
- The following should be considered:
 - Have all the requisite licences or assignments been obtained prior to releasing the content on mobile networks?
 - Do any agreements entered into cover your IPR's effectively?
 - Does the use of a particular wallpaper/ringtones/video clip infringe the IPR's belonging to someone else?
 - How can you protect yourself and your content?

Conclusion

Conclusion

- IPR's are a **very serious** consideration for those in the Media and Entertainment Industry
- Ensure you know what the consequences of your actions are!
- Protect your IPR's as you would any other business asset – don't let yourself be caught out!
- Professional advice is crucial to staying on top of things



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THANK YOU