

United Kingdom

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1. Copyright treaties and conventions

The United Kingdom is a party to the following main international copyright treaties and conventions:

Common name	Treaty or convention	Date of entry into force
Berne Convention	Berne Copyright Convention (1971)	December 5 1887
UCC	Universal Copyright Convention (1971)	September 27 1957
Rome Convention	International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961)	May 18 1964
Phonogram Convention	Convention for the Protection of Producers of Phonograms against Unauthorised Duplications of Their Phonograms (1971)	April 18 1973
TRIPS Agreement	Agreement on the Trade-Related Aspects of Intellectual Property (1993)	January 1 1996
EU Copyright Directive	European Parliament and Council Directive on the Harmonisation of Certain Aspects of Copyright and Related Rights in Information Society (2001/29/EC)	June 22 2001

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Common name	Treaty or convention	Date of entry into force
EU Copyright Duration Directive	European Parliament and Council Directive on the Term of Protection of Copyright and Certain Related Rights (2006//116/EC)	January 16 2007
WIPO Copyright Treaty (WCT)	World Intellectual Property Organization Copyright Treaty and Explanatory Statement (1996)	March 14 2010
WPPT	World Intellectual Property Organization Performances and Phonograms Treaty and Explanatory Statement (1996)	March 14 2010

2. What can be protected?

Copyright is primarily regulated in the United Kingdom under the Copyright, Designs and Patents Act (1988) ('the CDPA').

2.1 How is a protected 'work' defined?

The following types of work may be copyright-protected under the CDPA:¹

- literary, dramatic, musical or artistic works;
- sound recordings, films or broadcasts; and
- the typographical arrangement of published editions (ie, layout of published literary, dramatic or musical works, such as the layout of a newspaper or sheet of music).

The United Kingdom operates a 'closed list' approach to copyright. A work must fall within one of the above categories if it is to be protected. If it does not, then copyright does not apply.

2.2 What are the criteria for protection?

(a) Originality

Literary, dramatic, musical and artistic works must be original to attract copyright protection. 'Originality' is not defined in the CDPA, except in respect of databases. It is a question of fact.

For works other than databases, the English courts have historically interpreted originality as meaning that the author must have used his own labour, skill and/or judgement (or some variation of this mantra) to create the work. Therefore, for

1 CDPA, Section 1.

example, a person who invests significant labour and skill in transposing a 17th-century piece of music into modern notation, correcting it and making performance notes, may create an original musical work that is capable of copyright protection, notwithstanding the fact that the person did not compose the piece of music itself.²

For databases, the CDPA states that originality exists where, by reason of the selection or arrangement of the contents, the database constitutes the author's own intellectual creation. This is generally regarded as being a harder test to satisfy than the test of 'labour, skill or judgment', because it requires the author to express his creative ability.³ This definition of originality was incorporated into UK law from the EU Database Directive.⁴

Other EU directives apply the same test for originality ('own intellectual creation') to photographs⁵ and computer programs.⁶ However, these tests have not been incorporated into English law and there is therefore some uncertainty as to which test applies – 'labour, skill or judgment' or 'own intellectual creation'. As the English courts are obliged to read domestic legislation in line with EU Directives, it is arguably the case that the test of originality for photographs and computer programs is the 'own intellectual creation' test.

Recent case law indicates that the 'labour, skill or judgment' test may be being replaced more generally in English law. In a recent decision, the English Court of Appeal held that a news headline (ie, a literary work) would only meet the originality threshold in the CDPA if the headline was the result of the author's own intellectual creation.⁷ This is a departure from the old English law test and reflects what some commentators are calling a trend of 'harmonisation by stealth' in European copyright law.

There is no requirement for sound recordings, films, broadcasts and typographical arrangements to be original to qualify for copyright protection. However, copies of a previous work of the same type do not attract copyright protection.

(b) Fixation/recording

The CDPA requires that literary, dramatic and musical works are recorded in writing or otherwise in order to attract copyright protection.⁸ For example, a speech made orally would only be protected by copyright if it was written down, recorded or filmed. However, the record does not have to be made by the author or with his permission.⁹

(c) Qualification

Certain territorial requirements must be met in order for a work to qualify for copyright protection in the United Kingdom as follows:

- the author of the work must be, at the time of the work's creation, either a

2 *Sawkins v Hyperion Records* [2005] RPC 32.

3 *Football Dataco Ltd and Others v Yahoo UK Limited and Others* Case C-604/10.

4 Directive 96/09/EC.

5 Article 6 of the Term Directive (Directive 2006/116/EC).

6 Article 1(3) of the Software Directive (Directive 2009/24/EC).

7 *The Newspaper Licensing Agency Ltd and Others v Meltwater Holding BV and Others* [2011] EWCA Civ 890.

8 CDPA, Section 3(2).

9 CDPA, Section 3(3).

British citizen or living/residing in the United Kingdom (or a country where the UK's copyright laws apply, for example the Channel Islands). If the copyright author is a company, the company must either be UK incorporated or incorporated in a country where UK copyright law is applied;¹⁰ or

- the work must be first published (or, in the case of broadcasts, first broadcast) in the United Kingdom (or a country where UK copyright law applies).¹¹

In addition, the CDPA is given extraterritorial application to protect works first published in and authors from countries granted reciprocal recognition of copyright under the various international treaties, and in particular the Berne Convention.¹²

2.3 Specific works

(a) *Literary works*

A 'literary work' is any work that is written, spoken or sung other than a dramatic or musical work.¹³ Literary works include tables or compilations, computer programs, preparatory design materials for computer programs, and databases. Although they may satisfy the above definition, words and short phrases such as the name of a company¹⁴ or a short title of a book are typically not protected by copyright under UK copyright law. Recent case law from the Court of Justice of the European Union and the Court of Appeal suggests that newspaper headlines, however, will usually be protected independent of the article to which they relate.¹⁵

Databases are protected as literary works and are defined as a collection of independent works, data or other materials which are arranged in a systematic or methodical way and in which each of the independent works can be accessed individually by electronic or other means. As mentioned above, databases only meet the requirement of originality, necessary for copyright protection, if the selection or arrangement of the items constitutes the author's own intellectual creation.¹⁶

(b) *Dramatic works*

'Dramatic works' are defined as including works of dance or mime.¹⁷ The courts have interpreted the statutory definition to include works of action, with or without words or music, which are capable of being performed before an audience.¹⁸ Therefore, the choreography in a dance routine would be a dramatic work. The courts have held that films which depict works of action attract the same copyright protection.¹⁹

10 CDPA, Section 154.

11 CDPA, Section 155.

12 The Copyright and Performances (Application to Other Countries) Order 2012 (SI 2012/799).

13 CDPA, Section 3(1).

14 *Exxon Corp v Exxon Insurance* (1982) RPC 69.

15 *The Newspaper Licensing Agency Ltd and Others v Meltwater Holding BV and Others* [2011] EWCA Civ 890 and *Infopaq International A/S v Danske Dagblades Forening* (C-5/08).

16 CDPA, Section 3A.

17 CDPA, Section 3(1).

18 *Norowzian v Arks Ltd (No 2)* [2000] FSR 363.

19 *Ibid.*

(c) Musical works

'Musical works' are defined as works of music, not including any words or actions which are intended to be sung, spoken or performed with the music.²⁰ This means that there may be two types of copyright work in a song: literary copyright in the lyrics and musical copyright in the tune. The courts have defined music as "a combination of sounds for listening to".²¹

(d) Artistic works

'Artistic works' fall into three categories:²²

- Graphic works (including paintings, drawings, diagrams, maps, charts or plans, engravings, etchings, lithographs, woodcuts or similar works),²³ photographs, sculptures (including casts or models made for the purposes of sculpture) and collages. These works are protected by copyright regardless of their artistic quality. However, sculptures must be made with a primarily artistic rather than a practical intention in order to attract artistic copyright protection.²⁴
- Architectural works, meaning buildings (including any part of a building or fixed structure), or models for buildings.
- Works of artistic craftsmanship. The courts have determined that these must be works of craftsmanship produced with artistic intent, and judged not to manifest a complete absence of artistic quality (although the law is unsettled as to whether this is a matter for evidence or a question for the judge).²⁵ For example, bespoke furniture might fall within this category, but mass-produced furniture would be unlikely to.

(e) Sound recordings

A sound recording is either a recording of sounds from which the sounds can be reproduced, or a recording of the whole or part of any literary, dramatic or musical work from which sounds reproducing the work (or the part of the work) may be produced. It does not matter which medium is used to make the recording or produce or reproduce the sounds. However, this type of copyright does not protect copies of previous sound recordings.²⁶

(f) Films

'Films' are defined as moving images which can be produced, by any means, from a recording on any medium. Similarly to sound recordings, copies of previous films do not attract copyright protection. The soundtrack of a film may attract copyright protection as a sound recording, but only where it is played independently from a film (eg, if a popular soundtrack was recorded and sold on a CD). Where a film is shown accompanied by its soundtrack, the film copyright covers both the film and its soundtrack.

20 CDPA, Section 3(1).

21 *Sawkins v Hyperion Records* [2005] RPC 32.

22 CDPA, Section 4(1).

23 CDPA, Section 4(2).

24 *Lucasfilm v Ainsworth* (2011) UKSC 39.

25 *George Hensher Ltd v Restawhile Upholstery (Lancs) Limited* [1976] AC 64.

26 CDPA, Section 5A.

(g) Broadcasts

'Broadcasts' are defined as electronic transmissions of visual images, sound or other information which are:

- simultaneously transmitted to, and capable of being received (legally) by members of the public; or
- transmitted to members of the public at a time determined by the transmitter.²⁷

Broadcasts do not include internet transmissions unless they are of a live event, or are transmitted at the same time as a non-internet transmission, or are transmitted as part of a scheduled programme of transmissions. A broadcast which infringes the copyright of a previous broadcast cannot be protected. Broadcasts are different in nature from the other copyright works protected under UK copyright law, because the law protects the act of having broadcast content, not the content itself, which is protected under its independent copyrights.

(h) Typographical arrangements

Copyright in the typographical arrangement of published editions protects the way these works are set out on a page and, for example, prevents people from taking photocopies of these works.²⁸

3. Formalities for protection

It is not necessary to register copyright in order to attract protection in the United Kingdom.

4. Duration of protection

Type of work	Duration of protection	Comments
Literary, dramatic, musical and artistic works	70 years ²⁹	The term of protection runs from the end of the calendar year in which the author of the work dies If a work is jointly authored, the term runs from the end of the calendar year in which the last-known author dies If the work is computer-generated, the protection lasts 50 years from the end of the calendar year in which the work was made

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27 CDPA, Section 6.
 28 CDPA, Section 8.
 29 CDPA, Section 12.

Type of work	Duration of protection	Comments
Sound recordings	50 years ³⁰	The term of protection runs from the end of the calendar year in which the recording is made or published If not published, the term runs from the end of the calendar year in which the recording was first played or communicated in public The EU Council of Ministers has recently voted to extend the term of protection to 70 years. This has not yet been implemented in the United Kingdom, but must be implemented by November 2013
Films	70 years ³¹	The term of protection runs from the end of the calendar year in which the death of the last of the following people occurs: principal director, author of the screenplay/dialogue or music composer If none of the above persons are known, the term of protection runs from the end of the calendar year in which the film was made or made available to the public
Broadcasts	50 years ³²	The term of protection runs from the end of the calendar year in which the original broadcast was made. The term will not be extended if a broadcast is repeated
Typographical arrangement of published editions	25 years ³³	The term of protection runs from the end of the calendar year during which the edition was first published

5. Ownership of works

5.1 Initial ownership

The general rule is that the author of a work is the first owner of the copyright in it.

30 CDPA, Section 13A.

31 CDPA, Section 13B.

32 CDPA, Section 14.

33 CDPA, Section 15.