

## Cultural Enterprise Factsheet

### Intellectual Property Terms

The following is a brief explanation of common terms associated with copyright. For further information on intellectual property, please refer to the organisations listed in the online Intellectual Property factsheet and seek legal advice.

#### **Copyright**

Copyright protects intellectual property. It can be used to protect work and add value to businesses through the sale or leasing of designs to another business. The normal term of copyright is the author's life plus 70 years, except for sound recordings (50 years from making or release), broadcasts (50 years from first transmission), and published editions (25 years).

Copyright automatically comes in to being with the creation of a work, provided it is original and tangible, (i.e. exists on paper, film, via sound recording, etc). Copyright laws do not protect ideas.

The creator of the work is usually the first owner of the copyright, unless the work was created in the course of employment. For films, sound recordings, broadcasts and published editions, copyright belongs to the film or record producer, broadcaster or publisher.

#### **Moral Rights**

Moral Rights are the rights of paternity (the right to be identified as the creator of a work whenever the work, or reproduction of it, is exhibited or issued to the public) and integrity (the right to object to derogatory treatment of a work, for example, if the work is adapted or shown in a manner that distorts the original work or reputation of the author).

Moral Rights last for the same period as copyright. It provides authors with some control over their work and the way it is used after it is sold or out of the author's possession, regardless of whether the creator owns the copyright.

#### **Right to Privacy**

If a photograph or a film is commissioned for private or domestic purposes, for example, a wedding or portrait, the author retains the copyright of the image, but is limited by the client's rights of privacy.

The client has the right to object to its exhibition and/or issue to the public, which lasts for the duration of the copyright; however a 'model release form' enables

the publication of images and the author to benefit financially. Right to privacy does not apply to images of the general public, as long as the photographs, films, etc, are created on public property and are not accompanied by defamatory material. For further information visit [www.ico.gov.uk](http://www.ico.gov.uk).

### **Design Right**

Design right applies to original, non-commonplace designs of the shape or configuration of articles. The term excludes two dimensional designs like textile or wallpaper designs, although these qualify for copyright and possibly registered design protection. Design right is not a monopoly right, but prevents deliberate copying. Design Rights in the UK can be registered or unregistered

Registered designs must be new (they must not be the same as any design available to the public) and have an individual character (they must produce an overall impression on an informed user that differs from the overall impression produced by an existing design available to the public). Registration can last for a maximum of 25 years.

British Unregistered Design Right arises in an original design comprising any aspect of the shape or configuration (whether internal or external) of an article, which is not surface decoration. It lasts for 10 to 15 years, but in the last 5 years licensing to others is compulsory if requested. For further information visit [www.patent.gov.uk](http://www.patent.gov.uk)

### **Patents**

A patent gives an inventor the right for a limited period to stop others from making, using or selling an invention without the permission of the inventor. Patents are about functional and technical aspects of products and processes, and specific conditions must be fulfilled to get a patent. Patent rights last for up to 20 years and a UK patent does not give rights outside of the UK. For further information visit [www.patent.gov.uk](http://www.patent.gov.uk)

### **Trade Marks**

A trade mark is any sign that distinguishes the goods and services of one trader from those of another, for example, words, logos, pictures, or a combination of these; a trade mark is a badge of origin, used so that customers can recognise the product of a particular trader. A UK Registered Trade Mark last for 10 years, and is often renewable every 10 years. Registered Trade Mark can also be sold and licensed.

To be registrable in the UK a trade mark must be; capable of being represented graphically, i.e. in words and/or pictures, distinctive for the goods/services covered, and differ from any earlier marks for the same or similar goods/services. ® denotes show that the word/logo referred to is a registered trade mark. It is a criminal offence in the UK to represent a trade mark as registered, when it is not. For further information visit [www.patent.gov.uk](http://www.patent.gov.uk)

## **Licences**

Copyright can be assigned to another party by mutual agreement. Assignment must be in writing and must be signed by the copyright owner. Care should be taken when assigning copyright, as it could result in a loss of earnings for the author, who will no longer have any claim on revenue generated from further sales.

Once-off reproduction rights are agreements which allow the client to make use of an image once. In this case the creator retains copyright and can (according to the terms of the contract) offer the same image for use by other clients that are not in direct competition. Contracts will often stipulate the length of time that the client retains copyright. For further information visit [www.artquest.org.uk](http://www.artquest.org.uk)

## **Performers' Rights**

A performer has the right to control the communication of their live performance to the public and their permission must be sought before a recording is made; once a recording has been made, the performer's permission is also needed to make copies of that recording. Performers will be entitled to remuneration in respect of broadcasting, public performance and rental of those copies. For further information contact the Musicians' Union ([www.musiciansunion.org.uk](http://www.musiciansunion.org.uk)) and Equity ([www.equity.org.uk](http://www.equity.org.uk)).

If a performance is of copyrighted work (e.g. a play or song cover), the performers' rights will be in addition to those of the original material's copyright owners.

## **Artist Resale Rights**

Introduced in 2006, Artist's Resale Right entitles artists and visual authors to a percentage share of the price every time their work is resold by a gallery, dealer or auction house for more than €1,000 (approx. £700). Resale royalties are managed through the collecting society DACS. For further information visit [www.dacs.org.uk/arr](http://www.dacs.org.uk/arr).

## **Publication Rights**

Publication rights gives rights equivalent to copyright to a person who publishes for the first time a literary, dramatic, musical or artistic work or a film in which copyright has expired. Publication right only lasts for 25 years from the publication of the previously unpublished material. For further information visit [www.intellectual-property.gov.uk](http://www.intellectual-property.gov.uk)

For more information on terms relating to intellectual property visit [www.intellectual-property.gov.uk](http://www.intellectual-property.gov.uk) and select the relevant area of interest.

For further legal advice contact:

Intellectual Property Wales  
Dept of Law, University of Wales Swansea, Innovation Centre, Singleton Park,  
Swansea, SA2 8PP  
01792 295472  
info@ipwales.com  
www.ipwales.com

Lawyers for your Business  
0207 316 5521  
info.services@lawsociety.org.uk  
[www.lawsociety.org.uk](http://www.lawsociety.org.uk)

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**Cultural Enterprise / Menter Diwylliannol**  
Chapter, Market House / Ty Farchnad, Cardiff / Caerdydd CF5 1QE

**Tel/Ffon:** 029 2034 3205

**Website/Gwefan:** [www.cultural-enterprise.com](http://www.cultural-enterprise.com)

**Email/ Epost:** [mail@cultural-enterprise.com](mailto:mail@cultural-enterprise.com)