

Changes to the law on copyright and design

There have been some interesting changes to the law in respect of intellectual property rights during recent months.

Copyright

From 1 October 2014, fair dealing with a copyrighted work for the purposes of caricature, parody or pastiche will not infringe copyright in that work.

This immediately raises two questions: what amounts to 'fair dealing'? and what constitutes 'caricature, parody or pastiche'?

1. What amounts to 'fair dealing'?

'Fair dealing' is an existing concept which already applies to using a work for the purposes of research and study, criticism and review, and reporting on current events.

The following three principles are applied to try and establish whether or not the use of a copyright work for one of the specified purposes amounts to fair dealing:

1. whether the use of the copyright work in some way commercially competes with the copyright work itself
2. whether the work has already been published or instead obtained through a breach of confidence
3. the quantity and significance of the work taken

For a business that is considering taking advantage of the parody exception, e.g. for marketing purposes, then an element of commercial competition may undermine a defence to copyright infringement.

For those businesses that create copyright work then it is likely to be the amount and importance of their work that has been used by a third party that will inform a decision as to whether or not to try and bring an infringement claim.

2. What constitutes 'caricature, parody or pastiche'?

Perhaps predictably there is no further illumination on this in the legislation itself and we will have to wait for the courts to start making decisions before we have a better idea. It does however raise the amusing prospect of judges opining on pop videos that have been edited and adulterated for comedic effect!

Another change to copyright worth noting is that private copying is now permitted in certain circumstances. Many people have probably believed for years that this was allowed but it is only from 1 October 2014 that an individual has been able to legally burn say a CD from an

original MP3 download that they have paid for. Any format shifting before now has been an infringing act and any such copy can still only be for private use.

Design rights

Design rights are an IP right that seeks to protect original 3D designs which are not covered by copyright, trademarks or patents.

Two recent changes to the law in particular should be borne in mind by any business that creates original 3D designs.

Firstly, infringement of a registered design is now a criminal offence. This brings design rights into line with copyright and trade marks.

Secondly, design rights also now mirror copyright in respect of ownership, so that where a business commissions work from a third party contractor, that contractor will own the design right and not the business which has commissioned the work. It is therefore essential that proper terms are put in place with any such designers to ensure that the design right (and any related intellectual property such as copyright) is automatically transferred to the business on being created.

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