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# Myerson **Business**

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**Claimant's guide to copyright disputes**

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# Welcome

Copyright protects against the copying and unauthorised use of another's work. It is important to understand what rights you have when you create original work and how you can stop this from being exploited without your consent. Copyright disputes can happen due to numerous different reasons. However, the fundamental issue of copyright infringement is whether the work being disputed was protected and whether the new work is breaching any protection due to similarity.

## Why Myerson?

Our expert copyright infringement solicitors are here to listen and advise you, we have years of experience in dealing with complex copyright cases. After we have reviewed your matter, we will provide you with all the potential options available. There are many remedies available, all of which will be discussed with you so you can make an informed decision. Throughout the process, we will stand by your side, making sure that you are effectively protected and fighting for the right outcome.

We are proud to be ranked as '**Top Tier**' in the prestigious international directory **The Legal 500** and commended by The Times '**Best Law Firms 2023**'. So, you can be certain that you will be receiving the highest quality legal advice and that we can advise you on complex copyright issues.

Myerson is also the Manchester and Cheshire law firm member for the **MSI Global Alliance**, a top 20 ranked, leading, international association of independent professional firms. As the copyright matters, we deal with often involve an international element, we can call upon the expertise and knowledge of our fellow MSI members to ensure that our client's global interests are protected. You can **find out more about our Intellectual Property Team by clicking here.**



# Copyright Disputes

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## What is copyright?

Copyright protects original literary, dramatic, musical and artistic works, including films, music and computer programs. It protects against the copying of another's work and the physical expression or representation of an idea, but it does not protect against independent development of the same idea.

Copyright ownership allows the owner to prevent the unauthorised use of the work, such as making copies or uploading the work to the internet. It is very important to appreciate that copyright law is intended to prevent copying but does not provide a monopoly; it does not matter if a similar or identical work already exists if it has not been copied.

Copyright automatically arises on the creation of the work and lasts for 70 years after the death of the author in relation to dramatic, artistic, literary and musical works. The creator of the work is usually the first owner of the copyright in it.



# Types of copyright infringement

There are two types of copyright infringement – primary copyright infringement and secondary copyright infringement.

## Primary Copyright Infringement

Primary copyright infringement occurs when someone carries out certain acts regarding the work without the permission of the author.

These acts include:

- Copying the work;
- Issuing copies to the public;
- Renting or lending the work to the public;
- Performing, showing or playing the work in public;
- Communicating the work to the public;
- Making an adaptation of the work; and
- Importing infringing copies.

Infringement arises where one of the restricted acts mentioned above is committed in respect of the whole or a substantial part of the work, either directly or indirectly. It is a question of fact in each case whether there has been an infringement.

If someone copies the whole of a copyright work, clearly there will be an infringement. In most cases, however, the position is not so clear-cut, and the key test is whether a substantial part of the copyright work has been copied.

Infringement does not depend on the copier, having seen the original work or knowing that he/she was copying. There can still be infringement if the copier has information to the original copyright work regardless of whether the copier knew they were copying or intended to copy the work.





## Secondary Copyright Infringement

Secondary copyright infringement claims deal with those further down the supply chain.

The following are infringing acts if carried out without the licence of the copyright owner to infringing copies of copyright works:

- Importing into the UK (other than for private and domestic use);
- Possessing or dealing;
- Providing means for making copies (including transfer by a telecommunications system);
- Permitting use of premises for an infringing performance; and
- Supplying apparatus for an infringing performance.

Unlike in cases of primary copyright infringement, there is no cause of action for secondary copyright infringement unless the defendant knows or has reason to believe that the material or a particular activity is infringing.

# How to bring a breach of copyright claim

## Specialist advisers

Breach of copyright claims can be extremely technical and complex meaning they are often dealt with by specialist courts in both England and Wales. For this reason, we always recommend that claimants in copyright infringement proceedings instruct specialist intellectual property solicitors. It is also quite common for a specialist intellectual property barrister to be instructed as well to represent claimants in court.



## Letters of Claim

If infringement proceedings are contemplated, a claimant should first write a letter of claim to the potential defendant(s). This letter of claim should put the defendant(s) on notice of a claim and give the defendant(s) a reasonable amount of time (normally between 14 and 28 days but could be up to 3 months in complex cases) to respond to the claims made against them. The letter of claim must sufficiently identify the copyright works to enable the defendant(s) to evaluate them and formulate a view on infringement. The best way to do this is to provide a copy of the copyright work or a link to an online example. All parties involved in copyright infringement claims are expected to act reasonably in exchanging information and evidence prior to court proceedings being issued.

## Court proceedings

If the claim cannot be resolved, then it is likely court proceedings will need to be issued. Higher value claims for copyright infringement are brought in the High Court, specifically in the Intellectual Property List of the Business and Property Courts. Lower value claims are brought in the specialist Intellectual Property Enterprise Court (IPEC) where capped costs operate. IPEC also has its own small claims track which deals with copyright infringement cases which are worth less than £10,000.

Only the copyright owner or someone with an exclusive licence to the copyright work can bring infringement proceedings. If the copyright in the work is jointly owned, any of the joint owners can issue a claim.

To issue court proceedings, specific court documents will need to be drafted. These are a claim form and particulars of claim. There will also be a court fee payable to issue court proceedings which depend on the value of the claim and the relief sought. We always recommend that a barrister drafts these documents with assistance from a solicitor to ensure they comply with the court rules. These documents will identify the parties, state the cause(s) of action and the remedies sought.

The defendant(s) will then be given an opportunity to file and serve a defence to the claim (normally within 28 days of the court proceedings being issued but extensions of time can be agreed).

After that, the Court is likely to order the parties to take the following steps to prepare the case for trial: disclosure of documents, witness statements and experts reports. It is our experience, however, that most copyright infringement cases settle without the need for there to be a trial.



# Remedies available for successful trademark infringement and passing off claims

There are several remedies available to copyright holders where copyright infringement is proven, including:

- Interlocutory relief – including Norwich Pharmacal orders, search orders,
- Freezing orders and interim injunctions;
- Orders for delivery up;
- Seizure of infringing copies and other articles;
- Forfeiture;
- Final injunctions;
- Damages or an account of profits; and
- Recovery of costs.

For more information on the remedies available, please visit our **claimants guide to copyright infringement**.



# You're in safe hands!

If you would like further information about how we can help you with **Copyright Disputes**, or if you have any questions, please don't hesitate to contact a member of our **Commercial Litigation Team** today.

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