



# Intellectual Property Guides

# Copyright in Photography

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**Frequently asked questions relating to  
copyright in photographs**

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This booklet is a brief guide to UK copyright in relation to photography. It attempts to reflect the current situation in what can be a complex and changing subject area and should not be considered as legal advice.

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# Copyright: The Basics

## **What is copyright?**

Copyright is an automatic legal right which protects original literary, dramatic, musical and artistic works. This includes among other things, sound recordings, broadcasts, photography, film and computer programs. It does not protect inventions or the names you give to your product or service. It also does not protect an idea, but rather the tangible expression of the idea in some physical form – a photograph is one example of that expression in physical form.

## **Why is copyright important?**

Copyright enables those who have created a work, such as a photograph or an image, to be paid for their creativity and to be acknowledged as the creator (see section on Moral Rights). Others can only use copyrighted work with the permission of the copyright owner. The owner will often charge for this permission. Copyright owners can also control how their work is used i.e. how it is copied, distributed, altered, transmitted, broadcast or performed. Anyone who uses a copyright work without permission can be guilty of infringement and action could be taken against them.

## **Do I apply for copyright?**

No. Copyright is an automatic right which exists as soon as the work to which it is related exists - providing it is recorded or “fixed” in some way (this may be in the form of a photograph, a film, video or DVD recording). For example as soon as you take a photograph you have copyright in that photograph.

## **Is copyright protection enforced by law?**

The Copyright Designs & Patent Act 1988 forms the basis for copyright protection in the UK. Copyright law is an attempt to balance the interests of those who create the particular work or composition and those who want to use it or enjoy it. Other laws can affect what can be done with a particular work as will be described in later sections.



## **How long does copyright last?**

In the UK, copyright for literary works generally lasts for 70 years after the death of the person who created the copyright work. In the case of films, it lasts for 70 years after the death of the principal director, the writers of the screenplay, the writers of the dialogue or the composer of the film's music (whichever of these happened last). In each case this term is calculated from the end of the calendar year. Copyright on sound recordings and broadcasts lasts for 50 years from the end of the calendar year of publication or broadcast. Calculating whether a particular work is currently protected by copyright can become quite complex as over the years different rules have applied at different times and often it is determined by the law in force at the time that the work was created. The term for photographs is currently 70 years after the death of the creator.

## **How is copyright infringed?**

Copyright comprises a collection of rights – basically copying, issuing to the public (including renting), performing, broadcasting, storing by electronic means, posting on the internet or adapting the work. Copyright is infringed if any of these acts are carried out without the copyright owner's permission. When this happens, the copyright owner can take legal action against the person or organisation who is infringing. Such infringement requires that a "substantial" part of the work is copied or used without permission by someone else. Anyone who gains permission to use an item which is in copyright needs to be clear what it's going to be used for. If it's ambiguous and it's used for something not explicitly agreed, this could be infringement. Where multiple copyrights exist, each one needs to be cleared before it can be used.

## **Is it a criminal offence to infringe copyright?**

Deliberate infringement on a commercial basis is a criminal offence for example producing, or distributing, or selling pirate copies of CDs, DVDs etc or assisting someone else to do so. Such an offence can be punishable by fines and / or a prison sentence.



# Copyright in Photographs

## **Who owns copyright in a photograph?**

Initially, copyright belongs to the person who creates the work. In the case of photography it is normally the person who takes the photograph (unless there's a written contract saying otherwise and signed by the photographer).

## **What if the photographer is being paid by someone else to take the photographs?**

In most situations this will not affect ownership of the copyright – it is the person creating the work and not the person paying for the work who owns copyright. The 1988 Act brought this in, so for photographs taken before 1st August 1989 copyright belonged to the person commissioning the photograph or the owner of the photographic film.

## **What if the photographer is working for someone else?**

If the photographer is an employee and takes photographs as part of their normal duties in this employment, then the copyright will belong to the employer (unless there's a contract stating otherwise). If the photographs were not taken in the normal course of their duties, or the photographs were taken on a freelance basis, the photographer retains the copyright. It is important that all contracts are studied carefully and appropriate legal advice taken where necessary.

## **What if more than one person is creating the work?**

Copyright initially belongs to the original creator – for example the person who takes a photograph. However, this might not always be clear. Creating a photograph can involve decisions on composition, lighting and exposure among other things. If two people contributed to this and their contributions are not distinct it is assumed that ownership is equally shared (and lasts for 70yrs after the death of the last surviving author). For someone else to use a shared work permission would be needed from both creators. Any waiver of moral rights by one creator will not affect those of the other creator.



**If a client pays a photographer for a DVD of photographs does the client then own the copyright?**

No. In the same way that owning a music CD does not give you the right to copy the music on it, a DVD of photographs does not give you copyright in the photographs on the DVD.

**If a client wants to sell or make their own copies of photographs they have received from a photographer do they need permission?**

Yes. Copyright belongs to the photographer. This will only change if there are terms in the contract to allow this.

**If a photographer is commissioned to take photographs of a wedding is he free to use the photographs however he/she likes?**

The Copyright Designs and Patent Act 1988 gives the client the right not to have photographs taken for private or domestic purposes issued to the public, exhibited or broadcast without their permission. Therefore, although the photographer owns the copyright in this situation, the client can control how they are used. It obviously makes sense for photographer and client to agree from the outset how the images are to be used to avoid difficulties later on.

**If a photograph is retouched or digitally altered can this avoid infringement?**

No. Doing so without permission of the original copyright owner will not avoid infringement.

**What if the photograph is altered significantly?**

Any retouching of some one else's picture or photograph without permission infringes copyright. If retouching is carried out with the permission of the original copyright owner and as a result the picture is changed significantly from the original this could create a second, and separate, copyright in the retouched work. This would not affect the copyright ownership of the original work. In order to use such work permission would have to be obtained from both copyright owners. Simply a change of medium does not justify copying.



# Other People's Work

## **Can I take a photograph of a trade mark?**

A trade mark is a sign which distinguishes the goods or services of one person or company from that of another, and often comprises words or a logo. For example many supermarkets and other high street businesses have trade marked their names and often logos or slogans to go with them. A photograph of a trade mark could infringe the rights of the trade mark owner if it is the main focus of the picture, particularly if it gives the impression that it was produced by the owner or the purpose is to use the mark to gain commercial advantage. If a trade mark is included incidentally in a photograph such as a street scene it is unlikely to cause problems.

## **If a photograph is taken of an existing work such as a painting, who owns the copyright in that photograph?**

Copyright will normally belong to the photographer. This copyright is totally separate from that of the painting. However, if the painting is still in copyright and the photograph is taken without permission the photograph will infringe the copyright in the painting. This means that although the photographer owns the copyright in his photograph he can not use it. In 1999 a judge in a New York District Court ruled that a "slavish recreation" of a work (such as a photograph) is not original and therefore not covered by copyright. Such a case has not been tested in a UK court and some have expressed the view that under UK law a different opinion would be reached as the photograph would be seen as a separate and original work.

## **Is there copyright on buildings?**

There would be copyright in the architectural drawings. The Copyright Designs & Patent Act states that generally copyright in such a work is not infringed by making a photograph or film of it. However, as described below, there are other issues particularly if the image is used commercially. In some countries, buildings have been registered as trade marks, though this is not common in the UK.



## **Do I need permission to photograph public sculptures or buildings?**

Works which are permanently displayed in a public place such as buildings, statues or sculptures don't normally have copyright restrictions placed on them as far as photography is concerned. However a photograph of any such article which is in place temporarily such as a sculpture on show for a limited time would infringe copyright if taken without permission. Photographers should bear in mind that there are a number of other factors which can also affect whether photographs can be taken. While property owners can not prevent photographs of their property being taken by someone standing on public land, if the photographs are taken on private land this can only be done with the permission of the property owner. The owner can, of course refuse permission or put restrictions on what is permitted. It is quite common to have photography restricted in theatres and concert halls and this may be indicated on signs or in terms and conditions of entry to the venue, possibly on tickets. Any photographer taking a photograph in breach of such restrictions would still own copyright in the photograph but would be unable to do anything with it. It should be borne in mind that areas such as shopping centres which are open to the public are nevertheless often on private land and the owners have the right to restrict photography. Similarly, there are certain public places, such as Trafalgar Square, where professional photographers are not permitted to operate without a permit which must be paid for. Tourist photographers are not restricted in the same way.

## **Are there situations when I do not need permission to use someone else's work?**

Copyright works can only be used by others without the owner's permission in certain specific and limited circumstances. There are three "exceptions" where this is possible: using the work for private study, for use in a review or in a news report. In each situation it has to be used in a "fair" way and the owner must be acknowledged. Photographs are excluded from the reporting of current events exception; in other words using photographs in a news report is not fair dealing. Making a copy of a work for the sole purpose of advertising its sale may not infringe copyright such as a photograph in sale catalogue.



## **What are orphan works?**

It can be difficult to determine who the copyright owner of a particular picture is. If the work is still in copyright and the author is unknown, it is called an “orphan work”. This situation may sometimes result from the newspaper, magazine or publication where the photo is displayed not crediting the author of the picture. Format shifting, where a work is copied from one format to another may also be a cause. Changes in copyright law resulting in revived copyright sometimes create orphan works. A lack of information provided by the copyright owner can also result in an orphan work. It may be possible to reproduce an orphan work providing the person wishing to make the copy can provide enough evidence of a reasonably “diligent” search to find the original rights owner. Unfortunately “diligent” has not been defined – a situation which can leave both the copyright holder and the person wishing to reproduce the work in a difficult position.

## **What is Publication right?**

If a work is first published after its copyright has expired, the first person who publishes it in any way (including electronically) or makes it available to the public will own Publication Right. This right works in the same way as copyright but lasts 25 years from the end of the year of publication. If the publisher is different from the current owner of the actual physical work then the owner of the work has to give permission for publication. Care needs to be taken. For example if someone owns an out-of-copyright photograph which has not been made available to the public and they allow someone else, such as a gallery, to display it then the gallery, and not the owner of the photograph will have publication right.



# Photographing People

## **If I take photographs of people without their permission am I infringing copyright?**

No. There is no copyright on people. However once again other factors need to be considered. Taking photographs of someone in their own home without their permission is likely to be seen as an invasion of privacy and possibly harassment. While there is no law against taking a photograph of someone in a public place, care needs to be taken. Strictly speaking such a photograph can be used for commercial purposes but this is not always straightforward. A crowd scene may not be a problem but where individuals are clearly identified this might be regarded as personal data and therefore come under the Data Protection Act if used for commercial purposes. Clearly how the photograph is used can also be an issue; anything which could affect the reputation of the subject of the photograph is likely to cause problems. Gaining permission, and wherever possible the use of a model release for any commercial use, can reduce the risk of potential difficulties.

## **Are there particular restrictions on taking photographs of children?**

There is no specific law which restricts the photographing of children in a public place where they would have no reasonable expectation of privacy. However, as with adults it is important to be aware of other regulations. Schools and local authorities, for example, often have their own child protection policy rules on what is permissible on their premises and land. Data protection once again comes into play if a child is identified in a commercially used photograph. Particularly in the case of children it makes sense to gain permission from a parent or guardian preferably in writing before taking a photograph and to ensure that this permission makes clear the use to which the photograph is to be put.



## **What is a model release?**

A model release is a written agreement giving the photographer permission to use an image of a particular person commercially. Any such agreement would, of course, indicate the terms of use. If you intend to sell the image to an agency for example, it may be difficult to do so without a release.

## **What are Performance Rights?**

Performers, whether they are actors, musicians or others, have the right to control the exploitation of their performances. The copyright in photographs or films taken of a performance belongs to the person taking the photograph or film but they can't exploit the work without the permission of the performer.

## **Do I need legal advice?**

If you are in any doubt about the taking or use of photographs, particularly in a commercial context, it is always advisable to seek legal advice and where possible from someone who specialises in copyright.

Always take great care with any contracts and ensure that they make clear who will own copyright and identify the permitted uses to which the photographs can be put.



# Further Information

The Association of Photographers  
Ltd  
81 Leonard Street  
London EC2A 4QS  
Tel 020 7739 6669  
Website: [www.the-aop.org](http://www.the-aop.org)

British Association of Picture  
Libraries and Agencies  
18 Vine Hill  
London  
EC1R 5DZ  
Tel 0207 713 1780  
Website: [www.bapla.org.uk](http://www.bapla.org.uk)

British Institute of Professional  
Photographers  
1 Prebendal Court,  
Oxford Road,  
Aylesbury,  
Buckinghamshire, HP19 8EY.  
Tel 01296 718530  
Website: [www.bipp.com](http://www.bipp.com)

Creators Rights Alliance  
British Music House  
26 Berners Street  
London  
W1T 3LR  
Tel 0207 436 7296  
Website:  
[www.creatorsrights.org.uk](http://www.creatorsrights.org.uk)

Design and Artists Copyright  
Society  
33 Great Sutton Street  
London  
EC1V 0DX  
Tel 0207 336 8811  
Website: [www.dacs.org.uk](http://www.dacs.org.uk)

UK Intellectual Property Office  
Concept House  
Cardiff Road  
Newport  
South Wales  
NP10 8QQ  
Tel 08459 500 505  
Website: [www.ipso.gov.uk](http://www.ipso.gov.uk)



# Useful Websites

This is not intended as a comprehensive listing. Be aware that information relating to copyright can change over time as laws are amended and updated.

## **Legislation.gov.uk**

The UK government's site run by the National Archives; contains all published UK legislation including those relating to copyright such as the Copyright, Patents and Designs Act 1988.

**Website:** [www.legislation.gov.uk](http://www.legislation.gov.uk)

## **Editorial Photographers UK**

Started in 1999, EPUK is an email group for professional editorial photographers allowing members to discuss the practicalities of the profession including copyright, licensing, fees and insurance.

**Website:** [www.epuk.org](http://www.epuk.org)

## **Editorial Photographers UK- The ABCD of Copyright**

The photographers guide to copyright legislation covering key points of importance and interest; downloadable as a PDF.

**Website:** [www.epuk.org/abcd-of-copyright](http://www.epuk.org/abcd-of-copyright)

## **Photographers Rights in the UK by Linda Macpherson**

A short guide to the legal restrictions relating to the right to take photographs in the UK and the right to publishing photographs taken in the UK (also available for the USA and Australia): downloadable as a PDF.

**Website:** [www.sirimo.co.uk/ukpr.php](http://www.sirimo.co.uk/ukpr.php)



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<http://www.bipcnewcastle.co.uk/>

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