

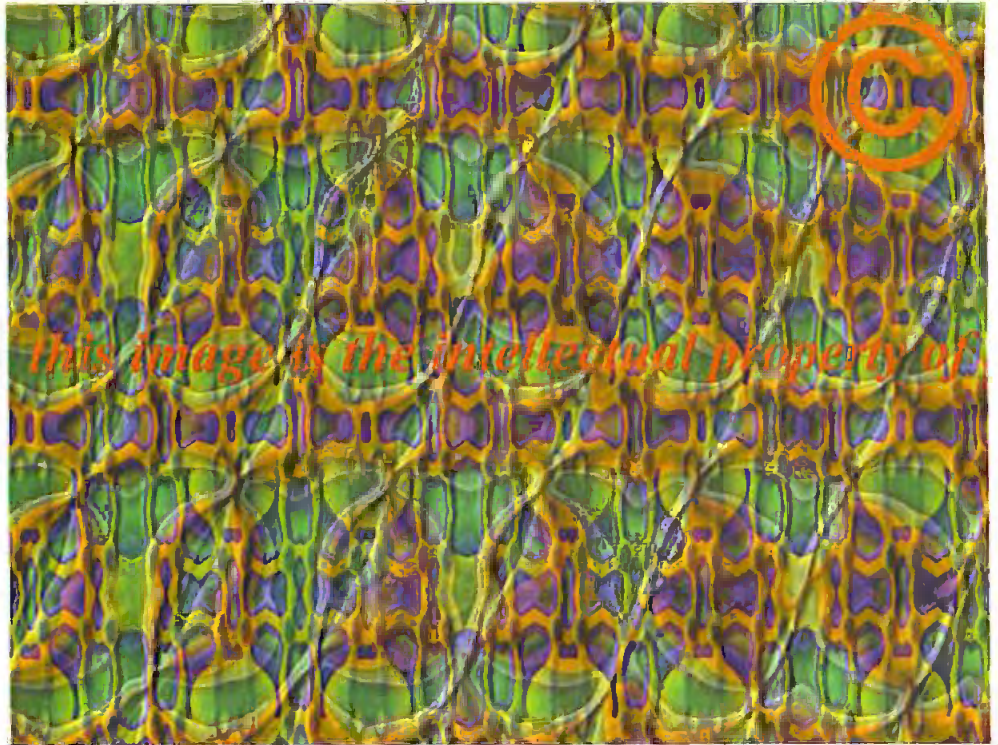
© & IP

by Jonathan Aldred

(Copyright and Intellectual Property)

...and what you really didn't know you should know about it.

JONATHAN ALDRED OUTLINES THE BASIC INFORMATION THAT ALL EMPLOYEES AND ESPECIALLY EMPLOYERS SHOULD KNOW ABOUT THE ISSUES SURROUNDING COPYRIGHT AND INTELLECTUAL PROPERTY. WHEN AN EMPLOYEE USES HIS OR HER CREATIVE TALENTS ON BEHALF OF A COMPANY, WHO OWNS THE RIGHTS TO WHATEVER IS PRODUCED? THE ANSWER IS NOT ALWAYS AS CLEAR CUT AS YOU'D THINK.



As someone who writes both for a living and as a hobby, I need to know about copyright laws and the issues surrounding intellectual property – but do you? You may think you don't; but if you own a business or work for one, there is a very real possibility that through not knowing about © or IP rights, either you or your business will lose out.

Firstly, let us briefly set out what IP and copyright are. My hobby is writing novels and short stories within that genre that is often referred to as 'science fiction and fantasy' (a nice heading as it covers both spacecraft and magic – two things that you'd assume to be mutually incompatible). When I joined the E&B team I was asked to put one of my short stories in to see what the reaction would be. I was pleased to do so, and I added at the bottom the standard IP notice that I automatically attach to anything I write (excluding, of course, features such as Web Electronics, Beyond Belief, etc that I put together for E&B).

I do hold the IP rights to 'The Factory'. I also own the copyright. If, however, I had sold the story to E&B, they would hold the

copyright and would be able to sell the story on to someone else (essentially they would, depending on the terms of the sale, be able to use it as they see fit). E&B has 'one-time publishing rights', meaning that anyone who contributes an article remains in possession of the rights to it. We can sell the article as part of the magazine, or photocopy that printed article as part of our back-articles service, but we do not have any rights to sell it on to (to, for example, another magazine). If someone other than the author has bought the full rights to a story (or song, or film, etc), then they can licence it as they see fit – but, as they do not own the IP rights, they cannot remove the author's name from it or alter it any more than what basic unobtrusive editing would allow.

Sometimes rights are bought outright; other times an author will get a percentage based on sales of copy (for example number of books sold) or a repeat fee based on the number of publications the same article is licensed to appear in (as was the case with Uri Geller's Extended Reality). It is essential that any author who sells the rights to his or her work thinks through the terms of the sale

thoroughly before agreeing to any contract – pity the poor author who agrees a lump sum for outright sale of his book and then finds it is to be turned into a film and he is not going to see a penny.

'The Factory' is now in print and, as such, it is copyrighted. I did not need to do anything for this to be the case – I can now prove this is my work and can exert my right not to have anyone copy it. It did, after all, appear in the June 2001 issue of Electronics And Beyond, otherwise known as 'Exhibit A' when I take whoever has stolen my material to court and sue them. Sending unpublished work to literary agents or publishers is a different matter. What if they are careless with your manuscript and it falls into the hands of someone who will copy it and try and pass it off as his own? If this happens you have to prove that you wrote it and not them – before sending your manuscript off, you should ask yourself 'would I be able to do this?' My recommendation is to send a full copy of the manuscript through the post to your own address before you send any others off. It will then be sealed and will show your own address and when you posted it. Then

leave the package in the care of your solicitor or a trusted family friend. Remember that putting an IP notice is a good statement of your rights – people who have read the document cannot claim they did not know you didn't want them to copy it – but it is not an automatic barrier against fraud. As an analogy, burglar alarms will not stop burglaries 100% of the time, but you'd never go without one just because of this.

So – copyright can be demonstrated easily, although it might be owned by someone other than the author; and IP is always owned by the author, but is more difficult to prove.

Actually, IP is not necessarily always owned by the individual who created it (or individuals – the legal difference between one and more than one author is not something we need to go into here). So why sound so sure about it in the statement above? Well, the trouble lies in the definition of the word

reason being, I developed it in my capacity as an employee of the company. If I wrote an article on the importance of C compilers and the role of the compiler's pre-processor, surely that article would belong to me – or would it? Under copyright law, computer programming code is considered to be a form of literary work, just the same as the C compiler article. But the perception of where the IP ownership lies can be very different for any two differing examples.

Kanda might use the C compiler article as part of, for example, the press release for their new Optima C Compiler. They might then decide to sell it to, for example, Personal Computer World. Under this scenario it is possible that I would not have any say in this and would not get any money from the deal. It might not necessarily be the case that Kanda takes the money and holds on to it – they might give the article to PCW in exchange for

by in-house staff alone. These companies might be IT consultants, web page designers, logo creators – whatever. Would it surprise you to learn that the agency who designed your new logo or the designers who created your web presence own by default the copyright themselves? Well, if you haven't explicitly sorted all this out in the contract, here's a wake up call for you – they do. Ownership should always be settled at the start of any such commission because after the contracts are signed and the fees are paid it is far less likely that any rights will be handed over. You will be left with, at best, a licence to use the IP rights resulting from the work and you may be powerless to prevent a competitor from also receiving a licence. In effect, you could end up with a situation where your competitor has a web page that looks exactly like yours, or an online ordering system virtually indistinguishable from yours. If they are a bigger company, it could appear to your customers that you have been copying them, when in fact neither company has copied anything. Coming back to the issue of copyright, it is important to remember that copyright is only a right to stop anyone else from copying your IP. It is no judgement of quality and is certainly not a monopoly for you to exact over ideas or concepts. Copyright is not a patent – it only protects the expression of an idea and not the idea itself. If someone has come up with the same idea independently, or come to the same conclusion without copying your work, then there is no infringement upon your

copyright as far as the law is concerned.

To conclude, if your business is dependant upon anything that you don't actually own – be it a delivery company, the premises you lease or the database an IT firm has developed for you, then you are leaving the doors open to a risk that, nevertheless, you cannot avoid taking. Business is, of course, all about risk – but every good businessman and businesswoman knows what the risks are and takes steps to manage them. A little bit of forethought can save a lot of turbulence in the long run.

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'author'. If you write an article or design some advertising on behalf of your company, then your company is usually considered to be 'the author' of that article or advertisement. You can claim credit for it on your CV but if you leave the company you do not take the rights to it with you. If you work for a company and develop an idea as part of your job, then in most cases the employer will own the IP to that idea. IP covers articles, reports, design rights, software, hardware, patents and trade marks.

If I designed a new database for Kanda Systems, our parent company, and then tried to sell it elsewhere, I would be in the wrong because they would own the rights to it –

advertising. Another possibility is that I could sell the article to PCW and Kanda would come down on me for selling what they consider to be their material.

Solicitors have been doing good business from borderline cases where employees have argued that creation of IP was not what they were employed to do, and that as such it belongs to them. All this could so easily be sorted out from the start when employment contracts are drawn up, or by employers telling their staff exactly what their duties are and what is and is not expected of them.

But it doesn't stop there. Nowadays it is common for companies to 'outsource' work to contractors when the job cannot be done

