



The Copyright, Design and Patents Act 1988

Special points of interest:

- *Media students and copyright ownership*
- *Media student and data protection compliance*
- *Journalism lecturers and intellectual property*
- *Journalism lecturers and data protection obligations*

The Berne Convention for the Protection of Literary and Artistic Works 1886 is the primary authority for intellectual property rules.

Member states are free to determine in domestic law how far extracts from works may be used for teaching purposes, in line with what is described in the treaty as 'fair practice' (Article 10).

The treaty also permits signatory states to decide the extent to which academic lectures and speeches may be protected from unauthorized copying, or may be published in the media within the limitations of the 'fair practice' concept (Article 2*bis*).

Article 11*bis* protects the rights of authors whose works are to

be broadcast, or whose works are to be included in a broadcast.

These principles are given effect in UK law through the CDPA 1988, which specifies time periods during which literary, artistic and musical works remain under copyright protection.

The Berne Convention is being revised to bring the principle of 'fair dealing' into line with modern communications channels such as the internet, but key aspects of authorship, first ownership and fair dealing remain intact where media schools are concerned.

The CDPA works alongside contract and employment law.



One 'problem area' is where authors describe themselves as self-employed or as freelancers. They may have first ownership depending on the terms of any contract defining their duties, tasks and their relationship with an employer or agency.

Journalists on consultancy-type 'contracts for services' (rather than employment 'contracts of service'), retain IP unless they expressly assign their rights — regardless of any fee!

Inside this issue:

<i>The Civil Procedure Rules</i>	2
<i>Data protection and the journalist</i>	2
<i>Copyright and first usage rights</i>	2
<i>Problem scenario 1</i>	3
<i>Problem scenario 2</i>	3
<i>Problem scenario 3</i>	3
<i>Useful websites and company contact details</i>	4

The Data Protection Act 1998

The DPA defines personal data as information about a living person, and the legislation explains what must be done to ensure the information is used for lawful purposes.

The DPA also defines types of 'sensitive personal data' which must be 'processed' according to strict rules. Please note that

'processing' is not synonymous with 'publishing'. The legislation covers the collection and storage of information, not just its subsequent dissemination.

The DPA provides journalists with exemptions to process sensitive data where there is a genuine view to its wider publication (Section 32).

But it must be in the public interest to circulate the data and the information must not be used for any other purpose, without consent.

'Data controllers' must register their activities with the Information Commissioner's Office (including freelancers). It is a criminal offence not to do so.



Teaching and exploring 'black letter law' is adequate for lecture and essay purposes, but learning outcomes are hard to measure unless students can apply their knowledge to problem scenarios, and argue cases.



PAGE 2

The Data Protection Act at a glance

Section 2: Sensitive personal data consists of data as to the ethnic origin, political opinions, religious beliefs, TU membership, physical/mental health, sexual life, (alleged) commission, proceedings or sentence of/for any offence, of a data subject.

Section 32: Personal data processed only for the special purposes are exempt from any provision to which this subsection relates (except the seventh principle) if:

(a) the processing is undertaken with a view to the publication by any person of any journalistic, literary or artistic material;

(b) the data controller reasonably believes that, having regard to public interest in freedom of ex-

pression, publication would be in the public interest, and;

(c) the data controller reasonably believes that compliance with that provision is incompatible with the special purposes.

Section 36: Personal data processed by an individual only for the purposes of that individual's personal affairs are exempt from the principles.

2nd Principle: Data shall not be disclosed outside the purpose for which the data was processed.

7th Principle: Appropriate measures must be taken to keep the data secure, safe from accidental loss/damage or unauthorized/unlawful disclosure.

The Copyright, Design and Patents Act at a glance

Section 2: The author retains the right to be identified as the author, to object to derogatory treatment, regardless of copyright ownership.

Section 9: The author is the person who creates the work, including computer generated work and the publisher of a typographical arrangement of the work.

Section 11: The author has first ownership of the copyright, unless it is made by an employee in the course of his/her employment, or there is an agreement to the contrary.

Section 30: Fair dealing for criticism or review does not infringe copyright providing it is accompanied by a sufficient acknowledgement and the work has been made available to the public.

Section 32: Copyright is not infringed if copying is done for the purposes of (educational) instruction, it is fair dealing, and providing the instruction is for a non-commercial purpose.

Section 90: An assignment of copyright is not effective unless it is in writing and signed by or on behalf of the assignor.

The Civil Procedure Rules at a glance

Copyright claims are brought in the Chancery Division. A court may order destruction of infringing goods (the defendant meeting compliance costs), and compel the defendant to alert clients/agents etc to the breach (Rule 63.13). Parties can be ordered to pay securities into court (CPR 25).

The copyright tribunal rules follow the CPR with a new 'small claims' track and case management process to reduce costs, prioritise issues and encourage early resolution.

There are no specific practice directions governing

claims under the DPA. Normal CPR protocols apply. Cases follow either small claims, fast track or multi track procedures, depending on the value of the claim and complexity. Claims for unauthorized processing/disclosure of personal data are not time barred (unlike tort/contract/employment).

Defendants must respond to a letter of claim and either deny or admit liability, request further info from the claimant, or give details of any defence.

If a letter of claim requests information, disclosure must be made to enable parties to explore ADR.

Is a final year project to be Lois' big break into radio?

Lois is a media student at Westchester College. Clark is features editor at Saturn FM, the campus radio station. For her final year project, Lois investigated media coverage of teenage pregnancy, abortion and domestic violence. She recorded interviews with Harmony (who underwent an abortion while at college), Lex (a reformed heroin addict who spent 6 months in prison for GBH) and Melody (a medical student who works as an escort to pay her tuition fees). Lois has emailed a draft of her project to her radio tutor Rodney, as well as her supervisor Del. It is due to be submitted on Thursday but as she is away she intends to give it to her flatmate Trigger to hand in on her behalf. Lois confided to her cousin Destiny (a church 'street pastor') that one of Melody's clients is Sam (a tutor at the college).

Rodney has suggested to Lois that she submits a DVD with audio recordings of her interviews with Harmony, Lex and Melody as much of the material in the project is anecdotal. Lois has sent him a copy (again for informal advice) and he has passed it on to Clark because it might make a good feature for the radio station and Rodney is looking for opportunities to submit good and hard hitting journalistic work for regional and national media awards. Clark has taken the DVD home to re-edit the tracks, as he is on holiday for a week. He put the disc in a desk drawer after uploading the audio files to the home PC.

Elisabeth has an eye on a community magazine launch

Elisabeth is editor of 'City Eye', the magazine she and journalism students produce at Westchester College. She took charge after founding editor Roger resigned, and now Elisabeth is completing her course she plans to turn it into a community publication with a website. Her friend Colin has produced two different website designs for her. He did not ask for payment because he wants to 'showcase' both versions in the hope of picking up freelance work as a web designer. Some of Elisabeth's colleagues on the magazine are not happy at her business plans and intend to publish another edition when they return in September. In 3 of the last 6 editions, Elisabeth ran an editorial credit column listing herself as editor, and attached the words '© City Eye 2011'. Colin has now registered www.city-eye-mags.co.uk and www.westchestereye.co.uk with Nominet. Clause 14 of the college enrolment contract states all IP rights arising under the contract are assigned to the college. Simon recently photographed a Westchester footballer with an 11-year-old cystic fibrosis sufferer. It went in City Eye and Simon also uploaded it to his Facebook site. The Westchester Mercury has downloaded it and re-published it online.

Ed's documentary is axed but can he get the last word?

Ed is a freelance TV journalist who recently worked on a Wessex TV documentary about a financier (Luther) providing loans to hard-up farmers, underwritten against stock. Ed and Wessex TV researcher David interviewed five farmers who fell foul of Luther. The financier has foreclosed on about a third of his clients and the suspicion is that this is done to fund the remaining loans. Ed was frustrated when Rex (the editor) got cold feet and dropped the story in the face of threatened legal action. Ed took a copy of the un-transmitted footage and downloaded contacts and documents to a pen-drive. This data included contact details of the farmers and copies of Luther's business records filed with 'Companies House', together with a draft production script and email exchanges with Luther and lawyer Rupert, plus David's CV. Ed is a part time tutor at Westchester College, and uses the material for a media studies workshop on investigative reporting and interviewing techniques. The session is attended by 15 students. He intends to use the material for future training sessions, but when he arrives home after teaching he finds he has mislaid the pen drive. He suspects he left it in the seminar room computer.



What are the copyright and data protection issues with these three scenarios?

'Black letter law' provides the 'raw' answers, but who wins and loses is largely determined by whether or not the parties abide by the CPR protocols.



ORCHARD NEWS BUREAU LTD



Media Consultancy and Publishing, Est. 2000
orchardnews@journalist.com
www.orchardnews.com
07557 902120

DIRECTOR
RICHARD W ORANGE
BA GDL

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USEFUL WEBSITES

Prosecutions, enforcement actions, monetary penalties and compliance notices issued by the Information Commissioner's Office are available on the ICO site at:

http://www.ico.gov.uk/news/latest_news.aspx

Information on copyright, design rights and trademarks is available at the Intellectual Property Office website at:

<http://www.ipo.gov.uk/types/copy.htm>

Information and updates regarding the Civil Procedure Rules are available at the Ministry of Justice website at:

<http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/index.htm>

Statutes are available at:

<http://www.legislation.gov.uk/>

Orchard News Bureau Ltd at a glance

Orchard News Bureau was established as a press agency by political journalist Richard Orange in 2000, covering local government and legal affairs.

We have grown into a media **training** consultancy, advising journalists and editors on access to information held by public bodies, providing **advice** on professional accreditation for journalism training courses, and supplying **news** stories and pictures to the national media.

We also publish **travel** guides, and run media training workshops on a variety of topics.

News agency clients include

- **Guardian Newspapers**
- **Telegraph Newspapers**
- **Times Newspapers**
- **The Sun**
- **BBC**
- **Press Gazette**
- **Private Eye**
- **MJ Municipal Journal**

In recent years, ONB Ltd has provided media law-related advice and assistance to:

- **Broadcast Journalism Training Council**
- **Centre for Investigative Journalism, London**
- **Centrex Police Training, Cambs**

- **Press Association**
- **Centre for Broadcasting and Journalism, Nottingham**
- **Wilmington Media Group**
- **Archant**
- **BBC Training Centre, White City**
- **Johnston Press**
- **Newsquest Media**
- **Times Newspapers**
- **ITV Central News (East)**
- **Amicus**

