

Careful with that copyright

Posted on [August 20, 2012](#) by [sabastian Dyer @ Inngot](#)



Just because copyright is automatic, it doesn't mean you can let it look after itself

By Martin Brassell, CEO [Inngot.com](#) | **Source & Publisher-** [Computerworld UK](#) | [View the article here](#)

Much of the debate around copyright law is currently focused on its (in) ability to protect artists' original works, at a time when their predominantly digital format makes rip-offs easier than ever. But copyright is also a fundamental right for software of all kinds, versatile and wide-ranging – and as well as ensuring your business benefits from it, you need to ensure you don't fall foul of it either.

At first sight, it may seem incongruous that the law treats software in general as an “original literary work” – but in fact it's very appropriate, considering that code is now often constructed using language that even non-programmers can recognise. And it covers more than you might think. Tables and compilations are covered under the relevant law (Part I of the Copyright, Designs and Patents Act 1988), as well as lines of computer code. Your basic rights as a copyright owner include copying (no surprise there), public sale, performance, broadcast and adaptation.

Interestingly, “adaptation” includes conversion into a different computer language or code – so it's not acceptable for someone to “translate” your software and claim it as their own. And all these rights apply to the whole work, or any substantial part of it. Case law (for instance in the context of recorded music) suggests that a “substantial part” can be a pretty small element, if it is distinctive of the work as a whole.

- International copyright development and the concept of fair use
- Of course, no form of intellectual property protection really safeguards an idea, because copyright, patents and designs don't prevent someone designing around your innovation (in fact it's worse than that – a patent discloses exactly how you've created something, thereby making it easier for others to design around your work).

But in software, more than any other creative domain, it can be perhaps argued there is no longer a clear distinction between the expression of an idea and the idea itself.

A great benefit of copyright is that it is very long-lasting. In the case of software, the clock starts ticking when the code is first written, and the alarm doesn't go off for up to 50 years, so your market opportunity will have run out long before your protection does. Best of all, the rights exist automatically in a work once it is first "recorded" – there's no need for statutory registration in order to get legal protection.

However, it is very important to draw attention to your copyright at every opportunity, and not just to put people off from copying you. You need to preserve all your rights, including damages and injunctive relief, in case someone infringes your work. If an offending party does not know, and has no reason to believe, that copyright exists, your right to damages is lost (this is where the absence of formal registration has its downsides, and is one of the areas we are seeking to remedy with Inngot.com).

The assertion process is fairly straightforward – the familiar © mark followed by your company name, the date and the phrase "All rights reserved" will normally suffice. Then you can sell, assign or license copyrighted software, in whole or in part, just like any other piece of personal property. To do that, of course, you have to tell people that it is available but more than anything else, you will need to be able to prove that you really own it. Straightforward, yes?

Not necessarily. If all development has been done in-house by employees of your business, there should be no issue. Under the Act, literary or artistic works made in the course of employment generally belong to the employer, in the absence of any agreement to the contrary, and computer-generated works don't provide for a "moral right" to be identified as an author.

However, you will need to be confident that your developers haven't "borrowed" chunks of code they've previously created for other people, or lifted them from any other application that is subject to someone else's copyright. If they have, be aware that if any offence is committed by a company with the consent or connivance of a director, manager or company secretary, then you too can be found guilty of infringement.

The most common problem arises when a business wants to sell off work which has been done in whole or in part by subcontractors without providing for transfer of copyright ownership. This shouldn't be difficult, since the law allows for copyright to be assigned even before any code has been written. The problem is more often a practical one; if some dispute arises over the quality or timeliness of the work done, the subcontractor has an incentive to hold the rights as hostage in order to extract payment.

Overall, though, the great appeal of copyright is that it is designed to protect goods that are meant to be sold. And in the case of digital media sales, it's not the law that needs fixing: it's the business model that's broken.

Martin Brassell is CEO of Inngot.com, a new online marketplace that enables companies to publicise their IP, including copyright protected software, in a secure environment and use it to find customers, partners and funding.

Visit www.inngot.com to find out more...