

Borrowing and Sampling

If you are considering, or are already, using material from other websites you must be aware that you could be infringing the intellectual property rights (IPR) of the owners. If you infringe any rights, you may be the subject to legal action to prevent you from using the material and you may have to pay the owner financial compensation.

The most significant IPRs that you should be aware of in this area are:

- Copyright
- Moral Rights
- Database Rights

COPYRIGHT

Copyright comes into existence automatically upon the creation of an original literary, dramatic, musical or artistic work. This includes any written text, software and any photographs or other images used on a website. The right also exists over sound and film recordings, TV broadcasts and cable programmes. The right is usually the property of the author or director.

Copyright does NOT exist in material to the extent that it is copied/taken from other sources.

MORAL RIGHTS

The author has a moral right to be identified as the author of any copyright work. He also has the right to object to derogatory treatment of the work and to prevent anybody from falsely attributing the work to him. If the author wants to be identified, he must give a notice to this effect.

DATABASE RIGHTS

A database right comes into existence automatically upon the creation of a database. A database in this context is "a collection of independent works, data or other material arranged in a systematic or methodical way and individually accessible by electronic or other means".

If you wish to use any material (text or graphics) from another source, including downloading, then the general position is that you must first obtain permission from the owner of the IPR. Most website pages will have the name of the copyright owner somewhere on the page (it normally says "© 2004 A N other" at the bottom of the page).

FAIR DEALING

There are only three very limited purposes for which protected works can be used without infringing the IPR. If the material is copied or used once for research or private study, criticism or review or for reporting current events, then the material can be used without permission.

There is no concept of "Fair Use" in the UK as there is in the US - where the proportion of work copied and the economic impact of the copying is evaluated. There is also no defence of "Private Use" in the UK as there is in Germany – where there is no infringement of IPR if the use is personal and a reasonable amount of remuneration is paid to the owner.

DISTORTING GRAPHICS

There is much debate and speculation at the moment about whether it is possible to distort an image, picture or graphic digitally to such an extent that the copyright is not breached and a new work is created.

This proposition has not yet been tested by the courts. The statutory law currently gives the owners of copyright the exclusive right to reproduce or modify their own work. The right to scan an image onto a computer, for example, belongs only to the owner. Consequently, the owner has the right to stop other people from doing any of these acts.

This suggests that people cannot avoid copyright protection by taking part of an image or distorting an image. The law as it currently stands appears to defeat the argument that distorting an image to create a “new” image creates an original work. However, with so many digital artists at work, this is an area to keep an eye on.

DIGITAL RIGHTS MANAGEMENT

Although copyright offers some protection to artists, it is becoming increasingly easy to copy, download or transform images or software with the use of a computer and graphics software and it is difficult to discover where and when images are being used. To combat this, digital rights management (DRM) is being increasingly used to protect copyright information. DRM, such as electronic watermarking or hardwired technology in software, protects the copyright information from being tampered with, thereby making it very difficult to breach the copyright. Following the Copyright and Related Rights Regulations 2003 in the UK and the Digital Millennium Copyright Act 1998 in the US, it is illegal to tamper with or remove DRM.

SAMPLING MUSIC

The legality of sampling music is an area of law which, at the moment, is only being gradually tested in the Courts. The replication or use of music created by somebody else without prior permission will of course breach copyright. However, we are now in the era of digital music where works can be distorted and rearranged. As yet, we do not have any definitive answers in the UK on whether or not this “sampling” automatically breaches IPR.

On one hand, the sampling of music creates an adaptation of an original work and therefore credit should be given and a payment should be made to the original artist. If you were to compare it to graphics – sampling is the equivalent of an extract from a graphic image being used as part of another image. In that light it is hard to see how sampling could not constitute an infringement of IPR.

However the artists carrying out the sampling argue is that they have created a new piece of music that is distinct from the original and capable of gaining its own copyright. They say that all music is created in the context of other work around at the time and that sampling music directories is no different.

There is currently no legislation in the UK that specifically deals with sampling of music. Whether or not it is a breach of copyright is going to be a matter of waiting for some case law to test this area. In the meantime, the safest course of action is to get consent from the owner of the copyrighted material before carrying out any sampling is carried out.

NEWSFLASH

The US Federal Court of Appeals in Cincinnati has ruled that rap artists should pay for every musical sample included in their work, even if the sample is a minor, unrecognisable snippet of music.

A three-bar riff was lifted from another piece by gangsta rap group NWA and put in one of their recordings in 1990. This recording was then subsequently used in the film “I Got the Hook Up” produced by No Limit Films. In the two-second sample, the guitar pitch was lowered, and the copied piece “looped” and extended to 16 beats.

Bridgeport Music and Westbound Records, who hold the copyright in the original piece, sued No Limit Films, claiming copyright infringement. Although the claim was dismissed at a lower level, the Federal Court held that just because a sample was unrecognisable, did not mean that it was outside copyright law. The Court said “Get a license or do not sample. We do not see this [ruling] as stifling creativity in any significant way.”

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