



TERRALEX®

# CROSS-BORDER COPYRIGHT GUIDE 2018



# United Kingdom

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## 1. Legislation and regulation

### 1.1 What are the main sources of copyright law?

The main source of copyright legislation in the UK is the Copyright, Designs and Patents Act (CDPA) 1988. The CDPA replaced the Copyright Act 1956, which in turn replaced the Copyright Act 1911. Those previous Acts are still applied today where a work was created at a time when those Acts were in force.

As a common law legal system, the UK also relies on case law to interpret and set precedents in law. As a result, there are a number of judicial decisions that contribute to the sources of copyright law in the UK.

## 2. Subsistence of copyright

### 2.1 What type of works can be protected by copyright?

The categories of work that can be covered by copyright are: literary, dramatic, musical and artistic works, sound recordings, films, broadcasts and typographical arrangements of published editions. They are broad categories, and can be summarised as follows:

#### Literary works

These are any works, other than a dramatic or musical work, which are written, spoken or sung and have been recorded in writing or otherwise.

#### Dramatic works

A dramatic work includes a work of dance or mime; this might also be a script for a play, a dance routine that has been choreographed or a screenplay of a book for film.

#### Musical works

These are works consisting of music, without any words or actions that are intended to be performed with the music. There is copyright in the sound recording of a musical work but that is a separate and distinct right (see below).

Music is defined as a combination of sounds for listening to; it is not the same as mere noise.

### Artistic works

A graphic work, photograph, sculpture or collage irrespective of quality, a work of architecture (be it a building or a model for a building) or a work of artistic craftsmanship.

A graphic work is broad in scope and can be, amongst other things, a painting, drawing, diagram, map, chart or plan, engraving or an etching.

A work of artistic craftsmanship must have some aesthetic appeal; for example, stained-glass windows or wrought-iron gates.

### Sound recordings, films, broadcasts, typographical arrangements of published editions

The sound recordings category is designed to cover both recordings of sounds which are not based on underlying literary, dramatic or musical works, and recordings of copyrighted works that are literary, dramatic or musical works.

A film is a recording from which a moving image may be produced and, importantly, includes the soundtrack to the film.

Broadcasts are the electronic transmission of visual images, sounds or other information which are transmitted for simultaneous reception by members of the public.

Published edition means a published edition of the whole or any part of one or more literary, dramatic or musical works.

## 2.2 What is required for works to qualify for copyright protection?

If the work falls within sections 1-4 above (literary, dramatic, musical or artistic works), it will only be protected by copyright if it is original. A work is original if the author (see 3.1 for how to decide on who is the author) has created the work through their own skill, judgement and individual effort and has not copied from other works. Save for works of artistic craftsmanship, it is not requisite that work is of artistic merit. It is also not necessary for the whole of a work to be original. In general, the threshold for originality is low in the UK.

As a general rule, the UK provides copyright protection if the author is a national of, or the work was first published in, the UK or a state which is a signatory to one of the various international conventions which the UK is a party to.

## 2.3 What rights does copyright grant to the rights holder?

The CDPA sets out the rights subsisting in copyright works which are the exclusive rights of the rights holder (before any licences are granted). They include the rights to:

- copy the work
- issue copies, rent or lend the work to the public
- perform, show or play the work to the public
- make an adaptation of the work or do any of the above in relation to the adaptation.

Rights holders also have the moral rights described at 2.4.

## 2.4 Are moral rights protected (for example, rights to be identified as an author of a work or to object to derogatory treatment of a work)?

Yes. In the UK, the following moral rights are provided for by the CDPA:

- the right to be identified as the author of a copyright work
- the right to object to derogatory treatment of the copyright work
- the right not to suffer false attribution to a copyright work
- the right to privacy in respect of certain films and photographs.

Moral rights are applicable to literary, dramatic, musical or artistic works and films. They do not apply to sound recordings, broadcasts or typographical arrangements.

## 2.5 What is the duration of copyright in protected works?

The duration of protection for copyright works varies according to the type of work and the date of creation. In general, for works created on or after 1 August 1989, the duration of copyright protection is as follows:

Category of work
Literary, dramatic, musical or artistic works
Duration
Copyright expires 70 years from the end of the calendar year in which the author dies.
Where a work has joint/co-authors, copyright expires 70 years from the end of the calendar year in which the last known author dies.

## 3. Ownership

Where the author's identity is unknown, copyright expires 70 years from the end of the calendar year in which the work was made or was made available to the public.
<b>Category of work</b>
Computer-generated literary, dramatic, musical or artistic works
<b>Duration</b>
Copyright expires 50 years from the end of the calendar year in which the work was made.
<b>Category of work</b>
Sound recordings
<b>Duration</b>
Copyright expires 50 years from the end of the calendar year in which the recording is made or, if the recording is published lawfully, 70 years from the end of the calendar year in which it was first published.
<b>Category of work</b>
Films
<b>Duration</b>
For films, the reference point is the end of the calendar year in which the last living author dies. Copyright then lasts for 70 years after that date.
<b>Category of work</b>
Broadcasts
<b>Duration</b>
Copyright in a broadcast expires 50 years from the end of the calendar year in which the broadcast was made.
<b>Category of work</b>
Typographical arrangements
<b>Duration</b>
Copyright expires 25 years from the end of the calendar year in which the edition was first published.

### 2.6 For how long do moral rights subsist in copyright works?

An author's moral right to be identified as the author, to object to derogatory treatment or to privacy lasts for the life of the author plus 70 years.

The right not to suffer false attribution lasts for the life of the author plus 20 years.

### 3.1 Who is the first owner of a copyright work?

As a general rule, the first owner of the copyright is the author. The main exception to the rule is where the work was made by a person in the course of their employment; in those circumstances, the employer is the first owner unless there is an agreement to the contrary.

The author is defined as the person who creates the work. The CDPA provides guidance for the specific categories of work where the creator is less clear:

- for sound recordings, the author is the person who made the arrangements necessary for making the sound recording
- for films, there are two authors: the producer and the principal director of a film
- for broadcasts, it is the person making the broadcast
- for typographical arrangements, it is the publisher of the arrangement.

### 3.2 Can copyright in a work be jointly owned? If so, what are the rights of a co-owner?

Copyright in a work can be jointly owned by two or more persons. This can occur where a work is created by more than one person or where there is an assignment of the whole or of part of a work.

To qualify as joint authors, it is necessary that the contributions of each author are not distinct. If they are distinct then two works subsist, each with separate copyright.

Joint owners have their own individual rights with respect to the work that can be assigned independently of the other(s), but the consent of all joint authors is required for licensing or use of the copyright work.

### 3.3 Can you register copyright? If so, what are the benefits of such registration and what other steps, if any, can you take to help you bring an infringement action?

Copyright is an unregistered right in the UK; it arises automatically upon creation of the work. There is no registration system.

A copyright notice may be useful to evidence ownership of copyright and the date of authorship. It creates a presumption that the named person is the author and puts third parties on notice of the rights. However, copyright subsists without such notice and the failure to display such notice does not affect copyright in a work.

## 4. Infringement

### 3.4 What steps should you take to validly transfer, assign or license copyright?

An assignment of copyright must be in writing, signed by or on behalf of the copyright owner.

A licence of copyright can, in addition to being in writing, be agreed orally or implied (although this is not best practice as the rights holder will not benefit from certain statutory rights as licensee, such as the right to sue third-party infringers).

### 3.5 Can moral rights be transferred, assigned or licensed?

No. Moral rights can be waived but they cannot be assigned.

Owners of copyright can take legal action if any of their exclusive rights (as set out in 2.3 above) have been infringed. There are two classes of infringement: primary infringement and secondary infringement.

### 4.1 What acts constitute primary infringement of copyright?

Primary infringement occurs where a person performs any of the following acts without the consent of the rights holder:

- copying
- issuing copies of the work to the public
- renting or lending the work to the public
- performing, showing or playing a copyright work in public
- communicating the work to the public
- making an adaptation of a copyright work or doing any of the acts listed above in relation to an adaptation.

Primary infringements are 'strict liability' offences. This means that there is no need to show that the alleged infringer had knowledge of another's subsisting right, or an intention to infringe that right.

### 4.2 What acts constitute secondary infringement of copyright?

Secondary infringement occurs where a person, with the relevant knowledge or reasonable grounds for such knowledge:

- imports, possesses, exhibits, distributes, sells, lets or offers for sale or hire the copyright work
- deals in articles designed or adapted for making copies of copyright work
- transmits a copyright work via a telecommunication system
- gives permission for use of a place of public entertainment for a performance which infringes a copyright work
- supplies apparatus which is being used to perform, play or show a copyright work in public
- gives permission, as an occupier of premises, for such apparatus to be brought onto the premises
- supplies a copy of a sound recording or film which has been used with such apparatus to perform, play or show a copyright work to the public.

### 4.3 What acts are permitted with respect to copyright works (ie what exceptions apply)?

There are a number of acts that can be carried out in relation to copyright works despite the fact that they might be protected by copyright. The Information Society Directive (2001/29/EC) contains what has been termed a ‘shopping list’ of exceptions and limitations, many of which the CDPA has implemented into English law. These permitted acts are wide in variety but often relate to very specific scenarios. They include (amongst others):

Act
Making of temporary copies
Description
A temporary copy that is transient or incidental which: <ul style="list-style-type: none"> <li>• is an integral and essential part of a technological process</li> <li>• has the sole purpose of enabling a transmission of the work in a network between third parties by an intermediary; and</li> <li>• has no independent economic significance (eg internet service providers who use caching).</li> </ul>
Act
Personal copies for private use
Description
There was an exception for private copying for a short while, but it was quashed for not complying with the relevant EU Directive, as the Government had not properly considered whether the exception offered adequate compensation to rights holders.
Act
Research and private study
Description
Research is permitted where a person is researching for a non-commercial reason. The research must contain an acknowledgement of the copyright work where it is referenced (ie identify it by title and author).  Copying is allowed for private study.
Act
Criticism or review and reporting current events
Description
Where the copyright work is being used for the purposes of criticism or review, or for the purpose of reporting current events.

It can be criticism or review of that copyright work, or of another work or performance, provided the copyright work has been made available to the public.

An acknowledgement of the copyright work is required.

No acknowledgement is required when reporting current events by means of a sound recording, film or broadcast where this would be impossible for reasons of practicality or otherwise.

#### Act

Quotation

#### Description

Quotations are a permitted act provided they relate to a work that has already been made available to the public, and the extent of the quotation is no more than required by the purpose for which it is used.

An acknowledgement of the copyright work is required where a quotation is used.

#### Act

Parody

#### Description

Naturally parodies, to some extent, require copying or mixing of another’s work. People are allowed to use limited amounts of another’s material without the owner’s permission.

The parody must evoke the existing work whilst being noticeably different from it.

It should be noted that parodied work does not excuse defamatory remarks or negate the moral right to object to derogatory treatment of a work.

### 4.4 Is it permissible to provide a hyperlink to, or frame, a work protected by copyright? If so, in what circumstances?

The CJEU decision in *Nils Svensson v Retriever Sverige* (C-466/12) determined whether linking to or framing links to copyright material without consent is a ‘communication to the public’ and therefore infringes the rights holder’s ‘communication to the public’ exclusive right.

The CJEU emphasised that to be a communication to the public, a link would have to be a communication to a ‘new’ public, ie a public not in the contemplation of the rights holder when the rights holder published the work. As a result, when a person uploads material to the internet, the public communicated to is the internet at large. Therefore,

linking to a work freely available on the internet does not communicate that work to a 'new' public.

However, where a work is not freely available on the internet, such as where the work sits behind a paywall, the copyright owner cannot be said to have communicated with the internet as a whole, and so linking to that work in a way that circumvents the paywall would constitute a communication to the public and infringe the rights of the rights holder.

The situation is different where the work linked to infringes copyright. In *GS Media BV v Sanoma Media Netherlands BV* (Case C-160/15), the CJEU considered whether hyperlinking to copyright-infringing content (ie content posted online without the consent of the rights holder) constituted a 'communication to the public'. Focusing on the knowledge of the person hyperlinking to the infringing content, the CJEU decided that if the person "knew or ought reasonably to have known" that the hyperlinked-to content infringed copyright, then hyperlinking to that content was itself a 'communication to the public' and therefore an infringement of copyright.

In particular, the CJEU found that:

- where a person hyperlinks to infringing content for financial gain, it is presumed that the person knows the linked-to content is infringing, as that person is expected to have carried out the necessary checks (although it should be possible to rebut that presumption)
- where a person is notified of the fact that the hyperlinked-to content is infringing, hyperlinking to that content will constitute an infringement (this is good news for rights holders – notifying a person who has hyperlinked to their content could convert the hyperlink from non-infringing to infringing)
- where a person hyperlinks to copyright content in a way that circumvents the public access restrictions put in place by the site where the protected work is hosted, that will also constitute an infringement (as per the judgment in *Svensson*).

#### **4.5 Is a licensee of copyright able to bring an infringement action?**

Under the CDPA, an infringement of copyright is actionable by the copyright owner. When copyright is licensed, the authority to bring an infringement action depends on the type of licence involved.

An exclusive licence authorises the licensee to exercise rights which would otherwise be exercisable exclusively by the copyright owner. One such right is the right to bring an infringement action.

A non-exclusive licensee may also bring an infringement action, but only where the licence is in writing and signed by the copyright owner and expressly grants the non-exclusive licensee the right of action.

## 5. Remedies

### 5.1 What remedies are available against a copyright infringer?

The CDPA provides the following remedies for rights holders:

- interim relief (including search orders, freezing orders, interim injunctions, and pre-action and non-party disclosure)
- delivery up of infringing articles
- seizure of infringing articles
- forfeiture of infringing articles
- an injunction against the infringer
- to elect between either an enquiry as to damages or an account of profits arising from the infringement.

### 5.2 Are there any specific remedies for online copyright infringement?

Where it appears that a website is displaying infringing material, rights holders can seek an injunction from the court ordering the internet service provider (ISP) to block the website. The relevant provision is s.97A CDPA. The ISP should be put on notice of the person using their services to infringe copyright before the order is sought.

### 5.3 Under what circumstances is copyright infringement a criminal act and what sanctions may apply?

There are a number of criminal acts under the CDPA in relation to copyright. The main offences relate to selling or making available for sale copies of a copyright work but there are also offences for communicating the infringing copy to the public. The sanction for committing a criminal offence in relation to copyright is likely to be a fine and/or a prison sentence.

If an offence is committed by a company and it is proven that an individual officer of the company consented to committing the offence, that officer can be personally liable for the criminal act.

Each offence requires a level of intention, knowledge or belief on the part of the culprit.

<b>Criminal act</b>
Making a copy of a copyright work for sale
<b>Relevant intention, knowledge or belief</b>
The knowledge, or having reason to believe, that the copy is infringing a person's copyright

<b>Maximum penalty</b>
For an indictable offence: 10 years in prison and/or a fine On summary conviction: 6 months in prison and/or a fine
<b>Criminal act</b>
Importing a copy of a copyright work into the UK
<b>Relevant intention, knowledge or belief</b>
The knowledge, or having reason to believe, that the copy is infringing a person's copyright
<b>Maximum penalty</b>
For an indictable offence: 10 years in prison and/or a fine On summary conviction: 6 months in prison and/or a fine
<b>Criminal act</b>
Distributing a copy of a copyright work in the course of business or otherwise to such an extent that it prejudices the rights holder
<b>Relevant intention, knowledge or belief</b>
The knowledge, or having reason to believe, that the copy is infringing a person's copyright
<b>Maximum penalty</b>
For an indictable offence: 10 years in prison and/or a fine On summary conviction: 6 months in prison and/or a fine
<b>Criminal act</b>
Communicating a copyright work to the public
<b>Relevant intention, knowledge or belief</b>
The knowledge, or having reason to believe, that communicating the work is infringing copyright
<b>Maximum penalty</b>
On conviction on indictment: 10 years in prison and/or a fine On summary conviction: 3 months in prison and/or a fine
<b>Criminal act</b>
Possessing a copy of a copyright work with a view to committing an infringing act whilst in the course of business
<b>Relevant intention, knowledge or belief</b>
The knowledge, or having reason to believe, that the copy is infringing a person's copyright
<b>Maximum penalty</b>
On summary conviction: 3 months in prison and/or a fine



<b>Criminal act</b>
Selling, letting for hire or offering for sale or hire a copy of a copyright work whilst in the course of business
<b>Relevant intention, knowledge or belief</b>
The knowledge, or having reason to believe, that the copy is infringing a person's copyright
<b>Maximum penalty</b>
On summary conviction: 3 months in prison and/or a fine
<b>Criminal act</b>
Exhibiting in public a copy of a copyright work whilst in the course of business
<b>Relevant intention, knowledge or belief</b>
The knowledge, or having reason to believe, that the copy is infringing a person's copyright
<b>Maximum penalty</b>
On summary conviction: 3 months in prison and/or a fine
<b>Criminal act</b>
Making or possessing an article specifically designed for making copies of a copyright work
<b>Relevant intention, knowledge or belief</b>
The knowledge, or having reason to believe, that the article is to be used to make infringing copies for sale or hire or for use in the course of business
<b>Maximum penalty</b>
On summary conviction: 3 months in prison and/or a fine
<b>Criminal act</b>
Causing a work protected by copyright to be performed, played or shown in public
<b>Relevant intention, knowledge or belief</b>
The knowledge, or having reason to believe, that copyright would be infringed
<b>Maximum penalty</b>
On summary conviction: 3 months in prison and/or a fine

#### 5.4 Is there a time limit for bringing a copyright infringement claim?

The time limit is six years to bring a claim for breach of copyright. Time begins to run from the date the damage is suffered.

#### 5.5 Can legal (or any other) costs be recovered in an action for copyright infringement? If so, what percentage of costs will typically be recovered by the successful party?

In the UK, the general rule is that the unsuccessful party pays the costs of the successful party. However, this is subject to the very wide discretion of the court, who can order otherwise. As a general rule, a successful party will not recover more than 70% of its costs, but it will be for the courts to assess this either at the hearing ('summary assessment') or afterwards ('detailed assessment').

## 6. Enforcement

### 6.1 What courts can you bring a copyright infringement action in and what monetary thresholds, if any, apply?

In deciding which court to bring a copyright claim in, the financial value of the claim and the complexity of the facts are the two key considerations.

The Chancery Division of the High Court is reserved for claims worth at least £100,000 and that are sufficiently complex or important to the public. There is no cap on the amount of costs recoverable in the High Court; they must simply be proportionate and reasonable.

For lower value claims, the Intellectual Property Enterprise Court (IPEC) provides an alternative to the High Court. It will not award damages of more than £500,000 and costs orders are made proportionately to the value of the award but, in any event, they will be no higher than £50,000.

Within the IPEC there is also a small claims track for claims worth up to £10,000.

### 6.2 Are there any other ways in which you can enforce copyright?

#### Seizure

A copyright holder may request seizure by HM Revenue & Customs of infringing copies being imported into the UK.

#### Criminal proceedings

Criminal proceedings, although rare, can be brought on the grounds described in 5.3 above and pursued through the criminal courts.

#### Copyright Tribunal

An alternative method of bringing proceedings is the Copyright Tribunal. This is an independent tribunal which was established by the Copyright, Designs and Patents Act 1988. Its main role is to adjudicate in commercial licensing disputes between collecting societies and users of copyright material in their businesses. It does not deal with copyright infringement cases or with criminal 'piracy' of copyright works.

### 6.3 What agency bodies are responsible for promoting and/or enforcing copyright?

The Intellectual Property Office (IPO) is the official government body responsible for intellectual property rights in the UK, including patents, designs, trade marks and copyright. It is an executive agency, sponsored by the Department for Business, Energy and Industrial Strategy.

The IPO is responsible for:

- IP policy
- Educating businesses and consumers about IP rights and responsibilities
- Supporting IP enforcement
- Granting UK patents, trade marks and design rights.

Although there are no agency bodies responsible for promoting copyright, there is the UK Copyright Hub ([www.copyrighthub.co.uk](http://www.copyrighthub.co.uk)). The Copyright Hub is a not-for-profit organisation that looks to make it simpler for people and companies to purchase a licence in a copyright work. The premise is that the easier it is for people to legally use copyright work, the better it is for rights holders and creative industries.

There are no agency bodies that actively enforce copyright. The UK Police will target criminal activity (see 5.3) but it is up to the rights holders or the rights management agencies to spot infringing work and take action.

### 6.4 What are the main collective rights management agencies that operate in your jurisdiction and who do they represent?

To use copyright material without infringing the rights of another, you usually need to gain the permission of the rights holder.

However, as a result of the practical difficulties and administrative burden for copyright owners in granting licences individually to those seeking them, copyright holders participate in collection schemes by signing up as members of collecting societies. Once members, they either transfer rights to the collecting society, which administers the rights for them, or appoint the society as their agent.

The key collecting societies in each sector are as follows:

<b>Agency</b>
Authors' Licensing & Collecting Society
<b>Who it represents</b>
Writers
<b>Agency</b>
Artists' Collecting Society
<b>Who it represents</b>
Artists

<b>Agency</b>
British Equity Collecting Society
<b>Who it represents</b>
Audiovisual performers
<b>Agency</b>
Copyright Licensing Agency
<b>Who it represents</b>
Creators and publishers
<b>Agency</b>
Design and Artists Copyright Society
<b>Who it represents</b>
Artists
<b>Agency</b>
Directors UK
<b>Who it represents</b>
Directors
<b>Agency</b>
Educational Recording Agency
<b>Who it represents</b>
Education sector
<b>Agency</b>
Motion Picture Licensing Company
<b>Who it represents</b>
Film and TV producers and distributors
<b>Agency</b>
Newspaper Licensing Agency
<b>Who it represents</b>
Newspapers
<b>Agency</b>
PRS for Music
<b>Who it represents</b>
Musicians
<b>Agency</b>
Phonographic Performance Limited
<b>Who it represents</b>
Musicians

<b>Agency</b>
Publishers' Licensing Society
<b>Who it represents</b>
Publishers

## 6.5 Are copyright levies payable? By whom, and in what circumstances?

Copyright levies are not payable in the UK where an exception applies.

## 7. Copyright reform

### 7.1 What do you consider to be the top two recent copyright developments?

#### ***Football Association Premier League Limited v British Telecommunications Plc and others* [2017] EWHC 480**

For the first time, the High Court has ordered six major internet service providers (ISPs) to block access to streaming servers giving unauthorised access to copyright footage. The governing body of the Premier League (FAPL) owned the copyright in the televised live footage of Premier League football matches and was aware of a situation whereby individuals were accessing copyright content by connecting directly to the streaming servers through devices such as set-top boxes, mobile phones and tablets rather than paying for subscription services.

Whilst the law governing obtaining blocking orders against websites that stream infringing content was fairly well-established, the law had not, until this case, been applied to infringements where devices connect directly to streaming servers via their IP addresses. FAPL sought a blocking order under s.97A CDPA, which permits UK courts to grant an injunction against a service provider “where that service provider has actual knowledge of another person using their service to infringe copyright”. Five out of the six ISPs supported the order and the other did not oppose it.

Arnold J granted the order sought, finding that there was a communication to a ‘new public’ since the servers were communicating the footage to a large number of people who would otherwise not have been able to enjoy it without purchasing a subscription. The order was ‘live’ in the sense that it only had effect at the times when match footage was being broadcast and provided for the list of target servers to be re-set each match week during the season to allow new servers to be identified. This case is an excellent example of the courts applying established principles to combat new types of infringement facilitated by evolving technology.

#### ***Stichting Brein v Wullems (t/a Filmspeler)* (C-527/15)**

The Court of Justice of the European Union (CJEU) has ruled that the sale of a multimedia player containing hyperlinks to websites illegally giving users access to protected works could amount to copyright infringement.

The ruling arose out of proceedings brought by Stichting Brein in the Dutch courts against Mr Wullems, who sold multimedia players under the name of ‘Filmspeler’. The devices were pre-installed with add-ons whose function was to retrieve content from third-party streaming websites on which film, TV series and sporting events were made freely available to users without the consent of the rights holders. Stichting Brein sought an injunction to prevent Mr Wullems from selling the devices.

The CJEU found that there had been a ‘communication to the public’ within the meaning of Article 3 (1) of the Copyright Directive. Whilst the mere provision of physical facilities did not in itself amount to a ‘communication’ for the purposes of the Directive, that was to be distinguished from a situation in which Mr Wullems had pre-installed add-ons that enabled users to have access to protected works and to watch them on their television screens. Mr Wullems’ actions were an intervention which enabled a direct link to be established between the websites broadcasting the works and the purchasers of the device. Without that link, the purchasers would have found it difficult to benefit from the copyright works, since the streaming websites were not readily identifiable and the majority of them changed frequently. The decision broadens the definition of what amounts to a ‘communication to the public’ and extends the classes of person who may be held liable for infringement to the suppliers of such devices.

### 7.2 What do you consider will be the top two upcoming copyright developments?

#### **Brexit**

There have been attempts to harmonise aspects of copyright law across the EU, such as the Information Society Directive and the Software Directive. However, copyright is essentially a national area of law, and there are still significant differences between Member States.

As a result, there will not necessarily be any immediate impact on this area when the UK exits the EU. UK copyright law is based partly on international conventions, the application of which is unlikely to be affected by Brexit. The CDPA 1988 is also likely to remain unchanged, unless repealed or amended by Parliament.

However, we are likely to see a divergence between copyright law in the UK and the EU in the medium to longer term. Post-Brexit, the UK will no longer be obliged to implement EU legislation or follow decisions of the CJEU. The extent of this divergence is likely to be shaped by the type of deal that the UK does with the EU post-Brexit.

#### **Digital Single Market: Modernisation of the EU copyright rules**

As we reported in last year’s Copyright Guide, the European Commission has presented proposals for new legislation designed to ensure that the EU’s copyright rules are fit for the digital age. A proposed directive on copyright in the Digital Single Market and a regulation are designed to ensure:

- better choice and access to content online and across borders – increasing the availability of works for people across Europe and providing new distribution channels for creators

- improved and modernised copyright rules applicable to the key exceptions and limitations in the areas of research, education and preservation of cultural heritage
- a fairer marketplace for online content, especially for press publications, online platforms and remuneration of authors and performers.

In addition, the implementation of the Marrakesh Treaty will make more books and texts available for people with print disabilities in a suitable format for them. The proposals are designed to help copyright industries flourish in a modern, digital age – helping authors to reach new audiences while making works widely accessible to European citizens. The proposals are currently being discussed by the European Parliament and the Council, but it is unclear what the UK will do in light of Brexit.

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