

COPYRIGHT IN CYBERSPACE: NEW GUIDELINES FOR ONLINE PUBLISHERS

"Is a stolen copyright a copy-wrong?" (Anonymous)

The high profile "Moneyweb v Fin 24" High Court judgment is significant for all online publishers. In a nutshell, Fin 24 was ordered to pay damages to Moneyweb for copyright infringement in respect of one article, but the Court found against Moneyweb in regard to six other articles and ordered it to pay 70% of Fin 24's legal costs.

Both sides in the litigation have claimed victory but the important message for us all is this - original creative works are protected by copyright even when posted online.

Strong protections – a summary

Let's start with our Copyright Act, which since 1978 has been protecting the creators of original works – literary, musical, artistic, photographic, and more recently computer programming, website creation and the like – from plagiarists. The idea of course is to encourage creativity, but without upsetting the balance between a creator's rights and the public interest. Copyright protection kicks in automatically as soon as you create an original work. No paperwork or registration is required, and you are covered internationally in all Berne Convention countries (https://en.wikipedia.org/wiki/Berne_Convention#/media/File:Berne_Convention_signatories.svg). To be protected you don't have to mark your works with the copyright "©" sign, but it's good practice to do so, together with your name and the year of creation. And if your copyright is infringed you can both claim damages from the copycat and put a stop to the infringement.

In cyberspace: What's fair game? And is it enough to acknowledge source?

What has not been clear until now is the extent to which these protections apply to re-publishing online. The common misperception that anything on the Internet is fair game for wholesale re-publication without permission is of course totally incorrect, and now we have from our courts some solid guidelines which **both the creators of online creative works, and those re-publishing them, need to pay heed to.**

In outline (this is inevitably just a summary of some very complex legal issues, so seek advice on your specific case)

- To qualify for protection, the work must be "**original**" (resulting from "sufficient application of the author's mind" rather than "slavish" copying), and it is for the creator to prove originality
- It isn't necessary to prove word-for-word plagiarism – copyright is infringed where a "**substantial part**" of the work has been reproduced. The court will make a value judgment here, based on the work as a whole and "focusing more on the quality of what has been taken than on the quantity"
- There are **exceptions** - no copyright protection at all is given to things like legislation, political speeches and "news of the day that are mere items of press information" (this last being the aspect relevant to the Moneyweb case)
- "**Fair dealing**" is a defence available to re-publishers of literary or musical works only for the purposes of research, private study, personal/private use, criticism/review, and (the aspect relevant to the Moneyweb case) the reporting of "current events". A re-publisher claiming fair dealing must prove it, and again the court will make a value judgment on fairness after considering all the facts of each case. Where fair dealing has been proved, both the source and author must be mentioned by the re-publisher. The Court held that a hyperlink back to the original article, together with mention of the author's name, is sufficient compliance.

Note however that **acknowledging source** – for example via a hyperlink back to the original source - doesn't in itself establish fair dealing. Fair dealing has to be proved separately as above – if it isn't, the copyright holder's permission to re-publish is essential.

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