

## The role of copyright in the UK knowledge economy

Traditionally, “innovation” has been viewed as being synonymous with scientific discovery and the development of new physical products. Accordingly, it has been measured using established yardsticks such as research and development expenditure and patent production.

However, in the UK, the service sector now counts for over 75% of added value, and technical development is often realised in software, which is seldom patentable. This changing economic emphasis has led to a growing acceptance that traditional measurements, and traditional approaches to intellectual property (IP), no longer reflect how innovative any given company or sector actually is. In July 2008, DIUS asked NESTA to launch consultation on a new Innovation Index, on the basis that innovation “now encompasses not only the development of new components and products but new services, technical standards, business models and processes.”<sup>1</sup>

As the legal means to protect “literary works” of all kinds, including software, copyright is the type of IP that is arguably most vital in understanding and developing the UK’s knowledge economy. The drive to exploit this automatic right more effectively is being led by Inngot, a private venture, which is launching a new service to register and publish copyright material. It enables innovative businesses to use their IP to attract customers, find collaborators, and secure finance and investment.

Inngot’s views coincide with the conclusions of the far-reaching Gowers report into IP policy, commissioned by HM Treasury and published in December 2006. Rather than extend monopolistic patent rights into software and business models, this recommended (among other measures) that government agencies should collaborate with others to improve the coverage of copyright.

### The versatility of copyright

The principal reference point for current UK copyright law is the Copyright, Designs and Patents Act 1988 (“the Act”). According to the Act, copyright automatically arises when an original work is recorded, an approach which is mirrored in most other markets, and lasts for up to 70 years. Where copyright material is created in the normal course of business activities, it generally belongs to the employer by default (and there are no moral or other rights provided in law for the creator of any computer-generated material if they work for someone else).

Under the provisions of the Act, software has the same protection as other written work. Strictly speaking, this level of protection covers the *expression* of an idea, rather than the idea itself. However, the two concepts are not mutually exclusive; in the case of software, the expression of an idea in code is what gives it an effect. Moreover, it is not only lines of code that can be protected – tables and compilations are specifically included in the scope of the Act, and even diagrams can also count as original artistic works.

As a type of property right, copyright can be fully or partially assigned (i.e. sold) to another party. It can even be assigned before it has been recorded, creating an entitlement to work which has not yet been created. While this practice is most familiar in the context of book advances, it could prove equally applicable to software.

### Copyright infringement

A copyright owner whose copyright has been infringed has a right to damages, and can take out an injunction to prevent further breaches. Under the Act, a copyright infringement by a company that occurs with the consent or connivance of a director or manager of a business can also make them personally liable for damages.

However, if the infringing party did not know, and had no reason to believe, that copyright existed in a work then there is no entitlement to damages. This provides a vivid example of the importance of publicly asserting copyright in any original work, so that it falls clearly within the scope of the law (and another benefit of registering and enquiring with the new Inngot register).

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<sup>1</sup> *Measuring Innovation*, NESTA Policy Briefing, July 2008

In addition to a “fair use” exemption for purposes such as legitimate research, copyright is not deemed to have been infringed unless a substantial part of a work has been copied. However a part may be “substantial” because it represents the most original and distinctive aspect of a work – the calculation is not simply one of volume, and case law has established that even a very small part of an original work can prove to be substantial in this context.

One popular misconception is that copying needs to be literal (i.e. word for word) in order for there to be an infringement. This is not necessarily the case: copying can also be demonstrated where it is not literal, provided that the material in question is expressed in the work and is not merely an idea (for instance, the plot of a literary work can be protected by copyright as well as the words on the page which explain it). This is an interesting precedent which demonstrates that software, as a “literary work”, could also enjoy copyright protection if the substance of its code is copied, even though the exact form of words may differ.

### **Inngot in the knowledge economy**

Whether they are seeking to assert their rights to copyright material, or trying to ensure that they are not in breach of existing copyright, knowledge economy businesses have been disadvantaged by the lack of a trusted central repository for “unpublished” material (i.e. copyright material that is not on general release).

Inngot addresses this by providing a common language to describe innovative businesses and their IP, and by publishing it in a secure environment protected by copyright. In doing so, it provides the significant benefit that a business can assert its ownership of specific IP without the downside risks of detailed disclosure – which is a statutory requirement prior to receiving patent protection.

Inngot does not duplicate the statutory registration regimes for patents and trade marks. By contrast, it harnesses the flexibility and dynamism of copyright to enable software and service businesses to express what makes them special.

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*Approximately 1,000 words*

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