

# Copyright and Design Law Notes

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# Topic One – Introduction to Copyright

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## The Berne Convention

- Provides for widespread reciprocal international protection via the 'Principle of National Treatment'
- Prohibits formalities as a condition of protection
- Imposes minimum requirements relating to the works protected, the rights granted (including recognition of moral rights) and duration.
- Requires exceptions and limitations (in most cases) to comply with the 'three step test'.
  1. Exception must be limited to certain 'special cases'
  2. Must not conflict with a 'normal exploitation of the work'
  3. Mustn't 'unreasonably prejudice the legitimate interests' of author.
- Created 1886; revised in 1896 (Paris), 1908 (Berlin), 1928 (Rome), 1948 (Brussels), 1967 (Stockholm) and 1971 (Paris).

## Essential Copyright Concepts

1. Copyright can only subsist in defined 'works' or 'other subject matter'
  - a. Artistic (exhaustively defined to mean paintings, drawings, sculptures, engravings, photographs, buildings/models of buildings, works of artistic craftsmanship)
  - b. Literary (not exhaustively defined, but includes tables, compilations, computer programs)
  - c. Dramatic (not exhaustively defined, but includes a choreographic show or other dumb show (ie pantomime))
  - d. Musical (not defined, but refers to the non-literary aspects of song)
2. Copyright protects only the form in which ideas and information are expressed, not the ideas or facts themselves. There can be no copyright infringement where the alleged infringer has only taken the author's ideas or facts, and not their form of expression.
3. Copyright grants the owner certain 'exclusive rights' over the work or other SM
4. Copyright is granted without any no formalities: protection is automatic.
5. There is a difference between property in the copyright in a work and property in the object in which the work is embodied.
6. Copyright only confers rights against derivation. It does not confer any rights against independent creation.
7. Everything that falls outside the scope of the copyright is in the public domain for anyone to use (although consider whether trademark, patent, contract etc might limit those rights)

*What's in the public domain?*

- The whole thing (where the term of protection has expired, or where it's not protected in a particular place)
- The bits that are only idea, not expression
- Very little bits of stuff (copyright is only infringed when you take a 'substantial part')
- Takings that are covered by an exception

## Theories

### *Utilitarian*

- Maximisation of net social welfare

### *Labour Theory (Natural Rights)*

- A person who labours has natural property right to the fruits of their labour (**Locke**)

### *Personality Theory*

- Private property rights are crucial to the satisfaction of fundamental human needs (**Kant and Hegel**)
- Shield from modification artefacts through which authors and artists have expressed their 'wills' and 'personality' (**Fisher 2001**)

### *Financiers Copyright*

- The investment of money by the owner (**Drahos**)

## Copyright Exam Template

### 1. Subsistence

- Does copyright subsist?

### 2. Ownership

- Who owns/licenses the relevant rights? – That's going to have an impact on what they are entitled to do

### 3. Infringement

- Has there been any unauthorised exercise (ie infringement) of those rights?

### 4. Defences

- Does the law permit those uses?