

Legislation within the New Media Industry

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What is legislation?

Legislation is a law or number of laws put into effect by a ruling body or organisation, in this case we are looking at laws of the government.

What are the risks?

If you break a law whether you are aware of it or not, you are liable to the punishment appropriate to the crime.

There are two kinds of legal liability: civil liability and criminal liability.

1. Civil liability gives a person rights to obtain redress from another person this may lead to injunctions and damages payments
2. Criminal liability is usually the state prosecuting the defendant before a magistrate, or a judge and jury in the Crown Court this could mean a fine and a criminal record, and possibly incarceration.

Within the New Media industry there are a few pieces of legislation that are important to be aware of, these are:

- Copyright
- Intellectual property
- Trademarks
- Libel
- Accessibility law
- Data protection law
- E-marketing law
- E-commerce law

Copyright, Intellectual property and Trademarks

Copyright is a form of intellectual property that gives the person who is responsible for creating an original piece of work the exclusive rights to its publication, distribution and adaptation for a certain time, after which time the piece of work is said to enter the public domain.

Below is the UK copyright law fact sheet from the UK copyright service:

The UK copyright law fact sheet outlines the Copyright, Designs and Patents Act 1988, the principal legislation covering intellectual property rights in the United Kingdom and the work to which it applies.

1. Introduction

Copyright law originated in the United Kingdom from a concept of common law; the Statute of Anne 1709. It became statutory with the passing of the Copyright Act 1911. The current act is the Copyright, Designs and Patents Act 1988.

2. Rights covered

The law gives the creators of literary, dramatic, musical, artistic works, sound recordings, broadcasts, films and typographical arrangement of published editions, rights to control the ways in which their material may be used.

The rights cover; broadcast and public performance, copying, adapting, issuing, renting and lending copies to the public.

In many cases, the creator will also have the right to be identified as the author and to object to distortions of his work.

International conventions give protection in most countries, subject to national laws.

3. Types of work protected

1. Literary

Song lyrics, manuscripts, manuals, computer programs, commercial documents, leaflets, newsletters & articles etc.

2. Dramatic

plays, dance, etc.

3. Musical

recordings and score.

4. Artistic

photography, painting, sculptures, architecture, technical drawings/diagrams, maps, logos.

5. Typographical arrangement of published editions

magazines, periodicals, etc.

6. Sound recording

may be recordings of other copyright works, e.g. musical and literary.

7. Films

broadcasts and cable programmes.

4. The Copyright (Computer Programs) Regulations 1992 extended the rules covering literary works to include computer programs.

5. When rights occur

Copyright is an automatic right and arises whenever an individual or company creates a work. To qualify, a work should be regarded as original, and exhibits a degree of labour, skill or judgement.

Interpretation is related to the independent creation rather than the idea behind the creation. For example, your idea for a book would not itself be protected, but the actual content of a book you write would be. In other words, someone else is still entitled to write their own book around the same idea, provided they do not directly copy or adapt yours to do so.

Names, titles, short phrases and colours are not generally considered unique or substantial enough to be covered, but a creation, such as a logo, that combines these elements may be.

In short, work that expresses an idea may be protected, but not the idea behind it.

6. Who owns a piece of work

Normally the individual or collective who authored the work will exclusively own the work. However, if a work is produced as part of employment then it will normally belong to the person/company who hired the individual.

Freelance or commissioned work will usually belong to the author of the work, unless there is an agreement to the contrary, (i.e. in a contract for service).

Rights cannot be claimed for any part of a work which is a copy taken from a previous work. For example, in a piece of music featuring samples from a previous work, the copyright of the samples would still remain with the original author.

Only the owner or his exclusive licensee can bring proceedings in the courts.

7. Duration of copyright

The 1988 Copyright, Designs and Patents Act states the duration as;

1. For literary, dramatic, musical or artistic works

70 years from the end of the calendar year in which the last remaining author of the work dies.

If the author is unknown, copyright will last for 70 years from end of the calendar year in which the work was created, although if it is made available to the public during that time, (by publication, authorised performance, broadcast, exhibition, etc.), then the duration will be 70 years from the end of the year that the work was first made available.

2. Sound Recordings and broadcasts

50 years from the end of the calendar year in which the work was created, or,

if the work is released within that time: 50 years from the end of the calendar year in which the work was first released.

3. Films

70 years from the end of the calendar year in which the last principal director, author or composer dies.

If the work is of unknown authorship: 70 years from end of the calendar year of creation, or if made available to the public in that time, 70 years from the end of the year the film was first made available.

4. Typographical arrangement of published editions

25 years from the end of the calendar year in which the work was first published.

5. Broadcasts and cable programmes

50 years from the end of the calendar year in which the broadcast was made.

8. Restricted acts

It is an offence to perform any of the following acts without the consent of the owner:

Copy the work.

Rent, lend or issue copies of the work to the public.

Perform, broadcast or show the work in public.

Adapt the work.

The author of a work or a director of a film may also have certain moral rights:

The right to be identified as the author.

Right to object to derogatory treatment.

9. Acts that are allowed

Fair dealing is a term used to describe acts which are permitted to a certain degree without infringing the work, these acts are:

- Private and research study purposes.
- Performance, copies or lending for educational purposes.
- Criticism and news reporting.
- Incidental inclusion.
- Copies and lending by librarians.
- Acts for the purposes of royal commissions, statutory enquiries, judicial proceedings and parliamentary purposes.
- Recording of broadcasts for the purposes of listening to or viewing at a more convenient time, this is known as time shifting.
- Producing a back up copy for personal use of a computer program.
- Playing sound recording for a non profit making organisation, club or society.

(Profit making organisations and individuals should obtain a license from PRS for Music.)

Copyright is an automatic right which applies when the work is fixed, that is written or recorded in some way.

Patents protect what makes things work - like what makes a wheel turn or the chemical formula of your favourite fizzy drink.

Trademarks are symbols that distinguish goods and services in the marketplace - like logos and brand names.

Intellectual property is a term that is often used to encompass the field of the design rights.

Libel

This can also be known as slander or defamation, it often refers to a malicious or false report that causes offence or implications for an individual or group.

This has been very common in traditional media throughout the year's i.e.

“Kerry Katona wins libel case

Reality star receives damages after paper claimed she worked as a prostitute

Monday, 28 July 2008

Kerry Katona has accepted an undisclosed 5-figure sum and legal costs over tabloid claims she was a prostitute before becoming famous.

The former Atomic Kitten singer, 27, was not at London's High Court to hear the verdict in the libel case.

The Sunday Mirror ran an article claiming her mum Sue planned to release a book that would include the sex claims.

But now the paper has admitted its story was not accurate.”

<http://www.nowmagazine.co.uk/celebrity-news/268198/kerry-katona-wins-libel-case/1/>

These cases will probably increase with ever growing mediums and the amount of content produced within the new media industry.

Accessibility law

There are laws such as the Disability Discrimination Act (DDA), which ensures that websites are accessible to blind and disabled users, below is an over view of the relevant sections:

- 2.2 (p7): “The Disability Discrimination Act makes it unlawful for a service provider to discriminate against a disabled person by refusing to provide any service which it provides to members of the public.”
- 4.7 (p39): “**From 1st October 1999** a service provider has to take reasonable steps to change a practice which makes it unreasonably difficult for disabled people to make use of its services.”
- 2.13 - 2.17 (p11-13): “What services are affected by the Disability Discrimination Act? An airline company provides a flight reservation and booking service to the public on its website. This is a provision of a service and is subject to the act.”
- 5.23 (p71): “For people with visual impairments, the range of auxiliary aids or services which it might be reasonable to provide to ensure that services are accessible might include ... **accessible websites.**”
- 5.26 (p68): “For people with hearing disabilities, the range of auxiliary aids or services which it might be reasonable to provide to ensure that services are accessible might include ... **accessible websites.**”

<http://www.webcredible.co.uk/user-friendly-resources/web-accessibility/uk-website-legal-requirements.shtml>

Reasonable adjustments should be made wherever possible to prevent substantial disadvantage to any user.

Data protection law

There is a great need within the digital age for people to send sensitive information digitally to companies, this information is usually stored for the convenience of both parties. Due to this the law needs to protect people from having their data used illegally.

The Data Protection Act 1998 establishes a framework of rights and duties which are designed to safeguard personal data. This framework balances the legitimate needs of organisations to collect and use personal data for business and other purposes against the right of individuals to respect for the privacy of their personal details. The legislation itself is complex and, in places, hard to understand. However, it is underpinned by a set of eight straightforward, common-sense principles. If you make sure you handle personal data in line with the spirit of those principles, then you will go a long way towards ensuring that you comply with the letter of the law.

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –
 - (a) at least one of the conditions in Schedule 2 is met, and
 - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.
2. Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.
3. Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.
4. Personal data shall be accurate and, where necessary, kept up to date.
5. Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.
6. Personal data shall be processed in accordance with the rights of data subjects under this Act.
7. Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
8. Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

E-marketing law

Online marketing campaigns have become very popular due to the fact that other than the costs of designing your marketing they are pretty much free to operate.

I found an article in which Christine Read, from the Institute of Direct Marketing's legal partner Manches, explains how to keep within the law when implementing an online marketing campaign.

1) No more unsolicited emails

According to the Information Commissioner unsolicited it means "uninvited". So if the recipient has indicated that he/she has no objection to receiving emails from you, you'll be safe. The new Regulations define email as "any text, voice, sound or image message sent over a public electronic communications network, including a short message service", so text messages are treated just like an email.

It is permitted, however, to send emails marketing your own goods or services to individuals whose details you have obtained in the course of a sale or negotiations for a sale of similar goods or services.

2) Marketing to business

Sometimes it's not easy to distinguish between marketing materials and a press release. Is a charity soliciting a donation direct marketing? Direct marketing includes sending any message by direct means aimed at informing or soliciting a response from the data subject, and according to the Direct Marketing this includes sales promotions and fund raising. You aren't allowed to send unsolicited emails for the purpose of direct marketing to individual subscribers unless you have the recipient's consent but this doesn't stop you sending marketing emails to corporate subscribers.

3) Have you got consent?

The term isn't defined, but it must be freely given, specific and informed. It does not need to be in writing and you can imply it from an action. So if you ask for someone's details, making it clear to them that you will use those details to send them marketing emails, the act of giving you the details will imply consent. Even if you have received consent you still have to give individuals a simple and free means of opting out of receiving direct marketing mails when you collect the details and every time you contact them.

4) Is your information reliable?

You can use your old marketing database provided you have obtained the details recently and in accordance with the law. This means you must have told

the individual who you are and the purposes for which you will use his/her data when you collected it.

5) In or outside the UK?

Even within Europe, member states have implemented the European Directive differently, so the rules will not always be the same. Various States in the US have anti-spam laws, and the penalties in the US can be much higher.

6) What about cookies?

Cookies are OK so long as you give comprehensive information about the purposes for which you use the data you collect, and the opportunity to refuse the cookie. The information need only be given the first time you use a cookie.

<http://www.mybusiness.co.uk/YccPrSZotKRAKg.html>

E-commerce law

E-commerce is all about the trading of goods and services over the internet. There are a number of legislative initiatives that affect business conducted over the internet, the legislation is primarily intended to ensure that online contracts are legally binding.

There is a very informative guide to the regulations that need to be followed at the website below:

<http://www.businesslink.gov.uk/bdotg/action/detail?r.s=sc&r.l1=1073861197&r.lc=en&r.l3=1075384925&r.l2=107386263&type=RESOURCES&itemId=1075385095>