

## **MATTERS OF LAW**

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## MATTERS OF LAW: GENERAL

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## I GENERAL

Great problems can be caused for programme makers by legal difficulties they are unaware of. It is vitally important to seek the views of BBC lawyers whenever problems are encountered or suspected.

No summary can cover all the legal issues affecting broadcasting. Producers would do well to familiarise themselves with one of the following books; McNae's *Essential Law for Journalists or Media Law* by Robertson and Nicol, or the 6th Edition of *Scots Law for Journalists* by McKain, Bonnington and Watt. But even these are no substitute for specific legal advice.

There are significant differences between the legal systems of England and Wales and those of Scotland and Northern Ireland. The Channel Islands and the Isle of Man are different again. If not observed these differences can cause serious problems.

There may be occasions, especially overseas, where providing accurate, impartial and fair coverage makes it impossible to remain within the law locally. Where such cases arise, producers must first consider what effect breaking the law might have on the BBC, on people concerned in the area, and on our future coverage of the region. The Head of Department or Commissioning Executive and BBC lawyers should be consulted, and if necessary Controller Editorial Policy. Where our coverage has been distorted or censored by local laws, this must be made clear to the audience (see also section 9 "Observing Local Law" in Chapter 3: Fairness and Straight Dealing).

## 2 WHO TO CONTACT

Any programme maker can consult BBC lawyers at any stage of production. The earlier the consultation the better, if necessary as soon as the programme idea is conceived. Repeated consultation may be called for.

On matters involving Scottish law consult the in-house lawyer at BBC Glasgow.

Advice on foreign legal matters can be obtained through the Legal Adviser's Division, which keeps a list of lawyers in various countries.

Lawyers in the LEGAL ADVISER'S DIVISION work in six departments:

- **PROGRAMME LEGAL ADVICE DEPARTMENT:** helps programmes to minimise the risk of libel and to avoid breaking the law

- **LITIGATION:** deals with problems that arise after a programme has been broadcast, as well as attempts at prior restraint and outside requests for programme material for legal purposes
- **REGULATORY:** deals with EC law, procurement and sponsorship, constitutional matters arising under the Charter and Agreement and the Broadcasting Acts, competition, regulation of the broadcasting and telecommunications industries, TV licensing, Data Protection and European Law including Human Rights, Freedom of Information and public procurement law
- **INTELLECTUAL PROPERTY:** gives advice on all aspects of the protection and exploitation of the BBC's intellectual property rights and the infringement of such rights.

For copyright advice on contributions to specific TV and radio programmes, programme makers should consult the lawyers (Legal Affairs Section) in the Rights Group in BBC Production

- **COMMERCIAL:** legal advice, drafting and negotiation involving major commercial contracts, corporate commercial compliance, joint ventures, IT contracts, contracting out/tender documentation, confidentiality agreements, commercial contracts with news agencies, radio sports contracts, insolvency and company law
- The **WORLDWIDE LEGAL DEPARTMENT** provides a comprehensive legal service to BBC Worldwide.

### 3 INJUNCTIONS AND INTERDICTS

An injunction, in Scotland an interdict, is a legal order by a judge directing a party to do or refrain from doing things specified in the order.

Anyone, whether individuals or organisations, can seek an injunction or interdict if they think their interests or reputation are about to be damaged by a programme. Applications are often associated with claims for breach of contract or breach of confidence, and may sometimes be sought for defamation.

Orders against programmes are sometimes sought outside court hours: we may have little or no warning. They can be granted and enforced over the telephone at night or at the weekend. Breach of an injunction or interdict is viewed seriously by the court. Fines and/or prison sentences can be imposed on offenders.

In addition to injunctions aimed at particular programmes, injunctions may be granted to prevent the media generally giving certain information, for instance the identification of children in wardship or childcare proceedings. Such injunctions will usually be notified to all programme areas by Programme Legal Advice Department.

Care should be taken when there is an injunction or interdict against another part of the media preventing their publishing certain information. If we broadcast the same material we might be in contempt of court. If in doubt, seek the advice of BBC lawyers.

**Programme-makers dealing with highly contentious factual subjects, or with people or organisations with a history of litigation, must be alert to the possibility of injunctions.**

**Producers must be able to organise evidence at short notice to help the BBC resist applications for injunctions.**

**The Programme Legal Advice Department must be consulted at the earliest possible stage in any case where there is a risk of a BBC programme being served with an injunction.**

#### **4 IDENTIFICATION OF CRIME VICTIMS AND WITNESSES**

In legal cases where the law or editorial policy requires the protection of the identity of individuals, producers should note that anonymity plainly means no name, no address and no photograph. It also means no strong clues.

When contributors ask for anonymity it is important to establish the degree of anonymity sought. It may be sufficient simply to ensure that contributors are not readily recognisable to the general public, or it may be necessary to ensure that they cannot be identified even by friends or family.

Such situations require careful judgement. Err on the side of caution where anonymity is concerned, but do not suppress valid journalism unnecessarily.

There is a range of cases where the identity of one or more of those involved, including witnesses, may not be reported. Failure to observe the law will result in either a contempt of court or the commission of a criminal offence.

#### 4.1 Identification of children

**There are various laws protecting children from being identified in court proceedings. Refer to Chapter 14; Children and Programmes for full details.**

#### 4.2 Courts Sitting in Private

It may be either a contempt or offence to broadcast detailed accounts of certain proceedings in courts sitting in private. This will include proceedings involving children, e.g. wardship, adoption or guardianship, or proceedings where the court sits in private for national security reasons. In wardship cases, it is not a contempt to report the court's order or an accurate summary of it, unless the court expressly forbids this.

#### 4.3 Victims of Sexual Offences

The BBC does not normally reveal the identity of victims of sexual crimes. This has long been BBC policy and, in England and Wales, it is now required by law.

The law prevents the identification of victims of rape and other sex crimes, including incest, underage intercourse, child abuse, buggery and indecent assault.

Judges may, on occasion, lift the restriction. At the request of the defence, they can do this to get witnesses to come forward and to ensure a fair trial, or to allow the reasonable reporting of a case of public interest. If a victim were identified in another, unrelated, criminal case, then the reporting of that case would not be restricted.

Victims can be identified if they agree to it. The consent should be in writing and must not be the result of any pressure.

The courts may be asked at times to restrict more information on the grounds that it would lead to the identification of the victim.

#### 4.4 “Jigsaw” Identification

It is not enough that we do not name the victims of sexual crime. We need to take special precautions to avoid what is known as the “jigsaw effect”. This happens when different news organisations give different facts about the victim, which can then be pieced together. The risk is at its highest when reporting sexual crime within the family, where naming the accused and the alleged offence could in effect identify the victim. In 1993 most newspapers and broadcasters agreed in principle that in such cases we will report the name of the accused/convicted person but we will refer to the crime merely as “a serious sexual offence”. Where the accused and the victim are related, if we identify the accused we should refer to the victim merely as “a young woman”, “a child” and so on.

The objective, however, is to protect the victim. In some individual cases some sections of the media have published details of **the offence**. In these circumstances it may be necessary for the BBC to follow suit and avoid naming the offender. One way or another, we must not complete the jigsaw. In such situations Programme Legal Advice and Editorial Policy should be consulted.

In other cases where there is a danger of the “jigsaw effect”, we should avoid any detail that might, with corroborating facts, lead to identification. Take care not to give an address, any link with another person in the story, or any link between the victim and the scene of the assault.

These restrictions may make it difficult or impossible to convey in our reporting the incidence of certain sexual crimes by reference to individual cases. Programmes should still address these issues but without referring to identifiable instances.

## 5 TRESPASS

Trespass can be defined as unauthorised entry onto private property. This should never be taken lightly by programme makers. However, in most cases trespass is a civil offence. It is usually a matter between the BBC and the lawful occupier and there is no question of programme makers committing a criminal act.

In general, we should ask for permission before entering private property. But private property can be anything from an individual’s home to a public shopping precinct, and no blanket rule can apply. Programmes must be

satisfied that, where permission has not been or could not be granted, it is appropriate in the circumstances for the BBC to proceed.

Whenever we are on private property and are asked by the legal occupier to leave, we should do so promptly.

In some circumstances, trespass can also be a criminal offence. The law is designed to cover demonstrations and large gatherings of people on private land. Normal journalistic activity seems unlikely to lead to a prosecution. But the law could affect coverage of demonstrations and “doorstep” interviews on private land.

Programme makers intending to gather material on private land in the open air without permission should:

- ensure their activities do not impede or obstruct people going about their lawful business
- keep the numbers of BBC people present to an absolute minimum
- remain on private land for the minimum amount of time necessary
- limit verbal contact with those going about their lawful activity so that our questioning of them does not disrupt that activity.

Police officers present at the scene have powers to order people to leave private land if they reasonably believe that criminal trespass may be committed. If programme makers are present on private land in the open air and are asked to leave by police they should do so immediately, and should not return. The very act of returning could itself constitute a criminal offence.

Programme makers in doubt about gathering material on private land in England, Wales, and Northern Ireland without permission should consult the Programme Legal Advice Department and, through Heads of Department or Commissioning Executives, Controller Editorial Policy.

## 5.1 The law in Scotland

The laws of trespass in Scotland are different from those of England and Wales, though the Criminal Justice and Public Order Act of 1994 does apply in Scotland and creates the same trespass offences in Scotland as in England,

Wales and Northern Ireland. Traditionally the law of trespass is interpreted more liberally in Scotland with free access to the Scottish countryside irrespective of ownership being regarded as the norm. Nevertheless programme makers should generally ask for permission before entering private property and observe the guidelines in section 5 of this chapter. Programme makers may seek advice from the BBC's solicitor in Scotland, who is based at Broadcasting House, Glasgow.

## **6 REPORTING OF COMMITTAL PROCEEDINGS**

Reporting of committal proceedings in England and Wales is restricted by the Magistrates Court Act 1980 and earlier legislation. Restrictions may be lifted by the court on application by the accused. If they are not, only the following categories of information can be reported:

- the name of the court and the names of the magistrates
- the names, addresses, occupations and ages of the defendant and witnesses
- the offence in the charge
- the names of counsel and solicitors
- the decision of the court on whether to commit for trial
- the charges on which the defendant is committed
- the court to which the defendant is committed
- the date and place to which any committal is adjourned
- whether bail is granted or refused – but not the reasons for refusal.

## **7 OBSCENE PUBLICATIONS ACT**

The Obscene Publications Act applies to broadcasting as well as printed material. It is an offence to broadcast anything that would “tend to deprave and corrupt”. Such a broadcast could be defended in court if it was “in the interests of science, literature, art or learning, or of other objects of general concern”.

Producers should also be aware of undertakings on taste and decency given by the BBC outlined in the Agreement attached to the Corporation's Charter (see also Chapter 6: Taste and Decency).

## 8 EUROPEAN DIRECTIVE: TELEVISION WITHOUT FRONTIERS

The European Council's TV Without Frontiers Directive 1997 Article 22.1, Protection of Minors, requires Broadcasters in Member States to take "appropriate measures to ensure that television broadcasts ... do not include any programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence". Articles 22.2 and 22.3 also require Broadcasters to use "acoustic" or visual warnings to alert viewers to other programmes "which are likely to impair the physical, mental or moral development of minors". The BBC must comply with the terms of this directive.

The BBC's policy is that an "acoustic warning", in the form of a presentation announcement is the absolute minimum requirement. **It should be clear from the Producers' Guidelines that it is inconceivable that the BBC would wish to broadcast a programme that might impair, seriously or otherwise, the physical, mental or moral development of minors.** Any programme maker who is in any doubt at all as to whether material they are dealing with might do this should seek urgent advice from their line management, who must consult Editorial Policy.

The BBC's guidelines on content warnings, presentation announcements, and use of the Watershed are outlined in Chapter 6: Taste and Decency.

## 9 RACIAL DISCRIMINATION

Section 70 of the Race Relations Act, 1976, makes it "an offence to publish or distribute written matter which is, or to use in any public place words which are, threatening, abusive, or insulting in a case where hatred is likely to be stirred up against any racial group".

An offence can be committed even if there is no intent on the part of the speaker or writer. Journalists must exercise particular caution when reporting events or issues in this area which are contentious (e.g. an inflammatory speech by a politician). The Attorney-General must, however, consent to the launching of a prosecution under this section.

Programmes are also subject to the provisions of the Public Order Act that make it an offence to stir up racial hatred or to possess racially inflammatory material. No action can be taken against a programme without the consent of the Attorney General but there is provision for “search and seizure” of programme material. This could cause difficulties at a time of racial tension.

## 10 DATA PROTECTION ACT

The Data Protection Act 1998 gives people certain rights in relation to information stored about them. The Act applies to all electronic systems for storing information, including images and sound recordings. There is a limited media exemption for material which is acquired for “journalistic, artistic or literary” purposes.

Programme makers with any queries about the Data Protection Act should contact the BBC’s Data Protection Officer. Any formal requests for information under the Act **must** be dealt with by the Data Protection Officer. Where there is a danger of a prosecution under the Act programme makers should contact Programme Legal Advice and the Editorial Policy Unit.

## 11 CONFIDENCE

The law recognises various categories of confidential relationship. These occur mainly in the world of commerce and employment, and in domestic life. Confidential information generated or disclosed within such relationships is protected by law, and it is ultimately for the courts to decide whether the information is confidential. A threatened breach of confidence may be subject to an injunction. Moreover, if the BBC is notified of an order against another media defendant, it will be bound by it and will risk being in contempt of court if it fails to observe the terms of the order. Confidence may also attach to formats or ideas for programmes submitted to the BBC by third parties.

In news broadcasting, there will often be a public interest defence, and it is generally a good defence that the material is in the public domain.

## 12 USE OF ANIMALS

Animals performing in programmes must be registered in accordance with the Performing Animals (Regulation) Act, 1925. Owners and trainers whose animals are used in a programme must comply with the registration provisions of the Act. They should be asked to show their registration

certificates before their contract with the BBC starts. Local Environmental Health Officers require notification of any wild animals brought into the studio.

### 13 HEALTH AND SAFETY

An extensive body of law, civil and criminal, covers the health and safety of employees and the public. Advice is given in a range of BBC publications. Advice should also be sought from the Manager Safety Services, or from BBC lawyers.

Should any material be obtained by recklessly or wilfully endangering a member of the production team, an artist or a member of the public, the BBC may decide not to transmit the material and may take disciplinary action. Those responsible may also be liable to prosecution.

#### 13.1 Flashing Images and Repetitive Patterns on Television (“Strobing”)

Fast cutting and flashing or intermittent lights in television programmes can cause problems for some viewers who have photosensitive epilepsy. It is estimated that about one person in four thousand is susceptible. Many of those who experience seizures have their first while watching television. **People under 20 are the most susceptible group and many are unaware of their susceptibility.**

Television presents some inherent risk because it is a flickering medium. But that risk can be reduced by following some basic rules, which have been endorsed by BBC Occupational Health.

Programme content should not flash, flicker or change at a frequency greater than three times per second. This applies where there is a visible change in brightness of more than ten percent of the screen area.

Prominent and regular patterns – especially light and dark bars and checks which cover a large proportion of the screen – should be avoided. Flickering or reversing patterns are particularly hazardous. Those which flow smoothly do not cause problems.

Flashing or flickering images involving red are dangerous and should be avoided. Where it may be difficult to minimise the effects, for example with a live news

report, and there is significant risk, viewers should be given an appropriate warning. But this should not be used as a substitute for careful shooting and editing.

For further guidance, contact Presentation Control.

### **13.2 Images of Very Brief Duration**

Section 5.1 (f) of the Agreement associated with the BBC's Charter states that BBC programmes should not "include any technical device which, by using images of very brief duration or by any other means, exploits the possibility of conveying a message to, or otherwise influencing the minds of, persons watching or listening to the programmes without their being aware, or fully aware, of what has occurred." Any programme maker who feels their programme might contain such images should consult their editor, line manager or Commissioning Executive, who can contact Editorial Policy for further advice.

## **14 REPEATED PROGRAMMES**

When repeated, programmes should be subject to the same legal scrutiny as when they were originally transmitted. Special care should be exercised in relation to questions of contempt, if someone featured in an original transmission is arrested prior to its repeat.

It is no defence in a defamation action to argue that material has already been shown (see also Chapter 21: Re-Use and Reversioning of BBC Television Programmes).

## **15 FURTHER ADVICE**

Programme makers who are in doubt about any aspect of the law as it applies to programmes should consult the Programme Legal Advice Department.

## MATTERS OF LAW: DEFAMATION

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## I GENERAL

If we broadcast anything that injures the reputation of an individual, a group or an organisation we may be libelling them. The risk exists whether the defamatory statement is scripted or spoken off-the-cuff, and the BBC is liable no matter who speaks the words in its programmes – and no matter whether the programme is a factual programme or a drama, made ‘in house’ or by an independent, or wherever in the world it is broadcast.

The tests normally applied by the courts to determine if a statement is defamatory include:

- does it reduce a person in the eyes of right-thinking people?
- does it cause a person to be shunned or avoided?
- does it expose the person to hatred, ridicule or contempt?
- does it injure them in their office, profession or trade?

The principal defences to libel are:

**Justification** (“veritas” in Scotland): proving that the statement is true.

**Fair comment on a matter of public interest:** showing that the statement was an honest opinion based on provable fact, was not prompted by malice, and was on a matter of public interest.

**Privilege:** statements made during broadcasts of fair and accurate reports of judicial and parliamentary proceedings and public meetings will have privilege in libel proceedings. This means that for normal purposes we are safe to report comments made as part of parliamentary proceedings or of court proceedings, in certain state documents, or made during the course of meetings which are freely open to the general public.

These are complicated defences which apply to a wide range of programmes and reports. If anything in your programme is potentially defamatory, you should seek the help of the Programme Legal Advice Department.

## 2 PICTORIAL DEFAMATION

It is possible to defame people by juxtaposition of words and pictures. This may happen by the careless use of general background shots (or “wallpaper”). For example:

- a general view of a football crowd, in which individuals are clearly identifiable, with a commentary about hooligans
- a general view of a children’s playground, in which children are recognisable, with a commentary about child abuse
- a graphic of holiday brochures, with a commentary about holiday companies going bust
- a general view of Muslims, in which individuals are clearly identifiable, with a commentary about alcohol.

Another way of pictorially defaming people is in the use of imprecise shots: the picture of a plain clothes policeman handcuffed to an arrested man, in which it is not clear which man is the criminal; or the picture of a suburban house which is an alleged bomb factory, in which the numbers of two houses are both shown, and it is not clear which house is being referred to.

## 3 NEGATIVE CHECKS

### 3.1 General

The negative check system tries to ensure that a name invented for a BBC programme or publication does not exist in reality or that its use is not defamatory. Expensive legal action could result from misusing a real name. Negative checks for all output areas are carried out by the Information Research Library at Television Centre.

A wide range of items can be checked including addresses, flight numbers, clubs, companies, products and trade names, dentists, doctors, lawyers, MPs, judges, schools, shops, ships, and so on.

The checking system takes about two weeks. It is best not to ask too early because clearances can become outdated. When a name is submitted, two alternatives should also be included.

Use of some names may infringe the rights of third parties. The checking system includes a basic trade mark search but further advice should be obtained from the Intellectual Property Department if the position is unclear.

### **3.2 Problem Areas**

In the Register of Limited Companies some small firms are listed by area. If a name is to be checked in the Companies Register the precise setting and location of the production should be included; so, too should the period (i.e. 1920s, 1950s etc).

At the Driver and Vehicle Licensing Agency in Swansea fictitious car numbers are available but they must not be used on public roads. To do so is an offence.

Registered trade marks can sometimes mistakenly be used as generic terms. Apart from giving uncalled for publicity when the context is favourable or neutral, there is a risk of legal action when registered trade marks are used generically. Rather than use a term such as “Hoover”, “Outward Bound”, or “Portakabin” we should use the proper generic “vacuum cleaner”, “activity holiday” or “portable building”.

The Intellectual Property Department can advise whether terms which are in common use are registered as trade marks.

## MATTERS OF LAW: CONTEMPT

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## **I WHAT IS CONTEMPT OF COURT?**

Contempt of Court arises if an action or statement gives rise to a substantial risk that the course of justice will be seriously impeded or prejudiced. All courts exercising the judicial power of the state are covered by contempt, from the Coroner's and Magistrates Courts to the House of Lords. Contempt rules also apply to some Royal Commissions and Tribunals.

Courts possess considerable powers in this area and use them frequently. In Scotland, the law is robustly applied. For example, Scottish courts almost invariably regard publication of a picture of a defendant (known in Scotland as an "accused") as a serious contempt of court.

Generally contempt risks arise only when proceedings are 'active'. In most criminal cases the 'active' period starts with the arrest of a suspect or the issue of a summons; in most civil cases, it starts when arrangements are made for a hearing. There are exceptions to this, especially in Scotland. The 'active' period ends once sentence is passed in criminal cases and when judgement is given in civil cases. Consult BBC lawyers in cases of doubt.

## **2 THE DANGERS OF COMMITTING CONTEMPT**

For BBC journalists, the main hazards during the 'active' period are:

- broadcasting pictures or comment which could influence those involved (witnesses, judges, jurors, lawyers and parties in the action). A detailed account of evidence likely to be given in a case would run the risk of contempt if broadcast during the 'active' period
- broadcasting material which could affect the way in which one of the parties conducts the case
- broadcasting an interview with a witness before the case is over
- having dealings with witnesses (e.g. interviews, or negotiations over possible interviews) which might influence or be thought likely to influence their evidence
- speaking to a juror in a case, about the case (see below)
- reporting what a judge has forbidden to be reported

- speculating about the outcome of a case
- commenting on a case due for retrial
- repeating what is said in court in the absence of the jury.

**A particularly high risk of contempt arises where there is a proposal to talk to a juror about the case they are involved in.**

**This applies at any time before, or during the hearing – and applies whether or not the report is actually transmitted. After the case is over it may be permissible to interview jurors but it is a serious offence, for them and for the BBC, if they discuss the deliberations (i.e. statements made, opinions or arguments expressed or votes cast by jurors) in the jury room. This applies whether or not such comments are broadcast. Any proposal to speak to a juror in a case must be referred to Programme Legal Advice.**

Although journalists run the most obvious risks, contempt may be committed in other kinds of programmes, for example in a dramatisation of contemporary court proceedings. Any department dealing with a real case must take care.

See also section 3 “Dealing With Witnesses” in Chapter 15: Crime.

### 3 DEFENCES AGAINST CONTEMPT

The defence of public interest is of very limited value in cases of contempt. Judges may overlook minor or unintentional acts. They may also resist attempts by third parties to use contempt as a means of preventing the broadcasting of material of proper interest to the public.

There is a statutory right to provide a fair, accurate and contemporaneous account of court proceedings heard in public, but this right is qualified. Judges have the freedom to postpone the reporting of an entire case or certain details of it. Reporting is also constrained by statutory restrictions on coverage of committal hearings in magistrate’s courts, and of preparatory hearings in Crown Courts, and by restrictions relating to courts dealing with sexual offences, juvenile and matrimonial matters (see also Chapter 14: Children and Programmes).

Programme makers who feel they may be in danger of committing contempt of court should consult the BBC’s Legal Advice Department.



## MATTERS OF LAW: COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

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## I GENERAL

“Intellectual property rights” are the legal rights that protect the products of the human intellect. They include statutory rights of copyright, moral rights, performers’ rights, trade marks, patents and designs, and rights to prevent “passing off” and breach of confidence.

**The Intellectual Property Department in Legal Adviser’s Division gives advice on all aspects of the protection and exploitation of the BBC’s intellectual property rights, and the infringement of such rights.**

## 2 COPYRIGHT, MORAL RIGHTS AND PERFORMERS’ RIGHTS

The laws of copyright exist to protect and reward creators and owners of original work, including books, films, and songs. Copyright is one of the most complex areas of the law affecting programmes. There are no simple answers to some copyright problems.

**Producers wishing to commission or clear copyright works for use in BBC programmes or to contract performers must seek advice from the Rights Group in BBC Production. Rights Group will generally provide the contracting service and contact should be made with them as early as possible.**

### 2.1 Copyright works

Copyright exists in a wide range of creative works, for example:

- literary works: scripts, novels, poems, essays, letters, lyrics or newspaper articles
- paintings, photographs and other visual images
- sculptures, models, architecture and works of artistic craftsmanship
- tables (eg timetables), compilations, databases and computer programs
- dramatic works, plays, dance and mime
- music

- sound recordings, including gramophone records, CDs, audiocassettes and any other sort of recording
- any recording that can produce moving images, eg film, video and videodiscs, or moving images generated on computer displays
- radio or television broadcasts (terrestrial and satellite), cable programmes and online services
- the typographical arrangement of a published work.

## 2.2 Use of Copyright Material without Permission

Copyright may not have to be cleared if the work or the use of it falls under the categories below. **However, these possible exceptions should always be checked with the Rights Group.**

- works that are **“out of copyright”**
- **insubstantial part:** some short extracts of copyright works can be used without consent – if they are “insubstantial” parts of the whole work
- **fair dealing:** there are exceptions in the 1988 Act which allow fair dealing with a copyright work for certain purposes. These include criticism or review (with a suitable acknowledgement), or reporting current events

The main UK broadcasting organisations have signed an agreement governing the use of each others sports footage in news programmes. Programme makers working in this area should consult the **Sports News Access Code Of Practice**

- **incidental inclusion:** copyright in a work is not infringed by its incidental inclusion in a radio or television programme, for example a news report or location shot which incidentally includes a painting in the background
- **spoken words** e.g. interviews
- **artistic works in public places:** this exception does not apply to paintings (or other graphic works) or photographs

- **other exceptions:** ideas as such are not protected by copyright. A succession or combination of ideas such as the plot of a novel may however qualify, and the law of confidentiality may also apply.

## 2.3 Music Copyright

The Music Copyright section in the Rights Group will advise on all aspects of music and recordings of music to be included in BBC programmes.

The BBC has various special arrangements for the music it includes in its output. Music Copyright covers three main areas:

### Payment of composers/writers

The BBC has agreements with the societies that collect royalties on behalf of composers (the Performing Rights Society and the Mechanical Copyright Protection Society). These agreements allow the Corporation to broadcast and record the PRS/MCPS repertoire. No advance clearance is needed, nor are any direct charges made to programmes for this material. However, programmes containing “dramatico-musical” works (such as operas, ballets, musicals) and parodies and burlesques are **not** included.

All music (even an insignificant or background use) must be reported on the programme’s music reporting form.

### Commercial Gramophone Records, CDs, Tapes etc.

The BBC has agreements with Phonographic Performance Limited which collects royalties on behalf of most record companies. These agreements allow the Corporation (with certain limitations) to broadcast and dub (re-record) commercial sound recordings made by PPL members. For advice on the current limitations, please consult Music Copyright.

Material can be broadcast in return for the appropriate payment. There is no exemption for review purposes.

Special clearance may be needed for recordings which are not subject to these agreements and for records dubbed into television programmes that will be sold outside the UK. The use of all commercial sound recordings must be reported on the music reporting form.

### **Specially Commissioned Music**

The Music Copyright section within Rights Group is responsible for all music specially commissioned by the BBC.

#### **2.4 Video and film copyright**

Extracts from commercially produced films or videos are subject to a number of rights agreements. Advice on use of material and relevant payment should be sought from Television Programme Acquisition Department.

#### **2.5 Moral rights**

These are the rights to be credited as author or director, not to have one's work subjected to "derogatory treatment", not to have work incorrectly attributed, and of privacy in relation to privately commissioned photographs, videos and films.

Advice on moral rights should be sought from the Rights Group.

#### **2.6 Performers' Rights**

A similar right to copyright also exists in performances, for example: dramatic performances (including dance or mime), musical performances, readings or recitations of literary works, a performance of a variety act or similar presentation.

The Rights Group will advise on all aspects of the contracting of performers for BBC programmes. Consent is required from the performer for the recording, broadcast or subsequent exploitation of the performance. Note that sound recordings or footage acquired from other producers or broadcasters may contain performances which require clearance.

### **3 TRADE MARKS**

Trade marks are distinctive names, words or logos which identify a product or service as originating from a particular source.

When deciding on a programme title or character name, producers should consider:

- might the name infringe a third party's rights (see also section 3 "Negative Checks" in Chapter 38: Defamation)?
- does any outside party – for example a performer or independent production company – consider that they might have rights in the title?
- might the BBC wish to register the title as a trade mark (advisable for a long-running series or where "spin-off" products are envisaged)?

Please refer any queries on trade marks to the Intellectual Property Department.

#### **4 PATENTS AND PROGRAMMES FEATURING INVENTIONS**

Patents grant monopoly rights to new inventions.

Care should be taken by programmes intending to invite members of their audience to submit ideas for possible inclusion. The act of submitting an idea could be interpreted as making it available to the public, unless a confidentiality agreement is in place, and could therefore invalidate any subsequent patent application.

Programme makers should consider whether any ideas submitted could amount to a new invention, and contain enough detail to describe the invention fully. If so, it may be necessary to incorporate a brief warning about possible patent implications into any material (i.e. on screen announcements, telephone hotlines) that solicits such ideas. Any material received should be treated in strict confidence and should not be broadcast without the specific consent of the contributor.

Please refer any queries on patents to the Intellectual Property Department.

#### **5 PASSING OFF**

Broadly speaking, "passing off" means taking advantage of someone else's reputation to promote a product or service. The BBC's rights may be infringed where a third party makes a misrepresentation that is damaging to its reputation and goodwill. This may occur through unauthorised use of a well known programme name, or by suggesting that the BBC has endorsed a product, for example by advertising it "as featured" on a BBC programme. But care should be taken by BBC Producers to avoid the use of a programme

title which suggests a connection with a product or service in which a business reputation has been built up by someone else.

Please refer any queries on “passing off” to the Intellectual Property Department.

## 6 CONFIDENTIALITY

The law recognises various categories of confidential relationship. These occur mainly in the world of commerce and employment, and in domestic life. Confidential information generated or disclosed within such relationships is protected by law. A threatened breach of confidence may be subject to an injunction. Moreover, if the BBC is notified of an order against another media defendant, it will be bound by it and will risk being in contempt of court if it fails to observe the terms of the order. Confidence may also attach to formats or ideas for programmes submitted to the BBC by third parties, and care should be taken always to put in place appropriate contractual arrangements.

Any queries on breach of confidence should be referred to the Intellectual Property Department.

