

Copyright Hints

APPRENTICESHIP WITH A
Master Chef

A good intellectual property lawyer has to be a creative facilitator, wordsmith, concept processor and master chef. Don't wait until you've baked your cake to find it hasn't risen. Get your lawyer in when you're selecting and mixing your ingredients.

RECORD
YOUR
RECIPE

Record your contracts in writing, even if they are with your mates. When contracting, as with cooking, you have to make a number of measured decisions. Otherwise few will eat or trust your cooking. Decide whether you want to licence (ie hire) or assign (ie sell) the work. Then work out and record in a signed contract who the deal is between, when it is to start, what is the fee and payment schedule and what are the other deal points.

UNIQUE
SELLS

Originality is the golden thread of intellectual property law, a term which includes copyright law. Since copying is not involved, original works avoid infringement and can command higher prices.

Don't Bite!
Nibble with caution.

In copyright the difference between permitted free use and theft is a question of degree. The most important concept here is this: an infringement exists if a substantial part is copied. Experience with industry conventions will help you work out what is "substantial".

DON'T GULP THE
WHOLE MEAL

If you gulp the whole meal you may choke. In extremely limited "fair dealing" circumstances it's OK to take a slice. "Fair dealing" exists only where there is one or a combination of three types of limited uses: research or private study, criticism or review (in which sufficient acknowledgment of the work is made), or news reporting.


BREACH
CHECKLIST

Stick this checklist on your refrigerator:

1. Is there copyright in the work being copied (ie copyright has not expired, the work is not in the public domain, the fundamental requirements are satisfied for copyright to exist)?
2. Is an expression of an idea being copied - not just an idea?
3. Is a substantial part being copied?
4. Is one of the exclusive rights of the copyright owner involved?
5. Is there a defence for the copying - fair dealing, an express or implied licence, giving professional legal advice, judicial proceedings, parliamentary library copying, or other defence?
6. Have the limits of such defences been exceeded (consult the Act, any licence provided by the owner and industry conventions)?

If the answer to all these questions is "yes", then infringement exists. The person whose work is being infringed may demand that you cough up. If you suddenly feel ill, call your lawyer.