

# M33139 Intellectual Property (2015/2016)

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71 items

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## TUTORIAL 1: THE SUBJECT MATTER OF COPYRIGHT PROTECTION (17 items)

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**Reading:** (10 items)

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**Books** (2 items)

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**Intellectual property law**, by Lionel Bently; Brad Sherman, 2018

[Book](#) | pp 59-90

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**Holyoak and Torremans intellectual property law**, by Paul Torremans; Jon Holyoak, 2016

[Book](#) | pp 195-233

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**Case law** (4 items)

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**Green v Broadcasting Corporation of New Zealand [1989] 2 All ER 1056**

[Proceedings](#)

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**Creation Records v News Group Newspapers [1997] EMLR 444**

[Proceedings](#)

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**Norowzian v Arks Ltd (No2) [2000] FSR 363**

[Proceedings](#)

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**C-393/09 Bezpečnostní softwarová asociace - Svaz softwarové ochrany v Ministerstvo kultury [2011] ECDR 3**

[Webpage](#)

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**Articles** (4 items)

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**Content copyrights and signal copyrights: the case for a rational scheme of protection** - in Queen Mary Journal of Intellectual Property, by Arnold, 2011

[Article](#)

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**"Joy" for the claimant: can a film also be protected as a dramatic work?** - in Intellectual Property Quarterly, by Stamatoudi, 2000

[Article](#)

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**Joy: a reply** - in Intellectual Property Quarterly, by Arnold, 2001

Article

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**British film copyright and the incorrect implementation of the E.C. Copyright Directives** - in Entertainment Law Review, by Kamina, 1998

Article

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## Further reading (6 items)

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**Copyright and Its Categories of Original Works** - in Oxford Journal of Legal Studies, by Pila, 2010-06-01

Article

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**No joy in anticipation** - in European Intellectual Property Review, by Jeffrey; Farnsworth, 1998

Article

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**Some joy at last for cinematographers** - in European Intellectual Property Review, by James, 2000

Article

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**Norowzian revisited** - in European Intellectual Property Review, by Rivers, 2000

Article

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**Authorship of films and the European Commission proposals for harmonising the term of copyright** - in European Intellectual Property Review, by Dworkin, 1993

Article

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**Authorship of films and implementation of the Term Directive: the dramatic tale of two copyrights** - in European Intellectual Property Review, by Kamina, 1994

Article

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## Questions for discussion (1 items)

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[1] To what extent does section 1(1) of the Copyright, Designs and Patents Act 1988 provide an exhaustive list of mutually exclusive categories of copyrightable works?

[2] What are the necessary elements that characterise a 'dramatic work' within the meaning of section 3(1) of the Copyright, Designs and Patents Act 1988.

[3] Critically analyse the scope of protection afforded to films under UK copyright law.

## TUTORIAL 2: THE SUBSISTENCE OF COPYRIGHT (21 items)

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## Reading: (16 items)

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### Books (2 items)

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**Intellectual property law**, by Lionel Bently; Brad Sherman, 2018

[Book](#) | pp 91-139, 177-188

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**Holyoak and Torremans intellectual property law**, by Paul Torremans; Jon Holyoak, 2016

[Book](#) | pp 199-253

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### Case law (8 items)

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**University of London Press v University Tutorial Press [1916] 2 Ch 601**

[Proceedings](#)

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**Ladbroke (Football) Ltd v William Hill (Football) Ltd [1964] 1 WLR 273**

[Article](#)

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**Plix Products Ltd v Frank M Winstone [1986] FSR 63**

[Proceedings](#)

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**Designers Guild Ltd v Russell Williams (Textiles) Ltd [2000] 1 WLR 2416**

[Proceedings](#)

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**Sawkins v Hyperion Records Ltd [2005] EWCA Civ 565 [2005] 3 All ER 636**

[Proceedings](#)

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**C-5/08 Infopaq International A/S v Danske Dagblades Forening [2009] ECDR 16**

[Proceedings](#)

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**Newspaper Licensing Agency v Meltwater [2011] EWCA Civ 890**

[Proceedings](#)

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**C-604/10 Football Dataco Ltd v Yahoo! UK Ltd [2012] 2 CMLR 24**

[Proceedings](#)

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### Articles (6 items)

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**The idea/expression dichotomy and the games that people play** - in European Intellectual Property Review, by Brown, 1995

[Article](#)

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**The compatibility of the skill and labour originality standard with the Berne Convention and the TRIPs Agreement** - in European Intellectual Property Review, by Gervais, 2004

[Article](#)

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**Authorship and originality: the persistent influence of Walter v Lane** - in Intellectual Property Quarterly, by Gravells, 2007

[Article](#)

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Masiyakurima, 'The futility of the idea/expression dichotomy in UK copyright law' [2007] IIC 548

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**Wonderful or worrisome? The impact of the ECJ ruling in Infopaq on UK copyright law** - in European Intellectual Property Review, by Estelle Derclaye, 2010

Article

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**Of originality: originality in English copyright law: past and present**, by Liu, 2014

Article

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## Further reading (4 items)

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**Copyright in photographs** - in European Intellectual Property Review, by Garnett, 2000

Article

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**Photographing paintings in the public domain: a response to Garnett** - in European Intellectual Property Review, by Deazley, 2001

Article

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**An Intentional View of the Copyright Work** - in Modern Law Review, by Pila, 2008-07

Article

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**Originality in UK Copyright Law: The Old "Skill and Labour" Doctrine Under Pressure** - in IIC - International Review of Intellectual Property and Competition Law, by Andreas Rahmatian, 2013

Article

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## Questions for discussion (1 items)

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[1] Anna and Bruce are members of the Luvvies, an amateur dramatic company. In 2014 they organised a weekend workshop, which was attended by twenty members of the Luvvies. During the weekend the concept of a musical, with the title of 'Betrayal in Benidorm', was developed; and it was agreed that Anna would write the script and song lyrics for a production by the Luvvies. Two days later, Bruce sent to Anna an outline for the opening scenes of the musical, which he had drafted during the weekend workshop. The musical is set in the Spanish resort of Benidorm, where a couple are staying on holiday. The wife falls in love with the manager of the hotel and she refuses to return home with her husband at the end of their holiday. The plot and the lyrics are very similar to those of a play written by a little known author who died in 1949. The musical score for 'Betrayal in Benidorm' was composed by Clive, another of the Luvvies. The music for one song bears a striking resemblance to a song from a 1930s musical (in which copyright has expired), although Clive had never seen or heard that musical. During rehearsals several changes were made to Anna's script, many of which were suggested by Bruce. It was also decided that the musical needed a dance routine as part of the finale. Clive devised the choreography, which was in the best traditions of Broadway musicals, although much of it was based on folk dancing routines that Clive had observed while on holiday in Barcelona.

Discuss.

[2] To what extent would the adoption of a general originality test of 'the author's own intellectual creation' represent a change from the current law?

[3] 'The requirement of fixation, the idea/expression dichotomy and the requirement of originality are all inextricably linked.'

Discuss.

## TUTORIAL 3: INFRINGEMENT OF COPYRIGHT (1) (20 items)

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### Reading: (18 items)

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### Books (2 items)

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**Intellectual property law**, by Lionel Bently; Brad Sherman, 2018

[Book](#) | pp 140-176, 189-220, 357-366 (outline only)

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**Holyoak and Torremans intellectual property law**, by Paul Torremans; Jon Holyoak, 2016

[Book](#) | pp 268-293

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### Case law (13 items)

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**Francis Day & Hunter v Bron [1963] Ch 587**

[Proceedings](#)

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**Ladbroke (Football) Ltd v William Hill (Football) Ltd [1964] 1 WLR 273**

[Proceedings](#)

---

**Designers Guild Ltd v Russell Williams (Textiles) Ltd [2000] 1 WLR 2416**

[Proceedings](#)

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**Norowzian v Arks Ltd (No2) [2000] FSR 363**

[Proceedings](#)

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**Newspaper Licensing Agency Ltd v Marks and Spencer plc [2003] 1 AC 551**

[Proceedings](#)

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**Baigent v Random House Group Ltd [2006] EWHC 719 (Ch)**

[Proceedings](#)

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**Baigent v Random House Group Ltd [2007] EWCA Civ 247**

Proceedings

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**C-5/08 Infopaq International A/S v Danske Dagblades Forening [2009] ECDR 16**

Proceedings

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**Newspaper Licensing Agency v Meltwater [2011] EWCA Civ 890**

Proceedings

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**Mitchell v BBC [2011] EWPC 42**

Proceedings

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**C-403/08 Football Association Premier League v QC Leisure**

Proceedings

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**Football Association Premier League v QC Leisure [2012] EWHC 108**

Proceedings

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**Temple Island Collections v New English Teas [2012] EWPC 1**

Proceedings

## Articles (3 items)

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**The hedgehog and the fox, a substantial part of the law of copyright?** - in European Intellectual Property Review, by Chacksfield, 2001

Article

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**Dematerialization, Pragmatism and the European Copyright Revolution** - in Oxford Journal of Legal Studies, by J. Griffiths, 2013

Article

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**Test of infringement: what is it now?** - in European intellectual property review, by Liu, 2014

Article

## Further reading (1 items)

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**Vagueness in the Scope of Copyright** - in The law quarterly review, by Spence; Endacott, 2005

Article

## Questions for discussion (1 items)

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[1] What are the constituent elements of the exclusive economic rights of the copyright owner?

[2] What test(s) do the courts apply in determining whether the defendant in a copyright infringement claim has copied a substantial part of the copyright work?

[3] To what extent is a finding of substantial similarity between the defendant's work and the copyright work conclusive of the issue of infringement?

## TUTORIAL 4: INFRINGEMENT OF COPYRIGHT (2) (13 items)

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### Reading: (7 items)

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### Books (2 items)

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**Intellectual property law**, by Lionel Bently; Brad Sherman, 2018

[Book](#) | 221-250, 250-271 (outline only)

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**Holyoak and Torremans intellectual property law**, by Paul Torremans; Jon Holyoak, 2016

[Book](#) | pp 294-310

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### Case law (3 items)

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**Hyde Park Residence Ltd v Yelland [2001] Ch 143**

[Proceedings](#)

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**Newspaper Licensing Agency Ltd v Marks and Spencer plc [2003] 1 AC 551**

[Proceedings](#)

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**Ashdown v Telegraph Group Ltd [2002] Ch 149**

[Proceedings](#)

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### Articles (2 items)

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**Strangling their creation: the courts' treatment of fair dealing in copyright law since 1911** - in Intellectual property quarterly, 2010

[Article](#)

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**Pre-empting conflict - a re-examination of the public interest defence in UK copyright law** - in Legal Studies, by Jonathan Griffiths, 2014

[Article](#)

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### Further reading (5 items)

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**Fair dealing and the Clockwork Orange case: "a thieves' charter"?** - in Entertainment Law Review, by Bradshaw, 1994

[Article](#)

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**Preserving judicial freedom of movement - interpreting fair dealing in copyright law** - in Intellectual Property Quarterly, by Griffiths, 2002

Article

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**Copyright law after Ashdown - time to deal fairly with the public** - in Intellectual Property Quarterly, by Griffiths, 2002

Article

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**Acknowledging the conflict between copyright law and freedom of expression under the Human Rights Act** - in Entertainment Law Review, by Birnhack, 2003

Article

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**The public interest: is it still a defence to copyright infringement?** - in Entertainment Law Review, by Johnson, 2005

Article

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## Questions for discussion (1 items)

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[1] Anna and Bruce are members of the Luvvies, an amateur dramatic company. In 2014 they organised a weekend workshop, which was attended by twenty members of the Luvvies. During the weekend the concept of a musical, with the title of 'Betrayal in Benidorm', was developed; and it was agreed that Anna would write the script and song lyrics for a production by the Luvvies. Two days later, Bruce sent to Anna an outline for the opening scenes of the musical, which he had drafted during the weekend workshop. The musical is set in the Spanish resort of Benidorm, where a couple are staying on holiday. The wife falls in love with the manager of the hotel and she refuses to return home with her husband at the end of their holiday. The plot and the lyrics are very similar to those of a play written by a little known author who died in 1949. The musical score for 'Betrayal in Benidorm' was composed by Clive, another of the Luvvies. The music for one song bears a striking resemblance to a song from a 1930s musical (in which copyright has expired), although Clive had never seen or heard that musical.

During rehearsals several changes were made to Anna's script, many of which were suggested by Bruce. It was also decided that the musical needed a dance routine as part of the finale. Clive devised the choreography, which was in the best traditions of Broadway musicals, although much of it was based on folk dancing routines that Clive had observed while on holiday in Barcelona.

Derwyn Discs Ltd acquired from the cast of 'Betrayal in Benidorm' the exclusive right to make and distribute recordings of the musical.

The following events occurred in 2015:

- (i) Evan released a CD entitled 'Betrayal in Benidorm'. None of the songs on the CD has any connection with the Luvvies' musical.
- (ii) Felix Films Ltd produced a film entitled 'Perfidy in Pisa', which is set in Italy but



which otherwise has an identical plot to 'Betrayal in Benidorm'. Some of the detailed incidents in the film are the same; but the dialogue is entirely different.

(iii) The Grenfell Gazette published an article, criticising the decline in the production of quality musicals over the last twenty years. Substantial extracts from the lyrics from 'Betrayal in Benidorm' were included in the article, although there was no specific criticism of the lyrics themselves.

(iv) Anna and Clive visited Hyacinth's, a private club where Clive is a member. They were surprised to hear a remixed version of one of the songs from 'Betrayal in Benidorm'. It transpires that Ian recorded a performance of the musical from the back of the theatre in which it was playing. He produced a number of copies of the remixed version and sold them to various club owners, including Hyacinth.

Discuss.

[2] Critically examine the approach of the courts to the balance between the protection of copyright and the use of copyright works for the purpose of reporting current events. To what extent does the Human Rights Act 1998 impact on the protection of copyright?