



## Volume 25 - December 2008

1. This month is a Copyright Special. So, if you want to know more about IP fairly painlessly, here is your chance.
2. We have moved offices to Kawana. If you are thinking of moving offices then please consider the K1 Building.
3. If you wish to publish any of our cartoons or articles in your newspaper or to liven up your newsletter please contact Margret Pfeiffer of syndication company [www.auspacmedia.com.au](http://www.auspacmedia.com.au) at [margretp@auspacmedia.com.au](mailto:margretp@auspacmedia.com.au)  
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### In this Issue

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[Copyright-A key driver of the 21st Century](#)

[Protecting Copyright](#)

[The Holy Grail and the Holy Dollar](#)

[The sincerest form of flattery](#)

## Copyright-A key driver of the 21st Century

Paul Brennan

Although the Financial Times reports that "Intellectual Property (IP) is today's competitive weapon ...one of the key drivers of business competitiveness in the 21st century" many businessmen are a little hazy on what their IP Rights (IPR) exactly are.

If you are a twisted individual who likes to steer conversations towards subjects where only you have researched the answers then copyright is your chance to shine.

Copyright protects your creative works such as anything you write down, music you compose, those photos of the dog-all sorts of creative stuff.

You will be relieved to hear that the quality of your creative work is not put under the microscope. In the law of copyright the courts protect your work however lousy it is. There is a very low test of originality-so you can get pretty close to borrowing other peoples ideas and still come out with "copyright works" that are all yours.

You don't need to register a copyright. It is automatic. It is a very cheap means of protection

Now you are aware of copyright; paranoia may set in. Please be assured that not everybody is "infringing your copyright" although it is easily done by down loading or photocopying but not by looking at you in a funny way.

A copyright infringement win can be very satisfying. Not only does it sound great but it gives the impression that there is something worth taking. However, do not expect a financial killing unless you have really suffered tangible loss. I do not mean hurt feelings.

With the right advice copyright actions can be settled immediately on the basis of a written undertaking not to do it again, sometimes a small payment and both parties move on.

With the wrong advice you can spook the other side and it can result in expensive emergency court proceedings.

[Click to see Paul's books including the eBook on disputes released last month](#)



## Protecting Copyright

Paul Brennan



If you produce quality writing, artwork or say training materials which are desirable (financial or otherwise) then some enterprising person may copy your work. Copying "original" work is a "copyright infringement". The easiest way to deal with this is violently. However this is illegal even if it is comparatively cheaper than law.

A copyright lawyer can spend lots of your money shoring up your case unless you have taken certain precautions.

Expect these defences:

- "You gave me permission". This can be implied.
- "You copied me" or more simply "Prove you own it". Proving it can be costly and surprisingly difficult. When your lawyer suggests that you call your mother as a witness you know that you are in desperate straits.

Another defence often raised is "I didn't know it was copied". However copyright infringement does not need intentio, the act is enough.

Here are five things that you can do to protect your work:

1. Keep your rough drafts, it is good evidence that you created it.
2. Put the work in an envelope and post it to your lawyer or someone else who would be believed by the court, to establish it was in existence on a certain day.
3. Use written agreements called "licences" when letting other people use your works.
4. Use © your name and year-you do not need to register, there is no charge to do this just type it on. This warns people that they are dealing with your copyright work.
5. Get written assignments of any copyright work which you buy from someone else.

Of course if as a writer, artist or other creative sort of person your work stinks then the good news is that you do not have a copyright problem. Copyright infringers are just too busy I'm afraid.

[click here to visit the Law & Disorder website for easy to learn law](#)

## The Holy Grail and the Holy Dollar

Paul Brennan

If you have read the The Da Vinci Code (DC) and The Holy Blood and the Holy Grail ("HBHG") as I have, you have probably decided that they are very different books. You will not be surprised to hear that a UK High Court judge supports our view. But how is it that what would have cost a legal advice fee of \$165 in Kawana, Australia, has cost \$AUS4.5M in London.

Although it sometimes depends on the idea, the smart money was on DC as every copyright lawyer knows that copyright does not protect "the idea but the expression of the idea". Although it depends on the idea.

For instance a story where boy meets girl, boy loses girl and boy gets girl back is not protected by copyright. It is just an idea and many stories have this theme. What if the girl was a cowboy? This is a novel twist (or so John Wayne would have had us believe) but still just an idea. What if you went further still and copied some words from the film such as "giddy up" or "woh boy". This would be good evidence but probably still not enough.

What needs to be copied is a "substantial part" of the original work. You engineers may measure "substantial part" as 15% or 20%. But in copyright law the test is one of "quality" rather than percentage. "Quality" how do you measure that, I hear you say? Well it is not easy and can cost up to \$AUS4.5M a throw.

The bottom line is that sometimes copying a lot less than 15% clearly is an unfair use of the sweat of some other's brow and that is wrong. Therefore, a percentage test may produce simple but grossly unfair results.

Where does this leave you? Well:

1. Where someone copies substantially the whole of your original work you are quids in.
2. Where someone copies part of your work it could be a copyright infringement.

The big lesson to learn from this case is that if you have a copyright issue try Kawana first.



## The sincerest form of flattery

Paul Brennan



After years of waiting, someone has finally copied my work. They have used a nom de plume. Being copied even by a fictitious entity does not take away that warm fuzzy feeling of knowing that someone likes my work as much as I do, maybe more.

This year, I wrote an article about a law firm being blessed by the Pope (<http://www.101reasonstokillallthelawyers.com/>). It was accepted by a legal magazine for publication on-line. When I did not hear from them I found that they had taken lines, which we clearly both thought funny, from my article and used in their own piece as if they were their original work.

Moral Rights or as we the plagiarized call it "Moral, I know my, Rights" provides for a right to be named if your work is copied and to control the form of the work but there are exceptions. Also, there is "reverse passing off", which covers plagiarism.

The Editor would not explain, apologize or print the article in full but did take down the offending web page. She offered a mention of my site in a "regular blog spot" a sort of "plagiarize one, get one free" offer.

It may be understandable that editors do not readily apologize just as captains often do not go down with their ships.

Like many potential litigants, I hoped that there might be a copyright lawyer out there, even a fictitious one, who would share my angst and take my case as a matter of principle i.e. for free.

However, as a copyright lawyer myself, I realized that was just not going to happen. So, it is left to me to do what any red blooded copyright lawyer would do, write an article and then advise myself as to the next step.

[Click here to to Paul Brennan's Blog, 101 Reasons to Kill all the Lawyers](#)

**Apek Publications PO Box 27, Mooloolaba, Queensland 4557**

A division of Brennans solicitors and migration agents

ABN 60 583 357 067. **Phone:** 07 5438 8199 **Fax:** 07 5438 8836

[info@brennanlaw.com.au](mailto:info@brennanlaw.com.au) [www.brennanlaw.com.au](http://www.brennanlaw.com.au)

