

## COPYRIGHT

### Ownership of copyright in commissioned logo designs

***Atelier Eighty Two Ltd v Kilnworx Climbing Centre CIC & Ots\** (Judge Hacon; [2015] EWHC 2291 (IPEC); 30.07.15)**

**Judge Hacon** found that Kilnworx was entitled to an assignment from Atelier of the legal interest in the copyrights in certain logos which had been commissioned on its behalf. Kilnworx was therefore held not liable for infringement of the copyrights through its use of the logos.

Kilnworx operated an indoor climbing centre. A director of Kilnworx (Mr Bunting) commissioned a design company (Purple Penguin) to design logos on Kilnworx's behalf. The agreement between Mr Bunting and Purple Penguin was verbal, with no express term dealing with the copyright in the logos. Although invoiced to Kilnworx, payment for the design of the logos was made to Purple Penguin by Atelier, of which Mr Bunting was the sole director and shareholder. Kilnworx agreed to reimburse Atelier for the cost at a later date, and was subsequently invoiced for it. However, the cost was never recovered. Mr Bunting subsequently resigned from Kilnworx and asked Kilnworx to pay for the right to use the logos, asserting that Kilnworx did not own the relevant copyrights. When Kilnworx refused, Mr Bunting obtained an assignment in writing of the copyrights in the logos from Purple Penguin to Atelier, and brought proceedings against Kilnworx for copyright infringement through its use of the logos.

Applying the principles established in *Griggs v Evans* [2005] EWCA (Civ) 11, **Judge Hacon** held that: (i) Mr Bunting had entered into the original contract with Purple Penguin on behalf of Kilnworx and there was an implied term in that contract that Kilnworx would own the copyright in the logos; (ii) Purple Penguin was the owner of the legal interest in the copyrights at the time the logos were created and held the copyrights on trust for Kilnworx; and (iii) Atelier's purchase of the legal interest from Purple Penguin was done with knowledge of Kilnworx's claim to the copyrights and so Atelier was not a 'darling in equity' – it took the legal interest in the copyrights subject to Kilnworx's equitable interest.

### Private copying exception quashed

***The Queen on the application of British Academy of Songwriters, Composers and Authors & Ots v Secretary of State for Business, Innovation and Skills; The Incorporated Society of Musicians\** (Green J; [2015] EWHC 2041; 17.07.15)**

Following the judicial review of the introduction of the private copying exception into English law by way of The Copyright and Rights in Performances (Personal Copies for Private Use) Regulations 2014, **Green J** held that the exception should be quashed with prospective effect.

### Background

Three music industry trade bodies (BASCA, the Musician's Union and UK Music) launched a judicial review of the UK government's decision to introduce a private copying exception into English law. Various grounds of challenge were raised, focusing primarily on the absence of any mechanism to compensate rights holders. The Information Society Directive permitted member states to introduce such exceptions, but required them to be combined with a compensation mechanism for rights holders, unless either no or *de minimis* harm was caused to their interests.

In an initial decision ([2015] EWHC 1723 (Admin)), the High Court ruled that the exception had been introduced unlawfully. It found that none of the evidence relied on by the UK government actually supported its conclusion that no or *de minimis* harm would be caused, and at no point had the government defined what *de minimis* meant. The Court left open, for further argument, questions as to whether (and if so how) it should revoke the exception and whether a reference to the CJ was required.

#### Decision

As it was unclear whether the UK government intended to reintroduce a private copying exception, **Green J** decided that it was unnecessary at this time to make a reference to the CJ on the question of the methodology for how the UK government should have assessed harm (i.e. whether on a 'lost sales' basis or by way of a 'licensing test').

**Green J** went on to decide that the position which applied before October 2014 (when the exception was originally introduced) was to be reintroduced with immediate effect, namely that copies of copyright works made for personal use would be infringements (unless otherwise licensed). However, the Judge refused requests to (i) quash the regulation with retrospective effect, and (ii) make a general declaration that all copies made under the exception were infringing.

**Katharine Stephens and Hilary Atherton**

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The reported cases marked \* can be found at <http://www.bailii.org/databases.html#ew>