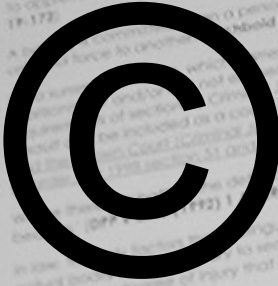


• Common Assault, contrary to section 39 Criminal Justice Act

- 1. An offence of common assault is committed when a person either assaults another person or commits a battery.
- 2. An assault is committed when a person intentionally or recklessly causes another to apprehend the immediate infliction of unlawful force. (Archbold 19-164 and 19-172)
- 3. A battery is committed when a person intentionally or recklessly applies force to another person. The maximum penalty is six months imprisonment. However, if the offence is committed under section 47 of the Criminal Justice Act 1988, then common assault may be included as a charge. (Archbold 19-164 and 19-174 to 19-175)
- 4. Where a battery results in injury, a choice of charge is available. The Code for Crown Prosecutors recognises that there will be factors, which may properly lead to a decision not to prefer or continue with the gravest possible charge. Thus, although any injury that is more than transient or trifling can be classified as actual bodily harm, the appropriate charge (subject to Para (vii) below) will be contrary to section 39 where injuries amount to no more than the following:
 - Grooves
 - Scratches
 - Abrasions
 - Superficial cuts
- 5. A "black eye"
- 6. You should also consider the location of the injury and in most cases will determine whether the injury is on an un-dressed part of the body. Generally, when the injuries amount to no more than those described in paragraph (vi) above, common assault will be the appropriate charge. However, there may be cases where the injuries suffered by the victim would usually amount to common assault but, due to the presence of serious aggravating features, they could amount to a more serious offence.

 **Copyright Theft**

***A research paper for
Chief Executives, HR Directors,
L&D / Management Consultants.***

NOT FOR COMMERCIAL SALE

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1st May 2006

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About the Author:

Will Doherty is a Senior Management Consultant with Renovatio. With over 6 years law enforcement experience in Asia and 18 years hands on L&D / management consulting experience he has come across a variety of copyright cases. His skills help educate and inform L&D managers what is the law as well as helping authors protect their intellectual copyright. If you would like help with your L&D copyright related issues or strategic L&D problems - please send him an E.mail to William.Doherty@ntlworld.com.

Introduction

This paper sets out to inform and educate individuals and managers within organisations who prepare and create consultancy material, Power point presentations and who work in the learning and development profession. Copyright infringement is not a subject covered in most management development programmes, as a result it can be a real shock when the court summons appears on the HR Directors desk for breach of intellectual property rights.

This paper provides structure, debate and discussion around the subject of intellectual property. The aim is to alert senior managers that they need a copyright strategy. Legal compliance is not an option especially with the recent changes in copyright legislation. Ignorance and transgression could result in civil prosecution, heavy fines and worse case scenario - criminal prosecution.

Several well known authors such as Max Landsberg, Bruce Tuckman, Thomas Kilmann and Belbin Associates have contributed to this research. They have shared their views how they want their work attributed and referenced. In addition Belbin Associates have kindly shared their recent court case victory highlighting the extent they will go to if “We” do not abide by their wishes.

Background :

Management Consultants and L&D Professionals work for demanding clients. They rightly expect professional presentations and high quality workshops - that include all the latest theory and underpinning knowledge.

Effort spent originating, designing and creating new material is time consuming - some may even find it challenging. As consultants we need to show research that will appear credible, present arguments in a logical structured manner and create diagrams or models that succinctly summarise and simplify the key issues in a way that is transferable to their business situation.

Q : Why re-invent the wheel ?

Q : Who will ever find out ?

Q : Everyone else does it !

This paper aims to remind you of the choices you have. The ethics you believe in and the values you demonstrate to the stakeholders who interact with you.

Nobody can force you to break the law – it is your choice. Be reminded that In any employment it is illegal and a breach of contract for a manager to ask you to perform an illegal act. Copyright infringement is an illegal act.

Definitions / Terms and Expressions :

What is copying ?

Photocopying a document or material, hand writing extracts from a document, scanning a document, cutting and pasting extracts from an electronic document for e.mail distribution. Reproducing other peoples material on your own web site, Creating an image that is a duplicate of an original piece of work. The document or material being copied includes literature, art, photographs, films, sound recordings, words and pictures on a page either electronic or physical.

What is copyright ?

This is a legal protection that gives the original author of a document, ownership rights to the material he/she created. These rights come into effect the moment the work is created and do not require any registration or certification. These proprietary rights are recognised in many countries - the UK has just harmonised and updated its copyright legislation in line with Europe. (SI 2498 New Regulations 2003)

What is Intellectual Property (IP) ?

The UK Government has a web site devoted to this definition. (<http://www.intellectual-property.gov.uk/faq/question1.htm>) The key areas include : Patents, trademarks, designs and copyrighted material. Because IP is labelled as property it means that it can be stolen. If someone dishonestly takes it without the owners consent, with the intent of depriving the owner of it on a permanent basis they will have committed the criminal offence of theft.

What can I copy ?

The 2003 Copyright Regulations allows copying for private study or research provided it does not contradict the explicit terms of reproduction expressed by the publisher or author. If the publishing is for a commercial purpose then permission must be gained from the copyright owner or a licence issued from the Copyright Licensing Authority (See bibliography).

According to the UK Gov Patent Office web site, you can make selective copies of material or documents if you are reviewing or criticising material. Reporting current events, require the material for judicial proceedings, teach in a school or other educational establishment that is not for profit and to help visually impaired people.

Unlawful Activities :

Handbooks :

- Designing hand books for commercial training courses with HRD models and material without the express permission of the author. (EG : Using Belbin Team models, Honey and Mumford Learning Styles. Publishing handbooks with models and no accreditation to the original author.
- Printing internally or contracting external printers to print material which is copyrighted to another author without their licence or permission.
- Printing material and claiming the plagiarised contents is copyrighted to the training company.
- Printing handouts using other authors work – theory or model – with no direct reference or attribution to the original author.
- Completing training proposals (RFI / RFP) or sales material for prospective clients claiming the copyright on the models and material is owned by the training company.
- Asking for sample material from training publishers , - copying it and then sending it back to the publisher.

Powerpoint Presentations :

- Creating slides using models and theories that are copyrighted to other authors without their permission or licence : EG : Ken Blanchard's Situational Leadership II , GROW / ACHIEVE model, Thomas and Kilmann model, MBTI explanations.
- Using photographs taken from other websites or from the press without permission or checking to see if they are copyright free.
- When permission is given – failing to attribute the authors name and date on the slide next to the model or theory.

Breaching Licence Conditions :

- One person attends the train the trainer course to learn about the author's material and then allowing other trainers who are not accredited to deliver the material.
- Using an authors material without seeking their permission or licence.
- The licensed material is duplicated and sold without permission and or without paying royalties to the originator or their publisher.

Videos / DVD's /CD's

- Sample videos / DVD's are requested and are then duplicated.
- TV / radio Programmes are recorded and then used for commercial training without the permission of the programme author / editor.
- DVD, VHS Films or Audio CD's are copied in part or full for training input or other use without permission and in contravention of the explicit copyright terms written on the packaging. (eg : Apollo 13, Dead Poets Society).
- Using popular music on CD or MP3 on a public commercial training course without seeking copyright permission.

Internet and Intranet

- Storing copyright material on a sever or lap top without the permission of the original author.(Often referred to as "Intellectual Property!"
- Sending or transmitting copyright infringed materials in a format such as MS Powerpoint slides or Word handbooks to a third party or internal trainer.
- Storing data about students / delegates without registering the database with the Data Registrar.
- Passing student / delegate details to third parties without their permission.
- Sending unsolicited marketing information to students

Management

- Being Ignorant of the copyright or data protection legislation. Tolerating copyright infringement at any level and taking no action.
- Conspiring to breach copyright or license agreements by asking an employee to photocopy, duplicate or use material without asking the authors permission or not seeking a license from the author. (A conspiracy is when two or more people agree to do an unlawful act or they agree to do a lawful act by unlawful means).
- Knowingly using infringed copyright material and selling it as part of a commercial training product – inferring their organisation has proprietary ownership. – (Potential Criminal Prosecution).
- Failing to ensure the company / organisation has up to date licence agreements for the material it is publishing, selling / distributing. This includes software and intellectual property.
- Knowingly publishing or mass producing copyright infringed material whether for commercial gain or not.

Liability and Prosecution of Employees

15th March 2006 (FACT Newsletter 7.4.06)

DVD pirate sentenced to 2 years and 3 months imprisonment

Martin Bagshawe was sentenced at Sheffield Crown Court having pleaded guilty to 15 copyright and trade mark charges for manufacturing and selling counterfeit DVDs. He received 12 months imprisonment on eight charges and six months on the remainder, all to run concurrently.

Liability and Prosecution of Management

According to Zielinski D.(1999) : In the USA commercial copyright violation involving more than 10 copies and value over \$2500 was made a felony. Statutory damages for infringing on copyright can hit \$20,000 per violation, and they can go as high as \$100,000 in some circumstances of wilful violation and that's above and beyond the fine for actual damages.

In one recent case, a corporation paid a seven-figure settlement for its unauthorized photocopying of articles from a trade journal and archiving those copies for internal distribution. With similar violations occurring almost daily in corporate America, and with an increase in piracy on the World Wide Web, licensing organizations, performing-rights societies and other copyright cops have stepped up activity to enforce their rights.

According to TASI There are two types of infringement:

1. Direct infringement - when you are doing the infringing
2. Authorising infringement - this can range from a boss directly telling an employee to copy, or an organisation having a slack approach and thus no respect for the copyright law. This negligence is the responsibility of the person right at the top of an organisation e.g. Managing Director, Vice-Chancellor. In Law, all are liable.

Infringement of copyright is both a civil and criminal offence. For an educational institution, most infringements will be a civil offence i.e. no imprisonment. This means that the Copyright owner can sue for infringement of Copyright through the courts. A claim could be made for [monetary] damages or for an injunction to be imposed. Where piracy of videos and CDs takes place this is a criminal offence. In the second type of infringement, i.e. authorising infringement, where an organisation has no regard for the copyright law, this may also be considered a criminal offence.

In order to infringe the copyright law, a person must have copied, etc., either the entire work or a "substantial part" of the work. Substantial is not what one would think it is. For example, some think that copying 10% of a literary work is acceptable, as they are not copying a substantial amount. The test for substantial is to imagine that what a person was proposing to copy was missing from the original, if this would be really annoying, then it is considered to be substantial.

As infringement is an offence the infringer can be sued for financial implications to the original creator (i.e. loss of income) or for the profit that you have made. It is an either/or scenario. The person who infringed may also be liable to paying all court costs. The creator may arrange for an injunction to be issued stopping the person from using the material.

Who may report you and how :

Any member of the public, internal employees or ex-employees – delegates who have attended your workshops. Public and private sector staff can report a copyright infringement to the Copyright Licensing Authority (CLA). The CLA has an enforcement arm called **COPY WATCH** which can pay up to £20,000 to an individual for credible evidence of copyright infringement depending on whether it leads to a successful licensing outcome or legal action. Often it is disgruntled ex employees who inform on their previous employers. All reports are investigated.

In Summary :

Always assume that any pre-existing work you'd like to use is copyrighted work and that it requires permission from the copyright owner to use or copy.

- Know the law – Ignorance is no defence. Read up / employ a solicitor.
- Create a copyright policy for your company.
- Contact the original authors.
- Provide training for all your L&D Designers and trainers.
- Make sure they check their material – remind them of their accountability.
- Create a register of all licences and authors contacted to clear copyright.
- Check all training / published material before sending it to the printers.
- Check your marketing / sales material
- If you cut corners expect to get caught – one of your staff might report you !
- Register / make contact with the Copyright Licensing Authority.

Rather than re-invent the wheel have you considered :

Q : Working in partnership with the author's organisation under a license agreement ?

Q : Delivering programmes, syllabuses, qualifications or solutions from accredited institutes using their material ?

Bibliography :

UK Patent Office	http://www.patent.gov.uk/
Government intellectual property	http://www.intellectual-property.gov.uk/index.htm
Copyright Rights Regulations 2003	http://www.cla.co.uk/support/business/guidance-for-businesses.pdf
COPY WATCH : CLA Enforcement Agency	http://www.copywatch.org/
F.A.C.T. Federation Against Copyright Theft	http://www.fact-uk.org.uk/
TASI Technical Advisory Service for Images	http://www.tasi.ac.uk/index.html
Solicitors who deal with copyright infringement	http://www.carter-ruck.com
Copyright Licensing Agency	http://www.cla.co.uk
Ref site for many management models	http://www.onepine.info
Zielinski Dave. 1999	June <i>Presentations</i> magazine.

Appendices :

- A List of commonly used models and contact details
- B Relevant Legislation
- C Press release : Prosecution of Corporate Management

Appendix A : L&D / HRD Models and their related Authors / Publishers

Model	Web site / e . mail contact / Ref	Licence / Reference needed.
Blake & Moulton	http://www.gridinternational.com/index.html	Yes
De-Bono 6 thinking hats	http://www.edwdebono.com/debono/index.htm	Yes
Neil Rackham SPIN Selling	http://www.huthwaite.co.uk/index.html	Yes
G.R.O.W.	john.whitmore@ihd.co.uk. sabinedembkowski@thecoachingcentre.com	Yes
ACHIEVE	fionaeldridge@coachingandcommunication.com	
Action Centred Leadership	ja@johnadair.co.uk	Yes
Good to Great	laura@jimcollins.com	Yes
Life positions I'm OK You're OK	http://www.ericberne.com/Im_OK_Youre_OK.htm	Yes
Mehrabian's Communication Model	ampsyd@gmail.com	Yes
Myers BriggsTM	coordinator@myersbriggs.org	Yes
Tuckman : Forming and Storming model	tuckman.5@osu.edu	Yes
Johari's window	Luft, J. and Ingham, H. (1955) "The Johari window".	Yes
Learning Styles	http://www.peterhoney.com/product/print	Yes
Thomas-Kilmann	http://www.cpp.com/products/tki/index.asp	Yes
Situational Leadership	Damon.largent@kenblanchard.com	Yes

Appendix B : Relevant legislation :

Video Recordings Act 1984	http://www.opsi.gov.uk/acts/acts1988
Trade Marks Act 1994	http://www.opsi.gov.uk/acts/acts1994
Copyright Designs & Patent Act 1988	http://www.opsi.gov.uk/acts/acts1988
Conspiracy contrary to common law	http://www.fact-k.org.uk/site/criminal
Copyright & Rights Regulations 2003	http://www.opsi.gov.uk/si/si2003
Copyright Offences Enforcement 2002	ISBN 010 562 502 7.
Data Protection Act 1988	http://www.ico.gov.uk/eventual.aspx

Appendix C : Press Release – Danish – April 2006

“Copyright infringement costs Danish publisher £50,000 Damages !”

Danish Distributor Potential ApS has been awarded £50,000 damages and costs against Børsen Forlag for infringement of intellectual property rights.

The Court found that Børsen Forlag had infringed rights to the Belbin Self Perception Inventory (SPI) by publishing without consent and instructed the company to pay Potential, the official Belbin distributor in Denmark, costs as well as damages. The SPI questionnaires were created as part of the Belbin Team Roles® concept by Dr Meredith Belbin after he and his team of researchers had studied the behaviour of managers from all over the world.

This involved putting managers into teams and giving them a battery of psychometric tests while they were engaged in a complex management exercise. Their different personality traits, intellectual styles and behaviours were assessed and clusters of behaviour underlying the success of the teams identified. These successful clusters of behaviour are known as “Belbin Team Roles”. Ulla Beck from Potential commented: "I am very pleased with the court's verdict which clearly states that the Belbin Team Role concept and related test materials are copyright protected and cannot be copied."

Nigel Belbin, managing partner of Belbin Associates in the UK commented “This is our first copyright to go to trial. We take our intellectual property very seriously and this case serves as a precedent for the future. I am delighted with the result”.

Niel Ackermann, a solicitor at UK law firm, Hewitsons, who advises Belbin on their intellectual property rights said: “In the past couple of years we have taken action in the UK against more than 25 infringers of Belbin’s rights and recovered damages and costs of tens of thousands of pounds together with undertakings that they will not be infringed again.

"There appears to be a mistaken belief that, because the SPI appears in a book, it can be copied for any purpose. Hopefully, this Danish decision will persuade others that this is not the case."