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Copyright Infringement

This fact sheet outlines the suggested procedure to follow in the event that your work is infringed.

1. **Who can take legal action**
   Under the terms of copyright law only the copyright owner of a work (or their exclusive licensee) can bring legal action against the infringer.

2. **Has an infringement actually occurred**
   Be clear in your mind that an infringement has actually occurred and that this is not simply a case of incidental inclusion or coincidence.
   The work should be substantially similar in design, structure or content to the degree that it can be said that the work was copied or adapted from your original.
   If in doubt, it is a good idea to show both works to a friend or colleague for a second opinion.

3. **Gather your evidence**
   The success or failure of your case will rely on the quality of the evidence, so take time to gather your facts carefully.
   Your evidence should include:
   i. *A copy of the infringing work.*
   Wherever possible, obtain a copy of the infringing work, this will prove valuable if the other party later changes the content in an attempt to deny your claim.
   ii. *A copy of your work.*
   Using the copy of your work, note specific examples of where the two works match.
   Particularly good evidence is if you can find duplication of unique aspects of your work, for example, if an error in your original has been duplicated in the copy.
   iii. *Date of registration and a copy of the registered version of your work (where applicable).*
   For work registered with Copyright Witness the registration date (which is found on the registration certificate) represents the date from which you can prove that the work was in existence. If the work has evolved since registration, it is a good idea to also have a copy of the registered version, and match the infringing work against this.
   iv. *Other dated documents.*
   Any letters or other documents referring to the work before the date of infringement.
   v. *Developmental work.*
      a. Rough drafts.
      b. Previous versions.
      c. Synopsis, etc.

   These represent what is called evolution of ideas and are good as evidence to demonstrate that you developed the work rather than stealing it.

4. **Contact the copyright infringer**
   The first step is to make the infringer aware of your objection and put forward a reasonable settlement and time scale to reach the settlement.
   In your letter you should include:
   i. The name of the work(s) you are objecting to.
   ii. The reason why this is an infringement, e.g. an unauthorised copy, adaptation etc.
   iii. State that you believe this act constitutes and infringement of copyright. That your work is protected under copyright law and that this infringement constitutes a breach of your legal rights.
   iv. State that the infringement must stop.
   v. State what action is required to resolve the dispute, usually you would request the withdrawal of all copies of the work, (and any other encroaching materials).
   vi. Specify a deadline for your conditions to be met; e.g. 14 days.
   vii. State that you are seeking legal advice and that the case will be pursued if they do not comply with your request within the time period.

   More details and example letters can be found in our guide at https://copyrightwitness.com/protect/cease-and-desist-letter
   It is normal to simply request the withdrawal of all infringing work as the first course of action, if however you believe that you are entitled to financial remuneration, such as damages or royalties, then contact a solicitor or lawyer immediately.

5. **Important points to note**
   i. If the infringing material is being published on-line, also contact the service provider hosting the site, or providing the network access for the site, and let them know of the infringement. In many countries the Internet Service Provider may be liable if they knowingly allow infringement on their networks to continue, so they will often act swiftly to remove the offending content of the site owner does not.
   ii. Wherever possible, keep a dated copy of the infringing material, (and ideally also send this to your solicitor). This will ensure that you always have evidence of the infringement in case of future problems.
   iii. Keep a copy of all correspondence you send or receive.
   iv. Do not sign any contracts or agreements unless you are certain what they involve and that it is in your interest to do so.
   v. If you are in any doubt, or do not receive satisfaction, speak to a solicitor or lawyer.
   vi. If you are a trading company, and the infringement is by a competitor with a similar name, though not directly a copyright claim, if you can establish that you were there first, then the infringer may also be guilty of trading off your name or reputation.
   vii. Always remain calm and courteous in your correspondence, do not allow yourself to get drawn into heated argument or debate. A professional and fair attitude will be a credit to you in the long run.

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6. **Further action**

   If you have not settled the dispute within the deadline, or if you believe that you are entitled to damages and/or royalties, then you should present your evidence to your solicitor or lawyer for a proper assessment on how to proceed).

   One option may be to make a claim through a small claims court hearing. Whether this option is available will depend on you location and where the infringement occurred.

   In the UK there is the Intellectual Property Enterprise Court (formerly the Patents County Court), that deals with intellectual property claims, including patent, copyright and trademark disputes; for details, please visit www.gov.uk/government/organisations/intellectual-property-enterprise-court/about

7. **Engaging a solicitor**

   If you do not have a solicitor, contact your local Citizens Advice Bureau, or Business Advice Centre who will be able to put you in touch with a recommended solicitor in your area. Many solicitors will offer a free half hour consultation for new clients, and it is well worth taking advantage of this to have the merit of your case professionally assessed.

   Once your case is in the hands of a solicitor it is best to stick to this course and refer all correspondence through your solicitor. This also has the benefit of demonstrating that you are not likely to back down, and you will have a good chance of being taken seriously.

8. **Benefit of a Copyright Witness registration**

   If your work is registered with the Copyright Witness, the independent evidence your registration provides gives you the best possible chance of proving your case. Effectively forcing the other party to provide similar evidence which predates your registration if they are to have any chance of defending their position.

   The irony is that by having such strong evidence you are often unlikely to need it in a formal legal proceeding. When the other party realises strength of your case they will normally wish to come to an amicable agreement.

   You can of course call on Copyright Witness for duplicate certificates and to provide a copy of the registered work if required, but your solicitor will be the best informed person to advise you on how to pursue the case from this point.

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