**Copyright and the exclusive rights**

**Primary restricted acts**

There are six major exclusive economic rights arising from ownership of the copyright in any protected work. These are often called restricted acts because they are acts that the copyright owner can restrict others from doing without permission. They are:

• copying (reproduction right);

• issuing copies of the work to the public (first sale or distribution right);

• renting or lending the work to the public (rental/lending right);

• performing, showing or playing the work in public (public performance right);

• communicating the work to the public (public communication right);

• making an adaptation of the work (adaptation right).

Broadly they can be described as methods of reproducing the work. They are the acts that the owner can licence or sell (assign) to third parties, or in respect of which they can take action for copyright infringement if someone carries out these acts without permission.

**General principles:**

***(1) taking of the whole or a substantial part***

Infringement can occur (and so a licence needs to be granted) by the doing of an act in relation to the whole or a substantial part of a work. Therefore if an insubstantial part of a work is copied, there is no infringement. If the copying is of ‘small, unimportant details’, rather than of a substantial part of the earlier work, there is no infringement.

The difficulty is to determine what constitutes a substantial part as this ‘depends much more on the quality than on the quantity of what he has taken’; For example, an extract of some 20 bars lasting about 50 seconds from a musical work which took about four minutes to play was held to be a substantial part because it constituted that section which would ensure recognition of the work by the public. It may also be important to consider what was important to user of the original work. However it should be remembered that if what is taken is only the idea of a work, rather than its substance, then there is no infringement. Similarly there is no protection for what is merely the style or technique with which a work is created.

A core part of the test is to determine whether what is reproduced is original in the sense that it expresses the author’s own intellectual creation. To that extent it will be important to dissect what has been taken to determine the originality of that part.

**Question**

What would amount to copying of a substantial part of a dance and thus infringement if done without authorisation?

 ***(2) doing a restricted act directly or indirectly***

A work can be copied whether the copying is done directly or indirectly. In other words, the copying can be in relation to an original work, or to a work derived from it. So in one case, copyright in drawings of Popeye the Sailor Man was held to be infringed although the defendant had copied not the drawings, but the licensed dolls and brooches based on these drawings.

**Question**

Can you think of an instance when there might be indirect copying of a dance that would infringe copyright in the original dance?

**Key points**

• The restrictions apply whether the act in question relates to the whole of the copyright work or only part of it

• Where the act relates to only part of the copyright work, it must be a substantial part of the work to be an infringement of the copyright

• Substantiality depends on whether the part taken is original in the sense of the author’s own intellectual creation

• A restricted act may infringe copyright whether performed directly or indirectly, via some intermediate work