

An open and shut suitcase?

Is there is a link between copyright and the art of creativity? Some people think that copyright encourages authors to write books and song writers to write songs, and so allow distributors to distribute the same to the public, on the basis that the author's rights will be fully protected. Others may contest that view and feel that copyright is a hurdle to overcome in any creative process.

What is the balance between copyright and creativity? We do not create things in isolation; images, songs and books subliminally influence our day to day lives and form part of everything we create. When we do this, we take time to consider whether or not the ingredients used in our creation have come from a protected source. Clearly, without the access we have to the library of life, future creativity could be confined as there would be nothing to influence or inspire creators.

There is no doubt that copyright locks up a lot of creativity which means that it is commercially unavailable for exploitation, and what is worse is that sometimes we do not even know who the copyright holder is in order to seek consent to use the same.

The nemesis to copyright is the World Wide Web, as within the internet there is so much creativity and publication occurring. So how can you protect yourself? This is a question many ask.

In the recent "Trunki" case, the company who designed the children's suitcases which we have seen parents pull their children around on at an airports, faced a dispute over a competing design with a company called Kiddee.

Design is another aspect of copyright and intellectual property. Here Trunki had specific registered design rights which gave it protection in its design of a suitcase based on an animal with horns. Whilst Kiddee created a suit case with an insect with antennae and animals with ears.

It was found by the Supreme Court that Kiddee did not infringe the design rights of Trunki. Even though the judge acknowledges that Trunki was "both original and clever" Lord Neuberger said the Kiddee suit case had been conceived "as a result of seeing Trunki and discovering that a discount model was not available". In essence the case came down to the question of overall impression. The court felt that an "animal with horns" was "significantly different from the impression made by the Kiddee suit case which were either an insect with antennae or animals with ears".

Seeking to achieve a balance between creativity and protection is increasingly becoming more of a challenge in the fast changing electronic society we live and work in.