

naomi korn

A S S O C I A T E S



Emilia Frost

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The information provided within this presentation is an opinion and should not be construed as legal advice.

Intellectual Property & Data Protection Overview & Challenges

Naomi Korn

CEO & Founder, Naomi Korn Associates



Who we are

Naomi Korn Associates is a UK-based leader specialising in copyright, data protection, and licensing. Since 2003, we have worked with the cultural, heritage, charity, education and private sectors across the UK and internationally.

We support our clients to comply with the law. We also help them to exploit their assets commercially through better rights and privacy management. We do this by integrating our legal, commercial, information governance and technical expertise into our clients' practices.

The team, headed up by Naomi Korn, Founder and CEO, brings together a range of world-renown specialists who have built a reputation of excellence amongst charities, education, and cultural heritage.

Introductions

- Introduce yourself
- What is your role?
- Where are you based?



Emilia Frost



Activity

Individual work



1. Intellectual property rights always need to be registered

2. AI generated works can be protected by IP

3. IP can be licensed, bought, sold and bequeathed

4. Trade marks registered in the UK protect the trademark in the rest of the world

5. Trademarks can be renewed indefinitely



Introduction to Intellectual Property

IP = fruits of the
human mind

Underpinning
innovation – trade
/ GDP

Human, not
animal...vegetable

Some require
registration
(rights) and other
not

IP is an intangible
property...
behaves just like
physical property



IP – what do we mean?

Copyright: automatic/creative works

Moral rights: automatic/assertion

Trade marks: registration/logos etc

Design rights: automatic and registration/ physical shape

Database rights: automatic/data

Patents: registration/inventions

Geographical Indications: registration/product's source

Don't forget other rights like privacy rights!



Copyright

Registration?	No
Duration?	Life of author + 70 years

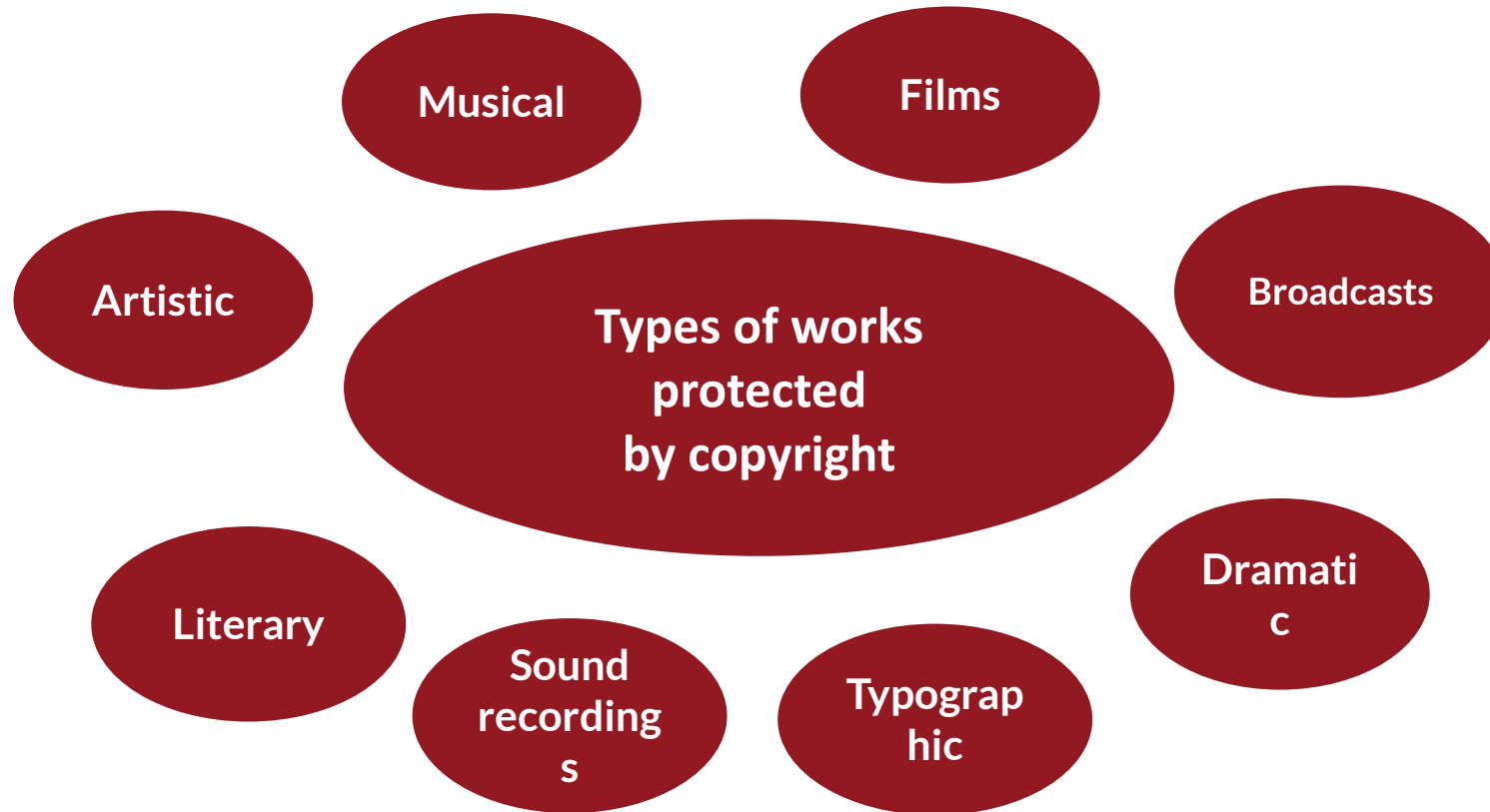
Automatically protects original creative works (LDMA), films, sound recordings, broadcasts, typographical arrangement

Exclusive right to copy, publish, perform, communicate to the public

Some copying allowed under copyright exceptions/ permitted acts such as quotation, private study, non-commercial research



Works protected by copyright



Applies to digital and analogue

Moral rights

1. Right to object to derogatory treatment
2. Right to be identified as the author
3. Right against false attribution
4. Right to privacy (certain films/photographs)

Trade marks

Registration?	Yes
Duration?	10 years renewable

- Distinguishes the goods or services of one trade from another
- Can take many forms; for example: words, logos, shapes and colours
- Usually lasts ten years and can be renewed indefinitely on payment of additional fees
- Protects your brand, provides you with the tools to prevent someone using similar signs and benefiting from your reputation



Photo by Katherine Kromberg on Unsplash



Design rights

Registration?	Yes
Duration?	5 years, renewable up to 25y

- Registered protects appearance, physical shape, configuration & decoration (2D) from shape of an aeroplane to a fashion item
- You can use it to stop someone copying your design.
- Unregistered design right only applies to the shape and configuration (how different parts of a design are arranged together) of objects.

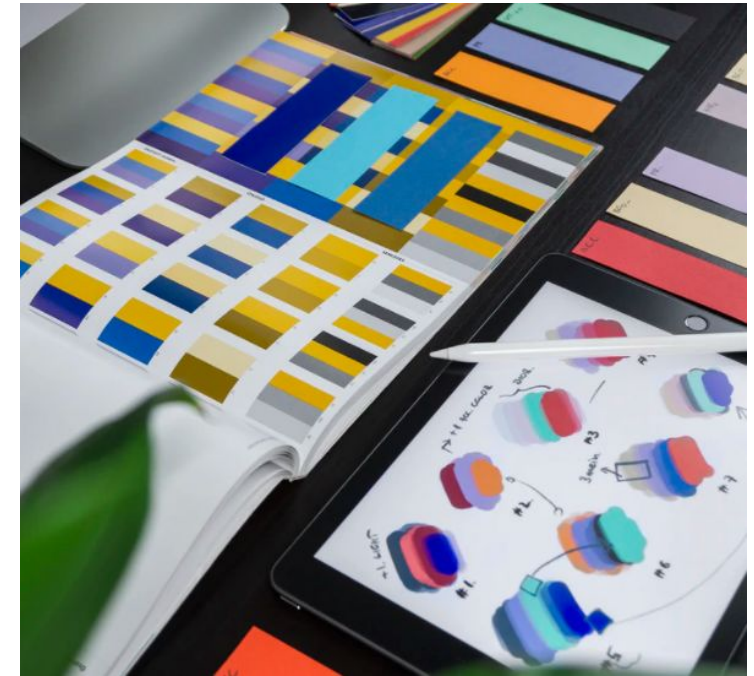


Photo by Balázs Kétyi on Unsplash



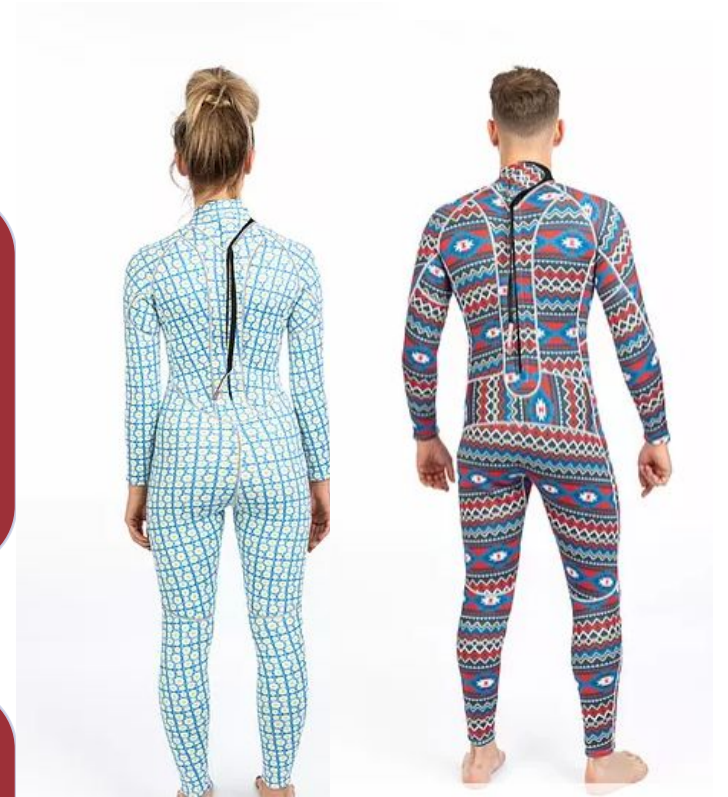
Qualifying for Design rights

Unregistered

- Automatic
- Original – a design that's all your own work
- Uncommon – a design that's not broadly recognised within a group of similar products

Registered

- Be new and your own intellectual property
- Not be offensive nor make use of protected emblems or flags (for example the Olympic rings or the Royal Crown)
- Not be an invention or how a product works



Images from <https://www.funkysealwetsuit.com/>



Performers Rights

Registration?

No

Duration?

50/70 years r

- A performer can be anyone who **acts, sings, delivers, plays in, or otherwise performs a literary**, dramatic or musical work.
- Requires consent from recorded individuals to be:
 - Recorded
 - Broadcast
- Performers get moral rights



Trade Secrets

Registration? No

Duration? No

- Before IP rights existed: there were trade secrets!
- Unlimited duration – can't be registered; but protected by law of confidentiality.
- Irn Bru – trademark, and copyright in campaigns.
- Irn Bru recipe one of best kept secrets in the world - only known to 3 people!





Data Protection Law

- UK General Data Protection Regulation (UK GDPR)
- Data Protection Act 2018

Personal Data

- Names, addresses and contact details about people whose records have been collected (including staff)
- Bank account details
- National Insurance Numbers
- Expressions of opinion about a person
- Fingerprints, CCTV footage
- Photographs and films
- Correspondence that can also reference others

Special Category Data

- Racial or ethnic origin
- Political opinions
- Religious or philosophical beliefs
- Trade union membership
- Genetic data
- Biometric data
- Health
- Sex life
- Sexual orientation

Lawful Basis (Personal Data)

(a) Consent (informed)

(b) Contract

(c) Legal obligation

(d) Vital interests

(e) Public task

(f) Legitimate interests

Data Protection Principles



Lawful, fair and transparent



Purpose limitation



Adequate, relevant and not excessive



Accurate and kept up to date



Kept for no longer than necessary



Secure maintaining integrity and confidentiality



Accountable

Open Access

- **Open access (OA)** is a set of principles and a range of practices through which [research](#) outputs are distributed online, free of access charges or other barriers.
- With open access strictly defined (according to the 2001 definition), or [libre](#) open access, barriers to copying or reuse are also reduced or removed by applying an [open license](#) for copyright.

What are licences?

- Tools to enable rights holders (or those authorised by them) to allow use of their property assets.
- A licence codifies expectations of each party
- Outlines what rights holder will allow another party to do
- Permitted uses of that material.
- Facilitates open access.

Role of Licences



Creative Commons



Licensing framework: over 2 billion items online



Clear, standard way to give permission to all users to share creative works



7 types of CC licences


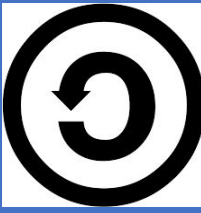

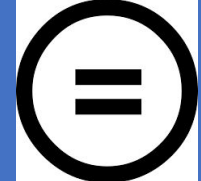


Person licensing content must have the right to do so



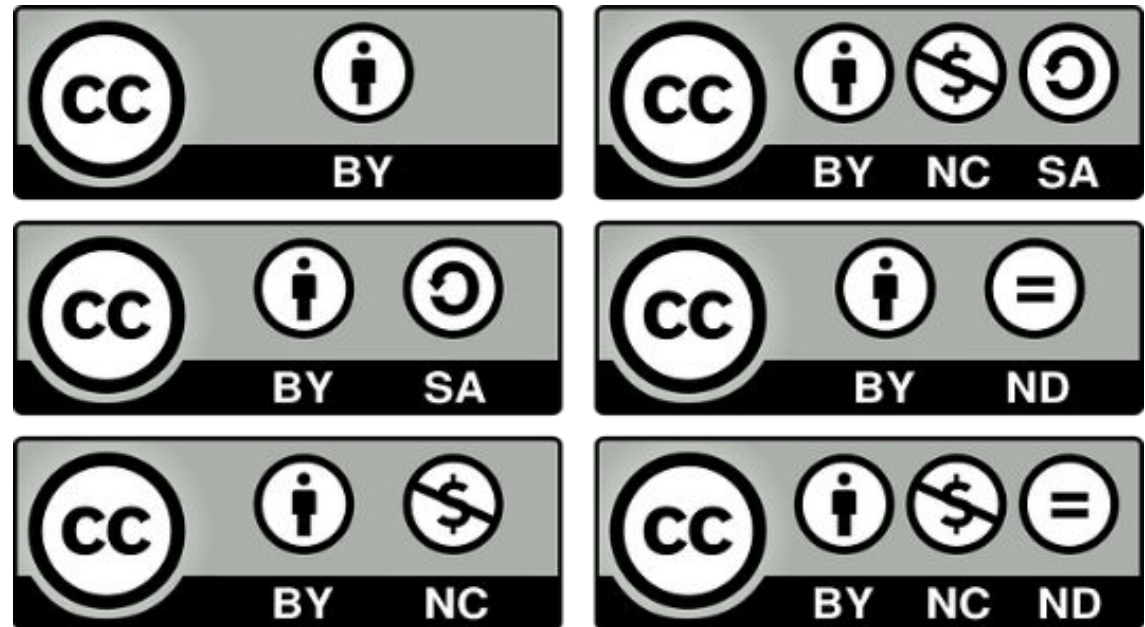
Can be used on any type of digital output

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Creative Commons and non-commercial

“Non-commercial means not primarily intended for or directed towards commercial advantage or monetary compensation”



Funders and Creative Commons licensing requirements

Funders and Creative Commons

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- CC BY NC
- CC BY ND
- CC BY NC SA
- CC BY NC ND



In practice...



This piece is part of a series on the South City Way Small Grants Fund. This fund was created to inspire community groups and charities to design artworks and gathering places which encourage walking and cycling. Find out more about the [South City Way](#).

Challenges

1. Collaboratively created works: who owns what rights?
2. Media rich content – multiplicity of rights & legal issues
3. Hierarchy: data protection trumps copyright
4. Issues of “informed consent”/power dynamics
5. Incompatibility between data protection and Creative Commons licences.
6. Ethics and copyright/DP not always compatible? (orphan works!)
7. Crediting multiple contributors: but how does that work with data protection issues?
8. What is non-commercial?
9. Seeking rights and resourcing rights clearance
10. Retention of personal data: what about children and parental consent

Useful resources

Intellectual Property Office - Intellectual property rights resources, information and updates on UK legislation:

[gov.uk/government/organisations/intellectual-property-office](https://www.gov.uk/government/organisations/intellectual-property-office)

Copyright User - A website providing guidance and resources about using copyright resources:

copyrightuser.org



Useful resources

Heritage Digital – an initiative aimed to increase the amount of free digital skills training and support available to heritage organisations:
charitydigital.org.uk/heritage-digital

The National Archives Data Protection Toolkit for Archives – a toolkit to help archivists deal with requests to access personal data found within an archive service's collection. Request to access the toolkit here:
nationalarchives.gov.uk/archives-sector/training-and-events/

naomikorn.com/resources

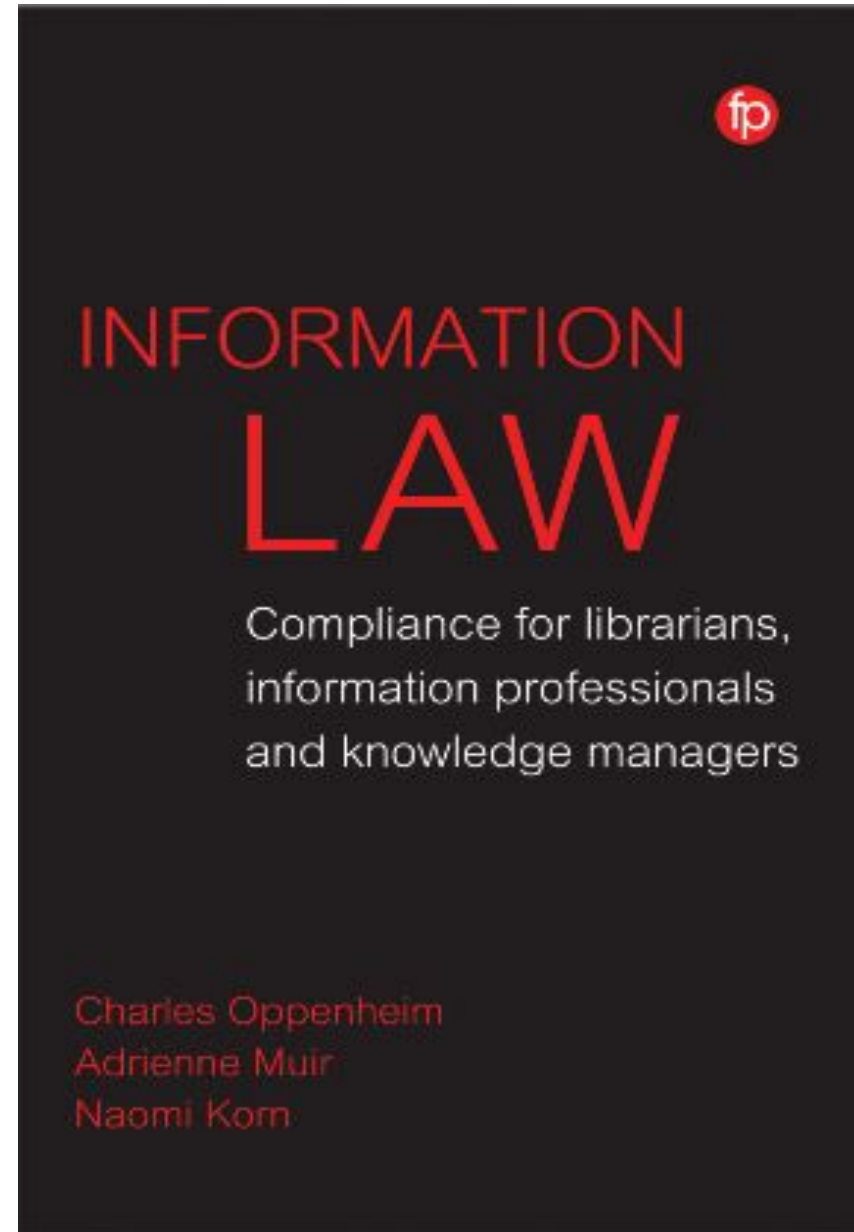


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