

# Write it Down and Beware the Freelancer

There has been a further High Court decision dealing with the question of when the law will imply contractual provisions that were not expressly dealt with by the contracting parties. It again adopts the "minimalist" approach – i.e. IF the Court is prepared to imply terms, it will only imply the bare minimum needed in order for the business transaction to make sense. In this case, this amounted to the difference between implying a term that the copyright should be assigned (which would have given the commissioner ownership), and implying a term that there should be an exclusive licence in favour of the commissioner (useful, but less than full ownership).

Wrenn and Integrated Multi-Media Solutions Ltd -v- Landamore. (2007) EWCH 1833 (Ch). High Court, Chancery Division (Robert Englehart QC as a Deputy Judge).

## **Context**

There are several important principles to bear in mind:-

- The first owner of software is its author (unless the author is an employee, in which case the copyright is owned by his or her employer).
- This is so, regardless of whether the software is written "on spec" or is produced as the result of a commission or other paid for order.
- Full ownership of copyright can only be transferred by way of written assignment (which can be prepared when the work exists, or before it is produced (by way of assignment of future copyright)). The court will sometimes be prepared to hold that the commissioner owned the "beneficial interest" in the work, which is effectively all the valuable rights in it, even without a written agreement. But it is safest not to rely on this.
- A licence (i.e. permission to use) a copyright work does not have to be in writing, though it is helpful evidentially if it is. But it does have to be "agreed".
- English contract law principles dictate that the legal essence of a contract between parties is limited to that which they actually agreed – i.e. in writing or verbally.
- It is only in very limited circumstances where the Court will imply a term – i.e. hold that a particular provision is in fact part of the legally binding contract between the parties, notwithstanding that they neither wrote it down, nor even expressed it verbally.
- One of these circumstances is where the disputed term must be there to give the relationship "business efficacy" – i.e. without it, the deal would make no commercial sense at all.

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### Facts

This was in essence a dispute between Mr Wrenn, who ran a company which exploited interface software, and Mr Landamore, a freelancer, who wrote the software for Wrenn. There were a number of different aspects, but basically Wrenn wanted access to the source codes and ownership; Landamore would not disclose them, wanted royalties and claimed ownership.

### Decision

In the end, most of the issues fell away because the Court found that the parties had, in fact, reached a binding settlement at an earlier stage, by which they had both agreed that the software was to be owned by a 50:50 company which they set up. The Deputy Judge did, however, examine the legal principles which would otherwise have been involved.

He found that on these facts, it was necessary to imply a term in favour of Mr Wrenn. However, he held that an exclusive license would be enough, and was not prepared to say that an agreement to assign full ownership should be implied. This follows the "minimalist" approach set out in the 1998 case of *Robin Ray -v- Classic FM*.

The Court also referred to another recent decision about software development (2006's *Clearsprings Management Ltd -v- Businesslinx Ltd*), where the parties had not dealt expressly with the relevant aspects. In that case, the Court was prepared to imply a licence, but only a non-exclusive licence – a reminder that the term which a Court might be prepared to imply will depend on the precise factual matrix, and what the Court deems to have been the bare minimum needed.

### Comment

The case is a further reminder of the need to deal expressly with important issues of IP ownership when entering into commercial relationships, and also of the fact that merely because someone commissions the creation of a copyright work – and pays for it in full – this does not automatically mean that he owns it.

Practical Tip for Businesses: review all arrangements with freelancers who produce copyright works for you, and check that a) there is a written agreement dealing with all important aspects, and that b) questions of copyright use and ownership are dealt with fully.

[Andy Millmore](#)

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Email: [andy.millmore@harbottle.com](mailto:andy.millmore@harbottle.com)

Tel: +44 (0)20 7667 5000