

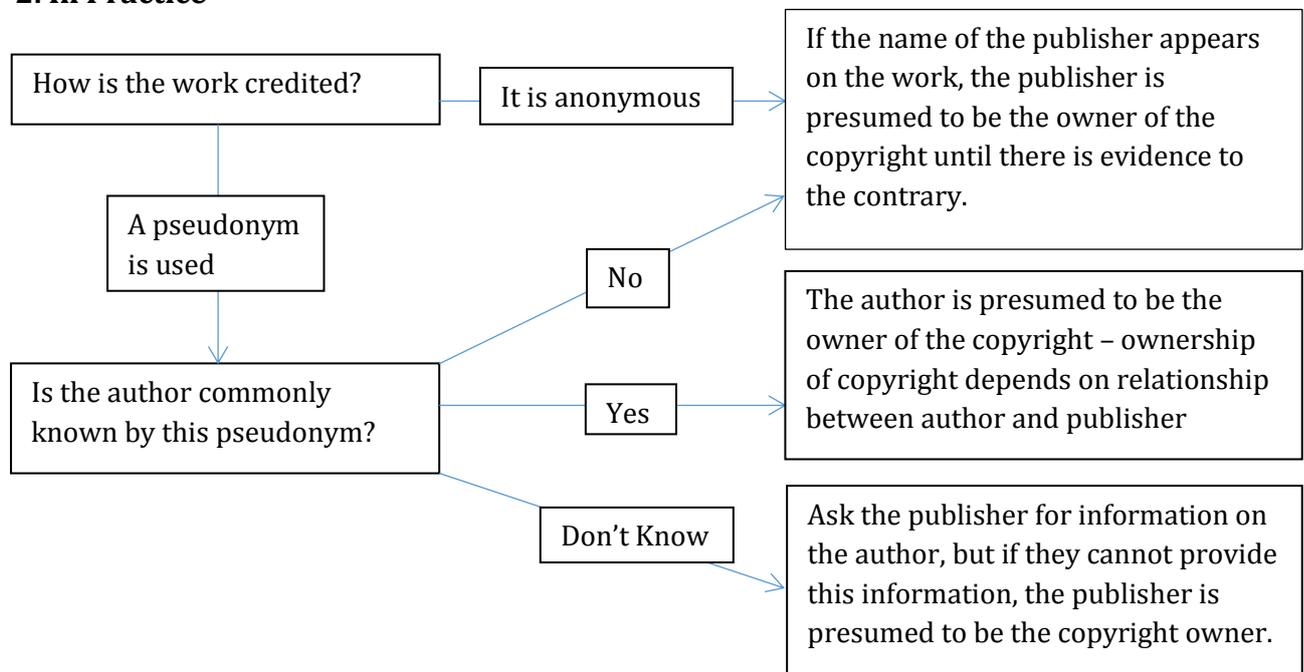
COPYRIGHT IN PSEUDONYMOUS AND ANONYMOUS WORKS

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1. Introduction

The use of pseudonyms has a long-standing tradition in newspaper and magazine publishing. *The Economist*, for example, operates a well-established practice of editorial anonymity in that all of their columnists publish under pseudonyms such as Bagehot, Lexington and Schumpeter.¹ This Guidance explains what is stated in the law about the authorship of works made under a pseudonym, and about the ownership of copyright in works created both anonymously and under a pseudonym, and considers the implications these presumptions have for rights clearance projects.

2. In Practice



Within the pages of the Edwin Morgan Scrapbooks examined as part of this research project, there is one letter, cut from a newspaper letters page, which has been published under a pseudonym: *Navigator*. In it, the writer relates the experience of seeing a mysterious 'aircraft'/UFO over Glasgow. So, what do the legal presumptions suggest about the copyright in the letter?

Regarding the initial presumption about ownership of copyright, the key question will be: is the pseudonym a name *by which the author in question was commonly known*? And this, of course, begs many other questions: commonly known to whom? Those who purchased and read the newspaper in question? Or would it be sufficient that the identity of the writer was known to his or her professional peers? As there are no

¹ However, the names of editors and correspondents are listed on the media directory pages of *The Economist's* website. Moreover, the authors of stories and articles published by *The Economist* are allowed to note their authorship from their own personal web sites.

reported UK cases addressing these issues, the answer is unclear. In this case, it seems likely that the choice of the pseudonym relates to the experience detailed in the letter, and that this was not a name normally used. However, it is impossible to say this definitively as the letter is taken out of context.

Practically, an obvious step is to ask the relevant publisher whether they can provide any details about the identity of the author. However, the law provides the publisher with an incentive *not* to investigate or disclose details about the author concerned: if the publisher cannot provide any details as to the identity of the author, and in the absence of any other relevant evidence regarding the identity of the author, s.104(4) of the *Copyright Designs and Patents Act 1988* (the CDPA) suggests that the publisher should be regarded as the copyright owner of the work in question. It may be in the publisher's best interests *not* to provide any details or information about the identity of the author concerned.

3. Legislative Context

The *Copyright Designs and Patents Act 1988* (the CDPA) sets out the presumptions concerning the authorship of published works, and the ownership of copyright in works of unknown authorship. These presumptions apply to works created both *before and after* the 1 August 1989, when the CDPA came into force.

4. Presumed authorship and pseudonymous works

Section 104(2) of the CDPA sets out that 'where a name purporting to be that of the author appeared on copies of the work as published or on the work when it was made, the person whose name appeared shall be presumed, until the contrary is proved – (a) to be the author of the work'.

A similar provision was contained in the *Copyright Act 1956*. However, s.20 of the 1956 Act specifically made reference to pseudonymous works:

Where, in the case of a literary, dramatic, musical or artistic work, a name purporting to be that of the author appeared on copies of the work as published ... the person whose name so appeared (if it was his true name *or a name by which he was commonly known*) shall, in any action brought by virtue of this Part of this Act, be presumed, unless the contrary is proved, (a) to be the author of the work (emphasis added).

Section 104(2) does not contain a similar explanatory clause regarding pseudonymous works. Should we interpret this to mean that s.104(2) does not apply to works published under a pseudonym? Almost certainly not; the recognition of the use of a pseudonym instead of the author's real name is acknowledged in both European and international copyright law.

Within Europe, A.5(a) of the *Directive on the Enforcement of Intellectual Property Rights* states that 'for the author of a literary or artistic work, in the absence of proof to the contrary, to be regarded as such ... it shall be sufficient for his name to appear on the

work in the usual manner'. Moreover, the inclusion of this presumption gives effect to 'the rule laid down in Article 15 of the Berne Convention'.²

The Berne Convention is the principal international treaty on copyright in literary and artistic works (the UK first signed the Berne Convention on 9 September 1886). Article 15(1) states that 'in order that the author of a literary or artistic work protected by this Convention shall, in the absence of proof to the contrary, be regarded as such ... it shall be sufficient for his name to appear on the work in the usual manner. This paragraph shall be applicable even if this name is a pseudonym, *where the pseudonym adopted by the author leaves no doubt as to his identity.*'

So, while s.104(2) makes no explicit reference to the use of pseudonyms, it is clear that the use of a pseudonym will give rise to a presumption of authorship so long as the name is one by which the author is commonly known (or, one that leaves no doubt as to the author's identity). Thereafter, the normal presumptions about the author being the first owner of the copyright in the work (or not) will apply.³

Conversely, when a pseudonym is adopted by which an author is not commonly known, or which gives rise to doubt as to the author's identity, the presumption in s.104(2) would not apply. In the absence of contrary evidence or proof, the work would fall to be regarded as, in effect, anonymous: a work of unknown authorship.

5. Presumptions about ownership of copyright in anonymous or pseudonymous works

For literary, dramatic, musical and artistic works published without the name of the author appearing on the work, s.104(4) of the CDPA states that if the name of the publisher appears on the work when first published, the publisher is presumed to be the owner of the copyright at the time of publication until the contrary is proved. However, this is merely a presumption; it will not apply in the face of evidence or proof of ownership lying with the author of the work (or indeed elsewhere).

What about pseudonymous works? Where the pseudonym provides a reliable (knowable) substitute for the author's name, then ownership of the copyright in the work will turn on details concerning the relationship between the author and the publisher.⁴

Where, however, the pseudonym is not a name by which the author in question was commonly known (or so long as the pseudonym leaves no doubt as to the identity of the author), the presumption in s.104(4) would appear to apply. That is, we should presume that the publisher is the first owner of the copyright in the work, subject to evidence or proof to the contrary.

² The Preamble to the Directive also sets out that as copyright 'exists from the creation of a work and does not require formal registration, it is appropriate to adopt the rule laid down in Article 15 of the Berne Convention, which established the presumption whereby the author of a literary or artistic work is regarded as such if his name appears on the work' (paragraph 19).

³ See, e.g., *Newspaper Articles: Copyright Duration and Ownership*.

⁴ For further commentary on work created by employees, employed journalists and commissioned works of art, see: *Newspaper Articles: Copyright Duration and Ownership*; and, *Photographs and other Artistic Works: Copyright Duration and Ownership*.

6. Legal References

Berne Convention for the Protection of Literary and Artistic Works, available here: www.wipo.int/treaties/en/text.jsp?file_id=283698

Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L 157), available here: eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32004L0048R%2801%29

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