

What Philatelists Need to Know About Copyright

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COPYRIGHT HAS INFLUENCE on everything philatelists do, including developing and giving their displays, writing articles or books, using images and using catalogues. It also has an impact on those that serve the philatelic community, such as stamp dealers, auctioneers and catalogue creators. This article covers the basics of copyright law from a UK perspective (other countries' laws are similar, but not identical), other intellectual property rights of relevance to philately before examining a few examples of how the law impacts those who inhabit the philatelic space.

What is copyright?

Copyright is an automatic right, which is created as soon as anyone makes something that is new – in other words, that has not been directly copied from a pre-existing artefact, or represents only a minor change to a pre-existing artefact. Copyright can apply to a wide range of artefacts, but of particular relevance to philatelists are words (as in an article for a magazine, the words in a book, the write-up on a display sheet, etc.), numbers (as in catalogue numbers, though they have peculiarities which are discussed further below), and images (known as “artistic works”), such as of stamps, covers, postmarks, a display sheet, photographs, drawings, etc.; there is no implication that they must have artistic merit. Another category is moving images (as in, for example, a video of a philatelic presentation). There is also protection for sound recordings, for dramatic works (such as the text of a play) and for musical works with musical notation, but these rarely arise in philately.

One doesn't need to register to get the protection copyright offers, and there is no requirement to put a copyright notice or a © attached to the artefact, though it is often useful to do so to flag up a warning to third parties, or, in some countries such as the USA (but not the UK), to be able to sue for infringement. In most countries in the world, the lifetime of copyright for published works is 70 years after the end of the year when the creator died. There are special rules for jointly created works, for anonymous or pseudonymous works, and for works that are “unpublished”. This term refers to works that have not been available to the public or a significant sub-set of the public, whether for free or for a fee.

The copyright lifetime for unpublished works can be exceptionally long. Unpublished works include letters, proofs, trials, preliminary artwork for stamps, many photographs and much else. In general, unpublished works are protected in the UK by copyright until the end of 2039, no matter when they were first created. Thus, even a 14th century letter will still be in copyright. How a philatelist can deal with this problem is discussed below. By contrast, published works include stamps issued to the public, printed ephemera, postcards, published catalogues and even postmarks if they have artistic merit. There are also special rules for so-called “orphan works”, i.e., a work that is in copyright but no one can trace who the owner is. Orphan works are discussed further below.

All the countries of the world are signed up to an international convention that sets minimum rules for the local copyright law. It sets the minimum term at life plus 50 years, but many countries, such as the UK, have made the lifetime longer. Once the creator dies, the copyright passes to their heirs and successors; ownership is discussed further below.

One important aspect of the convention is that copyright created in one country automatically gets protection in every other country. Thus, something created in, say, Japan, automatically has protection in the UK, and *vice versa*. The comments above about lifetime reflect broad principles. Unfortunately, there are some special cases with different lifetimes. These are not considered further here.

Copyright does not protect ideas that have not been recorded in some way, or simple facts – more on the latter below.

The most important right that comes with copyright is the right to do, or authorise others to do, so-called “restricted acts”. These acts include copying the work, issuing copies to the public, communication to the public by electronic means, renting or lending the work, performing the work (performers rights are considered below) and adapting the work. These rights end when copyright in the work expires, and the work is then said to fall into the public domain, and anyone can do what they like with it.

Perhaps the most important point to make is: *just because you own a physical object does not mean you own the copyright in it, and so, whilst you are free to display the item, you are not necessarily free to do things such as reproducing it.*

Incidentally, copyright applies to electronic materials in the same way as it does to more traditional materials. Thus, materials on the Internet are subject to the same rules as printed materials.

Other intellectual property rights of relevance

Copyright is one of a collection of different legal rights that are collectively known as intellectual property rights. Many of these are of limited or no relevance to philatelists, but a few are and need to be mentioned. **Patents** are rarely of relevance unless one is considering the history of a philately-related invention. For example, the first patent for an envelope-making machine was granted to Edwin Hill, the brother of Sir Rowland Hill, in 1845 (UK Patent 10,565 (1845) entitled “Manufacture of envelopes”). As a rule, copies of patents can be made for a philatelic talk, display or publication.

Registered trade marks can be important – for catalogue publishers, postal administrations, auction houses, manufacturers of albums and accessories, and stamp dealers. These prevent unauthorised use of their name or logo (or anything confusingly similar to it) by third parties. Numerous covers will include registered trade marks (which may enjoy copyright as well as being so protected) on illustrations or meter marks. It would not usually be an infringement of a trade mark to reproduce it in a philatelic publication unless the trade mark was owned by a philatelic organisation. The lifetime of trade marks is potentially infinite.

Performers rights are also important for those philatelists who give talks, presentations and displays. This gives the presenter the right to prevent unauthorised recording of and/or dissemination of their performance.

Moral rights, which are not applicable in all countries, give the creator the right to be identified as the creator, and the right to object to derogatory treatment of their work, such as by so amending it in such a way that it damages the reputation of the creator.

The most important right of relevance to philatelists other than copyright is **database right**. There is no copyright in a fact (“it is a fact that the SG catalogue number for the 1929 £1 PUC stamp is 438”, or “its current SG catalogue value is £1,100”), but there can be protection, in the form of copyright and/or database right, for a collection of facts. Such a collection of items gets copyright if it is original by reason of the selection or arrangement of the materials within it. Thus, a listing of (say), all stamps with a theme of dogs might well enjoy copyright because the creator has used their skill and judgement to decide a particular item is related to dogs, or is not.

However, a comprehensive listing, such as the country catalogues produced by Stanley Gibbons, Yvert & Tellier, Michel, Scott, or Facit, might involve little judgement in selection and arrangement, as they will cover all stamps issued by a postal-issuing authority in an obvious chronological order, and within that in face value order. They each have adopted a unique numbering system, and each will quote a different price for an item, but neither of these, in my view, constitutes sufficient originality for copyright protection.

However, such catalogues may well enjoy database right in those countries that offer it (primarily

EU member states) if the creator can show it has made a substantial investment in obtaining, verifying and presenting the contents. There is no need for catalogue producers to worry about this, as they own strong registered trade marks. Some implications of these rules for publishers of stamp catalogues are considered further below.

Ownership

The first owner of the copyright in a creation is normally the creator. However, if an employee creates the work in the normal course of their employee duties, or if the work has been specially commissioned by a third party, then copyright in what is created automatically belongs to the employer or whoever commissioned the work. Thus, for example, the artist who designed a stamp will normally have been commissioned to do so by a stamp-issuing authority, and so the latter will own the rights to the accepted design. However, if the artist submitted sketches to the authority before receiving the commission, then the artist will own the copyright in those sketches.

Copyright in text written by a catalogue publisher employee for their employer belongs to the employer. There are interesting questions for employees of bodies such as the British Library or The Royal Philatelic Society London as to whether works they have created is part of their employee duties or not. The copyright in the write up and presentation of pages from the Royal Philatelic Collection belongs to the Royal Family, as an employee of the Royal Family carried out the work as part of their employee duties. Any employee-created materials cease to enjoy copyright if more than 70 years have passed since the employee died, and assuming those pages have been displayed in the past (and have therefore been “published”.) Copyright in the images on an illustrated envelope will belong to the person who created the illustration.

Assignments and licences

Whoever ends up owning the copyright in the creation is entitled to either pass the ownership over to a third party, (assignment) perhaps for money, or to give permission to third parties to do some or all the possible restricted acts, again perhaps not necessarily for money (licensing) if they so wish. It is worth noting that a licence can be an explicit written agreement, or can be implied from custom and practice. Such agreements often happen when an individual writes an article for a philatelic magazine, or a philatelic monograph.

In some cases, a licence can be implied by the actions (or lack of actions) by a copyright owner in response to re-use of their materials. For example, there is an implied free of charge licence from stamp issuing authorities allowing third parties to copy and exhibit items for displays and magazine articles, but there is no implied licence to reproduce in order to defraud the stamp issuing authority by making forgeries!

A formal contract is always required in the case of a copyright assignment. Reproduction of covers may involve multiple copyright owners; the various components of a cover – the stamp image, the postmark, perhaps advertising material shown on the cover, etc., may have different owners. A person wishing to reproduce the cover might have to approach several different parties for permission to do so.

Where there is joint ownership, then each party has rights and responsibilities, which, in turn can sometimes mean one of the owners, cannot do things with the work without the permission of the other owner(s). This is a complex legal area and is not discussed further in this article.

Infringement and exceptions to copyright

If a third party does any of the restricted acts to all, or a “substantial part” of another person’s work, without permission, that third party is deemed to have infringed the copyright of the work. The copyright owner can then sue the infringer for damages, representing the financial loss for the copyright owner or the financial gain for the infringer, plus of course legal costs. In more severe or blatant cases, there may be criminal sanctions as well, such as fines or even prison.

What is considered “substantial”? Each case would be considered on its own merits; what is important is not the proportion of the original that has been copied, but its importance. With this, as with so many things in copyright, one has to make a judgement call.

For good public policy reasons, the law allows certain activities that would otherwise be infringement to be done without having to ask for permission or having to pay any fees. The major so-called exceptions to copyright from a philatelist’s point of view are: non-commercial research or private study; quotation of a small part; or criticism or review.

“Non-commercial” can cause a problem if the intention of the research is to create something that makes money, for example a priced monograph. It is much less likely to apply if the research is aimed at producing a magazine article, or in preparation for a philatelic display, where the presenter will at best get their expenses returned. Quotation can be for any purpose. Note that copying an item for criticism or review does not have to be criticising the item copied, and in any case “criticism and review” are terms that are interpreted generously. Another exception of relevance to philatelists is copying for non-commercial educational purposes (such as for a display or a talk one is giving).

There is also a specific exception for auction houses and sellers to reproduce artistic works, such as stamps, offered in an auction or for sale. This extends to online services such as Delcampe and eBay. In addition, philatelic libraries, such as that maintained by the RPSL, have an exception allowing them to make copies of items for bona fide researchers. It is likely that many readers of this article will have taken advantage of this. Any exception is a defence to be used if one is sued for infringement, but is not a guarantee of immunity.

Merely displaying a copyright item, such as in a competitive entry or as part of a philatelic talk, is never infringement as long as it is the original, and not a copy that is being shown. Even showing a copy of a copyright work in a display is likely to fall under one of the exceptions, so should be safe.

A particular problem: orphan works

Philatelists, especially those dealing with postal history, are likely to encounter older works that are still in copyright either because they are less than 70 years since the creator died, or because they are unpublished. Some of these may well be orphan works. Orphan works are works that are in copyright, but where it is impossible to identify or track down the copyright owner, and so there is no one to approach when seeking permission to carry out a restricted act on that work. The problem applies to all media, including photographs, films, broadcasts and textual materials.

However, all is not lost. They may well be justified in copying and reproducing the items under one of the exceptions to copyright noted above. In the UK, there are special permissions and licensing schemes available – see <https://www.gov.uk/guidance/copyright-orphan-works>. However, it must be said that these may not suit many philatelic needs.

The impact of copyright on those involved in philately

The protection of *stamp catalogues* is a particular complex area. As noted above, a collection of facts, such as is found in a typical catalogue, might have copyright protection, database rights protection, or no protection at all; arranging a comprehensive list of stamps in a catalogue in date order, and within that by value order, and with catalogue numbers in numeric order, may have no copyright protection. If, however, the catalogue includes comments and explanations, or if there has been some selection, choosing to include some stamps but not others, the catalogue will have copyright.

There may be database rights in stamp catalogues if the catalogue publisher has made a substantial investment in obtaining, verifying and presenting the contents of the catalogue. There will almost certainly be registered trade mark protection for catalogue producers. The catalogue producers will not own the images of stamps or postmarks reproduced in the catalogues, but they almost certainly have a licence from the relevant copyright owners to reproduce, or the images are so old that they are out of copyright.

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Le catalogue Mondial de Cotation

Le Tome de Référence des Catalogues - (Outil pour l'identification et le classement des Timbres-Poste)

I. - FRANCE, Émissions Générales des Colonies - (En couleurs. Parution annuelle)

Ibis. - TOM - Monaco - Andorre - Europa - Nations Unies - (En couleurs. Parution annuelle)

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OUTRE-MER

(Volume 1 Aden à Burundi)

(Volume 2 Caïmanes à Danemark)

(Volume 3 Dominique à Israël)

(Volume 4 Guinée-Bissau à Israël)

(Volume 5 Liban à Nyassaland)

(Volume 6 Océan Indien à Océan Indien)

(Volume 7 Seychelles à Zambie)

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Le Catalogue Mondial des nouvelles émissions

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Le Catalogue des Timbres Fiscaux

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Figures 1-3. Copyright announcements in Facit, Yvert & Tellier and Stanley Gibbons stamp catalogues.

Are catalogue producers justified in the copyright claims they make (see Figures 1–3)?

Catalogue publishers rightly want to stop third parties offering similar catalogues by copying the effort they have put in. However, the correct wording for their statements should be along the lines of “Except as permitted in law, no part of this catalogue.....”

A second group of players are **auction houses**, as well as related online services such as eBay and Delcampe. In many countries’ laws, they are explicitly allowed to make available images of their offerings without risk of infringement. In the UK, the exception is only for artistic works, which will include stamps, but curiously does not cover written works. Thus, in theory, the auction houses might be infringing copyright if they reproduce an image of, say, an old letter, in their catalogue. They can also get copyright in their catalogues, see, e.g., Figure 4.

In the case of **philatelic displays**, it is usual in most countries for copying and then displaying that copy to be deemed not infringement. This is despite the fact that, depending on the age of the materials, some of the materials on any given page may be in copyright (belonging to the stamp designer and/or the issuing postal authority) and some may be out of copyright. The exceptions for education, and for criticism or review are likely to apply, but this might not be the case of competitive displays where the purpose may be to gain a trophy or cash prize. However, I consider the risk of copyright problems in all displays to be extremely low.


If a display of a set of sheets is recorded and subsequently made available to the public, such as those provided by the RPSL¹, then again the exceptions for criticism or review, or for copying for

educational purposes, will apply. Copyright in live streaming, or recording and replaying, of a philatelic display is considered below. Some of the pages of a display may contain maps, images, etc. They, too, may or may not still be in copyright. Text added by the person giving the display will almost certainly be the copyright of that person, unless they have copied it directly from another source. The way the material has been organised and presented is also arguably the copyright of the display’s owner (as an artistic work).

Overall, the person giving the display can generally rely on an implied licence from the copyright owner of any specific items shown, though reproduction of a copyright map in a display might well require specific permission from the map’s copyright owner. Those who prepare and give displays will (unless giving the display on behalf of their employer) own the copyright in the text and layout of the display.

Philatelic libraries, such as that of the Royal, or of the British Library, have explicit permission to make copies of items in their collections and to supply said copies to requestors under the local library exceptions to copyright. The only problem that might

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Figure 4. Copyright announcement in an Eastern Auctions catalogue.

arise is if a requestor needs a copy of an item for their commercial (as opposed to non-commercial) research.

Authors of philatelic books and articles must ensure that what they write is not copied from a different source (this is called plagiarism) and that they either have permission to copy any third party text or images they reproduce if such copied material is still in copyright, or the material is so old to be out of copyright, or they are covered by one or more of the exceptions to copyright.

Philatelic monograph and magazine publishers must ensure that everything they publish is clear of potential copyright problems. They therefore will normally require authors submitting material for publication to provide a warranty that confirms that nothing the author has supplied will infringe copyright (or any other law, such as data protection, defamation, and official secrets) and that the author indemnifies the publishers against all costs should it turn out that the warranty is mistaken. They may or may not require the author to assign copyright in the work to the publisher, or may be content simply with a licence to reproduce, with the author retaining their rights; it would be a mistake to rely on implied licences for a monograph, but implied licences are not uncommon in philatelic magazine publishing.

If the publisher amends the work in any significant way before publishing, they risk infringing the moral rights of the author, and so should always check that the author is happy with the amendments. Moral rights kick in if the changes are such that they damage the reputation of the author, for example, amending the text in such a way that it completely changes the argument the author was trying to make.

Philatelic magazines publish a mixture of articles, reports of meetings, diary dates, etc. They may not have a formal contract with their contributors. If they do not, it is safe to assume that the author of a piece owns the copyright in the work (unless it was written by an employee of the publisher as part of their employee duties) and that the author has granted the publisher an implied licence to reproduce the item. It should be noticed that anyone who wishes to reprint an article published in the LP must have the permission of the author, the Editor and the RPSL, and they should contact the Editor for further instructions.

In addition to the various copyright issues raised by philatelic displays, another needs to be considered if the display is being **live streamed or video recorded** and that recording is then made available online, e.g., on YouTube. The person giving the display has performers rights in their performance (for that is what it is), and so has the right to control the reproduction of that performance. This means that explicit permission to record must be sought from the person giving the display in advance of the event. Such explicit permission should also cover any data protection issues that might arise. If the screening or recording shows any members of the audience, then they too should be asked to sign a statement that they agree to be so included, to avoid any data protection problems that, however unlikely, might arise.

Stamp designers might be freelance, or employees of the stamp issuing authority. If freelance, they will own the copyright in their designs, but no doubt agree to assign this copyright to the stamp issuing authority in return for a fee. They may, however, retain copyright in preliminary sketches, unless they have agreed to assign copyright in these as well. The same applies to designers of first day covers, of illustrated covers and of postmarks. If the designer is an employee of the authority, then automatically the copyright belongs to the employer.

Any organisation that scans or otherwise copies materials for **preservation purposes** will probably be able to do so because of relevant copyright exceptions, but putting the resulting scans on, say, a web site might be problematic.

The copyright status and lifetime of **stamps** can be complex. They are considered to be artistic works in law. In some countries, stamps are government works that are not protected by copyright, although there may be restrictions on the ways in which the stamps can be used. In other countries

where the stamp-issuing authority is not a government agency, they are protected by copyright. The copyright term is based on the life of the contributors to the stamp design.

Copies of items for sale produced in brochures produced by *stamp dealers* enjoy the copyright exception that protects stamp auctioneers (see above), but if offering manuscript material, they do not have that exception to rely on; however, they are most unlikely to be sued by copyright owners. If something is posted on *the web*, it can get widely copied and disseminated. Some caution is required if reproducing something taken from the web. In particular, one should check if the material is available under a creative commons licence (such as everything on Wikipedia is). This says, in effect, “I retain the copyright, but feel free to reproduce this at no charge.” There are several types of creative commons licence and you should be careful to follow the rules associated with anything you use which is under such a licence. The rules are explained at <https://creativecommons.org/share-your-work>.

Forgeries, in addition to being instruments of fraud, are also often copyright-infringing.

Services such as www.artstamped.com, which produce *images using stamps*, own the copyright in the images they create, and are probably not infringing copyright by using the previously issued stamps.

Copies produced by *expert committees* are not infringement because they are being used for criticism and review of the item being expertised.

When is it OK to copy?

- If the work is so old that it is out of copyright. It is reasonable to assume that anything that has been published and is more than 125 years will be out of copyright. (But a recent edition of an old work may still be in copyright if the creator of the new edition has added notes or commentary). However, unpublished materials are probably still in copyright no matter how old they are, as noted above. These should not be copied without consideration of risk management.
- If the amount copied is so small to be considered “insubstantial”. (But remember that “substantial” is measured in terms of both length and importance of what is copied, so care is needed).
- If the copyright owner has granted permission. This may be because the user has obtained a licence to use the materials (perhaps by asking the copyright owner directly), or because the copyright owner has granted a free of charge licence, such a Creative Commons, to all.
- Where the copying is under an exception to copyright, such as for non-commercial research or private study. This will not apply if the purpose is for financial gain, for example to earn royalties, but would apply when the purpose is clearly non-commercial, such as an article in a philatelic society magazine, which involves no payment.
- There may be an implied licence permitting copying of what can be found on the web, but readers should not assume that just because it is on a web site that it is acceptable to copy the materials. Check the terms and conditions of the web site (if any) and whether it is reasonable to assume the copyright owner (who may not be the same as the organisation running the website) would grant permission to copy.
- Government-issued outputs, including Acts of Parliament, statutory instruments, official advice notes, patent specifications and much other material produced by the government, etc. can be freely copied.

Some previous cases of copyright in philately

Copyright infringement in philately is not new. In 1867, the Belgian stamp dealer and journalist H Moens noticed that his journal was regularly copied by a French journal without acknowledgement.² Moens published an article announcing a fictitious issue of stamps by a commune called Moresnet, which is a village on the border between Netherlands and Prussia. The author of the article was “S Neom” (Moens backwards). The French magazine not only copied the announcement but also even offered the fictitious stamps for sale. More details about this case can be found in Anon (1882);

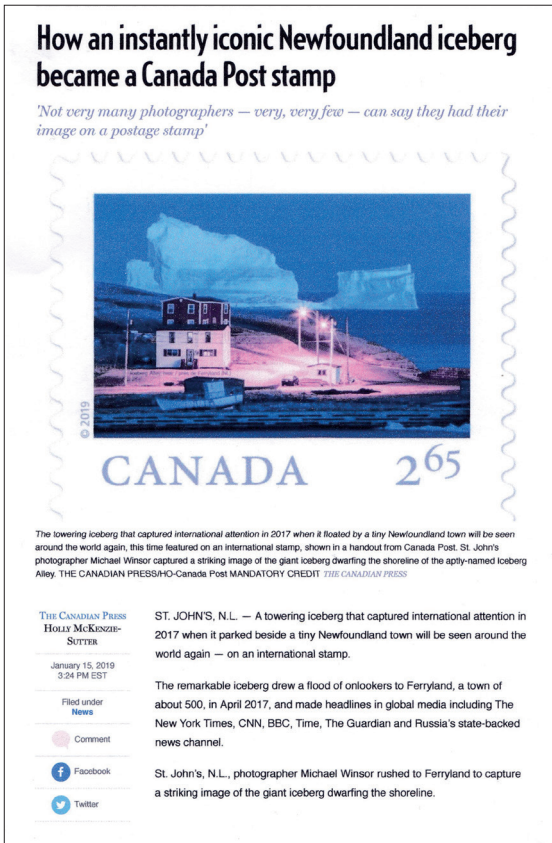


Figure 5. The *National Post* article in the Internet.

I suspect they will continue to grow bolder and before long sets with Disney characters will appear.” It is of course possible, but very unlikely, that Disney is unaware of such stamp issues.

An article from the *National Post* at <https://nationalpost.com/news/how-an-instantly-iconic-newfoundland-iceberg-became-a-canada-post-stamp> relates to the reproduction in a 2019 Canada stamp of a photograph taken by freelance photographer Michael Winsor. It is shown in Figure 5. Presumably, Canada Post obtained a licence to reproduce the image from Mr Winsor. The stamp shown in the figure has the legend “© 2019” on its lower left and is probably the joint copyright of Mr Winsor and Canada Post, the latter having chosen the shape, size, layout and typography of the stamp. To make matters even more complicated, The Canadian Press owns the copyright in the text of the *National Post* article.

Finally, Farley Katz (2019) has drawn attention to the remarkable similarity between early stamp designs for Mexico and the design of the 1851 issue of the USA. No one complained at the time, but the USA would have been justified in complaining about copyright infringement by Mexico.

Summarising it all

Copyright is a complex subject; the advice given below tries to encapsulate the issues I have raised.

1. Just because you own a philatelic item does not automatically give you the right to reproduce it.
2. In most cases, the risk involved in copying and reproducing philatelic materials is very low. For example, reproducing copies of materials in a display is very low risk.
3. Anyone who writes a philatelic article or displays portions of their collection should be aware that they own the copyright, and potentially other rights, in what they have created. If they feel they have been plagiarised, or someone has made unfair use of their materials, the law gives them the power to sue. I am not aware of an example of a philatelist suing for infringement. I would welcome notification of any cases readers are aware of.

Patrick Maselis (2018) discusses the philatelic history of Moresnet, including Moens’ outing of plagiarists.

There is a controversial Lithuania-based stamp-issuing agency, Stamperija (www.stamperija.eu), that has for more than a decade been responsible for producing numerous miniature sheets from countries such as Angola, Burundi, Cape Verde, Central African Republic, Comoros, Ethiopia, Guinea, Guinea-Bissau, Ivory Coast, Maldives, Mozambique, Namibia, Niger, São Tomé and Príncipe, Solomon Islands, Togo and Uganda. In a recent article (Anon, 2019), it was noted that Stamperija had started to produce stamps showing images that infringe Disney’s copyrights.

The article stated “Disney’s lack of legal action against the producers and sellers of illegal stamps seems to indicate that little or nothing will be done to curtail Stamperija’s new issues. Why they are not suing these producers is unclear as Disney is well known for taking legal action against any minor infringement of their copyrights.” The article concludes, “As long as Disney does not object and try to sue these issuing entities, I

4. My advice for potential authors of articles in *The London Philatelist* is that legal risks in reproducing copies of philatelic materials in such articles are low, but authors should be particularly cautious about reproducing maps, photographs and other images originally created by a third party. The risks for authors of books (which will earn money for the publisher and/or author) are somewhat higher than for journal article authors, and so I recommend a cautious approach be adopted by such authors to using third party materials.
5. I am not a lawyer and this article offers indicative advice only. Nonetheless, I would be happy to give informal advice to any reader on a copyright-related issue. I can be contacted through the editor of *The London Philatelist*.

End notes

1. A typical example can be found at http://www.rpsl.org.uk/documents/displays/DISP_20181122_001.pdf, includes images that are probably still in copyright.
2. Many thanks to Jeffrey Stone for drawing my attention to this case.

References

1. Anon (1882), “Moresnet”, *The Stamp News*, Volume 1, No. 6, June 1882, p47–48.
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To find out more

There is no easy guide to copyright and related rights. However, a free of charge user-friendly introduction can be found at www.copyrightuser.org.

A useful source of information regarding the copyright status of stamps of many individual countries can be found at https://commons.wikimedia.org/wiki/Commons:Stamps/Public_domain

An approachable official overview of UK copyright basics can be found at <https://www.gov.uk/topic/intellectual-property/copyright>, whilst similar information about other national copyright laws can often be found at the web sites of other national copyright offices.

<https://www.rightsdirect.com/international-copyright-basics/> provides a good summary of copyright principles throughout the world.

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