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**SALLY RAMAGE**

**Copehale, Coppenhall,  
Stafford, United Kingdom**

**Tel 01785-244725**

**Fax 01785-228281**

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*'Blackstone's Custody Officers' Manual, Oxford University Press (2008)', publication reviewed by Sally Ramage*

# What criminality can be committed in the area of design intellectual property law?"

By Sally Ramage

## Introduction

A design is an artistic work. An artistic work means a graphic work; a photograph; a sculpture; a collage, all irrespective of artistic quality. A work of architecture is an artistic work. Graphic work includes any painting, drawing, diagram, map, chart, plan, engraving, etching, lithograph, woodcut or similar work. Intellectual property (IP) can allow you to own things you create in a similar way to owning physical property. You can control the use of your IP, and use it to gain reward. This encourages further innovation and creativity. Designs protect the visual appearance or eye appeal of products. The United Kingdom Patent Office is now called the UK IP Office and is situated at Concept House, Cardiff Road, Newport, South Wales, NP10 8QQ, and United Kingdom. To register a design, the application form and fee must be sent to the UK Intellectual Property Office, Designs Registry, Cardiff Road, NEWPORT, South Wales, NP10 8QQ.

## Registering a design

Many brilliant people design things and miss the just rewards of their work because they fail to register their designs. If you are the creator of a design, you will be regarded as the owner of that design and entitled to apply for design registration. In the United Kingdom designs are protected by three legal rights- registered designs which give you the right to stop anyone copying or using your design in the United Kingdom for up to 25 years; an automatic design right when you create an original design which stops anyone copying your design for up to 15 years and automatic copyright protection against illegal copying. The Forms that must be completed are Form DF2A and the £60 Fee Form, after which your design will be examined and you may have to make

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amendments to your application, should the examiner object to certain aspects of your application. By registering a design, the proprietor obtains the exclusive right for 25 years (provided renewal fees are paid every 5 years) to make, offer, put on the market, import or export the design, or stock the product for the above purposes. With no objections, a design can be registered, in pursuance and subject to the provisions of the Registered Designs Act 1949, after which your registered design becomes a valuable piece of property. Sections (1) and (2) of the Act states:

*“(1) A design may, subject to the following provisions of this Act, be registered under this Act on the making of an application for registration.*

*(2) In this Act “design” means the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture or materials of the product or its ornamentation”.*

Your registration is renewable every five years for up to twenty – five years. Copyright may exist in designs, and will principally protect documents detailing the design as well as any artistic or literary work incorporated within the finished product. Design rights exist independently of copyright, while copyright may protect documents detailing the design as well as any artistic or literary work incorporated within the finished product, the design right focuses more on the shape, configuration and construction of a product. For UK designers, both the UK and EC rights can exist at the same time. Registered design rights have a broader application to manufactured articles than the unregistered design right. Graphic symbols and typefaces can be registered. The aspects of appearance of the whole or part of a product, resulting from features lines, contours, colours, shape, texture or materials of the product or its ornamentation can be registered, provided it is novel and it has an individual character.

### **Designs may remain unregistered**

If you have not registered your IP rights, you may be still able to take action under common law of "passing off".

### **Design: a valuable intellectual property, which should be protected**

The design process begins with a brief setting out of the aims and objectives of a project and outlining certain targets and parameters for its completion. Designers and in particular product designers use computers to perform a wide range of tasks including communication, visualization and 3D modelling. Computers are used to create storyboards that respond to the client's brief, to collaborate with one another and other professionals and to design appropriate prototypes. The design process includes the development of a design specification in

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collaboration with the client. Designers make use of brainstorming methods, including the use of databases of images found on the internet, sketches and diagrams. Designers use mind maps as a powerful graphic technique, which provides a universal key to unlock the potential of the brain. Developing mind-mapping applications built on this concept can be used to assist the design process. The mind map is used to assist the generation of ideas using a non-hierarchical structure. Evaluation of the ideas generated takes place after the completion of the process. They use hand tools to produce 3D models and concepts to explore new product ideas. When designers first start thinking about a project, they often create visual presentations that include keywords from the client's brief combined with related images.

### **Design bespoke to the brief**

If the client is undecided, the designer has to create several storyboards of the product from which the client can choose. The storyboard contains important keywords from the client's brief as well as images gathered from either image databases on the Internet or from magazines and brochures. The designers use these images to help clarify the brief as well as to visualize the product. These images may be related to the key words in terms of shape, weight or material. As soon as the client agrees with the contents of the storyboard, the next stage would be the creation of the prototype. This is either in a two or three-dimensional form with the help of CAD software, or as a three-dimensional foam model. Designers prefer to use foam models rather than a CAD model. Foam models provide a more tactile experience, giving an advantage over CAD models that may however be more adaptable and easy to modify. The description above illustrates the hard word put into a design and therefore the value in a design. It is therefore a misnomer that a potential contractor might ask a designer to sign a confidentiality agreement when he gives him a brief to produce a design from his client's idea. The idea in English law has no value whatsoever. It is the design that has the value. Anybody can have ideas but not anybody has the skill and the knowledge to put an idea into a conceptual form. Such a confidentiality agreement is an unfair contract under the Unfair Contract Terms Act. British university used to think until recently that all students registered at that university produce all work which copyright the university owns. This is quite misleading, illegal and untrue. A confidentiality agreement can only stop the idea given to the subcontractor for designing that idea, to keep the idea out of the public domain. If however such an idea is a common one in the public domain, the obligation of confidence ends. The status of this idea will be a question of fact and as the use of the internet increases, it will be increasingly difficult for a claimant to establish that information known in one place is confidential elsewhere. In the case *Attorney General v Guardian Newspapers* [1987] 1 WLR 1248, the House of Lords held that once information was

in the public domain, the courts could not restrain further publication, even if the information entered the public domain via a breach of confidence. If a potential contractor or employer requires a design drawn in order to see whether a potential employee is good enough for his employ, and if that potential employer makes the potential employee sign a confidentiality agreement, , it is avoid and illegal and invalid agreement. The parties in this case are NOT in any contractual or fiduciary relationship. The potential employee is deemed an indirect recipient of information/idea and the potential employee is NOT party to any relationship of confidence. See the case *Coco v Clark* [1968] FSR.

### **Intellectual Property Rights**

Intellectual property stems from the exercise of the mind and enjoys legal protection. It is intangible and created by intellectual efforts of people having creativity. It is accredited in various forms viz. copyrights, patents, trademarks, designs, trade secrets and geographical indications. The intellectual capital is the bedrock and driving force for creating the intellectual property in addition to the financial capital and infrastructure. An individual who creates or directs another individual to create intellectual property has a right on such property as in the case of ownership of tangible property. They are treated as personal property and others are excluded from using them without prior permission. The responsibility to protect the intellectual property rights lies with the Government. It enacts legislations to recognize and protect the intellectual property. The modalities of recognition and protection of the intellectual property rights may differ from one country to the other. With the establishment of WIPO, the processes and systems have gained momentum. The fundamental requirements, such as novelty, non-obviousness and utility of the inventions are causing problems for the grant of Intellectual Property rights.

### **Conclusion**

As an intellectual property (IP) owner, you are responsible for managing your IP. You must decide how, or if, you want to use your IP. To make your protection as secure as possible, always renew your IP on time. You can use your intellectual property (IP) like any other form of property. You can use your IP as security for a mortgage. You can license your IP so that other people can use it. You must show you have protected your IP, to stop other people from using it

without permission. Keep your IP Registration Certificate safe. You can use copies of your IP documentation to support your case in legal proceedings.

## **Book Review by Sally Ramage Blackstone's Custody Officers' by Huw Smart; Oxford University Press, 2008.**

With 540 pages, sixteen chapters and up-to-date cases and statutes, Police Inspector Huw Smart has managed to fit in yet another police-training book into his year. The author states that this book's main purpose is to provide access in one place to all the legislation and procedures that affect custody officers.

### **Now to test drive the manual.**

The short table of cases consists of cases from 1983 to 2003. The author did not state the date to which the law in his book is valid.

### **Incomplete List of Caselaw:**

*The application of Reynolds) v (1) Chief Constable of Sussex*

**(2) Independent Police Complaints Commission [2008] EWHC 1240 (Admin)**

In the case of *The application of Reynolds) v (1) Chief Constable of Sussex (2) Independent Police Complaints Commission* [2008] EWHC 1240 (Admin), an arrested person had fallen into a coma in police custody and it was necessary, for the purposes of carrying out an effective investigation, to investigate whether the injury causing the coma had been caused whilst the victim was in police custody or before he had come into contact with the police, it was the Independent Police Complaints Commission which was under a duty to carry out that investigation.

This could be included in Chapter 3, "Risks Assessments and Clinical Attention". There is also the case in August 2008 involving an epileptic who died shortly after being released from police custody raises several lessons for those with responsibility. A man who suffered from severe epilepsy was arrested on suspicion of shoplifting. He appeared vacant and unresponsive at the time and the officers arresting him thought he was drunk or on drugs. At the station, he did not reply to questions. The custody officer completed a risk assessment but this was not recorded

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within the NSPIS custody record. The custody officer called in the FME who authorised the man's detention and arranged for half-hourly checks on him. The FME examined him again shortly after. He gave instructions that the detainee's medication should be recovered from his home and recommended to the custody officer that an appropriate adult represent the detainee and that the half-hourly checks continue for as long as he was detained. Custody staff recorded these recommendations wrongly. The custody officer took no action on an appropriate adult because he thought there was no need for one until some action in respect of a detainee, for example an interview, was intended.

Officers who went to the detainee's home could not gain access, so were unable to recover the detainee's medication. When the detention officer entered this on the custody record, he used a terminal where another colleague was logged on without recording that the entry was his. When the FME next examined the detainee, he concluded he had had an epileptic fit, was in a post-convulsion state and still not fit for interview, though not needing admission to hospital. Subsequent visits by custody staff were not all entered on the custody record. The custody officer decided to release the detainee on bail. He did so without establishing what advice the doctor had given following his latest examination, although he knew it had taken place and was aware that the detainee was not fully fit. He was slow and shuffling on release and looked vague and confused. He was taken to the rear entrance, given his property and told he had enough money on him for a taxi. He walked away from the gate shortly after midnight but he was seen about ten minutes later walking round in circles in an adjacent car park. The man was subsequently found dead in thick bushes some 200 metres from the police station. He appeared to have died shortly after release from custody and lain undiscovered for two weeks.

Key lessons are that efforts to identify and contact an appropriate adult should be made immediately (the duties of an appropriate adult include ensuring that detainees understand their rights, helping check documentation, advising and assisting detainees and helping facilitate communication); risk assessments should be completed as early as possible, even if a detainee is unable to participate; the need for detainees to be risk assessed prior to release; when using another person's log-on custody staff should add text identifying the individual responsible for the entry; FMEs regularly used by forces should be trained to enter observations and recommendations into the electronic system themselves; custody officers should sign the Medical Attendance Register as soon as practical after completion and in any event before the detainee is released.

***R (on the application of Lotfi Raissi) v Secretary of State for the Home Department* [2008] EWCA Civ 72**

In the case of *R (on the application of Lotfi Raissi) v Secretary of State for the Home Department* [2008] EWCA Civ 72, it was held that the *ex gratia* scheme operated by the Secretary of State for the Home Department for the payment of compensation to those detained in custody following a wrongful conviction or charge applied to those detained in the context of extradition proceedings. (There is no chapter, which deals with the after-effects of custody).

***R (on the application of G) (Appellant) v Chief Constable of West Yorkshire (Respondent) & Director of Public Prosecutions (interested party)* [2008] EWCA Civ 28**

In the case of *R (on the application of G) (Appellant) v Chief Constable of West Yorkshire (Respondent) & Director of Public Prosecutions (interested party)* [2008] EWCA Civ 28, the Police and Criminal Evidence Act 1984 section 37A did not invest the Director of Public Prosecutions with authority, through the issue of guidance, to extend the powers of police officers to keep a suspect in detention. The detention of a persistent young offender for three hours whilst a custody officer sought advice from the Crown Prosecution Service as to what offences the offender should be charged with, was therefore unlawful. (This could be dealt with in Chapter 8, “Reviews and Relevant Time”).

***R (on the application of Torres) v Commissioner of Police of the Metropolis* [2007] EWHC 3212 (Admin)**

In the case of *R (on the application of Torres) v Commissioner of Police of the Metropolis* [2007] EWHC 3212 (Admin), it was held that Police and Criminal Evidence Act 1984 section 37 applied to every occasion when a person under actual or deemed arrest was produced to a custody officer, and therefore it was lawful for a suspect, following his initial arrest and detention at a police station but prior to charge, to be granted police bail with conditions attached. (This could be dealt with in Chapter 15, “Bail”).

***G (Claimant) v Chief Constable of West Yorkshire (Defendant) & (1) Director of Public Prosecutions (2) Secretary of State for the Home Department (interested parties)* [2006] EWHC 3485 (Admin)**

In the case of *G (Claimant) v Chief Constable of West Yorkshire (Defendant) & (1) Director of Public Prosecutions (2) Secretary of State for the Home Department (interested parties)* [2006] EWHC 3485 (Admin), the claimant's claim that the police had unlawfully detained him for three hours in a police station was dismissed, as a custody officer was entitled to detain a suspect for a reasonable period whilst seeking advice from the Crown Prosecution Service on the appropriate

charge. Following this recent Court of Appeal decision, it is possible that police forces will be subject to claims for damages from suspects who were kept in police detention, pending a decision from the Crown Prosecution Service as to whether they should be charged, during the period 29 January 2004 to 14 January 2007. The facts of the case were that G, a persistent young offender, had been arrested on suspicion of having committed assault occasioning actual bodily harm. A custody officer decided that G should be detained pending a decision from the CPS as to whether he should be charged, arguing that he had the power to detain G for this purpose because Section 37A(3) of PACE required custody officers to have regard to guidance issued by the DPP. G's legal representative informed the custody officer that there was no proper basis for detaining G, as there was sufficient evidence to charge him and that, in accordance with Section 37 of the Police and Criminal Evidence Act 1984, G should be released on bail or charged. G was detained for three hours before being charged with affray and common assault on the advice of the CPS, but not for assault occasioning actual bodily harm. G applied for judicial review of the custody officer's decision to detain pending being charged. The High Court held that the detention was lawful. The Court of Appeal's decision was that Section 37A of PACE did not invest the DPP with authority, through the issue of guidance, to extend the powers of police officers to keep a suspect in detention; and the detention of G whilst advice from the Crown Prosecution Service was sought as to what offences he should be charged with was therefore unlawful. (This could be dealt with in Chapters 2 and 10, "Detainees-Initial Reaction" and "Detained Person's Welfare").

### ***R v CF*, [2006] EWCA Crim 3323**

In the case of *R v CF*, [2006] EWCA Crim 3323, the judge had been wrong to rule that a police cell came within the exception to the Public Order Act 1986 s.4A(2). A police cell was a place where a person was detained in custody, not a place that a person occupied as living accommodation within the meaning of s.8 of the Public Order Act 1986.

(This could be dealt with in Chapter 10, "Detained Person's Welfare").

### ***R (on the application of M) v Gateshead Metropolitan Borough Council*, [2006] EWCA Civ 221**

In the case of *R (on the application of M) v Gateshead Metropolitan Borough Council*, [2006] EWCA Civ 221, it was held that the duty to provide accommodation under the Children Act 1989 section 21(2) (b) in response to a police custody officer's request under the Police and Criminal Evidence Act 1984 section 38(6) was imposed on the local authority that received the request. Although section 21(2)(b) of the 1989 Act imposed an absolute duty on a local authority to receive and provide accommodation for children whom they were requested to receive under section 38(6) of the 1984 Act, it did not impose an absolute duty to provide

secure accommodation.

(This is a Chapter 14 issue. Chapter 14 deals with “Continued Detention after Charge”).

***R (on the Application of Leon Wilson) v Secretary of State for the Home Department, [2004] EWHC 2462***

In the case of *R (on the Application of Leon Wilson) v Secretary of State for the Home Department*, [2004] EWHC 2462, permission was granted to apply for judicial review of the Secretary of State's decision not to hold a public inquiry into a death in police custody, where there was an arguable case that the Secretary of State had taken into account the European Convention on Human Rights 1950 Article 2, although not obliged to do so, but had misdirected himself in the course of concluding that the requirements of Article 2 of the Convention had been met. In the case *The Queen on the application of Linda Mullholland v HM Coroner for St Pancras [2003]*, concerned John Bunker, aged 46, who was estranged from his family and of no fixed abode. This was an alleged shoplifting case and Mr. Bunker was held down and became unconscious. After an ambulance was called and was declined by Mr. Bunker, the police van took him to Albany Street police station. He was taken to the custody suite, where he vomited, and Police Sergeant Clark, the custody officer, formed the view that John Bunker was in need of urgent medical attention. He instructed PC Mullally and PC Walker, to take him straight to the hospital. He was put back into PC Donaldson's van to the Royal Free Hospital, a journey taking about ten minutes. Unfortunately the treatment was unsuccessful and John Bunker died late on the following day. A post mortem examination was performed by Dr Rouse, who found that death was due to head injury. After the inquest found that he had died of a head injury, the police appealed. It was held that they were not negligent. (This could be dealt with in Chapter 3, “Risk Assessments and Clinical Attention”).

***R (on the application of M) v Gateshead Metropolitan Borough Council, CA, 14 March 2006***

In the case of *R (on the application of M) v Gateshead Metropolitan Borough Council, CA, 14 March 2006*, the duty to provide accommodation under the Children Act 1989 s.21 (2) (b) in response to a police custody officer's request under the Police and Criminal Evidence Act 1984 s.38 (6) was imposed on the local authority that received the request. Although s.21 (2) (b) of the 1989 Act imposed an absolute duty on a local authority to receive and provide accommodation for children whom they were requested to receive under s.38 (6) of the 1984 Act, it did not impose an absolute duty to provide secure accommodation. The applicant (M) applied for judicial review of the failure of the respondent local authority to provide her with secure accommodation as requested by the police under the Police and Criminal Evidence Act 1984 s.38 (6). M, a juvenile, had been arrested and taken into police custody. A custody officer made a request under s.38 (6) of the 1984 Act for secure accommodation at 00.20 on the basis

that M would be expected to appear before the court at 10.00 on the same day. The local authority failed to provide secure accommodation and consequently M was detained at the police station overnight. M submitted that the Children Act 1989 s.21(2)(b) duty was imposed on any local authority that received a request from a police custody officer to provide accommodation for arrested juveniles under s.38(6). M also submitted that the local authority's duty under s.21 (2) (b) was to use its best or reasonable endeavour to provide secure accommodation when requested to do so by the police pursuant to s.38 (6). However, it was held that the Local Authority had only duty to provide accommodation, nor secure accommodation.

### **Developments- Criminal Justice Act 2003 The Criminal Justice Act 2003**

By virtue of Schedule 2 of the Criminal Justice Act 2003, it is now possible for a custody officer to release a detained person without charge and on bail for the sole purpose of enabling the director of public prosecutions (DPP) to make a decision as to whether there is enough evidence to charge that person with an offence. In addition, the DPP may issue guidance to custody officers as to how this referral power should be worked. The established options of a custody officer refusing charge, bailing a suspect in order to continue police investigations or charging the suspect with an offence remain unaltered. The new procedure is set out in section 37B of the Police and Criminal Evidence Act 1984 (PACE 1984), as amended. Accordingly, the DPP shall be provided with the necessary information "as soon as is practicable". Thereafter, the DPP shall decide whether there is sufficient evidence to charge the person with an offence and, if so, whether or not the person should be charged or cautioned. The police must then charge or caution (whether conditionally or otherwise) accordingly.

### **Safeguarding Vulnerable Persons Act 2006 Exception for making monitoring checks**

Section 16, 'exception to requirement to make monitoring check' states that:

1) Regulated activity falls within this section if it is carried out for the purposes of

or in connection with any of the following—

- (a) an establishment for the detention of persons in lawful custody (within the meaning of section 59(7) (a) to (c));
- (b) a recreational, social, sporting or educational activity provided wholly or mainly for vulnerable adults;
- (c) a course of education or instruction which is provided wholly or mainly for vulnerable adults and is of a prescribed description;
- (d) the provision of services, by or on behalf of a person who provides or manages housing, to vulnerable adults in connection with that housing;

- (e) welfare services of a prescribed description;
- (f) dealing with payments by a person appointed to receive them as mentioned in section 59(10) (f).
- (2) Activity does not fall within this section if the individual engaging in the activity is a prison officer acting in the course of his duty.
- (3) In subsection (2) “prison officer” includes—
  - (a) a prisoner custody officer within the meaning of section 89(1) of the Criminal Justice Act 1991 (c. 53);
  - (b) a custody officer within the meaning of section 12(3) of the Criminal Justice and Public Order Act 1994 (c. 33). Therefore, Custody Officers are included here. The Manual does not mention the Safeguarding Vulnerable Groups Act 2006.

### **Serious Organised Crime and Police Act 2005**

The Serious Organised Crime and Police Act 2005 (“SOCPA”) gives an extension of the civilianisation of custody duties by creating staff custody officers. The staff custody officer is a topic addressed in Chapter 1, at 1.4.2. and states that s 130 SOCPA introduces the concept of police staff custody officer and further states that a police staff custody officer will have the powers to perform all the functions of a custody officer under PACE 1984 except those under s45(4) PACE, relating to reviews conducted by video links and under any other enactment which confers functions on such a custody officer, but in relation to a police station designated under s35(1) PACE 1984, the person must first be appointed a custody officer for that police station under s36(2) PACE 1984. In most police stations, the manual states, more than one sergeant will be appointed as custody officers, in order to 24-hour coverage and to account for leave and sickness.

### **Conclusion**

The Custody Officers’ Manual appears to be a much-needed one. My one disappointment, apart from the lack of caselaw, is that chapter 3, consisting of 37 pages on risk assessment and clinical attention, is sparse, in consideration of its utmost importance and the terrible travesty of so many people who die in custody, necessitating major national reports. This chapter could have been more detailed, with more explanations and including many cases to show the wrong done and the right way to handle such situations. Overall, this useful book was disappointing because of what appears to be lack of care and attention. This can be corrected when the third edition is due. ENDS+