KENT ARCHERY ASSOCIATION

www.archerykent.org.uk

CLUB GUIDE

PROTECTION OF CLUB ASSETS

Version: **1.00**

Issue Date: **13 May 2013**

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INTRODUCTION

This guide does not cover insurance of a club's tangible assets, as it is felt that the subject is well known to all clubs.

This guide is provided in good faith as a general account of how Intellectual Property (IP) Law and certain other UK laws affect the assets of a typical archery club. If, however, your club requires detailed advice on a specific issue, then you are strongly recommended to refer to a qualified specialist.

It is also important to note that IP Law in particular is very complex and ever-changing as case law (the courts' interpretation of the legislation) evolves; it is therefore impossible to be comprehensive in a guide of this sort.

What is Intellectual Property?

Our laws recognise ownership of physical things and protect the owner by the criminal laws of theft, detinue and similar: if someone comes along and takes your property without consent, or refuses to give it back when they should, then the owner has legal remedies from calling the police who may be able to bring criminal charges, to pursuing the matter in the civil courts to recover it and/or receive compensation for the loss and/or loss of use.

But some people make their living from inventing or designing things, writing books, taking photos, making movies or writing or performing music; other people do these things because it is important to them or simply interesting. The underlying idea of IP is that these inventions, ideas, designs, writings, images and performances have a value, that someone (including organisations) might 'own' them, that the owner is entitled to any benefits that they bring and that the owner is entitled to protect his/her ownership, authorship and reputation.

To give a simple example, an author spends several years and considerable time, effort and money to research the background for a book; he hopes to self-publish and sell copies of the book to make a livelihood while he researches and writes the next book. When he sets the price for the book, he will take into account all of these costs he incurred to write, print, market and distribute it. Without the protection of IP law, anyone could simply copy the end result and sell it at a fraction of the price, because that person had not incurred most of the costs. The probable consequence would be that no-one would write quality material, because someone else would always rip it off.

The law relating to physical things (and their ownership) is not simple, even though physical things are normally easy to identify and ownership may be reasonably easy to prove. As soon as we start dealing with the less tangible 'intellectual property' it starts to get very complicated, especially when it comes to 'ideas' and 'designs', particularly if a design incorporates a number of pre-existing elements (each of which might have their own associated intellectual property rights) in a new way.

Some of the complexity arises because many of the concepts involved are subjective, such as 'idea', 'design', 'creative', 'artistic' and 'skill'. The attempt to reconcile the idea of IP to other 'common sense' ideas of how society should work is another major reason why IP law gets mind-blowingly complicated and worse still, it is constantly changing as new legislation is passed and new court cases interpret the law to cover new media, technologies and the changing expectations of society.

And that, dear reader, is why disputes end up needing a specialist IP lawyer, why good IP lawyers are *very* expensive and why so many cases are settled out of court to avoid the hideous costs that might otherwise be involved! And that is why it is a good idea to avoid in the first place the situations where ownership of IP rights is open to dispute.

IMPACT ON CLUBS

Why should an archery club or association care about protecting their assets? The answer is both simple and very unfortunate: it has been known for club members to fall out with their club and there have been recent cases where a long-standing member of a club has left acrimoniously and claimed that they can take the club name, logo, website and even the right to use the venue with them, claiming that *they* own the associated rights, not the club.

So is this true? And what can clubs (and indeed county or regional associations do to ensure that they are not put in a similar position?

This guide will not dwell on general explanations of the law, but instead concentrate on the practical consequences of Intellectual Property (IP) Law and certain other UK laws for the typical archery club in its every-day activity. We will go through each of the main assets of a typical club and look at what laws apply to them; we will give a brief explanation of the main practical issues, focussing in particular on aspects that are not intuitively obvious or are regularly misunderstood;

If there are straightforward measures that a club can take to protect itself, these are shown in green box-outs, titled 'Suggested Actions'. Other important information and/or warnings are shown in red box-outs.

As a general principal, anything that is done for/by a club must have been done by one or more members or other people; the club therefore needs to consider:

- whether the results of that work belong to the club or to the person who did the work;
- whether the club should acquire the rights or obtain a license to use the work for a specified purpose and/or specified period of time.

Either way, the club should also consider whether it is happy to work on the basis of a 'gentleman's agreement' or whether a more formal agreement should be adopted. Whichever you choose, our strong recommendation is that the question should be discussed and agreed by the club's management committee *and minuted*, so that it is not open to argument at a later date when different people are running the club or tempers are running high!

While a gentleman's agreement is normally seen as perfectly acceptable at the time it is made, it is the unforeseen problems some way down the track that can make this approach very vulnerable. At the very least it is prudent to minute the details of such a decision and circulate those minutes, including to the other party to the agreement. You can then present a case at some point in the future that the minuted account of the agreement was not challenged and that this strongly implies that it was accepted and therefore correct. Not an unassailable argument, but at least it provides some authority.

Better still would be to document the entire process of commissioning and completing the work to within an inch of its life.

As ever, the most practical solution for most clubs probably lies somewhere in between.

CLUB ASSETS AND ACTIVITIES

The Club Itself

IP Law: It is just not possible to use IP law to claim ownership of a club (as opposed to its name, logo, etc.) as clubs do not fall within any of the definitions of patentability, copyrightable works, trademark, design, etc..

Constitution: A club that is incorporated (e.g. as a limited company) is owned by its shareholder(s), whose rights will be defined in the company's Memorandum and Articles of Association (the obvious example being GNAS itself). Very occasionally a club might be set up as a Trust, in which case members' rights will be defined in its Deed of Trust. The M&AA or Deed of Trust is the club's constitution.

However, the great majority of clubs are unincorporated 'members' clubs' and are governed by a simple constitution (an ArcheryGB requirement for *all* clubs) which defines membership and how the club is managed (most commonly by a management committee). Unless explicitly stated to the contrary in its constitution, a club is normally owned by its current members in common (i.e. equally by all), but exceptions exist, especially in cases where a club is operated and run by a school for the benefit of its students or a company for the benefit of its employees, in which cases it is likely to be owned by the parent organisation.

This should highlight one (of many) reasons why a club's constitution is important and should be as precise as possible, not relying on the goodwill of future members to act in accordance with intentions that have been left unspecified.

The entire nature of a club is defined in its Constitution – that is why it is vital to get this document right and not rely on the good will of future members & committee members, who you don't even know yet.

For normal members' clubs this is a relatively simple document, but for more complex organisations it could be a 'Deed of Trust' (if set up as a trust or charity) or 'Memorandum & Articles of Association' (if set up as a Limited Company).

Club Membership

IP Law: For the same reasons, the membership list of a club has nothing whatever to do with IP (except possibly for the paper it is printed on, or the database that is used to store the list). There is also no sense in which a club can be said to 'own' its members – indeed the exact reverse is the case.

Members are free to join any club they please (subject to a small number of specific limitations in ArcheryGB/GNAS Laws, relating to transferring between clubs during the course of a membership year and to closed clubs).

However, it is reasonable to expect any club to object strongly to attempts by another club at 'poaching' its members – it is equally reasonable to expect that the club subjected to poaching might seek disciplinary action under one of the more generic offences, such as 'Bringing the Sport into Disrepute'.

Venue

IP Law: Again and for the same reasons, the use of a particular venue has nothing whatever to do with IP – it is the provision of a service by the owner of the venue and is therefore normally an issue of contract law. IP rights cannot exist even if a member spent years of his life tracking down that perfect place to shoot – the right to use the venue is either determined by:

Ownership: For a members' club in the UK to own real estate it must do so via a management trust or management company, so unless you have one of these, it is highly unlikely that the club owns its venue. If the club does own its venue (i.e. the freehold), then the deeds will incontrovertibly show that and there can be no argument concerning the matter.

Contract Law: If the club itself does not own its venue, the club should have some form of *written* agreement with the owner that shows when the venue can be used, for what purpose, how much the club must pay and any other significant conditions (e.g. insurance, storage, access to toilets, who can have keys for access). Even a simple list of terms and conditions from the owner together with evidence of payment is likely to imply the existence of a contract, but to place it beyond doubt make sure that you have the following as a minimum:

- contract, agreement or terms and conditions *signed by the owner* and *addressed to the club* (i.e. to the club secretary or management committee, not personally to a member of the club) – it must include the start date and either the end date or date of next review;
- an acknowledgement or *acceptance on the club's letterhead*, or at least signed *on behalf of the club (the number of signatories will depend on the club constitution, but two is normal)*;
- pay the rent from the *club's account* (cheque, PayPal, etc.), never in cash and never from the personal account of a member.

Taking all three of these together it would be very difficult to argue that any contract exists with anyone other than the club itself, even if one particular member did all of the negotiation and correspondence with the owners. Even if there is less evidence than this, it might still be possible to prove that the contract is with the club, but why make it difficult when it is not difficult to make it easy?

It is the duty of the club's management committee to ensure that this is done correctly – if they rely on an individual to do everything and there is no independent check, then it greatly increases the risk of it all going horribly wrong.

Suggested Actions:

Ensure that you have a written agreement covering your use of the ground and that it clearly stated that it is between the land-owner and the *club*, not an individual member of the club - even though it is inevitably members of the club who will organise and sign it, it is important that they clearly do so on the club's behalf.

Club Name

Copyright: A club name cannot be protected by copyright because:

- it is much too short to qualify as a 'creative work';
- most names are unlikely to achieve the requirement of originality (e.g. 'Anytown Archery Club' or 'Bowmen of Anywhere').

Trademark: A club name is, however, likely to be recognised as a trademark. However to do so, it is vital that the club's constitution should show the name in exactly the words that will normally be used – this is necessary to pass the first test for trade mark, that the club owns the name. So if your constitution says you are 'Anytown Archery Club', but you often refer to the club as 'Anytown Archers', the latter is unlikely to be recognised.

To gain trade mark protection you do not have to register it, but doing so affords wider legal protection; however, the cost of doing this is likely to be prohibitive for the majority of clubs (from £170 for 10 years if registered direct with the Intellectual Property Office, considerably more if a Trade Mark Attorney is used).

An unregistered trademark does not give you exclusivity, but it can be defended under the common law of 'Passing Off', if you can prove that:

- the mark is yours
- you have built up a reputation in the mark
- you have been harmed in some way by the other person's use of the mark.

Bear in mind that this can be both a very difficult and a very expensive exercise.

It is also worth noting that there are restrictions on names that can be registered as trademarks and the same restrictions are likely to apply if the name were the subject of a passing off action.

ArcheryGB: In practice ArcheryGB will not normally permit registration of a new club with the same name as an existing one (or a name that is likely to be confused with an existing club), if it is in the same local area (so a second and unrelated Ashford Archers in Kent should not be possible, but another club of the same name would be permitted in Ashford, Middlesex).

Suggested Actions:

Make sure that the club name you commonly use is the one specified in your constitution and that a copy of the current constitution has been supplied to the KAA.

If you become aware that a club is being formed using a name that is the same as that of an existing club, or could readily be confused with it, inform:

- the Head of Membership Services at ArcheryGB;
- the County Treasurer.

ArcheryGB and the KAA can then work together to ensure that a confusing club name (whether or not deliberate) is avoided, but action to prevent this is unlikely if the new club will not be affiliated to ArcheryGB and/or the KAA.

Club Logo

Bear in mind while reading the following, that many clubs have several different versions of their logo, for example for print/website, medals, badges, etc.. The following guidance should be considered separately to each version, because each is a different 'work' from the perspective of IP law.

Copyright: If someone (whether or not a member) volunteers to create a logo for your club and lets the club use it, the copyright remains with the author, unless that copyright is *explicitly* given or sold to the club. The same is true if the club asks someone (whether or not a member) to create a logo.

Not the Same as Paid Employment!

Do not confuse this with the situation at work, as the opposite is likely to be true there – employers will almost always include clauses in employment contracts to ensure that they will own the rights to anything that their employees create in connection with their employment. The contract will then take precedence.

If the author has permitted the club to use the logo (even over a prolonged period of time) as if the club owned it, it is likely that they would simply be considered to have been acting under an implied license – i.e. permitted to use it free of charge, but not actually owning it. There are no 'squatter's rights'!

Suggested Actions:

By far the cleanest solution is a written agreement between the club and the author, making it clear that copyright has been given or sold to the club. If you want the added protection of contract law, the author must be paid, even if this is a purely nominal amount or in kind (e.g. in return for straightening his/her arrows). It is best that an agreement is set up before work starts, as this could save unnecessary misunderstanding later.

Remember that simply creating a new version of an existing logo (e.g. lovely colourful Photoshop edition, instead of the old line drawing) gives rise to a new copyright, even though the basic design is unchanged – copyright applies to the "independent expression" of an idea, not to the idea itself.

The same is true if you create a new version for a badge or medal (perhaps because the existing version does not translate well into the required production process.

Trademark: Club logos can also be registered as trademarks or be used as such without registration, in much the same way as described for club names, but if you want to separately *register* the name and logo, you will have to pay separate fees for *each*. However, it is important to note that the inclusion of certain protected symbols will automatically disqualify trademark protection; the protected symbols include the Royal Crown, Olympic Rings, national flags or emblems of a country – there are also others.

To be clear that the club owns the mark, it is important that they have a *written* agreement from the author(s) of the logo, giving or selling the copyright to the club - bear in mind that without a written agreement if the author leaves to set up a new club, he/she could take it with them and any rights you have would be difficult and expensive to prove and are likely to fail.

Design: Finally it is possible to register a logo as a Design and gain sole use for up to 25 years, but again the cost is expected to make this option unviable for the great majority of clubs, being £85 for the initial search and registration for 5 years, with each subsequent 5-year renewal increasing until it is £410 for the final 5-year period. Registration is not available for designs where more than 12 months have elapsed since they were first published.

There is no provision for unregistered 'Design Right' that is applicable to logos.

Suggested Actions:

Registration of a club logo as a Trademark or as a Design is almost certainly too expensive to be seriously considered by most clubs; enforcement of a Trademark (whether registered or not) is likely to be prohibitively expensive and complex.

The most practical approach is for the club to ensure it owns the copyright for its logo and to enforce that by using the archery disciplinary process where infringement originates within the ArcheryGB community. It is unlikely to be practical to enforce it beyond that community.

Coat of Arms in a Logo

A recent case has highlighted the problems that can occur if a club logo incorporates recognisable parts of a town or local authority coat of arms, or even arms with a strong local connection. If the arms were granted by Royal Charter or Letters Patent, it is likely to be an offence for anyone else to use them or any substantial and identifiable part of them.

Other genuine coats of arms (known as 'Achievements') will also be protected by the College of Arms.

In all cases (whether or not the coat of arms is genuine), it is important to consider whether it might be an infringement of someone's copyright.

There is no restriction on inventing a club coat of arms, provided that it does not infringe anyone's existing copyright or any existing arms granted or protected by the College of Arms; however, any invented arms will only be entitled to the same level of legal protection as any other logo.

Books and Other Written Documents

Copyright: a document could easily have multiple copyrights associated with it, for example the club logo, other graphics, photographs as well as the written content; as we are dealing with most of these in other sections of this guide, we will limit ourselves here to the written content.

A guide book (such as this), a policy document or written history of your club involves creative input and therefore qualifies for copyright, so it is important to ensure you have agreement from the author as to who owns the copyright for the finished project.

Care must also be taken to acknowledge sources of content, especially:

- quotations from pre-existing works; longer quotations might require the written agreement of their author and payment of a license fee.
- photographs must be acknowledged and agreement obtained from the current copyright owner.

Copyright does *not* apply to operational documents such as minutes and general correspondence, but might apply to more complex documents, like business cases; images such as maps and architectural or other plans included in such a document will certainly be copyright, even if the text is not.

Suggested Actions:

By far the cleanest solution would be a written agreement between the club and the author, making it clear that copyright has been given or sold to the club. If you want the added protection of contract law, the author must be paid, even if this is a purely nominal amount or in kind (e.g. in return for straightening his/her arrows). It is best that an agreement is set up before work starts, as this could save unnecessary misunderstanding later.

Photographs and Videos

This section on photographs is rather longer than most of the others, partly there are more laws relating to them, but because it is the thing that people tend to get most upset about and where there is the greatest misunderstanding. Before you read on, though, just consider this – if someone is not happy about you using a photo, no amount of explaining the law to them will make them happy! You are far better off simply accepting their objection and using a different photo – archery is simply a hobby for most of us, and there is really no point in creating a lot of unpleasantness and hassle!

Safeguarding:

In cases where a photograph contains images of identifiable juniors (under 18 years old) or of vulnerable adults, the ArcheryGB "Policy for Safeguarding Children, Young People and Vulnerable Adults" also applies.

Copyright: In general the copyright will almost always initially belong to the *photographer*, irrespective of what the photograph/video contains, why it was taken and whose camera was used. There are a few exceptions to this, mostly related to commercial employment and commissions, but these are unlikely to be of consequence to the overwhelming majority of archery clubs.

Contrary to some popular opinion the subject of a photograph has very few rights relating to the image and you can *never* claim ownership of a photo or its copyright simply because you are the subject.

If someone takes a photograph and gives it to a club to use, this does not mean that the club now has the copyright, but the photographer can give or sell the copyright to the club if he/she wishes or just license the club to use the photo (either for a fee or free of charge). Even if the club does obtain the copyright, the photographer retains the moral right to be acknowledged as the author.

Suggested Actions:

If you want to use a photograph on your club website or in a newsletter or brochure, it is advisable to obtain the photographer's written permission to use it first, even if he/she is a member – if you have it in writing, it can save a lot of argument later. The photographer might want to specify what the photographs can and cannot be used for (e.g. for use only in the website/newsletter).

You should also state who took a photograph anywhere it is used – this is known as a 'citation' and is one of the 'moral rights' that the photographer keeps, even if he has given or sold the copyright to the club.

One final point to bear in mind is that a club, association, any other organisation or tournament organiser cannot automatically claim that they own the copyright for all photographs of a sporting event or for the event itself, because the competitive activity cannot be considered to be an author's own 'intellectual creation' and therefore does not qualify for the purposes of UK or EU copyright law.

However, video photographers in particular should be aware that inclusion of other content, such as background music, anthems, pre-recorded highlights of previous competitions, large-screen broadcast of the current action and/or graphics *are* likely to be works protected by copyright and therefore could be problematic if included in a video.

Privacy: In UK law, any person has a right to privacy in their own home and very limited additional places and is entitled to prevent others from taking photographs of them there (for example the media are not permitted photograph you through your living room window).

However in public places the photographer owns the photographs he/she takes and is under no obligation to destroy/delete photographs of you, however much you might object to being photographed. There are a few exceptions to this, but these are mainly to do with commercial use and therefore unlikely to be relevant to most archery clubs. Having said that, it would be courteous to ask the subject's permission before taking photographs and would certainly be rather ill-mannered to disregard a request for privacy whether at your club or at a tournament.

Bear in mind also that events taking place on school, college or university grounds or at venues owned by local authorities are subject to any restrictions imposed by the owners; it is therefore important to ensure in advance that they permit photography.

Suggested Actions:

If you are going to use a photograph in a *promotional* publication of any kind, check Appendix C - Model Release on page 16.

Music

Copyright: If you intend playing pre-recorded music during an event or tournament, take care because the CDs or MP3s you buy only license you to play them for your *personal* entertainment and do not cover this type of use. Even if the music will only be heard by other club members, this constitutes a public performance and must be licensed.

In many cases there will be more than one copyright involved: the composition (i.e. the music and/or lyrics) and the specific sound recording. Even if the copyright has expired on the original composition (for example a Beethoven symphony), a copyright is still likely to exist on the recording (i.e. the specific orchestral performance recorded, or even the specific re-mastering of an older recording).

Suggested Actions:

Clubs that use school, college or university premises, local authority sports halls or community buildings may find that their event is covered by an existing performance license, but should always check and never simply assume that they are covered.

If the premises are not already covered you will normally require a performance license.

The cost depends on the type of event, who is organising it and how many people will hear the music.

Web Site

Copyright: Websites are more complicated than you might at first expect, because, apart from the overall website design, they are likely to include a variety of content, e.g. club name, logo, different sections of text, photos and videos. To simply say that so-and-so owns the copyright for a website misses an important point.

The overall website design and the code that produces that design are protected under copyright(s) and many of the elements the website contains are likely to be protected separately, as described in other sections of this guide. So a single web page showing text and images is likely to have a number of copyrights associated with it. In theory this could be even further complicated if the website is adapted from a template (commercial or otherwise), which will have its own associated copyright(s).

Suggested Actions:

Although the inclusion by the author of a copyright statement (such as the one at the foot of each page of this guide) is an *implicit* statement that the author has given or sold the copyright and it might be difficult to prove at a later date. It would, however, be far clearer and therefore preferable to have a written agreement between the club and the author, ideally completed at the time that the author is invited to do the work for the club.

If the website is to be built using a template, it is important that the license to use that template is in the name of the club, rather than the individual person who built the site from it or adapted it, even if the template is royalty-free.

A further issue that is frequently encountered is that of re-using snippets of code from other sources (especially common in JavaScript code!). Many experts and amateurs alike develop 'open source' code that they make freely available, subject only to an acknowledgement of authorship - this acknowledgement is normally contained in 'comments' attached to the code. Be aware that some authors require visible acknowledgement somewhere on the website as a condition of use.

Suggested Actions:

It is accepted good practice (for performance reasons) to strip all comments out of HTML, CSS and JavaScript as part of the process of 'minifying' it - this effectively removes the acknowledgement from the code that is served to visitors' web-browsers.

This would almost always be accepted by the author, as the visitors would not see the acknowledgement anyway – however the acknowledgement should not be removed from the un-minified (development) code, so that future developers of the site are aware of the authorship. This way the author will receive the acknowledgement of his/her peers.

Domain Registration & Web Hosting:

It is also prudent to ensure that the website's domain registration and hosting package makes it clear that the club owns the domain, rather than the person who completed the registration and whose name and address are stated in the registration.

If this is not supported by your registrar and/or web host, it is wise for the club to obtain the developer's written agreement that this is the case.

Ownership of a trademark in a club name has no bearing on entitlement to register a corresponding domain name; registration of a domain name is strictly 'first come, first served' unless you can show that the suitable domain name for your club has been registered by someone else fraudulently or maliciously.

Databases and Software

For this purpose a database is simply defined as any *organised* collection of data, which could include SQL, Microsoft Access, Excel or even tables of data in a Word document or simple text document. It is possible to satisfy both of the following requirements so that both copyright and database right apply.

Copyright: Databases may be protected by copyright as a 'literary work', but for this to apply the database must have originality in the selection or arrangement of the contents.

Software (i.e. the code that processes data) is also protected by copyright in the same way as for literary works.

Suggested Actions:

As with other copyright issues the cleanest solution is to ensure that the club acquires the copyright from the author and that this is evidenced by a written agreement, preferably before development begins.

Database Right: This is an automatic right, does not require registration and lasts for the shorter period of 15 years. For it to apply, there must have been a substantial investment in obtaining, verifying or presenting its contents.

Equipment

If one of your members has had a brilliant and original idea for a new type of a target stand, or other piece of equipment, it is in principle possible to patent it. A patent protects new inventions and covers how things work, what they do, how they do it, what they are made of and how they are made for a maximum of 20 years. It is also important to bear in mind that you must file for patent before showing to anyone else (even if just for testing) – if you do, it fails the primary test of not being known elsewhere in the world and is thereby no longer patentable.

However, unless you intend to market the product commercially, the cost of patenting alone will almost certainly make it prohibitive for a typical archery club. At the time of publication, a patent application direct to the Intellectual Property Office costs £230-280 and (if successful) cover the first 5 years; renewals are required every 5 years, starting at £70 on the first occasion, rising to £600 for the last. The cost will be very substantially higher if done via a Patent Attorney.

Patent infringement is not a criminal offence, so you would have to be prepared to enforce it by civil action in the courts – a potentially costly exercise.

It is also possible to register the visual design of the whole or part of the equipment, but in a similar way to patents, the design or particular design elements must be new and distinctive. The costs involved are less than for a patent, but are nonetheless very significant and impractical for a typical archery club.

Suggested Actions:

It is unlikely that patenting or registering a design is a practical option for the great majority of clubs.

However, if you believe that there is a significant market for your invention or design, check the information available on the Intellectual Property Office website before you so much as discuss it with *anyone* else.

Shooting

Copyright: You might not see shooting as an 'asset', but there have been occasions when organisers of sporting events have attempted to claim this to protect their own 'rights' to broadcast or publicise an event.

In 2008 the Premier League took action against a Portsmouth public house landlady in connection with her screening football matches on a television in her pub, using a subscription to a Greek satellite channel. Part of the ruling by the European Court of Justice in 2011, subsequently confirmed by the UK High Court in 2012 related to copyright issues; their ruling was that competitive activity cannot be considered to be an author's own 'intellectual creation' and therefore does not qualify for the purposes of UK or EU copyright law.

Clubs and tournament organiser therefore cannot claim that they own the copyright for *all* photographs or videos of a sporting event or for the event itself – the copyright will be owned by the photographer, as described in Photographs and Videos on page 10.

However, video photographers in particular should be aware that inclusion of other content, such as background music, anthems, pre-recorded highlights of previous competitions, large-screen broadcast of the current action and/or graphics *are* likely to be works protected by copyright and therefore could be problematic if included.

Safeguarding:

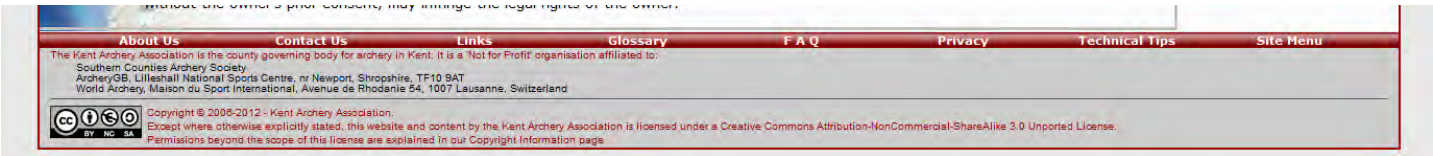
Having said that, nobody has an unconditional right to photograph or video an event, particularly if it takes place on private land, and a club can (and is indeed required to) insist that all photography complies with the ArcheryGB "Policy for Safeguarding Children, Young People and Vulnerable Adults".

APPENDIX A - CREATIVE COMMONS

Creative Commons are a very simple and useful type of *license*, whereby the existing copyright holder retains their copyright, but allows anyone that wishes to use the copyright content, subject to certain limitations:

- different licenses set a variety of baselines,
- *and* the copyright owner can specify additional conditions and/or concessions (obviously they must be consistent with the chosen license).

For example the KAA website and most KAA documents are published in exactly this way, but with one important exception – any included photographs. All photographers are individually acknowledged and in all cases copyright remains with the photographer – because the KAA does not own the copyright, it cannot license it to anyone else.



The reason the KAA has taken this approach is simply to ensure that the work it has done is available to other similar organisations – they can use content 'as is' or adapt it to their particular circumstances without being forced into some very time-consuming reinvention of wheels. But there are still limitations to protect the KAA and to prevent anyone taking unfair advantage of our largesse!

The type of Creative Commons license that the KAA has used is ideally suited to membership clubs who wish to make their work available, yet retain copyright ownership. You will see at the foot of this page:

- the copyright statement and
- the rectangular symbol that specifies the Creative Commons that the KAA is using:
  - CC identifies this as a Creative Commons
  - BY Attribution you must always acknowledge the KAA as your source.
  - NC NonCommercial You may not use this work for commercial purposes – e.g. you are forbidden from selling to others what has been provided to you free of charge.
  - SA ShareAlike If you alter, transform, or build upon this work, you may distribute the resulting work only under a licence identical to this one.

There are additional conditions and the terms of this particular license are explained in full on the KAA website at http://www.archerykent.org.uk/copyright.aspx and include information about how to obtain authority to use KAA material for purposes that are not covered in the basic license.

APPENDIX B - SAMPLE AGREEMENT & CONTRACT

The following example of a simple letter can be adapted to provide a part of the paper trail to show that certain design work was done at the specific request of the club (i.e. the work has been commissioned). It can be copied into your club's letterhead and adapted as required:

The management committee of [Club Name] has resolved to invite [Author's Name] to undertake the following work on its behalf and in its name:

- Design, build and maintain a website.
- Design a new club logo.
- Create an up to date design and rendering of the existing club logo.
- Design a publicity brochure for use at .....

The finished work is required by .....

The finished work will be subject to acceptance by the management committee, before it can be used publicly.

It is the management committee's intention that all economic rights in the completed work will be passed from the author to the club before it is used. The terms of that agreement will be subject to separate written agreement.

The following sample letter can form the basis for a contract for a club to purchase the copyright of a piece of work from its author:

Details of author and work

Name: _____

Address: _____

Phone number: _____

Description of work(s): _____

_____

THIS CONTRACT is dated [Date] and is between the undersigned club ("the Club") and the undersigned author ("I").

The Contract

For good and valuable consideration of [Amount] received I hereby grant to the Club and its direct or indirect licensees and assignees the ownership of copyright and the irrevocable and unrestricted right to use and publish the above-mentioned work and to alter the same without restriction.

I am of legal age and have the full legal capacity to execute this authorization without the consent or knowledge of any other person and assert that I have the legal right to enter into this contract.

Author		**For the Club**		
Name:	_____	Name:	_____	_____
		Position:	_____	_____
Signature:	_____	Signature:	_____	_____
Date:	_____	Date:	_____	_____

This text	Delete if no payment (cash or otherwise) is being made for the work, but to do so demotes this from 'contract' to 'gratuitous promise' with the possibility of no legal recognition.
This text	Necessary to allow even the most basic development and updates of websites, future update/adaptation of logos etc..

APPENDIX C - MODEL RELEASE

'Model Release' is included in this guide, because it is often mistakenly believed to be something to do with copyright. In fact it has nothing whatever to do with copyright – it is actually a contract designed to limit or exclude civil claims for damages relating to the model's privacy or reputation

A Model Release form is the written agreement of a photographic subject (or subjects) for their image(s) to be used for promotional purposes and is *only* applicable if the image is used in such a way as to imply to 'the man on the Clapham omnibus' that the model is advocating or sponsoring the thing being promoted (e.g. your club, tournament, have-a-go session, etc).

Taking photos does *not* require a release - it is the *use* to which the photos are put that determines whether a release form is actually required.

If you are intending to *publish* photos that contain identifiable people as a prominent or significant part of the image, you *might* need a model release. Similarly, if you intend to sell photos for publication, the publisher *might* require a release. The key words here are:

- *publish*: if the photos are not going to be published, no model release form is needed;
- *might:* even then you are only likely to need a release if the photo(s) will be used for promotional purposes.

The basic purpose of the release form is to protect the *publisher*, should the model decide that they do not want to be associated with the product or idea that their image is being used to promote – perhaps they think it will damage their career or reputation.

If one of your club members is the model in a photograph, you would expect that they are happy to be associated with your club – why else would they be a member? But if you are planning to have a batch of brochures printed that will last you a few years, can you be sure that this will remain the case – fallings-out are not uncommon and the person who is a member now, may radically change their opinion in a month's time and object to being associated with promoting your club.

Alternatively, what if the model is not a member? If no-one in your club wants to be photographed or is suitable for the task, you might involve the friend of a friend. If you decide to use a pre-existing photo, there is no problem with obtaining agreement now that you have a purpose in mind.

In all of these cases it is wise to have the model's written agreement to the intended use and the easiest way of achieving this is with a model release form – especially as a couple of customisable forms are included in this guide!

The guiding question is: 'Does the way in which the photo is to be used imply that the model is an *advocate or sponsor for an underlying idea, product or service*'? If the answer is 'yes', then a release form is probably required; if 'no', then it definitely is not.

- an advert for your club or a forthcoming tournament probably is promotional, but even then a release is only required if the model can reasonably be interpreted as *endorsing* it;
- simply reporting a past tournament or circulating a newsletter to existing members is not normally promotion – it's journalism – so a release is not needed.

Finally, the question of payment. A model release is intended to be a *contract* (as would a less formal written agreement) between the club and the model, but a contract requires a contribution from both sides – the model is waiving rights he/she might possess relating to the use of the image in return for payment from the club. But, if there is no payment (however small), there is no *contract*, just a *gratuitous promise* that a court is highly unlikely to enforce, regardless of everyone's intentions, but it *would* be wholly reasonable for a governing body's disciplinary process to take it into account if issue falls within their jurisdiction.

Even a very modest payment establishes a contract and the payment does not have to be monetary, just so long as it has a demonstrable value (for example a discounted membership, use of equipment that they would not otherwise have been entitled to, or some extra coaching, so long as it has a value).

Example Release Forms

The following examples are provided in good faith and are believed to cover the normal basic usage that most clubs are likely to encounter, by adding to a club letterhead. Please note that they are supplied without warrantee as to their suitability for any specific purpose and clubs are advised to take legal advice before proceeding with any project.

Adult

Details of Model

Name: _____

Address: _____

Phone number: _____

Date of Birth: _____

Age at date of use: _____

Insert photo 1	Insert photo 2	Insert photo 3

THIS MODEL AGREEMENT AND RELEASE ("Agreement") is dated [Date] and is between the undersigned club("the Club") and the undersigned model/performer ("I").

The Agreement

For good and valuable consideration of [Amount] received I hereby grant to the Club and its direct or indirect licensees and assignees the irrevocable and unrestricted right to use and publish the above images of me, or in which I may be included, for editorial trade, advertising and any other purpose and in any manner and medium and to alter the same without restriction.

I hereby release the Club and its legal representatives and assigns from all claims relating to said photographs.

I am of legal age and have the full legal capacity to execute this authorization without the consent or knowledge of any other person.

Model		**For the Club**		
Name:	_____	Name:	_____	_____
		Position:	_____	_____
Signature:	_____	Signature:	_____	_____
Date:	_____	Date:	_____	_____

This text	Delete if no payment (cash or otherwise) is being made for the photograph(s).
This Text	Replace this with more specific purpose and medium, if required
This text	The authority to 'alter without restriction' exists to allow changes like cropping, retouching and other completely reasonable 'Photoshop' changes that are almost certainly required in any photo, but cannot necessarily be anticipated in advance.

Minor

Details of Model

Name: _____

Address: _____

Phone number: _____

Date of Birth: _____

Age at date of use: _____

Insert photo 1	Insert photo 2	Insert photo 3

THIS MODEL AGREEMENT AND RELEASE ("Agreement") is dated [Date] and is between the undersigned club("the Club") and the undersigned parent / guardian ("I") of the model/performer.

The Agreement

For good and valuable consideration of [Amount] received I hereby grant to the Club and its direct or indirect licensees and assignees the irrevocable and unrestricted right to use and publish the above images of the above minor, or in which he/she may be included, for editorial trade, advertising and any other purpose and in any manner and medium and to alter the same without restriction.

I hereby release the Club and its legal representatives and assigns from all claims relating to said photographs.

I hereby warrant that I am of full age and have every right to contract for the minor in the above regard. I state further that I have read the above authorization, release, and agreement, prior to its execution, and that I am fully familiar with the contents thereof.

This release shall be binding upon the minor and me, and our respective heirs, legal representatives, and assigns.

Parent or Guardian of Model		**For the Club**		
Name:	_____	Name:	_____	_____
		Position:	_____	_____
Signature:	_____	Signature:	_____	_____
Date:	_____	Date:	_____	_____

This text	Delete if no payment (cash or otherwise) is being made for the photograph(s).
This Text	Replace this with more specific purpose and medium, if required
This text	The authority to 'alter without restriction' exists to allow changes like cropping, retouching and other completely reasonable 'Photoshop' changes that are almost certainly required in any photo, but cannot necessarily be anticipated in advance.

It is important to note that no contract can ever give anyone the right to act unlawfully, so even the very general 'any other purpose and in any manner and medium' and 'alter the same without restriction' used in this standard release cannot be interpreted as permitting the use of the photograph for lewd or pornographic purposes. However, if the photographs are for a specific purpose, it will normally be more acceptable to everyone to word the release very specifically for that one purpose.

APPENDIX D - MAIN TYPES OF IP RIGHT

Copyright

An automatic right that does not have to be registered that gives the author control over any *creative* works (including literary, graphic, photographic, video, musical, performance, broadcast and software).

Copyright *does not protect ideas* for a work. It is only when the work itself is *fixed*, for example in writing, that copyright protects it. Rights expire up to 70 years after the death of the original author.

Trademark

Protection given to a graphic, text or a mixture of both that are closely associated with and used to identify an organisation, product or service and differentiate it from others.
Registration is not necessary, but it does give a far greater degree of protection.

Patent

A patent requires registration and protects *new* inventions and covers how things work, what they do, how they do it, what they are made of and how they are made. If a patent application is granted, it gives the owner the ability to take a legal action under civil law to try to stop others from making, using, importing or selling the invention without permission for a maximum period of 20 years.

Design

A Registered Design is a legal right which protects the overall visual appearance of a product or a part of a product in the country or countries you register it. For the purposes of registration, a design is legally defined as being "the appearance of the whole or part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture or materials of the product or ornamentation."

This means that protection is given to the way a product *looks*.

Design Right

Design Right gives you automatic protection (registration is unnecessary) for the internal or external shape or configuration of an original design, i.e. its three-dimensional shape. Design Right allows you to stop anyone from copying the shape or configuration of the article, but does not give you protection for any of the 2-dimensional aspects, for example surface patterns.

Database Design

Database Design Rights are automatic and protect the content of both paper-based and electronically stored databases. For them to apply there must have been a substantial investment in obtaining, verifying or presenting its contents.

APPENDIX E - COMMON IP SYMBOLS

© Signifies ownership of copyright, or that something is subject to copyright.

® Signifies a registered trade mark to warn others against using it.
Note that using this symbol for a trade mark that is not registered is an offence.

™ Signifies a logo or words that are being used as a trade mark, but not registered.
The symbol 'TM' has no *legal* significance in the United Kingdom.

SM Signifies a logo or words that are being used as a service mark, but not registered.
The symbol 'SM' has no *legal* significance in the United Kingdom.

APPENDIX F - FURTHER INFORMATION

Printed

The following sources are commonly used by law students for study and revision; they contain valuable additional and detailed information, some of which were referenced when compiling this guide:

Name	Published by:
Intellectual Property Law	Pearson Books
Nutshells: Intellectual Property Law Revision Aid and Study Guide	Sweet & Maxwell
Nutshells: Contract Law Revision Aid and Study Guide	Sweet & Maxwell
Nutshells: Tort Law Revision Aid and Study Guide	Sweet & Maxwell
The Politics of the Common Law: Perspectives, Rights, Processes, Institutions	Routledge-Cavendish

Internet

The Intellectual Property Office is the official governmental body responsible for administering all IP registrations. Their website is written in plain English, is highly informative and intelligible, is very comprehensive and is easy to find your way around. It is therefore the recommended first port of call for anyone who wants to find out more.

Address	Maintained by:
www.ipo.gov.uk	Intellectual Property Office
www.creativecommons.org	Creative Commons
www.dacs.org.uk	Design and Artists Copyright Society (DACS)
http://www.prsformusic.com/users/businessesandliveevents/musicforbusinesses/charityandcommunity/Pages/default.aspx	Performing Rights Society