

## Mayer Brown @ Digital Shoreditch Answers

### **“If we find code on a forum, it must be free to use.”**

Software code is automatically protected by copyright. The person who wrote it (or his/her employer) will usually own the copyright and can take legal action against people who copy it without permission. Even if the code appears on a forum, you cannot assume that it is free to use because the person who submitted it may not be the copyright owner. If you use the code, the copyright owner may then pursue you for copyright infringement. This may still be the case if you put it in a different language or modify it in some way.

If you are on the receiving end of a copyright infringement claim, you may incur substantial legal costs in trying to defend it and a wider project using the code may be delayed. In addition, if you would like to sell your company and/or software in future, buyers may wish to see an audit trail including details of the provenance of any external code used.

We recommend that you:

- avoid using code displayed on forums unless you take steps to ensure that the person that submitted the code has the legal ability to allow you to use it; and
- document the source of any externally obtained code used as part of wider projects. (This may make your software more valuable because there should be less risk to any future buyer.)

To find out more go to the following client updates:

<http://www.mayerbrown.com/publications/article.asp?id=9415&nid=6>

<http://www.mayerbrown.com/publications/article.asp?id=4415&nid=6>

### **“Data protection law doesn’t apply to cloud computing.”**

Data protection law (which regulates the use of personal data – explained below) still applies where personal data is stored in the “cloud”. Personal data is any information that can be used to identify an individual either on its own or in conjunction with information in another location.

Processing in the “cloud” may involve a complex web of companies processing data in a variety of locations around the world. Where personal data is not simply processed in accordance with a “data controller’s” instructions or where it is transferred to a country outside the EU which is not regarded as having an adequate data protection regime, then the data controller has additional requirements under EU data protection legislation which was drafted in an era which did not contemplate cloud computing solutions.

There are no short cuts when it comes to data protection laws and the acquisition of and storage of personal data should not be taken lightly. Penalties for unlawful acts include a fine of up to £500,000.

To find out more go to the following client update:

<http://www.mayerbrown.com/news/article.asp?id=10588&nid=20>

### **“Advertising rules don’t apply to social media.”**

Advertising rules do apply to social media. In particular, the CAP (Committee of Advertising Practice) Code which regulates advertising in the UK applies to advertisements by businesses on their own websites and on other non-paid-for space under their control, such as Facebook pages and Twitter accounts. The CAP Code is part of the self-regulatory system under which complaints can be made to the Advertising Standards Authority (“ASA”). Also, the Consumer Protection from Unfair Trading Regulations (2008), will apply to promotional activity using social media platforms such as Twitter or Facebook. If promotional material, such as Tweets or content submitted to a Facebook page, does not make it clear that it is a promotion, you may fall foul of these regs and the OFT can take action against you. Penalties include a fine and/ or imprisonment. To avoid falling foul of these rules, always make sure that you make it clear to readers when submitting material on a social media platform that it is a promotion.

To find out more go to the following client updates:

<http://www.mayerbrown.com/publications/article.asp?id=10519&nid=6>

<http://www.mayerbrown.com/publications/article.asp?id=10518&nid=6>

**“The open source licences are all the same.”**

There are a number of open source licences and their terms can vary quite significantly. Some licences are more restrictive (such as the General Public Licences) whereas others tend to offer more freedom to subsequent users of the code (such as the MIT Licence). So when using open source code it is important to identify which licence(s) attach to the open source code. Care must especially be taken when redistributing modified open source code. For instance the GPL licences require redistribution of the modified source code as well as the object code and that the GPL licence terms apply to the redistributed modified code as well.

For more information please go to the client updates referred to in the first answer.

**“If there’s no copyright notice on a website, we can take anything we like from there.”**

Copyright protection arises automatically, so the fact that there is no copyright notice does not mean that there is no copyright protection. Website owners may say on their sites that they are happy for content to be copied but if not, you need to think about copyright restrictions before cutting and pasting. Even using material made available under a “Creative Commons Licence” is not risk-free. This type of licence permits the free exploitation and reuse of material. However, you still need to make sure that the person granting the licence is the copyright owner, and that no other third party rights are at stake such as the right to privacy.

To find out more go to the following client update:

<http://www.mayerbrown.com/publications/article.asp?id=8755&nid=6>

**“If a freelancer creates some code whilst working for you, they can always use it in their next job.”**

The answer to this question depends on your agreement with the freelancer. Just because you pay someone to write code does not mean you own the copyright in it, but a well-drafted consultancy agreement will deal with this, and will also deal with issues such as confidentiality obligations.

For more information on employment matters, please contact Bernadette Daley (Partner) at [bdaley@mayerbrown.com](mailto:bdaley@mayerbrown.com)

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