



IP ITeasers 070:

Copyright in court: a tangled web

Last month, a High Court judge (Wilson Chan J) in Hong Kong was formally reprimanded by the city's Chief Justice for copying over 98% of his judgment from the claimants' written submissions in, ironically, a trade mark infringement claim. Given the extent of the Judge's "*wholesale copying*", the Hong Kong Court of Appeal found that a reasonable person could justifiably consider that he had simply abdicated his responsibility without applying his own mind to the issues, and ordered a retrial: *Wong To Yick Wood Lock Ointment Limited v Singapore Medicine Co.* [2023] HKCA 740 at [27]-[28].

Most barristers would be pleased if their written submissions are incorporated into the final judgment, although not perhaps to the extent of the case cited above. From a copyright perspective however, judicial copying raises a host of questions. In the first place, does it constitute an act of copyright infringement? Counsel's written submissions surely fall under the scope of "original literary works" in section 1(1) of the Copyright, Designs and Patents Act 1988 (the "Act") and therefore are subject to copyright protection. However, the potential difficulties this would pose to the administration of justice are obvious. Accordingly, section 45(1) of the Act states that "*copyright is not infringed by anything done for the purposes of parliamentary or judicial proceedings*". Thus, even wholesale copying of written submissions by a judge do not infringe copyright, although such acts are clearly inadvisable and are likely to damage public trust in the administration of justice.

The interrelationship between copyright law and judicial proceedings continues to be an area of some ambiguity. It remains uncertain whether copyright in judgments is owned by

the judge(s) who wrote the judgment, or by the Crown. Under section 45(1) of the Act, there is no copyright infringement where judgments are quoted or reproduced in written submissions or in correspondence: indeed, the English courts have held that this applies even to contemplated proceedings. However, researchers who wish to quote judgments outside the context of legal proceedings do not enjoy this protection. Whilst the act of reporting on court or parliamentary proceedings itself does not infringe copyright, the unauthorised copying of a law report (or Hansard) constitutes copyright infringement.