



# Professional Practice in Engineering Management

University of Sydney Faculty of  
Engineering & Information  
Technologies

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# Copyright and engineering

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# Engineering drawings, data and copyright

- The basics of copyright law and the protection it affords?
- Who can enforce copyright?
- When is copyright infringed?
- Engineering data and copyright infringement.
- Case study #1: Nine v IceTV
- S.77 Copyright / Design overlap provisions.
- Case study #2: Digga v Norm Engineering
- Case study #3: Burge v Swarbrick
- Drawings in patent specifications and design registrations



# Basics of copyright law

- Copyright is an intangible right that sits independently of any rights in physical articles or products.
  - Copyright arises automatically, without the need for registration.
  - Copyright protects certain classes of “work”: literary, artistic, dramatic and musical and certain other subject matter: sound recordings, films and broadcasts.
  - Whether copyright arises (subsists) depends on whether preconditions are met ie. the author or creator is an Australian or a person in a convention country.
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# Copyright in drawings

- Drawings are one species of the “artistic” copyright work.
  - There is no requirement that drawings take any particular form or that they attain any particular artistic quality.
  - The cases demonstrate that where there are multiple illustrations on a single page, they are a single copyright work. ie. when LEGO sued a competitor the Court found that each page of a master sheet was the copyright work.
  - The text surrounding drawings can be a literary work, or part of a single work that is comprised of writing and drawing elements.
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# Who can enforce copyright?

- Copyright can be enforced by the “owner” of the copyright, or by an “exclusive licensee”.
- The owner of the copyright is the creator (in the case of works) or the maker (in the case of other subject matter).
- Where copyright is created by an employee within the terms of their employment, the copyright is owned by the employer.
- Independent contractors own the copyright in their creations unless they contract for a different result.
- Copyright can be dealt with like any form of property ie. sale or assignment.



# When is copyright infringed?

- Copyright is infringed when a person other than the owner (or a licensee) does one of the acts in relation to the copyright that is exclusively reserved to the owner.
- These acts include obvious ones such as reproduction (copying) and include others that are less obvious, such as communication to the public. ie. covering digital infringement of copyright.
- Infringement occurs when the whole or a substantial part of the work has been infringed. It can include a change from 2D to 3D.
- The consequences of copyright infringement are often severe, with the Court empowered to award damages in punishment for an infringement, or to deter others from infringing.



## Case study #1: *Nine v IceTV* [2008]

- This recent case illustrates the level of the threshold for determining whether a substantial part of a drawing has been taken.
- It was an extreme scenario in which Nine Network created and published (through third parties) a TV program guide and IceTV took parts of the content of the guide, time and title information, and republished its own competitive guide.
- The Full Court found that although nothing like the whole of the original guide had been taken, there was enough taken to be substantial part of Nine's copyright work.
- The importance of the part taken was a critical factor in evaluating what constituted a substantial part.



# Copyright/Design overlap

## s77 Copyright Act

- This is an important section to understand when considering any copyright in drawings.
  - The purpose of the section is to prevent a person from gaining parallel protection under copyright law and under design law for industrially applied designs.
  - If a drawing (artistic work) falls within the ambit of the section, then the creation of a copy of the drawing, whether in 2D or 3D does not infringe copyright in the drawing.
  - The section has been controversial in that it has been amended a number of times, most recently with effect from 17 June 2004.
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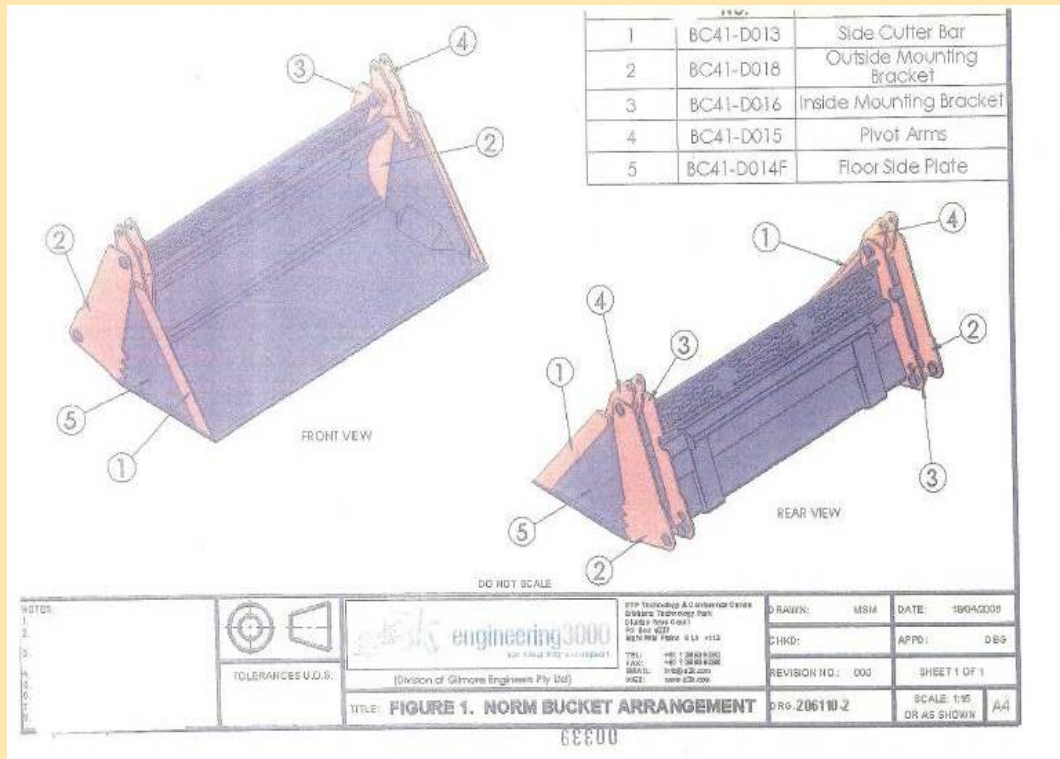


## *Digga v Norm Engineering* [2008]

- The most recent case on the interpretation of s77, under the present set of amendments.
  - The case involved a claim of infringement by one engineering company against another over the design of a bucket for a Bobcat type machine.
  - The copyright owner could prove that its employees had created drawings of the design of the bucket.
  - The court found (despite denials) that the competitor had accessed the drawings (directly or indirectly) to create a copy of the bucket.
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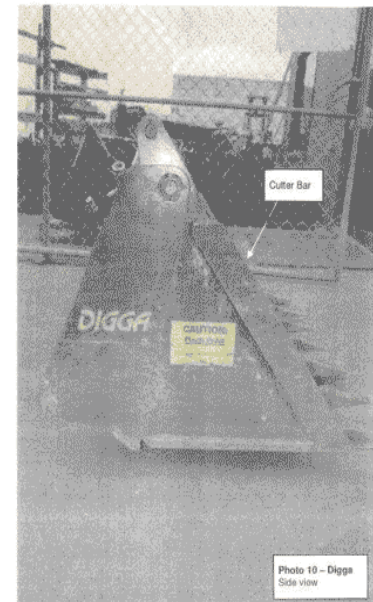
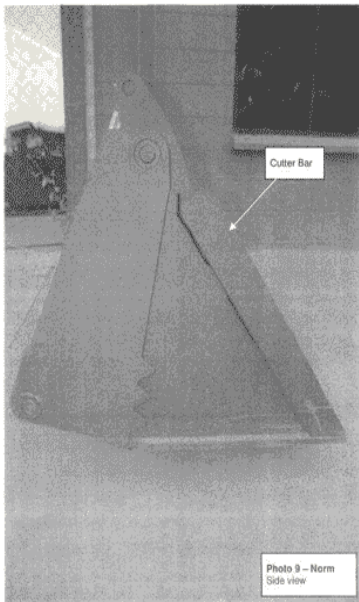


# The Norm bucket drawing





# The two buckets compared





## The result in *Norm Engineering*

- The Court found that of the 5 cases of alleged infringement, 4 were covered by s77 and there was no infringement.
  - On appeal, the Full Court ruled that the 5th case of infringement also fell within s77 and reversed the ruling on that single drawing.
  - The result of the case was that the copyright owner had no protection against its competitor copying its drawings or making a copy bucket.
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## The result in *Norm Engineering* (cont')

- Implications: For the first time this case has demonstrated how limited copyright protection is likely to be in industrial drawings.
  - Recommendation: The way to protect many of these industrial drawings in the future will be by way of design registration.
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## Case study #3:

### *Burge v Swarbrick* [2007]

- This was a case before Norm Engineering, which considered the exceptions to s77 for certain types of artistic work.
- S77 does not apply to works of artistic craftsmanship or sculptures.
- The case related to a boat building business, that had created a unique hull design which it sought to protect against copying by a competitor.
- Realising the danger that s77 posed for its copyright action, it argued that the plug/mould amounted to a work of artistic craftsmanship or a sculpture.
- The High Court rejected the argument and the case failed.



# Drawings in Patent or Design Specifications s77(1A)

- Previous uncertainty about whether these were industrially applied before an article was made.
- This led to the possibility that drawings that were not reproduced in a 3D form would be protected by copyright.
- The position has been clarified expressly by s77(1A) which deems a complete patent specification and a design representation to be equivalent to an authorised industrial design. ie. not an infringement.