

LIASA panel discussion: copyright from the perspective of the author

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Thank you for inviting me to take part in this discussion; you have made me at last try to sort out my thoughts on this subject. I first began to think about the author's relationship to publishing rights of various kinds (of which copyright is obviously the most fundamental one) during the mid-1980s, when I was part of a group of people who were planning to set up a publishing collective, and we had to design publishing contracts to offer our authors. This was happening in the context of our involvement in many different progressive, sometimes radical, cultural and education initiatives, and our approach to publishing was informed by some basic principles that underpinned all our activities.

Of relevance for this discussion today were two principles in particular: firstly, that as publishers we should not in any way exploit the work of the authors we published in ways that were detrimental to the authors themselves, whether financially or in terms of control of their work; secondly, that our aim was to make the authors' work freely available (metaphorically speaking – and if necessary, literally as well) to the broadest possible range of readers, and in particular to any and all readers from the various potential audiences amongst those sectors of South African society whose access to books was constrained by political and economic forces. We arrived at these twin commitments – to authorial control of rights, and to unlimited access to any and all kinds of published work – out of our own experience as authors, activists and people with a certain vision of what cultural freedom means. Some of us had already experienced the 'normal' publishing process, its positive and negative sides, and we had a certain sense that it should be possible to keep authors fully aware of and in control of their rights, without causing total chaos at the production end of the process.

I mention all this to indicate that the ways in which I've continued to think about, and often puzzle over, the author's copyright and control of her work, are strongly influenced by other thoughts about what it means to live in a free society, how literature and other cultural products are influenced by political and market forces, and what it means as an author to earn a 'reasonable' reward for literary labour; and by having worked and lived in a period of very febrile debate and experimentation with forms of cultural production (which was the case not just nationally, but internationally, during the 1970s and 1980s). And because of this, it may well be that my own views on authorial rights are not exactly representative of what authors in general think about these things. (One needs to realise also that these views are also often governed by purely idiosyncratic factors to do with personal temperament.) It's important to bear in mind that the author's understanding of the value of copyright, and of how it ought to

work, is part of his or her overall set of cultural and political values – there is no ‘innate’ authorial position on these matters, and if one thinks of how artistic production has been recognised (or not recognised) at different times throughout history, one quickly sees that our modern understanding of creative work as ‘private property’, and our modern approach to paying authors, are very much determined by specific historical developments in certain parts of the world.

What I’ll try to do here is set out, as logically as I can, what the various issues are that arise for an author in relation to copyright, and then try to indicate what kinds of general authorial concerns are relevant in each case. From time to time I get asked to advise authors on the meaning and implications of standard publishing contracts, and this has given me some sense of how they tend to view their various rights, and what they are most and least concerned to protect in this regard.

Perhaps I should also explain, before I go further, that I’ve published work in genres that span some of the extremes of authorial and contractual experience: I earn part of my living from writing school textbooks (published mostly in South Africa but also for certain publishers abroad); and I’ve been publishing poetry in journals and books, in South Africa and abroad, for many years – and as you will all no doubt know, publishing poetry has absolutely nothing to do with earning a living. I spend quite a bit of time advising authors on the meaning and implications of standard publishing contracts, and this has given me some sense of how they tend to view their various rights, and what they are most and least concerned to protect in this regard.

All that by way of introduction.

I’ve already indicated that, from an author’s perspective, copyright matters can raise puzzling questions or lead the author into adopting quite contradictory positions. In the rest of my presentation I’ll describe some of these, and leave it to you to decide how far the author’s concerns are relevant to your own concerns and commitments as librarians. In my personal view, librarians are among the most important agents of cultural growth, exchange and liberation in any society, and I don’t know of any authors who would see their interests as antagonistic to yours, in terms of a shared commitment to books and readers. It sometimes seems that economic questions must inevitably drive a wedge between the two groups (authors need to earn a living, librarians need to have as many books for as little money as possible), but it surely has to be possible to develop a model of keeping authors alive that doesn’t involve depriving people without personal wealth of access to books.

At the same time, as publishers rightly point out, their commercial interests and those of the author almost always coincide – the arguments tend to be about who gets how much of the total amount, not about whether or not money should be made. So how to reconcile the author's financial interests, and her interests in distributing her work to the widest possible readership – this seems to be where the various paradoxes and confusions of copyright arise in the author's head.

I'd say that the attitudes of most writers tend to fall into two broad categories: on the one hand, a sense that what really matters about the work could never be captured by any contractual rights, so it doesn't matter what happens after it's published; on the other hand, a belief that the publisher's main aim in life is to make money out of the author's creative labour, and the author must be vigilant about getting a good share of this money. With one or two exceptions, the authors I have talked to tend to see themselves as passive beings, when it comes to wielding their copyright – in other words, they tend not to see their copyright as an asset to be bargained with selectively, with themselves setting all kinds of conditions for each use of their work. The fact that the average publishing contract asks authors to hand over all rights in their work for the full duration of copyright seems seldom to bother most of the authors I speak to.

It's a different matter, of course, for professional writers, who are usually very clear about what is at stake when they sign a publishing contract – but this is often because they are being commissioned to write, rather than offering a finished work for publication. I think there is an important division here: if you've spent months or years working on a manuscript, purely driven by your own creative energy and obsession with certain subject matter, it really can seem that everything that comes afterwards is incidental to the creative process. If, on the other hand, you've written a work specifically to meet the commercial requirements of a publisher, or because your intention is to have your work used in your own teaching institution, you are much more alive to the way the work will be used and controlled after it's been completed.

I'd like to draw attention to another group of authors here, one which I think is often more marginalised than any other: the artists who illustrate books – whether story books for young children or technical books for educational use. They often play a central authorial role, in the sense of contributing to the meaning and value of the material; and their terms of employment are often abysmal, financially and in terms of their copyright. As you take your deliberations further, I'd urge you to invite some of the illustrators who do commissioned work for publishers to discuss their situation with you, so that you can see whether your thoughts on policy and practice intersect with their concerns at all.

The four aspects of copyright that concern authors can be broadly posed as follows:

1. being identified with the work
2. control over use of the work
3. moral rights over the work
4. income from the work

1. How much does **being identified with the work** matter?

fame, career building, reputation

In a sense this is the most obvious and uncontested right – to be known publicly as the author of the work – and it's the right most willingly defended by publishers on behalf of their authors, when questions of plagiarism or pirated editions arise. For authors, being identified with the work can be important for any of a number of reasons:

- building a reputation as a writer, in the artistic sense, or as an expert on a certain subject, or as the source of a particular theory or body of knowledge; in this respect, the cumulative effect of one's publications has a value in itself – a book by a well-known author is likely to be more readily received by the public than a book by someone unknown. (Authors of literary works tend not to lean too heavily on this, because each new work they produce involves grappling with new form and content, and there can be no reliance on books already written to bolster the new one. The reputation-factor nonetheless comes into play here at the stage of contract negotiations, and post-publication marketing.)
- becoming famous: for some writers, fame itself is desirable – they want to be recognised, praised, valued by society. Having one's name well-publicised is an important part of the publishing process, for these writers. For others, fame of even a very minor local sort is irrelevant to the creative process.
- career development: this is more concrete than building a scholarly or artistic reputation, and comes into play in academic and professional environments in which the number of publications on one's CV has a direct effect on one's employability – hence the fights to the death that can go on among teams of authors as to whose name comes where on the author list.
- being identified with a certain set of ideas or values – it can happen that a writer wants to be known as the author of a work advocating a particular theory, ideology or belief system, and

that this is more important than any other reason for publishing the work. Conversely, it can be important to a writer to conceal his/her identity as the author of a work of this kind, for any of a number of reasons to do with self-preservation.

2. How much does **control over use of the work** matter?

right to share, restrict access

This can be a very complicated matter, or very simple. The majority of authors, certainly of those who approach commercial publishers with their work, are in effect making a decision to hand over control of the use of their work to commercially motivated agents, on the understanding that the publishers will find as many ways as possible to have the work used for financial gain (this now extends, literally, to something called ‘universal rights’ – which in effect means that the publisher takes control of all existing and as-yet-uninvented electronic and other means of distributing the work anywhere in the universe). Experienced authors will tend to ask careful questions of any publisher about how well they can promise to market the book in other countries, and how many deals for electronic rights, film rights, translated editions, etc. they can arrange. The author’s motivation here is usually a mixture of wanting to become well-known, and wanting to derive as much income as possible from licensing rights on the book.

(It needs to be noted that authors are often persuaded (and they often don’t need much persuasion) to cede copyright entirely to the publisher – usually on the grounds that it is ‘convenient’ to do things this way – whereas the fact that the contract invariably asks the author to license all rights, for all territories, to the publisher ‘for the duration of copyright’ in effect gives the author the same full spread of rights, without having to claim copyright as well. I have never come across a situation where the cession of copyright actually solved a problem that couldn’t be solved by a bit more administrative energy on the part of the publisher. The fact that authors don’t object to this is an indication of how little they tend to recognise, or engage with, their own power as copyright holders.)

Authors in some cases may be concerned to intervene more directly in control of how their work is used – either to restrict access to certain markets (for example, to say they do not want their books to be sold in a certain country, as part of a political campaign against the government of that country), or to ensure access for people who cannot afford to buy their work commercially (for example, exacting a commitment from the publisher to donate copies of the book to certain communities, or to sell the book at a reduced price in certain places). An author who relies on a commercial publisher to produce and distribute the book has very little room to exercise this

kind of choice and control over how the work is used. However, authors who choose to operate outside this environment can tailor their sale of licensing rights much more creatively to their various interests and commitments. The approach taken by the developers of the *creative commons* website is a good example of how authors can make use of their copyright in this regard.

3. How much do **moral rights over the work** matter?

avoiding distortion, misuse

I would think that moral rights matter enormously to authors, although this is something rarely discussed – it seems to be generally taken for granted that the publisher, having accepted the work for publication, is more or less on the same moral and cultural wavelength as the author and will respect his/her moral rights by default. Here again, it depends how precisely the author has defined what is an acceptable context for the work – most authors seem to accept whatever is happening around them culturally as part of their normal publishing environment; but some authors might object, for example, to having their work serialised in a magazine like *Hustler*, or to selling TV rights to a particular religious channel, or to allowing their texts to be included in other works that promote views they don't support. There are poets who have expressly stated that they do not want their poems to be used in school examinations. The standard publishing contract contains a clause on moral rights (or should do), and I advise authors to discuss any concerns they have about this with their publisher before they sign the contract. (The in-house editor's own attitudes and values are often not fully representative of the overall company culture, specifically of the visions cherished by the marketing department.)

4. How much does **income from the work** matter?

reward for labour, earning a living, sharing in profits

This is the area in which conflicts of interest can become most apparent. As I've already said, if the author signs a contract with a commercial publisher, the assumption has been made by both parties that they share the same interest in extracting maximum financial rewards from the distribution of the work concerned. The limit case here is that every copy of the book must attract a royalty for the author, all possible uses of the book must be exploited, and every possible use of the book must be for a fee.

It seems to be common sense that any author would want to go along with this, and would want the limit case to apply. In my own case, this is entirely the logic of my textbook-writing career,

given that at present in South Africa publishers are not interested in publishing textbooks of any individual creative character. You do the writing because it will earn you an income. (And yet – I can't imagine refusing any child, or any school, a set of textbooks, because they had no money to pay for them. Knowing the economic conditions of the society for whom you write cannot but influence your approach to financial rewards, as an author.)

Yet there are very many kinds of authorial work for which this is not true. I don't think it's a matter of chance that poets don't haggle much (or at all) over royalties and fees – and not only because they know that their publishers are usually losing money on their books. The creative work is intensely demanding, and one needs to eat, so it would be very nice to get paid enough to survive while writing. (And it would make the writing better, if one didn't have to keep interrupting the creative process to produce another textbook chapter.) But generally speaking, authors of literary works would be doing it anyway, even if they never got published, so the equation between labour input and number of copies sold is less direct. The question arises most often when it comes to anthology rights: how much is a reasonable fee for use of a poem in an anthology? Is a long poem worth more than a short poem? The equations quickly become absurd. And yet – why should the poets not get paid, when the publisher and compiler will make money from the anthology, which wouldn't exist without the poets' material?

Let's be clear: authors work very hard to produce something worthwhile, and like any other workers, they need to be rewarded for their labour. If a society values their literary and intellectual output and makes use of it, that society should create the material conditions that allow the author to work (which, as any author knows, means accepting that wandering around in a daze for many weeks of the year counts as real creative work – it's a different model of productivity from factory work). And if financial profit is to be made off their work, authors need to share in that profit, even to garner the major share of it. But authors also, by their nature, tend to believe in the right of all human beings to have unfettered access to knowledge, literature, culture, call it what you will – and many of them are not comfortable with the fact that their own income relies on a system that restricts free access to their work for those who can't afford to be individual owners of copies.

I suspect that the core of this tension lies in the royalty system, in which 'success' and 'value' are measured entirely in individual purchases of copies of a book. The 'lending rights' system used in some countries (or is it only the UK?) seems a good compromise, but is it affordable here? Is there a way to have the state pay authors a kind of 'living wage' so that they can spend their productive time writing, without having to rely on royalties? Should it be accepted that an author cannot earn more for a certain work than the amount of money that could be earned by

another type of skilled professional, during the time it took to write the book? Could the commercial publishers be made to set the same limits on their profits? Can the socialised access systems – libraries above all, and school libraries – be made more fully responsible for the circulation of all books, based on better use of our taxes?

I have no answers to these questions, but it does seem to me that we have to fundamentally shift our paradigm of how authors (by which I mean all artists) are supported by society, if we are to get out of the trap of making people pay for access to knowledge and culture even when they can't afford food – a kind of barbarism that is truly frightening.

In summary, then, all authors have direct concerns and interests relating to these four aspects of copyright: identity, control, moral rights and income. But the ways in which they want to exercise their copyright in order to satisfy these concerns and interests may differ, depending on their personal values and needs. The one general point that I think we can draw from this is that the author must *always* be an equal partner in decision-making processes which touch on these rights, and that any process designed by other partners in the publication chain must be elastic enough to respect the fact that different authors will want to exercise their rights in different ways, and that they are perfectly entitled to do this.

The fundamental fact that authors start off as the full and sole owners of copyright in their work is often lost sight of, as soon as the authors begin to negotiate for use of their work. I would say that authors need to exercise this right more consciously, with a greater sense of both their power to decide how their work should be used, and a greater responsibility for helping to design methods of income-generation and distribution that honour both their own interests and the interests of those on whom they want to rely for publication. Given the way mechanisms of production, costing and distribution of written works have expanded and mutated in recent years, I'd say that almost nothing about the process we think of as 'publishing' has to stay the way we have inherited it – except for that one apparently irreplaceable process which involves the author dragging the raw material out of her own head.

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