



## **Ethics in real life**

### *Plagiarism and copyright law*

#### **Maureen Duffy:**

Copyright is a legal system which grants certain rights to authors – and that includes painters, musicians, film-makers, performers to a certain extent as well as writers – to license their work to other people to exploit, in return for money, and that is the sort of core principle of it.

#### **Nigel Warburton:**

Why is it so important to authors to get money from copyright because often they get paid by publishers anyway?

#### **Maureen Duffy:**

Well, actually, they don't paid by publishers, they get paid according to how many copies they sell and, increasingly in today's market, people are copying works instead of actually going out and buying them. Or else they're borrowing them from libraries and in the future this is going to be much, much worse once we get e-books on hand-held readers, books online, books in huge databases that can be hacked in to, so we need copyright to try to establish that some of the money that's going to be generated by all those new developments will come the way of the writer.

#### **Nigel Warburton:**

Now, that's always been the argument for copyright, that writers deserve fair recompense for their labour. But the balance, is the question, the balance between what's fair for an author against what's fair for the consumer in terms of freedom of access to the heritage in writing of their country and other countries too.

#### **Maureen Duffy:**

Yes, but, unless the writer is supported, there will be nothing for the consumer to access. And this is the real problem and this is what society at large is finding so difficult to come to terms with. We could see a situation where we were reduced to a handful of best-sellers and nothing underneath and that's like trying to support the glittering tip of an iceberg without the two thirds under the water.

#### **Nigel Warburton:**

The assumption of many people is that authors earn a large amount on the whole from their books. How true is that?

#### **Maureen Duffy:**

Well, the ALCS has done a very significant piece of research – or at least they got Bournemouth University to do it for it – and what that shows is that the average earning of an author is two thirds that of the national average wage. And even that of course is in a way distorted by significant earnings by people like JK Rowling. Not that I begrudge JK Rowling her earnings, she wrote for a long time with very little success and the first Harry Potter was published in the edition of five hundred copies so she certainly earned it but it distorts the figures even further and if you compare what we earn with what our German colleagues earn, then, factoring in the much, much higher cost of living here, we're doing rather badly indeed.

#### **Nigel Warburton:**

Now, turning to copyright itself, currently under EU law, there's a seventy year post-mortem copyright, that means that, if I write a book that's published today, I can carry on benefiting from its copyright until my death and then my heirs or my relatives can benefit for a further seventy years. That seems far too long.

**Maureen Duffy:**

Well, there are two reasons for that. One is pragmatic and one is perhaps more sociological. The pragmatic reason is that you have to harmonise copyright throughout the European Union and you cannot take away rights that people have been enjoying and the Germans already had a seventy year copyright so when it was harmonised, it had to be harmonised up to seventy years. And of course, as soon as the US saw this, they thought this was a very good idea and they followed suit. The sociological reason of course is much, much greater. Age, that everybody is living to, so my children, if I had any could well live to be ninety and so could their children, so seventy years has been stretched partly to fill that greater age span.

**Nigel Warburton:**

You've been personally involved in authors' rights for a long time now. Could you sketch what that involvement was and continues to be?

**Maureen Duffy:**

Well, my involvement really began in 1972 when after some twenty odd years of campaigning for a public lending right, the Arts Council produced a study with recommendations that we as writers thought was completely unsatisfactory. What they suggested was, in brief, that something should be added to the price of books sold to libraries. That money should go to publishers and a percentage should be passed on to authors. Now, that meant that the thirteen million books already in libraries would attract nothing so there was nothing for the older writer, and it also meant that publishers could, in theory, set it against unearned advances – in those days, you actually had advances which in most cases you don't get anymore – and it didn't reflect use. So we set up a group called Writer's Action Group – WAG for short because we thought we were the tail wagging the dog as we hoped – and campaigned, contacted computer companies, went into bar-coding, got a statistician to recommend an appropriate sample so that we didn't have to gather all the data, lobbied parliament vigorously for government money from the arts budget and, with the help of various MPs, in particular Michael Foot and Ted Willis, the author in the House of Lords, and the support of the TUC eventually, we managed to get an act passed and that was the Public Lending Right Act of 1979. And we've been benefiting as writers from that ever since. And that sort of started it off because, while we were campaigning like that, we got in touch with our continental colleagues and said, 'Well, you've had it for years, how have you done it?' and they all were able to say, 'Well, we administer it through a collecting society' and we said 'There isn't one' so they said, 'Well, do something about it'. So we founded the ALCS and that has been an enormous success, I mean, it's collected an enormous amount of money for writers that they would otherwise not have been able to get hold of and that comes from so-called secondary rights, things that you can't keep track of, that you can't exploit yourself as an individual writer, things like photocopying, and foreign public lending right, cable re-transmission right, all that kind of thing and of course, in the future, there's going to be a lot more because it will, we hope, be able to manage digital rights.

**Nigel Warburton:**

You've given us a success story but copyright has been under attack. Could you say something about that?

**Maureen Duffy:**

Well, I think the people who are mainly attacking it are people who, for some curious reason, have the romantic belief that writers will always write and that it's the nineteenth century and we can sit in our garrets with a draft of gin or something and we have to go back to Dr Johnson, 'No man but a blockhead ever wrote except for money'. And many of the people who oppose it are academics, salaried themselves, with pensions to look forward to, or librarians, salaried with pensions to look forward to, who somehow believe that books will get written whether the author is supported or properly remunerated for the use of our work - we're not asking for subsidy or compensation even – we are asking for payment for use.

**Nigel Warburton:**

One of the critics of copyright, Lawrence Lessig, has argued that copyright inhibits creativity because authors and other creative people often want to use the work of previous authors or previous artists.

**Maureen Duffy:**

Well, as we see from the Da Vinci Code case, they do it all the time. So, I don't see that there is any inhibition in any practical sense. I find it very curious that you should want to extensively use somebody else's work – do your own research is my feeling – but I don't think it inhibits creativity, it encourages creativity because it gives us two things. It gives us, as I say, a currency, a form of financial support but it also, combined with technology and with things like collecting societies, lets us know that we still have an audience and as culture becomes more and more global, it is extremely difficult to know whether you are actually producing anything of value being read out there or whether you are merely sitting at home massaging your own ego.

**Nigel Warburton:**

I want to push you on the question about the Da Vinci Code because that was a case where what was being protected was the expression of an idea not the idea itself so The Holy Blood and The Holy Grail was the source of ideas that were used in the Da Vinci Code but if the Da Vinci Code had actually used the very same words, that would have been protected by copyright but it was deemed not to have used the same words.

**Maureen Duffy:**

Yes, that's right. I mean, that was the judgment on appeal and one can see the fine line that Judge Humphries was trying to draw to clarify but it does seem to me to go against a previous judgment, the Ravenscourt judgment, where it was recognised that if you took an entire structure and the ideas, then you had gone further into the realm of copyright infringement. After all, The Holy Blood and The Holy Grail, you can argue, is a work of fiction in itself and the whole structure is there – the Da Vinci Code couldn't have been written without it – and it seems to me that it is a very fine line and it is potentially quite a dangerous judgment that's appeared from this. It chimes in with some of the current thinking that people should be allowed sort of renovative works based on somebody else's work, but I think you have to be extremely careful not to discourage original authors from producing their work if they know that it isn't going to be sufficiently protected for them to get a return from it or even an acknowledgement. In the Da Vinci Code case, had Dan Brown acknowledged that this was the source of much of his material, instead of which of course, what he did was take two of the names of the writers and turn them into the villain of the piece, which hardly seems a fair acknowledgement.

**Nigel Warburton:**

To play devil's advocate or Lessig's advocate, perhaps, I think Shakespeare ripped off plots from other writers in the same way that you're describing. Are you going to condemn Shakespeare or TS Eliot's exploitation of other writers in The Wasteland?

**Maureen Duffy:**

Pound is an even better example. I think it's fair enough to take the work of classical writers and reinterpret it for our own time. That's fine. I think you could rewrite War and Peace with reference to the war on Iraq. What I don't think is fair is to take the current work still available of contemporary writers and to rewrite that. Shakespeare after all, not only rewrites, he totally re-imagines. There are great accusations in the seventeenth century of, for instance, Aphra Behn, of being a plagiarist so this is not a new problem, it's been around a long time but, as I say, my feeling is Fair enough, the classics, the Bible, anything that's out of copyright but works within copyright, I think, should still retain that protection. You can go so far but I think the line has been drawn too far in favour of the plagiarist.

**Nigel Warburton:**

But in my understanding of copyright law now, what's protected is the expression, not the underlying idea.

**Maureen Duffy:**

That's right. But there are constant questions about the protection of formats, for instance. If you do a programme or a programme series, you can sell that or the company that makes it could sell that to any country of the world and have their version of it done. So, it is still a very fine line and I don't think we've got to the end of it yet.

**Nigel Warburton:**

How do you see the future of copyright in the age of the internet?

**Maureen Duffy:**

Well, the music industry's been wrestling with it for some long time and we're on the fringes of it and any minute now I think we're going to be plunged right in. I mean, copyright is an idea, I like it, it works, or it has worked. If anybody can think of anything better, I am not going to the stake for copyright but so far, nobody has come up with a better idea and I noticed on the radio this morning, there was an item about designer goods and the faking of designer goods and of course, we're now in the position of the faking of pharmaceuticals which are extremely damaging and you need some system, not necessarily an overarching system, to protect these various areas. The original idea for copyright in the act of Queen Anne was that learned men should be encouraged and enabled to write books for the good of society and that's still the basic concept. It's up to us, I think, as the creators to come up with the solutions to these problems. Nobody's going to do it for us. And unless we can provide practical solutions which I believe will still entail copyright, then the whole of society really stands to lose but it's up to us, nobody's going to provide them for us. Nobody gave us a PLR scheme, we had to invent it and fight for it and that I believe is what we've got to do in the future.

**Nigel Warburton:**

One very important alternative that's been presented to the standard law of copyright are these Creative Commons Licenses which are basically formulations which people write into their internet sites or put on their books which specify that people are free to use the material in a non-profit making way. Have you come across those?

**Maureen Duffy:**

Yes, I've certainly come across them. I've attended conferences on them and they have two main drawbacks as far as I can see, or perhaps three. One is that there is absolutely no enforcement organisation or mechanism to back them up. So in effect, the author is signing away a work and depending for absolutely no return for the whole term of copyright and many writers do not understand that that is in effect what they are doing. And the other thing is, I can do that already if I want to. I have my own website. I can put my work up on my own website and say Dear Readers, copy. I can publish my own book and have that printed in the front at my own expense. So I can make my work already free to anybody, if that is what I choose to do. But to spread a system which encourages both public to feel that it should have everything for nothing and does not make it clear to the author that they will get absolutely nothing and that they have given in effect, the whole thing away, seems to me at the very least, misleading. It's never been tested in the courts whether you can revoke that if you suddenly think, 'I was only eighteen, what was I doing? Why did I give all this material away for nothing?' And it may well be that a court would decide that you did it and you have abrogated your copyright and you no longer have any claim to it. That of course would be against the Universal Convention on Human Rights and also against international conventions like Berne convention which governs basic principles of how copyright works throughout all those countries that sign up to it.