

Copyright, contracts, creators: new media new rules

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Book Review by Sally Ramage

The author's argument

Essentially, the author's stance is that 'copyright, purported to address the needs of the author through protection of works thus to create incentives to produce and bolster societal well-being, has insufficiently met these objectives'.

The reviewer has met the author when based at the Oxford Intellectual Property Research Centre, based at St. Peter's College, Oxford University, St Peter's being the base for annual IP moots, where Professor David Vaver holds directorship.

UK Copyright, Designs and Patents Act 1988

There is a wealth of relevant caselaw in this book and this is one of its high points. *The Hospital for Sick Children (Board of Governors) v Walt Disney Productions Inc*¹ concerns the concepts of authorship and ownership in copyright law. The UK Copyright, Designs and Patents Act 1988, Part III, introduced a new form of intellectual property - *unregistered design right*.

Copyright expired after 60 years

Peter Pan is a character created by Scottish novelist J. M. Barrie (1860–1937). In the book, Peter Pan is a mischievous boy who can fly and refuses to grow up, existing in a never-ending childhood and on the island of Neverland as the leader of his gang the Lost Boys where he interacts with mermaids, Indians, fairies, pirates, and sometimes with ordinary children from the real world.

In 1929 Barrie partially bequeathed copyright in his works to Great Ormond Street Hospital for Sick Children, a hospital with a great international reputation in its field. The revenue from the royalties was small in relation to the hospital's running expenses but nevertheless amounted to a significant sum and, when the copyright expired, theatre managers indicated that they would like to continue to make voluntary payments to replace the royalties to which the hospital would no longer be entitled, copyright having duly expired in 1987. A provision was inserted into the new 1987 Copyright Bill by the House of Lords to create a kind of perpetual copyright in the play, Peter Pan. It cannot be said that the Peter Pan case was a continuation of perpetual copyright- the duration of copyright protection is usually something that is subject to international obligations.

Right to receive Royalties- 50 years

The hospital had had the right to receive royalties, and to refuse permission for a performance to take place – this right hardly ever having been exercised). The copyright rights were essentially revived, but not continued by the new Copyright Designs and Patents Act. This is not a perpetual copyright because the new Act states

¹ [1967] All ER 1005.

that the right shall cease if the hospital ceases to have a separate identity or ceases to have purposes, which include the care of sick children. Furthermore, article 7 of the Berne Convention demands a minimum duration for copyright protection of 50 years after the death of the author.

Copyright in the United States

The 2008 US Copyright Act is a very detailed statute, especially with regard to the initial registration of copyright in a book:

'Sec.410

....

b)(1) A certificate of registration satisfies the requirements of this section and section 412, regardless of whether the certificate contains any inaccurate information, unless--

(A) the inaccurate information was included on the application for copyright registration with knowledge that it was inaccurate; and

(B) the inaccurate information, if known, would have caused the Register of Copyrights to refuse registration.

'(2) In any case in which inaccurate information described under paragraph (1) is alleged, the court shall request the Register of Copyrights to advise the court whether the inaccurate information, if known, would have caused the Register of Copyrights to refuse registration.'

(b) Technical and Conforming Amendments-

(1) Section 412 of title 17, United States Code, is amended by striking '411(b)' and inserting '411(c)'.

(2) The item relating to section 411 in the table of sections for chapter 4 of title 17, United

States Code, is amended to read as follows:

'Sec. 411. Registration and civil infringement actions.'

Past changes to the international copyright system, as embodied in the Berne Convention for the Protection of Literary and Artistic Works (1886), have mostly resulted in the strengthening of copyright rules to the benefit of rights holders. All attempts to reform it to the benefit of users of copyrighted materials, such as consumers and developing countries, have either failed or been of limited effectiveness such as in the case of the Berne Appendix (1971), which contains special provisions for developing countries. (The 'Berne Convention' is the Convention for the Protection of Literary and Artistic Works, signed at Berne, Switzerland, on September 9, 1886, and all acts, protocols, and revisions thereto.).

However, A stricter, more author-friendly copyright regime does not guarantee higher pay for authors, according to a 2007 study which surveyed the earnings of 25,000 writers. The survey found that copyright law could exacerbate risk for authors. Writers in Germany earned less than those in the UK; despite the fact the country's copyright regime is more beneficial to authors, according to a study by the Centre for Intellectual Property Policy and Management at Bournemouth Law School. In 2004 to 2005, UK authors earned around 50 per cent more than their German counterparts. UK authors earned an average of £12,330, while the Germans earned an average of

£8,280. The survey was based on professional authors, meaning those who allocate more than half of their time to writing. Pay for an author is inconsistent. The survey also revealed that the top 10 per cent of authors earn 60 per cent of all the money earned in the UK, but just 41 per cent of that in Germany. The bottom 10 per cent in the UK earn just eight per cent of the money paid, but they earn 12 per cent in Germany.

In the final chapter the author posits solutions for freelance writers and analyses these solutions.