

## CASE FILE #10: THE UNCERTAIN MOTIVATION

### LEARNING AIMS

- Understand the theories of why we have copyright
- Be able to debate the arguments for and against having copyright

### KEY QUESTIONS

The following key questions should be discussed to address the learning aims:

- Why do we have copyright?
- What are the theoretical arguments for having copyright?
- What are the reasons against / what if there was no copyright?

Students will be expected to use Case File information to analyse ideas, to give opinions, and to justify opinions. Other questions posed within the Case File can be used to generate further discussion.

### WHY DO WE HAVE COPYRIGHT?

- See **TEXT BOX 2**
- Copyright is a law that provides the creators of protectable works with rights that stop others from using their work without permission.
- In addition, the law also balances the rights of other stakeholders by limiting the rights given to the copyright owners. Some of the ways that copyright is restricted are: duration, copyright exceptions and by only protecting the individual expression of ideas, not ideas themselves.
- More generally, we can say that the goal of copyright is the creation and spread of knowledge. Indeed, one of the main purposes of copyright regulation is to strike an appropriate balance between production and dissemination of knowledge. In other words, copyright should reward and incentivise creators to produce new works, while also allowing the public to access and use these works in certain ways.

### WHAT ARE THE THEORETICAL ARGUMENTS FOR HAVING COPYRIGHT?

- See **TEXT BOX 2 and 3**
- There are different theoretical arguments for why we have copyright. Two key explanations are known as the economic and natural rights theories.
- **Economic Theory**

In the UK we tend mostly to consider copyright from the economic perspective. This means that copyright is understood to provide an economic incentive for creativity and dissemination of things such as books, films, music, and art for the benefit of society as a whole.

Since copyright allows creators to own their work, they are able to make money from it, for example by selling or licensing it. If their work was free to copy without any copyright protection, the potential monetary value of the work would be lost.

And then, if a creator is not able to make money from their work, they might be discouraged from creating at all, and perhaps decide to do something else instead. For example, if a photographer is unable to sell their photographs, how would they pay for their equipment, or living costs?

The economic perspective argues that, without copyright, creators would not be able to sustain a creative career, and society would be disadvantaged by this lack of creativity. By compensating creators for the time, skill and effort they put into their creative endeavours with an income, copyright ensures the production of new materials and thereby the development of society through innovation and cultural resources.

- **Natural Rights Theory**

Natural rights theory is a different justification for copyright that is favoured in some other countries such as France. According to natural rights theory, copyright is granted in recognition of the fact that creative works are expressions of the creator's own personality and therefore they should have ownership of their creative outputs. According to natural rights theory, these rights exist simply because the work has been created, and because it represents an aspect of the creator.

## WHAT ARE THE REASONS AGAINST / WHAT IF WE THERE WAS NO COPYRIGHT?

- See **TEXT BOX 2, 3 and 4**
- Some people believe that copyright is not always a good thing. Some of the key arguments in this debate are as follows:

- **Copyright protection is too long**

Generally, copyright expires 70 years after the death of the creator. After that time, the work becomes part of the public domain. Once in the public domain, copyright is no longer attached to the work and this can be used by anyone without permission.

Some stakeholders believe that copyright protection lasts too long and therefore does not balance the different interests fairly. They suggest that copyright protection should be shorter, so that works can become part of the public domain sooner. This would mean that the public has the ability to access and use the works within a shorter period of time.

- **Copyright regulation is too broad**

Some stakeholders also argue that copyright regulation is too broad. By this they mean that copyright prohibits too many activities. As a result, it is felt by some that the balance of copyright falls in favour of the copyright owners.

One aspect of copyright that determines what activity is allowed without permission, and what is not, are the exceptions to copyright. Copyright exceptions are circumstances in which a person does not need the permission from the copyright owner to use his or her work. These include quotation, news reporting, education, private study and parody. Some people believe that these exceptions are too narrow.

- **Artists are not always motivated to create by copyright**

Some people believe that copyright does not motivate creators. A convincing argument for this is the consideration of creators who wrote books and plays before copyright existed, such as Shakespeare.

However, although Shakespeare didn't benefit from copyright law as we understand it today, he was still paid for his work and was therefore still able to make a living from his creative work. So, while he was not motivated by copyright, he may have been motivated by making money from his work.

- **Would people still create without copyright?**

Probably. People created literary, artistic and musical works before copyright was even thought of, and they would probably keep creating even if copyright no longer existed. The urge to create and be creative is a natural human phenomenon. Some people would continue to create, perhaps to entertain themselves, or their families, or maybe others. But it would certainly be much more difficult to make a living through creating stories or music or artwork without a copyright regime.

## SUGGESTED ACTIVITY

In addition to the suggested discussion topics, you might organise a debate about why we have copyright, and what benefits it brings. However, instead of just focussing on whether we should or should not have copyright, you could ask the students to think about whether copyright should last as long as it does.

For example, today, the duration of copyright lasts for the life of the author plus 70 years after they die. However, when copyright was first introduced in 1710, it lasted only for 14 years, plus a further 14 years if the author will still be alive when the first period expired. Key issues might be:

- What economic incentive do authors need to create? A 25-year term of protection? Are they likely to be more incentivised to create with a 50-year term? Or a term that lasts for life plus 70 years?
- What economic incentives do the creative industries need to invest in authors, musicians, and so on? Do film companies or music companies normally expect to recoup their investment within five years?, or ten years?, or longer?
- Should duration only be determined by economic incentives? Should duration last for at least the lifetime of the author?
- Why should duration of protection last beyond the life of the author? In the late Victorian period, it was thought that an author should be entitled to rely on their work to provide for their children, and for their children's children. Does this still make sense in today's world?

For further insights on copyright duration, see **Case File #2**.

So, the debate topic might be:

'Copyright lasts too long. It should last no more than 25 years.'

Split the class into four groups, two in favour of the proposition and two against. Give them time to research and plan their arguments. Encourage them to find commentary and analysis, opinions, news articles and other texts online that support their arguments.

THE GAME IS ON! – CASE FILE #10: THE UNCERTAIN MOTIVATION

For the debate, pick two teams to present. The other teams will serve as judges and decide which side presented the stronger case, voting for the winners of the debate at its conclusion.

## CASE FILE #10: THE UNCERTAIN MOTIVATION

### 1. INTRODUCTION

Joseph, Sherlock Holmes and the 'girl with the light blue hair' are all creators: Joseph draws and designs toys; Sherlock composes music; and the mysterious girl is an accomplished street artist. However, they all create for different reasons.

This Case File #10 considers the role that copyright plays in incentivising the creation of literary and artistic works, before inviting you to think about the different motivations each of our characters may have for creating their own work.

### 2. ECONOMIC ROLE OF COPYRIGHT

In [common law jurisdictions](#) such as the UK and the US the justification for copyright is often presented in economic terms. Copyright provides an economic incentive to encourage the creation and dissemination of cultural goods such as books, music, art and films. It does this by giving the creators of those works the right to prevent others from making use of their work without permission. Without the protection of the law, other people could simply make use of the work for free and the creator may not be able to earn a living from his or her work. And if creators weren't able to earn money from their work, they may be discouraged from creating new work at all, which would have a negative effect on society as a whole.

However, it is understood that the copyright regime should also deliver significant benefit to the public as well. For one thing, by giving authors the right to control the use of their work, copyright encourages and incentivises the creation of new work which contributes to the encouragement of learning, the dissemination of knowledge and the promotion of culture. But also, copyright does not give creators absolute control over the use of their work: they are granted only certain economic rights, and these rights are subject to various exceptions. This means that, under the right circumstances, everyone is able to draw inspiration from, and make use of, existing copyright works in the creation of new work.

That copyright plays this dual role of securing private rights and public benefit was evident from the very start of the copyright regime. The first copyright act in the world was passed in the UK. Popularly referred to as the Statute of Anne 1710, it was passed 'for the Encouragement of Learning by Vesting the Copies of Printed Books in the Authors or Purchasers of such Copies'. That is, the 1710 Act granted copyright to authors (by vesting the copies of printed books) for the public good (to encourage learning).

### 3. WHY PEOPLE CREATE

We are all creators, and we all create copyright works all the time. Whether you are writing an email, taking some photos or videos with your phone, or preparing an essay or report for school or for work, you are creating something that is probably protected by copyright. These may not be the kind of things that we normally think of as literary, artistic or musical works but they are still works protected by copyright. And obviously, we would create them whether or not the copyright regime exists.

So, while copyright provides an important incentive for the creation of certain types of work, it does not incentivise the creation of all types of copyright-protected work.

Different people have different motivations for creating, and some people will always create whether copyright exists or not.

Joseph is a toymaker. He draws and designs toys for a living, and he sells his 'beautiful, wonderful toy' in order to be financially rewarded for his creative efforts. He creates work safe in the knowledge that the law provides him with economic rights in his work that he can exploit commercially.

On the other hand, Sherlock composes music because he enjoys it; it helps him think and he believes that 'the work is its own reward'. He is not incentivised to create by the copyright regime as he is not interested in commercially exploiting his compositions. (Indeed, he doesn't appear to know anything about copyright at all!) Rather he simply enjoys creating and composing music in the privacy of his home.

The mysterious 'girl with the light blue hair' is also motivated to create, although her reasons for creating the 'dreadful images' are not as obvious as for Joseph or Sherlock. She does not appear to be creating her works of art for commercial gain. But neither is she simply creating for herself, as Sherlock does. She is creating work for public consumption, work that engages the public. Her works are a form of communication, but communication without any obvious economic agenda. As with Sherlock, the copyright status of her works does not appear to be a relevant consideration in motivating her to create.

#### **4. FOR DISCUSSION: IS IT ALL ABOUT THE MONEY, MONEY, MONEY?**

Do you agree that copyright protection helps creators, and that it encourages people to create? What if copyright did not exist? Would people still create? How would writers, artists and musicians make a living out of their creative works, if not by copyright?

Why do you think the 'girl with the light blue hair' is creating her images featuring Joseph's beautiful, wonderful toy?

#### **5. USEFUL RESOURCES**

What are the arguments for and against contemporary copyright regulation? You can find some here: <https://www.copyrightuser.org/educate/a-level-media-studies/prompt-2/>