

CASE FILE #33: THE (IN)COMPLETE MESSAGE

LEARNING AIMS

- Understand that not all copying is wrong
- Understand that copying, when creating new work, can be lawful and creative
- Understand that theft and copyright infringement are not the same thing

KEY QUESTIONS

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

- What is the difference between theft and copyright infringement?
- In creating *The Game is On!* have we copied other people's works creatively and lawfully?

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.

WHAT IS THE DIFFERENCE BETWEEN THEFT AND COPYRIGHT INFRINGEMENT?

- See **TEXT BOX #2 and #3**
- Theft involves dishonestly taking someone's property and permanently depriving them of it
- Copyright infringement occurs when you copy someone else's work for certain purposes without their permission.

Copyright infringement might be economically harmful, but it does not deprive anyone of their property, permanently or otherwise. The copyright owner can still make use of their property.

Also, copyright infringement can happen by mistake, or innocently. Even if you don't know you are doing something wrong you can still be infringing copyright.

IN CREATING *THE GAME IS ON!* HAVE WE COPIED OTHER PEOPLE'S WORKS CREATIVELY AND LAWFULLY?

- See **TEXT BOX #4 and #5**
- The first question is easy to answer (we think): we have been extremely creative with other people's works in developing and producing *The Game is On!*

Sometimes our use is obvious. Sometimes our use is not so obvious.

Perhaps make the **ANNOTATIONS** to each episode (or some of them) available to the students to let them explore the various ways in which we have copied, creatively.

- **Have we copied lawfully?**
- **YES.** We have copied in various ways that are entirely lawful. For example, we have copied:
 - **Ideas;** ideas are not protected by copyright.
 - Standard **Themes and Tropes** that recur again and again in literature and film; like ideas, these are not protected by copyright.
 - **Facts and Information;** these are not protected by copyright.
 - From works that are in the **Public Domain;** that is, copyright has expired in these works, and so they are free for anyone to use.
 - **Insubstantial Parts** of works; insubstantial copying is allowed under the law.
- In addition, wherever we have copied something more than an insubstantial part of someone's copyright work, we have relied on various exceptions to copyright. These exceptions allow us to make use of other people's work, so long as our use is fair.

We have relied on exceptions for the following purposes:

- Parody
- Quotation
- Criticism and Review
- Illustration for Instruction

ADDITIONAL MATERIAL

In considering and discussing the second KEY QUESTION you may want to refer to the ANNOTATIONS accompanying the films to illustrate these different types of lawful use. With that in mind, we provide some examples drawing on the ANNOTATIONS.

- **Ideas;** ideas are not protected by copyright

See 4.16: In episode 4, the idea of using a melody as the basis of the cipher was influenced by Alfred Hitchcock's film *The Lady Vanishes*. Miss Froy (the lady who vanishes), is an undercover British agent who must deliver a message to the Foreign Office in London. The key to the message is a folk tune that Miss Froy teaches to her travelling companions, Iris Henderson and Gilbert Redman.
- Standard **Themes and Tropes** that recur again and again in literature and film; like ideas, these are not protected by copyright.

See 2.26: In episode 2, each of the six characters that Mary is thinking about creating – the six detectives – are easily recognisable tropes frequently used in the genre of detective fiction. Recognisable types of literary detective cannot be protected by copyright.
- **Facts and Information;** these are not protected by copyright.

See 6.27: Arthur, the photographer is obsessed with the occult, and with capturing fairies on film. This aspect of the episode 6 was based on the well-known fact that

Sir Arthur Conan Doyle believed fairies and tried to persuade the public about their existence.

- From works that are in the **Public Domain**; that is, copyright has expired in these works, and so they are free for anyone to use.

See 5.8: In episode 5, our map of the game that Sherlock and John must play is based on two illustrations of the different levels of Hell, from Dante's *Inferno*, one of which is by Sandro Botticelli (1445-1510). These works are in the public domain.

- **Insubstantial Parts** of works; insubstantial copying is allowed under the law.

See 1.32: There are lots of examples of insubstantial copying throughout the films, but one of the most insubstantial concerns the use of one word from an episode of the BBC series *Sherlock*. That word is: 'Bored!'

- **Exception for Parody**

See 1.24: In episode 1, we create a parody of the famous movie poster for *Jaws* (1975), while at the same time incorporating elements from works in the public domain by Carlo Chiostrì.

- **Exception for Quotation**

See 3.22: We make use of extensive quotation throughout the films, copying very short bits of dialogue from other films, from television, and from literature. Sometimes we paraphrase or adapt the quotes slightly, to suit our context. In episode 3, much of the dialogue of the person interviewing Sherlock and John is quoting similar dialogue from the film *Blade Runner* (1982)

- **Exception for Criticism and Review**

See 1.1: The opening scene of the entire series is an image of a red double-decker bus crossing Westminster Bridge. In doing so, we recreate an image that was the focus of copyright litigation in 2012, resulting in a decision that many researchers and academics considered problematic. Within the film, our use of this image carries with it an implicit critique of the court's decision, discussed further in Case File #1.

- **Exception for Illustration for Instruction**

See Episodes 1-6: We like to think that however and whenever we have copied other people's work throughout the making of *The Game Is On!*, ultimately, it has all been for the purpose of 'illustration for instruction'. The point of developing this resource has been to help educate and instruct students about copyright law.

SUGGESTED ACTIVITY

Pick one film and its accompanying set of annotations (or, alternatively, give different groups a different film to consider and discuss).

Working in groups, ask the students to identify examples of copying, and to explain why the copying is lawful. For example, the copying might involve ideas, or facts and information. Alternatively, the copying might involve quotation or parody.

Are there any instances of copying that the group cannot agree on? Do the students think there are any examples of copying that might be unlawful? Ask them to explain why.

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1. INTRODUCTION

There are many different copyright education resources available online and elsewhere. Often, they are developed for schools in partnership with organisations that represent authors and artists, as well as the publishing, music, film and other creative industries. But, in our experience, this often means these resources offer a very particular kind of story about copyright, its purpose and its possibilities.

In this Case File #33, we consider two ways in which some traditional copyright educational materials can present a slightly skewed or incomplete view of the copyright world. Then, we invite you to consider the many and varied ways in which we have copied copiously from other people's ideas and works to create the entire series of *The Game is On!*

2. YOU SAY EDUCATION? I SAY MISINFORMATION. LET'S CLEAR THE WHOLE THING UP

Copyright infringement is wrong.

And, theft is wrong.

They are both wrong, but they are not the same thing. Far from it.

Why then do some copyright educational materials tell you that copyright infringement and theft are essentially the same thing?

For example, one copyright education resource repeatedly talks about 'copyright theft' (rather than copyright infringement), contains a lesson plan concerning 'the theft of creative ideas,' and stresses that 'it's wrong to steal an idea,' just as 'it's wrong to steal a pen, a mobile phone or a car'. You may also have seen adverts in the cinema or online delivering a similar message: you wouldn't steal a handbag or a car, so why would you infringe copyright?

Classically defined, theft occurs when one person dishonestly takes property belonging to another with the intention of permanently depriving the other person of that property.

In other words, theft typically involves things – such as a pen or a mobile phone or money – that can only be used by one person at one time. If you steal my car, you are depriving me of its use. If the car is never recovered, I have been deprived of its use permanently. Also, theft only occurs when someone is acting dishonestly. That is, they must intend to steal. If you take my pen by mistake there is no theft because there is no intention to steal.

Copyright infringement is unlawful, but it is not theft. Rather, it involves *copying someone else's work without permission*. Moreover, not all copying without permission is unlawful, as we shall see in the next section.

For now, however, think about J.K. Rowling's first book, *Harry Potter and the Philosopher's Stone*. Since it was first published in 1997, it has sold over 120 million copies worldwide, in over 80 languages. That is, the story has been printed and reprinted, bought and sold, on paper and in digital form, over 120 million times. Roughly speaking, that's about one copy for every 60 people that are alive on the planet. The phenomenal success that Rowling has enjoyed is quite amazing.

Now, suppose that I copy and paste passages from *The Philosopher's Stone* into a blog or a website that I maintain because I'm a Harry Potter fan. In doing this, I am copying parts of Rowling's copyright-protected text. My copying may or may not be unlawful, depending on the circumstances, e.g., how much I have copied, the reason and purpose for my copying, whether my actions can be considered fair, and so on.

But, whatever else I am doing, I am not stealing. There is no theft.

Of course, copyright infringement can sometimes cause economic harm. Imagine, for example, an eccentric billionaire decides to print one million copies of *The Philosopher's Stone*, in Spanish, to give away for free to children in Colombia, Ecuador, Venezuela and Peru. And, she does it without Rowling's permission. Clearly, this amounts to copyright infringement and this unlawful action will cause Rowling economic harm by harming her opportunity to sell copies of her work throughout the north of South America. But again, this is not theft.

So, to recap:

Theft is wrong.

Copyright infringement is wrong.

But, copyright infringement is not theft. And, don't let anybody tell you that it is.

3. HEADS OR HEADS? A STORY HALF-TOLD

The second way in which some copyright education resources sometimes fall short, is that they have a tendency only to tell you half of the copyright story. That is, they tend to focus almost entirely on what you *can't do* with someone else's copyright work. But, rarely do they tell you what you *can do* with another person's work without the need for permission or paying any kind of fee.

You should never forget that there are *always* two sides to the copyright coin.

The law tells us that there are certain things that we cannot do without copyright permission. But equally, the law expressly tells us that there are lots of ways in which we can make use of another person's work, without the need for their permission, whether it is for certain creative, informative, educational or other purposes. In the next section, we consider the various ways in which use without permission is entirely lawful.

So, to recap:

Sometimes how you make use of someone's work will require permission; at other times, it won't.

Whereas some resources tend to prefer a coin with two HEADS, in this resource we show you both sides of the coin, HEADS *and* TAILS.

4. THE STORY OF THE STORY OF *THE GAME IS ON!*

When developing *The Game is On!* we set out to make a research-led, open access, web-based resource that provides users with an opportunity to explore, discuss and debate key principles and ideas underpinning copyright law, creativity, and the limits of lawfully appropriating and reusing other people's work. But, *The Game is On!* does more than just try to explain and help users navigate these issues.

Rather, we want to *demonstrate* how copyright enables creative possibilities. In adopting appropriation as a creative technique, each of our films speak to the positive, expressive power of the copyright regime by embracing and evidencing the creative reuse of public domain and copyright materials.

In short, we have copied. Lots. And, lawfully.

Across all six films, in just over 20 minutes, we believe we have copied, borrowed from and been influenced by other people’s ideas and copyright works around 500 times (or, on average, approximately twice every five seconds). The works we have borrowed from take many different forms: novels and short stories, paintings, film posters and photographs, melodies and musical scores, television and film, costume and set designs, history, science and academia, real-world copyright litigation, and much, much more.

Sometimes we make use of numerous sources in developing a single image, design or idea for one of our films. Sometimes we make use of the same work multiple times, in different ways, throughout the films. Sometimes we simply take inspiration or borrow ideas, neither of which are protected by copyright. Sometimes we borrow from works in the [public domain](#), works that can be freely copied because copyright has expired.

However, in general, we borrow from works that are still in copyright. And, importantly, not once did we ask for permission.

This isn’t because we’re rude people (we’re not).

And it isn’t because we don’t respect the authors who created the works, or because we think copyright isn’t a good thing. We do. And, it is.

Rather, we don’t ask for permission because we don’t need to ask for permission. We haven’t asked for permission because the copyright regime tells us we can make use of other people’s work in all sorts of ways. In making *The Game is On!* we’ve made use of others people’s work [for criticism and review, for quotation](#), for [parody and pastiche](#), and for [educational purposes](#). Similarly, we’ve made use of insubstantial parts of copyright works, and of information, biographical and otherwise, as well as commonplace tropes, themes and ideas from well-known films, stories and more.

In other words: we have done what creators typically do. We have allowed ourselves to be influenced by the world around us. We’ve taken things that already exist in the world and we’ve struck them together, hoping for a creative spark, conjuring fire, and spinning unlikely threads of gold.

In creating, we have copied. And that’s not a bad thing. It’s not a bad thing at all.

Moreover, we have decided to lay bare the story of our copying, so far as we know it and have been able to document it.

Accompanying this Case File are six documents, each of which annotate an episode of *The Game is On!* In each document, we identify and explain the many and varied sources that have influenced the writing, design, animation and scoring of each film. We do not claim that our annotations are necessarily exhaustive or complete. We accept that there may well be influences we have forgotten or overlooked. Similarly, there may well be material that we have copied or borrowed from unconsciously. If you can identify any copying that we have not listed in each of these documents, it would be great to hear from you. Otherwise, we leave it for you to explore these annotations at your own leisure.

5. FOR DISCUSSION

From a copyright perspective, we believe all of the copying that takes place in *The Game is On!* is lawful. Do you agree?