

The logo for ALCS (Authors Licensing Collecting Society) is displayed in white, bold, sans-serif capital letters on a black rectangular background in the top-left corner. The background of the slide features a large, stylized graphic of a white arrow pointing right, set against a black and white checkered pattern that tapers to a point on the right. The left side of the slide is partially covered by a solid teal color.

**ALCS**

# **WIPO/BCC COPYRIGHT COURSE**

## **Rights and Interests of Authors**

Richard Combes  
Head of Rights and Licensing,  
Authors Licensing Collecting Society (ALCS)

## Literary works – history

UK legislative origins, Preamble to the Statute of Anne:

“Whereas Printers, Booksellers, and other Persons, have of late frequently taken the Liberty of Printing, Reprinting, and Publishing...*Books, and other Writings*, without the Consent of the Authors or Proprietors...to their very great Detriment, and too often to the Ruin of them and their Families...”

The scene is set: a) Importance of rights for authors;

b) The beginnings of a legal definition: ‘books and other writings...’

## Literary works – statutory definition

- Literary Copyright Act (1842): “Every volume, part, or division of a volume, pamphlet, letterpress sheets, music sheets, maps, charts and plans”
- Section 3 (1), CDPA 1988: “any work, other than a dramatic or musical work, which is written, spoken or sung”
- Section 178 definition of “writing”, includes any form of *notation or code*, whether by hand or otherwise and regardless of the method by which, or medium in or on which, it is recorded...” Notation or Code extends to e.g. computer code, shorthand, Braille etc.)

Note the breadth of subject matter and communication types.

## Case law guidance

- “A literary work is intended to afford either information and instruction or pleasure in the form of literary enjoyment.” (Davey LJ – Hollinrake vs Trusswell, 1884).
- Invented words, meaningless terms or brief collections of words such as titles are generally not covered, (Francis Day & Hunter vs 20<sup>th</sup> Century Fox, 1940).
- Infopaq Int A/S v Danske Dayblades Forening (2009) - 11 words taken from press cutting and re-used. ECJ noted “elements reproduced were the intellectual expression of their author”.
- Position confirmed in UK case in relation to copyright status of headlines: NLA (and others) v Meltwater and PRCA Ltd (2010), Court of Appeal (2011).

## Dramatic works

- Originally protected as literary works, until the Dramatic Copyright Act (1833) recognised the public performance right. The text provides an idea as to scope: “Tragedy, comedy, opera, farce or any other dramatic piece or other entertainment.”
- CDPA (1988): “Includes a work of dance or mime”. A work of action, capable of being performed (*Norowzian vs Arks (no.2)* (2000) (Court of Appeal))
- Game shows? Depends on coherence of the action: contrast *Green vs Broadcasting Corporation of New Zealand* (1989) with *Banner Universal Motion Pictures Ltd v Endemol Shine Group* (2017).
- Video games? Each play follows a different ‘script’ so lacks the unity of a dramatic work, *Nova Productions v Mazooma Games and Bell Fruit* (2006).

## Fiction vs non-fiction

Baigent and Leigh - vs - The Random House Group Limited (2006). “Central Theme” rejected as a subject of protection: “...merely an expression of a number of facts and ideas at a very general level...It is the effort and time that has gone into the way in which those ideas and facts that are presented that is capable of protection.”

“...generalised propositions, at too high a level of abstraction to qualify for copyright protection, because it was not the product of the application of skill and labour by the authors in the creation of their literary work.

(the ‘central theme’ lay on the wrong side of the line between ideas and their expression)”

## 'Fan Fiction'

Unlikely that UK copyright protection will extend to fictional characters *Kelly v Cinema Houses Ltd* [1928-35] but may be possible in the US...

The case of *Tyburn Productions Ltd v Conan Doyle* [1991] Ch. 75 affirmed the traditional view that English law does not recognise copyright in the literary features of fictional characters. However, literary characters, represented by their names and drawings primarily, can be protected under trade mark law.

Unauthorised sequel to *Catcher in the Rye* - *60 years later: Coming through the Rye* - US injunction banning publication. (Not fair use: no transformation for parody purposes). The 'sequel' was aimed at making money and relied upon the famous original.

# Authors' Rights and Remuneration

- Contracts; royalties; residuals; buy-outs
- Unions and collective bargaining
- Collective licensing schemes: ALCS; CLA; ERA; International networks
- Statutory remuneration - <https://plrinternational.com/>
- Authors earnings in decline - ALCS research  
<https://www.alcs.co.uk/research> IAF Report: [Creating a Living](#)



## Future Issues

- Independent authors - <https://www.allianceindependentauthors.org/>
- International co-ordination - International Authors Forum  
<http://internationalauthors.org>
- Policy interventions - EU DSM Directive
- AI and authorship -  
<https://www.theguardian.com/books/2019/mar/25/the-rise-of-robot-authors-is-the-writing-on-the-wall-for-human-novelists>



Thank you, any questions?

Richard Combes, Head of Rights and Licensing, ALCS

*email [richard.combes@alcs.co.uk](mailto:richard.combes@alcs.co.uk)*

<http://www.alcs.co.uk>