



Copyright and Human Rights

An IPA Special Report

"If we had a more effective copyright protection system we would have many more independent writers. Many writers who have the right to live from their writings are unable to do so because of a lack of strong copyright protection. Not only in the field of literature but also in the movie and music sectors."

Alaa Al Aswany, bestselling Egyptian novelist.

8th July 2015

I. Introduction: Copyright and Human Rights

Jens Bammel, Secretary General, International Publishers Association



Copyright protection is not per se a human right, but it is a tool which protects the human rights of authors and publishers. Copyright has two elements that relate to human rights: it has an element linked to someone's personal creativity and identity and it has an economic aspect. As an author's right, copyright is not expressly mentioned in international human rights treaties and conventions. Instead, international treaties and national constitutions allude to it by giving creators and scientists the benefit of protection of "the moral and material interests resulting from any scientific, literary or artistic production of which he is the author." As a property right, copyright is a form of intellectual property (IP) and therefore enjoys protection as part of the human right to property. This is enshrined in Article 17 of the Universal Declaration of Human Rights.

Copyright law is a tool for resolving the conflict between human rights and policy obligations: on one hand, the objective to enable citizens to have access to culture and on the other, to ensure that scientists and authors (potentially the same individuals) are able to support their livelihood through their research findings and creative endeavours. The latter creates much of the culture the former wish to access.

Copyright impacts on freedom of expression, both of the author and of members of the public who wish to distribute the author's works as part of their own freedom of expression. Freedom of expression does not just mean the freedom to express a certain opinion. It includes the choice of medium, so that an author can choose, for example, whether he would like to distribute a work over open access licences on the Internet, or through a publisher via a publishing agreement. The latter will expressly detail the timing, format and territory of publication, a further expression of the author's freedom. Authors also have the right to stay silent, i.e. not to publish their works or to distribute them to a limited circle of persons or geographical regions.

The imposition of licensing terms of a publishing contract is a way in which the author exercises his freedom of expression. If a government or a third party were to distribute an author's copyright protected work outside of the limits of a licence, this would impact on the author's rights.

Throughout history, copyright has served as an incentive for human ingenuity by turning creativity into an industry. This creative industry has provided authors with advances that enabled them to invest their time into writing. For a typical international trade publisher one of the greatest investments are the advances paid to authors they plan to publish in the next two to three years. In turn the respective licensing agreements have given publishing houses the legal certainty to invest in unknown

Article 27

- Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
- Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

The Universal Declaration of Human Rights (1948)

authors and unpublished works. It is an important part of the knowledge economy and of the modern service and knowledge based economy as a whole.

This report reveals how the relatively poor state of creative industries in developing countries, compared to industrialised nations, is directly linked to the absence of copyright.

It is a tragedy that few, if any, African writers can live from the royalties their books earn in their home countries. Piracy means that local taste in literature cannot easily express itself in the form of royalty payments. Their livelihoods depend on their success in developed countries. This in turn distorts African literature. Whereas the reality of the African experience is now urban, the Western taste for lions-and-savannah influence which author is successful.

Many great authors in developing countries must continue to earn their living elsewhere while writing in their spare time, at least until international success ensures royalty income from abroad.

Governments must incentivise and protect authors on the one hand, and ensure access to the general public, including those who cannot buy. In publishing, the interplay between markets and public service expresses itself largely in copyright protection and the support for public libraries. This balance needs to be redressed in the digital environment, where the different licensing and lending models are yet to mature. In the digital environment, publishers' business models include those that allow free access, and e-lending, i.e. temporary access, can equally be provided by publishers.

“Information wants to be free”

Some voices say, that now that it is possible to publish on the Internet without the necessity to go through the traditional publishing route, the purpose of copyright protection is no longer given. American writer Stewart Brand famously said: “Information wants to be free.” the full quote reads: “On the one hand information wants to be expensive, because it's so valuable. The right information in the right place just changes your life. On the other hand, information wants to be free, because the cost of getting it out is getting lower and lower all the time. So you have these two fighting against each other.”

This quote points to publishers' added value in the Internet economy: publishers connect authors with audiences; they are the bridge between authors, their content and readers. Even where torrents or pirate networks provide the actual copy, the creation and curation of the content remains a value that author and publisher add.

Copyright is a policy instrument that protects the human rights of authors and publishers, in particular their freedom of expression. It must be balanced with the human rights of others. This has always been done through use of limitations to copyright within copyright law, or through supplementary policies in other areas that broaden access to copyright protected works.

The IPA published this special report to explore the tensions on the creative economy, and on wider society, whenever copyright is vulnerable. We hope you find it useful.

II. Copyright and Human Rights; the Author's Perspective

Alaa Al Aswany is the Arab world's bestselling novelist. His debut work *The Yacoubian Building*, a critique of life in Cairo during the dictatorship of Hosni Mubarak, has sold over a million copies worldwide. He was a key participant in the 2011 Egyptian uprising which led to the end of the Mubarak regime.

IPA: You believe that copyright and human rights go hand in hand. Why is that?



Alaa Al Aswany: Copyright struggles in countries where you don't have democracy. In the West you have a fair, open, honest system. I grew up in a dictatorship. Dictators don't feel comfortable with the concept of an independent writer. Writing is a tough, hard profession and if you can't pay your bills, you'll stop writing. It was impossible to have copyright protected in Mubarak's Egypt – this was done intentionally.

IPA: What was life like for writers under Mubarak?

Alaa Al Aswany: Governments offered writers jobs, often entirely fictitious, to buy them. You could be paid to be an "advisor" who never advised on anything. You received a cheque every month, but you couldn't criticize any human rights violation by your paymaster. This was the main strategy of Egypt's Ministry of Culture. It's a classic technique to control writers and to deprive them of their rights.

IPA: Has the copyright situation improved since the revolution?

Alaa Al Aswany: Unfortunately not. It remains impossible for the vast majority of writers. I'm lucky to have an honest publisher (Ibrahim El Moallem of Dar El Shorouk) who pays everyone their rights. He does this because he's an honest man, not because the system requires it. We have a big hole in our copyright system. Not just in Egypt - it's the same across the Arab world.

IPA: Technology was a key enabler of the Arab Spring. Is it enabling better conditions for writers?

Alaa Al Aswany: Social media has given Egypt's youth two things which my generation lacked. Independent sources of information, and an efficient and quick way to communicate, both outside the control of authorities.

There are great benefits here for writers. I have 1.7 million twitter followers. Whenever I write something, it immediately reaches a vast audience. It's great for any writer to be in direct contact with readers, to have an efficient way to present our ideas or to promote our work.

But what the internet gives writers with one hand, it takes away with the other. I'm talking here about piracy, and the lack of copyright protection. There are hundreds of sites where all my books are available for free and illegally.

I'm a dentist, from the middle classes, which means I've been lucky enough to be able to support myself as a writer. Most writers have very fragile financial situations. The real danger is that in the absence of proper copyright protection, people will simply stop writing. And everyone will lose as a result.

III. Country focus: Nigeria

Otunba Olayinka Lawal-Solarin is Chairman of Literamed Publications and one of Nigeria's best-known publishers. He speaks about his experiences in publishing and the challenges facing the book industry.



Piracy is devastating the publishing industry in Nigeria. The whole intellectual property space here is dominated by pervasive piracy and has been for a very long time. As soon as I ventured into book publishing, especially school textbook publishing, our books were being pirated. Multinational publishers like MacMillan, Longman, Evans, Heinemann's books are heavily pirated. Today, piracy has taken a turn for the worse; pirates can go to China, India or Dubai to import near-perfect pirated copies of the original, which fool customers who cannot tell the difference between the original and pirated copies.

In 1990, we published two sets of books VERBAL AND QUANTITATIVE REASONING. These books have been very successful and have been heavily pirated, as well as plagiarized, since they were published.

Nigeria's national book policy envisages that each primary school child should have at least five books. That translates to a huge volume: 125 million books for 25 million primary school children; which does not include another five million children in private schools. About 8 million children are registered in secondary schools, there are 129 universities and 69 technical colleges and colleges of education. Simply put, there are not enough local publishers and infrastructure to cope with such a huge demand for books.



Laws exist to prosecute copyright infringement, but how effective can they be in a vast country of 170 million people where law enforcement agencies and the courts take an interminable time in concluding cases? Court sentences are typically a 5000 Naira (\$25) fine. Nigeria's Copyright Commission, the agency saddled with enforcing copyright infringement, is poorly funded, making it difficult for the agency to function properly.



But it is not all doom and gloom. The Nigerian Government is beginning to show the political will to deal with the problems because of the growth of the entertainment industry where copyright infringement is most visible and where you have high-profile people protesting about it. There is a new levy on all imported printing equipment, including photocopying and digital equipment. This

will fund the Copyright Commission and should make it more effective.

Our new Government has made the fight against corruption a major priority. I hope this will translate into improved enforcement of copyright infringement.



IV. Country focus: Belarus

Ihar Lohvinau received the 2014 IPA Freedom to Publish Prize, in recognition of his achievements in defending freedom of expression in Belarus. In October 2013, Ihar Lohvinau's publishing licence was withdrawn by Belarus' Ministry of Information after he printed a book containing a photo of a protester who had been assaulted by police. Ihar Lohvinau is now compelled to publish in exile, from Lithuania.



Today in Belarus, the notions of freedom of expression or freedom to publish do not exist. Mass media and publishing are strictly regulated by laws which restrain freedom of expression. The government's view on book publishing is that publishers adhere to the state's interests, rather than having any interest in enabling freedom of expression.

There's a big list of topics and issues which are not allowed to be discussed openly. This means that whenever publishers or media tackle these themes, they need to cover them allegorically. Our experience - a forced move to another country - is not unique; relocating abroad is sometimes the only option for a Belarusian publishing or media business to survive.

So far there have been no serious copyright violations in Belarus. The country follows international standards on securing author's rights, and there are lots of effective instruments to guarantee the protection of copyright. The only problematic sphere of copyright is in the emerging market of e-products, where content is extremely vulnerable to piracy.

A new law on publishing and book distribution threatens the survival of the Belarusian-language market. In January 2014, a new requirement to register for distribution of print products came into force, along with obligatory registration for publishers. Publishers need to pass a state control in order to obtain permission to publish books. The new law imposes extra limitations on private companies in such a way as to cripple free entrepreneurship, both financially and legally. Obliging book distributors to obtain this permission to operate also reduces the number of existing networks upon which many publishing houses depend.



There is wide inequality between conditions for state publishing houses and private companies, with the latter group at a severe disadvantage.

The world is changing rapidly, but the value of freedom to publish must be demonstrated again and again. Unfortunately, in many countries the situation regarding freedom of expression is even worse than in Belarus. It's absurd that in the 21st century these restrictions divide the world into "free" and "unfree" zones, which in turn makes intercultural communication considerably harder.

V. Regional focus: Latin America

Ana María Cabanellas has worked in publishing since 1970, running fiction, non-fiction and children's book businesses, and serving as IPA President from 2004 to 2008. We spoke to her about the climate for freedom to publish and copyright in Latin America today.

IPA: Where are the main pressure points regarding freedom to publish in 2015?



Ana María Cabanellas: Right now, we see problems in several Latin American countries. The situation in Cuba in recent years is well known, and there are clear problems in Venezuela. Censorship is quite open there, although neither authors nor publishers seem prepared to speak about it. In Ecuador, restrictions to freedom of expression are so tough that even the Pope referred to the situation during his visit. In Cuba, Venezuela and in Ecuador, I suspect that only a regime change will bring about the improvements in freedom of expression and freedom to publish that those countries' citizens want and need.

IPA: How are things in your own country of Argentina?

Ana María Cabanellas: Conditions, thankfully, are completely different to how they were under the military regime, when publishers were actively persecuted and thousands of books were burnt. To give you one example, Daniel Divinsky and his partner, Kuki Miller, went to prison because they published a children's book and the military authority in one province considered it was against the government. It was only thanks to Peter Weidhaas, former Director of the Frankfurt Book Fair, that they were allowed to leave the country with their son. Clearly, we have come a long way from those dark times.

IPA: What are the main problems in Latin America around respect for copyright?

Ana María Cabanellas: In Latin America there are many piracy problems, in terms of locally pirated books and imports, as well as digital piracy. Countries like Uruguay do not themselves produce pirate copies of printed books, but they do sell imported pirated books. A big problem is that pirated books are sold in bookshops, so in the same bookshop you may find legally published books and pirated copies. The good quality of the pirated books makes it difficult or impossible to distinguish them from the legally printed books. Price is a driving factor. Chile has a VAT rate of 19%, creating a lot of space for piracy.

Photocopies and digital copies of higher education texts are also a problem. Not all Latin American countries have RRO's, and in the case of Argentina, the RRO, CADRA, is voluntary for both authors and publishers, since there is not a law that establishes this type of association for books. Education is very important, since even authors sometimes encourage their pupils to copy their books.

Part of the problem with copyright is legislation. Argentina has the oldest copyright law in Latin America, from 1933, although it has been modified many times. The problem is that publishers and authors are afraid to ask for a new law: we all know that a new law will open the possibility of new exceptions and limitations with which we do not agree. Other Latin American countries' copyright laws are more recent, but, in many cases over the last decade, they have been used to create new exceptions and limitations.

VI. Publishing's role in supporting freedom of expression

William Nygaard is the former CEO of publishing house Aschehoug and now serves as the chairman of Norwegian Broadcasting and the President of Norwegian PEN. In 1989 he published the Norwegian edition of Salman Rushdie's novel *The Satanic Verses*. On 11 October 1993, Nygaard was shot three times outside his home in Oslo, a crime likely connected to the fatwa which Ayatollah Khomeini issued against the book and its publishers.



IPA: The Nordic countries, and Norway in particular, have always been strong promoters of freedom of expression. Why is this?

William Nygaard: Norway, a small and young independent nation, has acquired through its history a strong feeling for the importance of democracy and freedom of expression as human values. The Second World War, in particular, strengthened this attitude.

How do you view the role of publishers as guarantors of freedom of expression?

Publishers' responsibility as guarantors of freedom of expression is part of our history and our professional obligations. In Norway, publishers are expected not just to uphold these values, but to integrate them into their business practice. An example is our net book agreement, which seeks to benefit society as a whole.

It is always important to educate and debate the role of the profession, particularly when the structure of the trade is changing and new generations are getting involved. You can never expect every participant to understand the seriousness of the issues when starting, but the key commitment to the profession should be part of the traditions of the trade and its associations. Recruiting the right kind of people who understand the seriousness of the profession is important, but the educational role of IPA and the national publisher associations is decisive. Responsibility starts with the owners and continues with the management and publishers. Educating the management and publishers is even more important than educating the editors.

Your experience demonstrates that threats to publishers are very real. How do you sense these threats are evolving, eg in the aftermath of Charlie Hebdo? Are you worried that fatwas against publishers will become more common?

It would really undermine the whole role of a proud profession if publishers stopped looking upon themselves as willing risk takers and fighters for freedom of expression. The Charlie Hebdo incident proves how important the publisher's role is in securing understanding and tolerance in all corners of society. Cartoons, as a genre, poke fun at people's self-importance. This attitude should travel across religions and politics. It is however important to publish content that, from an editorial point of view, looks to create dialogue and positive communication.

Forget about fatwas. That is part of the natural risk taking of the profession.

Do you fear that publishers may no longer want to publish important, but controversial works?

If the IPA and the national publishing associations give up drawing attention to this issue with all the players in the sector, then yes, this might happen. It's a question that should be continuously debated in the media and discussed in educational programs. There's a dangerous mentality today that profit should be the primary goal of publishing, which ignores our wider responsibility, and that creates a risk which has to be fought.

This stems from the globalization of the industry and the size of conglomerates dominating it. I worry that the people they're recruiting are not prepared for the responsibility of defending freedom of expression. The distance between the financial people with the real power, and the editorial risk takers is too large, creating a lack of common understanding.

Find out more

For further details about the IPA's work in defending copyright and freedom of expression, contact:

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