

Joseph Bender

The Modern Copyright Battlefield

1. “Three Favorite Copyright Metaphors”

Metaphors can be useful tools used to help represent abstract principles. Using symbols and drawing similarities can humanize a concept into a more understandable form. Patry elaborates on three commonly employed metaphors that give sympathetic sentiment to the ownership of intellectual property. I found the birth metaphor to be most stimulating. **[1a]** The idea of authors being parents of their work aims to personify the process of creation. Also known as the creation-as-birth metaphor, it claims that the mind of a creator is an intellectual womb of sorts, and the things it produces can be seen as children. It’s purpose is to evoke the intimate relationship between a parent and child. Much like human parenthood, this metaphor asserts that “The author, having given birth to the works, should have the right to raise and protect them as if they were the author’s children” (Patry 70). In this chapter, Patry attempts to discredit the metaphor and insists it is an overromanticized way of promoting copyright protection. **[1b] I disagree with the author’s opposition to this metaphor and believe it to be an accurate representation of the nature of the problem.** Patry uses two main arguments to refute the creation-as-birth connection. He proclaims that no author is an island, meaning that a lot of creative works draw on inspiration or imitation of past works. The author also points out that copyright is an economic right, and not a moral obligation. The metaphor attempts to elicit sympathy, but most authors are merely searching for leverage to make a profit. I think both of these claims are shortsighted and trivialize a complex issue. Intellectual property can be more meaningful at times than physical property. The next great novel currently resides in a pregnant

mind waiting to be birthed. It should be given the same sensitive attention that is given to a growing infant. It is also preposterous to draw a conclusion that because creation is based on past knowledge, it shouldn't be protected. [1c] In a paper addressing these controversial beliefs, Omri Rachum-Twaig emphasizes an author's individual creative energy over inspiration over already published works, "This romantic point of view understands creativity as a moment of revelation in which a work is created from nothing...in spite of the fact that every work is based on previous knowledge, the individual contribution of the author to a new work still justifies copyright protection" (Rachum Twaig 46). I feel that not endorsing this metaphor stubbornly rejects that creative works are a result of the author's originality. Even Pablo Picasso was quoted saying "Good artists copy, great artists steal" (Patry 73). Does this mean that we should shame the legendary painter and not view his works as innovative? It goes without saying that human invention builds on its predecessors. I would argue that it is a beautiful symptom of our inability to escape the passing of time. Approaching copyright with a creation-as-birth mindset is a great way to accentuate the importance and sensitivity of the subject.

2. Role of Fear and "Folk Devils"

Moral panic is a significant and influential tool used to control public perception. In an industry as controversial as intellectual property, public opinion is an important factor. Moral panic has been categorized as an exaggerated reaction to a certain event. Even the Salem witch hunt was an embellished response to uncertainty. The entire concept of copyright arose from the fear of credit not being given when due. Fear is a powerful emotion and can motivate people to take action. William Patry outlines and then offers numerous examples of this moral panic phenomena. In several instances, a moral panic was conjured intentionally in order to manipulate the public. Copyright and fair use have been monumental points of contention in today's digital

landscape. As an information professional, I have the ability to take an active role towards minimizing the dangers of these moral panics. **[2a] In my opinion, the most substantial way to combat moral panics is to keep people informed.** Misinformation was a critical factor in spurring many of these historical frenzies. For example, after 9/11 the US government promoted an irrational fear of terrorism. This allowed the NSA more freedom in unregulated monitoring of communication between American citizens. Similarly, fear of a communist uprising facilitated McCarthyism in the 1950s. However, Osama Bin Laden was not hiding in your basement, and Mr. Jones down the street was not secretly practicing Marxism. In both of these instances, the government formulated illogical fear on the basis of misinformation. Keeping the public educated is integral in coming to a global consensus on what is just and morally right. Moral panics are used by politicians to “take an existing problem of little or no consequence and turn it into an existential one to further a political agenda” (Patry 136). If people are scared, it is easier to pass legislation. There is a difference between blind fear and intellectual caution. The latter will arm us with the weapons we need to ensure copyright remains fair and for the people.

References

Patry, W. (2009). *Moral Panics and the Copyright Wars*. New York, NY: Oxford University Press.

Rachum-Twaig, O. (2016). *Recreating Copyright: The Cognitive Process of Creation and Copyright Law*. *Fordham Intellectual Property, Media & Entertainment Law Journal*: 1-54. <https://ssrn.com/abstract=2776292>