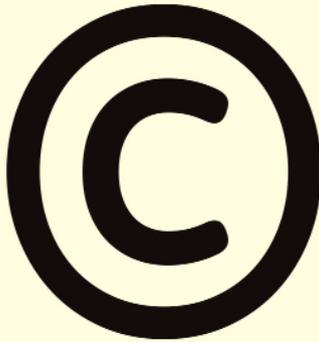


Excerpt from *In Defence of Copyright*  
by Hugh Stephens



**IN DEFENCE OF COPYRIGHT**  
**HUGH STEPHENS**

"It is a sad commentary on today's state of affairs that there is a need for a book defending copyright. The general public, in Canada and elsewhere, has only a vague knowledge of what copyright really is and why it is needed."

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## Prologue

It is a sad commentary on today's state of affairs that there is a need for a book defending copyright. The general public, in Canada and elsewhere, has only a vague knowledge of what copyright actually is, how it functions, and why it is needed. There are deep knowledge gaps and a prevailing impression that anything available on the internet is effectively free for the taking. If it isn't free, the view is that it should be and that copyright is not just a barrier but the barrier preventing this. Ask many librarians — who should know better — and they will say that copyright locks up content and stops it from being made available to the public. Many members of the public have heard of intellectual property but get copyright, patents, and trademarks confused. The confusion is understandable given the paucity of information available and the proclivity of even the mainstream media to frequently conflate the different forms of intellectual property protection.

My own awareness of copyright and intellectual property came slowly. After almost thirty years in the Canadian foreign service, in 2001, I had a career change and accepted a position as Senior Vice President (Public Policy) for Asia for the U.S. media conglomerate Time Warner. This necessarily entailed a greater familiarity with copyright issues than I had previously needed, given that the bread and butter of a company like Time Warner was content. Without content, the company was largely an empty shell, and the way in which its content was protected and monetized was largely through copyright. Therefore, the level of copyright protection — or the corresponding lack of it — in terms of legislation and enforcement in the countries in my region were of prime importance. As a senior representative of the company, my task was

to use public policy to get governments in the region to improve their copyright regimes and to take more action to combat piracy in both its physical and digital forms.

I became aware of how little thought was given generally to intellectual property protection in many Asian countries. In most countries, the problem was not so much with the laws themselves as with the interpretation and enforcement of those laws, as well as the attitude of a public that considered theft of intellectual property, particularly copyright piracy, to not be a serious offence — perhaps not a crime at all. Today, I think people are somewhat more aware of the consequences of patent theft, but theft of copyrighted materials and trademark violations are considered by many to be more an irritant than a crime. I confess that a number of years ago when I lived in Seoul, South Korea, one of the family's weekend delights was to go down to Itaewon, the street full of vendors of knockoff goods, music, movies, and so on that was adjacent to the U.S. military base at Yongsan. Knockoff goods that closely resembled the real thing could be purchased for a fraction of the price of the genuine article. Pirated and counterfeit goods were openly displayed. The Seoul police were not interested in stopping foreigners from purchasing knockoffs that resembled genuine brand-name foreign products, a process that would result in putting some of their countrymen out of business. I am not proud of it now, but back in the late 1980s, the acquisition of bargains, even though they were clearly copyright or trademark infringement, was considered a normal weekend activity. We knew they weren't the real thing, but who cared?

This same double standard was on display a few years later when the American Women's Club of Shanghai ran a feature in its weekly newsletter informing newcomers of the best places to buy counterfeit and pirated goods. Some of those families were

affiliated with either the U.S. Consulate or U.S. companies trying to protect their intellectual property in China. The U.S. government found it somewhat embarrassing, to say the least, to be lobbying the Shanghai government to close the pirate markets while dependents of consulate staff were promoting the attractions of such venues. In the end, the message was delivered to the Women's Club, and its awareness was enhanced. I have undergone the same education. Sharing this experience and helping to shape awareness of the role of copyright in society today is one way of making up for some the lapses of my earlier, unaware self.

As I hope you will come to appreciate, copyright protection is essential to promote and preserve the cultural life of the societies in which we live. There can be debates over how much protection is appropriate, but the essence of providing creators (authors, artists, sculptors, photographers, musicians, songwriters, performers, composers, cinematographers, architects, knitting pattern designers, tattoo artists, even writers of software programs) with the exclusive right to control and license reproduction and distribution of their work is what makes artistic creation viable. It is the fuel that allows the machine to run. The simplicity of establishing copyright is what makes it unique among other forms of intellectual property, although there is no shortage of legal interpretation of what is and is not protectable. The bundle of rights that constitutes copyright is not absolute; it is subject to limitations and exceptions. What these rights are, and how they apply, is the subject of Chapter 1.

Copyright did not just spring wholly formed from the mind of lawmakers. It underwent centuries of development and continues to evolve today, in the digital age. I explore some of the historical roots of copyright early in the book to set the context for the system we have today. This constitutes Chapter 2.

In some countries, such as Canada, the exceptions to copyright are considered user rights, and I have devoted Chapter 3 to a discussion of these. At the same time, user rights need to be balanced against the moral and economic rights of those who created the works in the first place. There is a great deal of debate over the application of these exceptions and limitations; over the years, courts have interpreted where those limits lie. New circumstances and new interpretations are part of the regular ebb and flow of copyright. Some of the legal but unauthorized (by authors) uses are controversial and have created major challenges for copyright holders. Finding the right balance is an ongoing challenge. I examine some of these challenges in Chapter 6.

Throughout history, there have been those who objected to the limited monopoly conferred by copyright. Their solution was to change or ignore the law. Pirated print editions actually predate copyright, and piracy has taken on new dimensions as technology has changed. Piracy, its origins, its different manifestations, its costs, and ways of dealing with it are explored in Chapters 4 and 5. Copyright in the digital age presents new challenges, but the basic precepts can be adapted to today's environment. This is particularly important as artificial intelligence (AI) becomes part of the creative landscape. Can a work created by AI be subject to copyright protection? How does the development of AI tools affect copyright holders? These issues are covered in Chapter 7.

Canada is but one of 180 members (at the time of print) of the Berne Convention, the international treaty that regulates copyright standards. Many of the challenges faced in Canada are reflective of the issues being grappled with in other jurisdictions. Others are a result of Canada's own experience, legal interpretations, and history of copyright. Throughout the book, I have tried to situate Canada's experience with copyright in the context of the

broader international picture. Copyright in Canada has been subject to many influences: British law, American practices, French traditions, and our own unique experiences. The current state of copyright in Canada reflects all these influences.

In Chapter 8, I provide my summary defence of copyright. It is important to get it right if we are to protect our cultural sovereignty and stay innovative and creative as a nation. There is no doubt that copyright and broader concepts of intellectual property are under attack today, both from new technologies and from a misplaced belief that copyright is an obstacle to the propagation of knowledge. There are some who argue that we are entering an era that will see the end of intellectual property. It is hard to take such a prognosis seriously. Copyright has adapted to technological change over many decades. The principles of copyright are as applicable in the digital world as they were in the day of physical typesetting. In a globalized world, with almost instantaneous communication and wide access to knowledge in various formats, a robust system of copyright is essential to ensure the continued production of and investment in quality content for the benefit and general welfare of society. Rather than preventing access to knowledge, the essence of copyright is that it encourages and facilitates creation and distribution. And if, for whatever reason, an author does not wish their work to be propagated, they surely should have the ability to exercise that right.

Finally, as a dessert offering after the main course, I have included a selection of weird and wonderful copyright stories drawn from a weekly blog on international copyright issues that I have been writing for the past six years. They illustrate some of the bizarre ways in which copyright can intersect with daily life, in the process becoming a matter of considerable jurisprudence.

I hope you will enjoy the journey and, if nothing else, come away

from reading this book with a better appreciation of the role that copyright plays in contemporary society and why, in my view, respect for copyright and creators is essential if we are to protect and nourish the creative impulses of our cultural community and cultural industries.