

The logo for the Authors Licensing Collecting Society (ALCS) is located in the top left corner. It consists of the letters 'ALCS' in a bold, white, sans-serif font, set against a black rectangular background. The overall design of the slide features a large, diagonal, black and white checkered pattern that divides the space into two main sections: a white upper section and a teal lower section.

ALCS

LITERARY AND DRAMATIC WORKS

Legal basis, case law and licensing practice

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.

Literary works - 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 20th 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...

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.

2016 – Publisher Hachette sued bestselling author (for breach of contract, not copyright) for copying from a public domain work.

Background to ALCS

- Established in 1977 by writers to campaign for PLR
- Early collections for German PLR, cable retransmission and reprographic rights
- Now representing over 100k writers; over £500m has been paid out
- Agreements in place with writers' bodies in 45 countries worldwide
- Writers remain at the heart of the governance structure
- Regulated by the Collective Management of Copyright (EU Directive) Regulations (2016)

What does ALCS do?

Licenses 'secondary use' of writer's works:

- Reprographic/ digital copying; Lending
- Cable retransmission; Educational use of audiovisual works; Private copying
- Public affairs work: lobbying on copyright/ authors' rights
- Cultural support programme
- Commissioning/ sponsoring research

CMO licensing Models

Various models apply for CMOs licensing authors' works:

- Voluntary schemes
- Voluntary + legislative support (Extended collective licence)
- Compulsory licences
- Legal licences (statutory right to copy, copyright levies)

Revenue Collection and Distribution

- Published works:
 - Reproduction rights ([CLA](#));
 - Lending schemes ([PLR International](#))
- Audio-visual Works:
 - Retransmission - Article 11bis Berne/ EU regulatory framework
 - Private copying - Berne 3-step test/ EU framework
 - Remuneration rights - Spain, France, Poland
- Mandates: authors empower ALCS to exploit and protect certain rights
- Distribution rules/ methodology governed by the board, approved by the members

See [ALCS website](#) for distribution report and governance documents

Practical Considerations

- Governance:
 - Member Representation: ALCS board includes majority elected writers + appointed specialists.
 - Members approve rules (financial, administrative, operational) through the AGM
 - External oversight is through the IPO, UK regulatory authority for CMOs / ATR
- Distribution:
 - CSIAC Works registration/ identification tools (IDA, IPI); model agreements
 - Online work registration and distribution
 - Blanket licence/ ECL = Author research (e.g. 300 new members per month)

Non-licensing activity 1: Public affairs

Supporting and preserving a writer's right to fair remuneration:

- Policy unit responds to UK/EC/WIPO policy reviews and consultations
- All Party Parliamentary Writers' Group
- International Authors Forum <http://internationalauthors.org>
- Commissioning research <https://www.alcs.co.uk/research>

Non-licensing activity 2: Cultural support

ALCS provides support for various activities in support of writers and writing:

- Funding for prizes and awards
- Festivals, conferences, debates
- Copyright education programmes

Future challenges

- Finding creative solutions for new services around high volume-use, such as user-driven digital platforms and institutional archives
- International outreach initiatives to standardise rights data and achieve connective licensing systems
- Aligning copyright policy with the reality of ever-evolving content markets
- Misinterpretation of copyright's function amongst 'digital natives'