

Copyright or Copyleft? Wikipedia as a Turning Point for Authorship

Daniela Simone

Copyright law provides that copyright subsists in original literary works and that the author of such a work is the first owner of the copyright subsisting in it. Traditionally, copyright law has applied in cases in which a literary work results from the collaboration of more than one author. For instance, encyclopaedias – a paradigmatic case of literary collaboration – are recognised as original (collaborative) literary works for the purposes of copyright law.

The paper considers the case of Wikipedia, which poses a unique challenge for copyright's rules of subsistence. It is disputable (a) whether Wikipedia might be recognised to be an original (collaborative) literary work, and (b) assuming that copyright subsists in such a work, whether its contributors might be recognised as authors, and thus, copyright owners. These two problems originate from the peculiar creative process by which the contributors to Wikipedia operate. Wikipedia is a constant work-in-progress which results from a wide range of contributions, although those contributions which the Wikipedia community consider to be valuable might not necessarily amount to 'authorship' as understood by copyright law. Wikipedia is created by a mass of contributors separated by distance and time making the application of the classical test for joint authorship problematic. Further, typical of Web 2.0 developments – which react to the previous idea of the Web as a static space where producers and users of information have fixed roles – Wikipedia is characterised by an increasing disappearance of the line dividing 'reader' and 'writer'. Contributions to Wikipedia are facilitated by a non-profit culture of sharing which operates within the normative framework provided by copyleft licences and the set of social norms recognised by the Wikipedia community. Interestingly, although copyleft licences are intended to create a copyright-free zone, in fact, they operate on the assumption of the continuing validity of copyright law standards.

The paper is structured in three parts. The first part outlines the model of collective authorship which thrives on Wikipedia – describing how Wikipedia works and suggests some reasons why it works. The second part offers a critical analysis of the relationship between collective authorship on Wikipedia and the concept of a work of joint authorship in copyright law. In particular, this part considers whether: (i) Wikipedia as a whole, or individual Wikipedia pages are original literary works in which copyright subsists and (ii) whether Wikipedia contributors are joint authors and thus copyright owners. The third part examines the role of copyleft licences in sustaining collective authorship on Wikipedia and considers the ongoing relevance of copyright law standards in this context.