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Why Public Performances of James Joyce's Works Are Not a Thing of the Past

By Robert Spoo

THERE HAVE BEEN GROWING CONCERN and confusion in recent years over whether noncommercial public performances of James Joyce's copyrighted writings may take place without authorization of the Joyce Estate. By a "noncommercial performance" I mean, for example, the kind of public or semi-public reading of *Ulysses* in its entirety or in excerpted form, by live participants, that we have come to associate with Bloomsday and other Joyce events.

The following discussion demonstrates that public performances of copyrighted Joyce works are permitted, without authorization of the copyright owner, under the U.S. Copyright Act, so long as those performances are "noncommercial" or "nonprofit" within the meaning of the statute. In addition, the copyright laws of Canada, Australia, the United Kingdom, and the Republic of Ireland also permit unauthorized public performances of copyrighted works, though sometimes in more limited ways than under the more expansive exemptions of U.S. copyright law. Please note that I am not discussing here classroom or other traditional educational uses of copyrighted works, which are treated under separate legal provisions. Also note that the following is a general discussion of the law and is not intended as legal advice.

Public Performances of Copyrighted Works in the United States

The U.S. Copyright Act contains specific exemptions concerning public performances of copyrighted works. First, it should be noted that U.S. copyright law governs only public performances. Private performances can never be infringing. 17 U.S.C. § 101(1). To perform a work "publicly" means to perform it "at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered." *Id.* This means that a reading of *Ulysses* at a theater open to the public or at a Joyce conference attended by numerous scholars and students would most likely be considered a public performance. On the other hand, a reading of *Ulysses* among a few Joyceans gathered privately for a study group would probably not involve the "substantial number of persons" required for a public performance. It is a public performance, however, to "transmit" a performance to the public by means of a closed-circuit channel, a radio or television broadcast, Internet streaming, or the like. *Id.* § 101(2).

If a copyrighted work is publicly performed in the United States without authorization of the copyright owner, the performer could be found to have infringed copyright, unless one of the following statutory exemptions applies to that performance.¹

1. Nonprofit Performances for Which No Admission Is Charged

The U.S. Copyright Act creates a specific exemption for the public performance of "a nondramatic literary or musical work otherwise than as a transmission to the public, without any purpose of direct or indirect commercial advantage and without payment of any fee or other compensation for the performance to any of its performers, promoters, or organizers, if . . . there is no direct or indirect admission charge." 17 U.S.C. § 110(4)(A). To qualify, the performance must (1) be given directly by a live performer or performers and not transmitted to the public by broadcast or other means; (2) involve a nondramatic literary work (such as a reading from *Ulysses*² or *Giacomo Joyce*, but not *Exiles*) or a musical work; (3) have no purpose of direct or indirect commercial advantage; (4) involve no payment of a fee or other compensation for the performance to the performer(s); and (5) require no direct or indirect admission charge (such as tickets paid for in advance or at the theater door, requests that an audience make voluntary "donations" to cover the costs of a performance; or, more indirectly, charging general admission to an event where part of the admission charge will offset or go to the planned performance).

This exemption covers many of the public readings from Joyce's works that we Joyceans ordinarily

encounter. Certainly, a live Bloomsday reading of *Ulysses* at a university or conference in the United States, for which the participants receive no payment or honoraria, and for which the conference organizers or hosting institution charges no direct or indirect admission and receives no direct or indirect commercial advantage, and which is not broadcast or otherwise transmitted, would fit comfortably within the Section 110(4)(A) exemption. Section 110(4) contains no restrictions on how much of the work may be performed; a work may be performed in its entirety under this provision if it otherwise complies with the requirements.

2. Nonprofit Performances for Which Admission Is Charged

Another part of the same provision creates a slightly different exemption for the public performance of "a nondramatic literary or musical work otherwise than as a transmission to the public, without any purpose of direct or indirect commercial advantage and without payment of any fee or other compensation for the performance to any of its performers, promoters, or organizers, if . . . the proceeds, after deducting the reasonable costs of producing the performance, are used exclusively for educational, religious, or charitable purposes and not for private financial gain . . ." 17 U.S.C. § 110(4)(B). Here, the same rules apply as in the Section 110(4)(A) exemption, except that, if admission is charged, any proceeds after deduction of costs must be used exclusively for a nonprofit purpose, such as charity, education, or religion.

Section 110(4)(B) contains an additional twist: the copyright owner has a veto power over such a performance if the owner "has served notice of objection to the performance" in a signed writing upon the person responsible for the performance "at least seven days before the date of the performance," stating "the reasons for the objection" and complying with other requirements established by the Register of Copyrights. 17 U.S.C. § 110(4)(B)(i)-(iii). Thus, the copyright owner can set the conditions for a nonprofit performance for which admission is charged, and can even veto the performance entirely if he or she wishes.

The upshot of all this is that the core Bloomsday-type activity to which we have become accustomed—the noncommercial, live, collective reading of Joyce's writings in public or semi-public settings (not broadcast, streamed, or otherwise transmitted)—is lawful in the United States under U.S. copyright law, without the Joyce Estate's permission.

Public Performances of Copyrighted Works in Certain Non-U.S. Countries

1. Canada and Australia

Editions of James Joyce's works published during his lifetime are in the public domain in Canada and Australia, where copyright lasts for the author's life plus fifty years. Can. Copyright Act, R.S. 1985, c. C-42, § 6; Aust. Copyright Act of 1968, § 33(2). There is no legal impediment whatsoever to unauthorized public performances of these works in Canada and Australia.³

A different copyright duration applies to works by Joyce published after his death, such as *Giacomo Joyce* (published in 1968) or the *Letters of James Joyce* (published serially in 1957 and 1966). For such "posthumous works," copyright lasts for fifty years (Canada) or seventy years (Australia) from the year of first publication. R.S. 1985, c. C-42, § 7(1); Copyright Act of 1968, § 33(3), as amended by the U.S.-Australia Free Trade Agreement (Jan. 1, 2005).

Even though copyright may subsist in posthumous Joyce works, Canadian and Australian laws contain exemptions for certain public performances of published, copyrighted works. Under Canadian law, "[i]t is not an infringement of copyright . . . for any person to read or recite in public a reasonable extract from a published work." R.S. 1985, c. C-42, § 32.2(1)(d). Similarly, Australian law provides that "[t]he reading or recitation in public . . . of an extract of reasonable length from a published literary or dramatic work, or from an

adaptation of such a work, does not constitute an infringement of the copyright in the work if a sufficient acknowledgement of the work is made." Copyright Act of 1968, § 45. "Sufficient acknowledgement" means "an acknowledgement identifying the work by its title or other description and . . . also identifying the author . . ." *Id.* § 10.

At a minimum, the Canadian and Australian exemptions permit a public performance in those countries by a person, through reading or recitation, of a reasonable extract from any published, copyrighted work by James Joyce. Neither provision expressly requires that the performance of the reasonable extract be conducted for a nonprofit purpose; nor do the provisions or applicable case law make clear what a "reasonable extract" would be, though unauthorized performances of lengthy extracts should probably be avoided.

2. The United Kingdom

In the United Kingdom (including Northern Ireland), all of Joyce's works, published and unpublished, are currently protected by copyright. Although works published during his lifetime were briefly in the public domain there during the early 1990s, the U.K.'s implementation in 1995 of a European Union Directive on copyright harmonization brought all lifetime-published works by Joyce back into copyright as of 1996.

The copyrights in lifetime-published editions of Joyce's works will last until "the end of the period of 70 years from the end of the calendar year in which [Joyce died]." Statutory Instrument 1995, No. 3297 (amending Copyright, Designs and Patents Act 1988 (c. 48), § 12(1)). As with Canada and Australia, a different copyright duration applies to works by Joyce published after his death. Copyright in posthumous works endures for fifty years after the end of the year in which the work was first published. CDPA, Schedule 1 § 12(2)(a).

Because lifetime-published editions of Joyce's works were among those public-domain works whose copyrights were "revived" in the United Kingdom in 1996, they are subject to special provisions applicable to "revived copyrights." These special provisions generally favor the public and aspiring users and were adopted to mitigate the re-imposition of copyright control on works that had previously been available for common use. The most important among these for present purposes is a "compulsory license" exemption which provides that "any acts restricted by the [revived] copyright shall be treated as licensed by the copyright owner, subject only to the payment of such reasonable royalty or other remuneration as may be agreed or determined in default of agreement by the Copyright Tribunal." SI 1995, No. 3297, § 24(1).

What this means is that public performances of lifetime-published editions of Joyce's works, including *Ulysses*, can be given in the United Kingdom without permission, as long as a "reasonable royalty or other remuneration" is paid to the Joyce Estate. If no agreement can be reached between the user and the copyright holder, the U.K.'s Copyright Tribunal will determine the fee or royalty. There are special provisions explaining how a party may apply to the Tribunal for settlement of any disagreement over a reasonable fee or royalty.

To take advantage of the compulsory license for use of revived works, the user "must give reasonable notice of his intention to the copyright owner, stating when he intends to begin to do the acts." SI 1995, No. 3297, § 24(2). If no such advance notice is given, the user's "acts shall not be treated as licensed," but rather as acts subject to liability for infringement. *Id.* § 24(3). If proper notice is given, however, the user's acts "shall be treated as licensed and a reasonable royalty or other remuneration shall be payable" to the copyright owner, "despite the fact that its amount is not agreed to or determined until later." *Id.* § 24(4). This means that the user, after providing reasonable notice of when the use will begin (three months in advance would be "reasonable"), may go ahead with the planned use and wait until later to complete any negotiations with the copyright owner or to apply to the Tribunal for settlement of a dispute.

The compulsory license provision applies only to revived works, not to works whose copyrights were never revived because they had never expired in the United Kingdom, such as *Giacomo Joyce*. However, a separate provision of the U.K. copyright law applies to the public performance there of any copyrighted work, revived or not: "The reading or recitation in public by one person of a reasonable extract from a published literary or dramatic work does not infringe copyright in the work if it is accompanied by a sufficient acknowledgment." CDPA § 59(1). This exemption would appear to apply to a reading or recitation from any copyrighted literary work (such as *Ulysses*) or dramatic work (such as *Éxiles*) so long as the extract is "reasonable" in length and the authorship is "sufficient[ly] acknowledge[d]." "Sufficient acknowledgement" means "an acknowledgement identifying the work in question by its title or other description, and identifying the author . . ." *Id.* § 178.

3. The Republic of Ireland

The copyright situation with respect to the Irish Republic is similar to that regarding the United Kingdom, with a few important differences. In the Irish Republic, the copyrights in Joyce's lifetime-published works, such as *Ulysses*, as well as in posthumously published works will last until "70 years after the death of [Joyce], irrespective of the date on which the work is first lawfully made available to the public." Copyright

and Related Rights Act, 2000, § 24(1); *see also id.*, First Schedule to CRRA, Part I, § 9.

The Republic of Ireland, like the United Kingdom, implemented the EU Directive on copyright harmonization, effective as of 1996. Although Joyce's major works were among those public-domain works that were "revived" in the Irish Republic in 1996, they do not benefit, as do their counterparts in the United Kingdom, from any "compulsory license" in favor of general users. Thus, the unauthorized use of any work of James Joyce in the Republic of Ireland could expose the user to copyright liability.

Like that of the United Kingdom, however, the copyright law of the Republic of Ireland has carved out an exemption for public performances of the type Joyceans sometimes engage in: "The reading or recitation in public by one person of any reasonable extract from a literary or dramatic work which has been lawfully made available to the public, where accompanied by a sufficient acknowledgment, shall not infringe the copyright in the work." CRRA § 90(1). Like its U.K. counterpart, this exemption appears to apply to a reading or recitation from any published, copyrighted literary work (such as *Ulysses*) or dramatic work (such as *Éxiles*) as long as the extract is "reasonable" in length and the authorship is "sufficient[ly] acknowledge[d]." "Sufficient acknowledgement" means "an acknowledgement identifying the work concerned by its title or other

description and identifying the author . . ." *Id.* § 51(3); *see also id.* § 2. ■

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1. This article does not address the possibility that a given public performance of a copyrighted work in the United States might be a "fair use" under 17 U.S.C. § 107. It should be borne in mind that fair use applies to some, but not all, nonprofit uses of copyrighted works.

2. The U.S. public performance exemptions would not be necessary for performances of a work that is in the public domain in the United States, such as the 1922 Paris first edition of *Ulysses*. See Robert Spoo, "Copyright Protectionism and its Discontents: The Case of James Joyce's *Ulysses* in America," *Yale Law Journal*, vol. 108 (December 1998), 633-67.

3. As a result of a Free Trade Agreement with the United States, Australia recently increased its copyright term to seventy years after the death of the author. This amendment applies only to works still in copyright, however, and does not revive copyright in works, such as Joyce's lifetime-published works, which had already entered the public domain in Australia.