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

By Robert Sook

There have been growing concern and controversy in recent years over whether non-commercial public performances of James Joyce’s copyrighted writings may take place without authorization of the Joyce Estate. By “non-commercial” performances, for example, the kinds of semi-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 discussions from any performance of Joyce’s 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, as amended, governs unauthorized performances of copyrighted works. Copyright performances may never be infringing, 17 U.S.C. § 101(1). To perform a work “publicly” means to perform “at a place open to the public or at any place where a substantial number of non-family members are present.” In other words, it’s a public performance. However, to “transmit” a performance to the public means by means of closed-circuit television, radio, or telematic transmission.

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. 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 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 or Joyce’s Articles of Honoraria); and (3) be broadcast, either directly or indirectly, as a transmission 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, in general admission passes 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 Joyceans ordinarily encounter. Certainly, a live Bloomsday reading of Ulysses at a university or conference in the United States, for which the copyright owner does not receive any payment of any kind, would, for the conference organizers or hosting institution charges no direct or indirect admission and receives no direct or indirect commercial advantage, would fit comfortably within the Section 110(4)(A) exemption. Section 110(4) contains nothing 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 Admissions Are 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 expenses, used exclusively for educational, religious, or charitable purposes and for not for any 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.

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 print in Canada and Australia, where copyright lasts for the author’s life plus fifty years. Can. Copyright Act, R.S. 1985, c. C-42, § 5; Aust. Copyright Act of 1968, § 33(2). There is no legal impediment to unauthorized public performances of Joyce’s works in Canada and Australia.

A different copyright duration applies to works by Joyce published after his death, such as Giovanni Joyce (published in 1929) or the letters of James Joyce (published primarily in 1957 and 1966). For such “posthumous works,” copyright lasts for fifty years (Canada) or seventy years (Australia) from the year of first publication. 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’s works, Australian law contains certain 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 a place where the public is not admitted, an extract from a published work.” R.S. C-61, 1985, c. C-32, § 2(3)(4). 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 identifying the work by its title or other description and...identifying the author...is given.” Id. § 2(3)(6).

At a minimum, the Canadian and Australian exemptions permit a public performance in those countries by a person, through reading or recitation, of a “reasonably brief extract” from Joyce’s works. Copyright works are protected by Joyce’s writings. Neither provision expressly requires that the performance of the reasonable extract be conducted for a nonprofit purpose; nor do the provisions or applicable law provide that 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 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 can endure for 70 years. However, the copyright in Joyce’s works was first published, CPDA, Schedule 1 § 122(2)(a).

Because lifetime-published editions of Joyce’s works were among those public-domain works whose copyright 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 facilitate the implemenation 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 user or users restricted by [the revived] copyright 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. copyright tribunal determines 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 licenses for the 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 work.” SI 1995, No. 3297, § 24(3). If that notice is given, the user’s “acts shall not be treated as licensed,” but rather as subject to liability for infringement, id. § 24(3). If proper notice is given, however, the user’s acts are treated as licensed and the user must then pay the user’s “acts shall not be treated as licensed.” But rather as subject to liability for infringement, id. § 24(3). If proper notice is given, however, the user’s acts are treated as licensed and the user must then pay the user’s “acts shall not be treated as licensed.”
The The University at Buffalo Libraries Special Collections Fellowships

The University at Buffalo Humanities Institute, in collaboration with the University at Buffalo Libraries, is offering three fellowships for visiting scholars and graduate students working on their dissertations to use the University at Buffalo Libraries' outstanding Special Collections, which include, among others, The Poetry Collection, The University Archives and The University's 20,000 volume Rare Book Collection.

The fellowships provide stipends of up to $4,000 to cover the cost of fellows' travel to Buffalo and accommodation and expenses during the time of their visit. In addition to the stipend, fellows will receive library and publishing privileges at UB and are invited to participate in any Humanities Institute events that occur during the time of their visit. Fellows are expected to give one public lecture on their research. The timing and duration of the fellows' residence in Buffalo are flexible, though we would anticipate a minimum stay of two weeks. Both graduate students at an advanced stage of dissertation research and more senior scholars are invited to apply.

1. The James Joyce Fellowship: For scholars and graduate students whose research is centered on the writings of James Joyce, Modernist, Joyce-related research, research on Sylvia Beach, Modernist publishers, Modernist genre criticism, Joyce's literary circle, his literary colleagues or his influences.

2. The David Gray Fellowship: For scholars and graduate students whose research is centered on 20th and 21st century English language poetry and poetics. (This fellowship must be held during the academic year, not during the summer.)

3. The Charles D. Abbott Fellowship: For scholars and graduate students whose research would be enhanced by any of the books, manuscripts or unique documents in the UB Libraries special collections, which include materials from The Poetry Collection, University Archives, The Public Collections, The Collections of the Music Library, and The History of Medicine Collection.

Brief introductions to some of the more notable collections in the UB Libraries are below. For more information, visit the Fellowships section of Humanities Institute website at: http://www.humanitiesinstitute.buffalo.edu/research/fellowships/index.php, or email uh-humanities-institute@buffalo.edu

Cinematicographic Joyce International Workshop 2006
Zurich, August 6-12

The major areas of research in cinematicographic techniques in Joyce via possible film references in Finnegans Wake give all the way to Joyce's interest in and impact on the Cinema (or possibly the theatre). As always, we want a full work of stimulating interaction. Participants will choose a pertinent topic and present their ideas in a free and open forum as to set up lively discussions. Formal written papers are vehemently discouraged.

Those who focus on comparing Joyce to a specific film should bring the documentation along in video or DVD form. The Focalizations use the two films on Ulysses (Steck and Wulsak), Steck's Portrait of the Dead, as well as the old FJP adaptation by Mary Ellen Bute.

The workshop can include up to twenty active participants (and practically no audience as space is limited) on a first-come, first-served basis. Please contact us as soon as possible. At some later stage, we need a title and a description of your topic.

Arrivals are on Sunday, August 6 and out until Saturday afternoon, August 12. Participants are welcome to use all resources of our library before and after the Workshop.

Ursula Zeller • Fritz Senn • Magriet Newkom • Frances Ermenger • Ruth Frohner

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Email joyce@es.unizh.ch or fritzsenn@mac.com
Phone +41 44 211 83 01 | FAX +41 44 212 5218
www.joycefoundation.ch (with reports on previous workshops)
Zurich, Switzerland

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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, implements the EU Directive on the harmonization of copyright, effective as of 1996. Although Joyce's major works were among those public-domain works that were "reserved" in the Irish Republic in 1996, they do not benefit, as do their counterparts in the United Kingdom, from any "copyright 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 acknowledgement, shall not infringe the copyright in the work." CRWA § 90(1). Like its U.K. counterpart, this exemption appears to apply to a reading or recitation from any published, copyrighty literary work (such as Ulysses) or dramatic work (such as Exiles) as long as the extract is "reasonable in length and the authorship is "sufficiently acknowledged." "Sufficient acknowledgement" means "an acknowledgement identifying the work concerned by its title or other description and identifying the author..." Id. § 3(1); see also id. § 2.

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


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 protect copyrighty works, such as Joyce's lifetime-published works, which had already entered the public domain in Australia.