

STATEMENT FROM MARK STEPHENS

Your question raises a broader issue about the sharing, repetition and recirculation of information, observations, humour and ideas online, and whether there is something inherently improper in that process.

I do not believe there is.

For most of human history, knowledge has spread because people encountered something interesting, enlightening or amusing and passed it on. Long before the internet, ideas travelled through conversation, correspondence, speeches, books, newspapers and word of mouth. The internet did not invent that process. It simply accelerated and democratised it.

Social media is a conversation, not a bibliography.

One of its greatest virtues is that it allows information, insight, humour and debate to escape traditional gatekeepers and reach audiences that might never otherwise encounter them.

There is, however, a broader and more interesting question here.

We appear increasingly willing to move beyond protecting particular expressions and towards asserting a form of continuing ownership over ideas, observations, arguments and humour themselves.

I am not sure that is a healthy development.

It risks blurring the distinction between authorship and ownership, influence and infringement, and between participating in a public conversation and claiming some continuing entitlement over how that conversation develops.

Copyright may protect expression. It does not confer title to the conversation.

An example may illustrate the point.

Many years ago, I repeated a joke and was accused of taking it from a well-known comedian. As it happened, I knew him and asked whether he had written it.

His response was memorable:

"Don't tell anyone, but I got it from Bob Monkhouse, and I think he got it from somebody else. We do it all the time."

That exchange illustrates a wider truth. Most humour is evolutionary rather than original. Most jokes have travelled much further than their current teller. And copyright law reflects

that. Jokes, also depend upon a shared cultural understanding assembled through countless encounters, influences and retellings.

The internet has introduced a further complication.

It is often remarkably difficult to establish who first expressed an idea, observation or joke. Material is reposted, screenshotted, paraphrased, shortened, translated, excerpted and circulated across multiple platforms, frequently stripped of context and attribution along the way.

By the time most people encounter something online, it may already have passed through numerous hands and several iterations. The person identified as its "author" may simply be the individual from whom the current reader happened to receive it.

Online, the confidence with which authorship is asserted frequently exceeds the evidence available to support it.

That is not an argument against attribution where attribution is known. Quite the opposite. Where an original source can be identified, I am generally happy to acknowledge it.

The difficulty is that social media rarely presents such a neat chain of provenance. Assumptions about authorship are often made with greater confidence than the underlying evidence justifies. That is not misconduct. It is simply the reality of how information travels online.

The same is true, more broadly, of ideas.

Interesting observations, specialist knowledge, niche expertise and unconventional viewpoints now circulate far beyond the confines of mainstream institutions. Much of what reaches large audiences online did not originate with a newspaper, broadcaster, university or public body. The democratisation of information has enabled valuable contributions from people who might previously have had no meaningful platform.

That is a public benefit, not a public wrong.

I read widely. Like most lawyers, journalists, academics and commentators, I am exposed daily to a vast range of sources, viewpoints and material.

Sometimes I share something because it is insightful. Sometimes because it is amusing. Sometimes because it deserves a wider audience. Sometimes I adapt it or add my own perspective. Sometimes the value lies simply in ensuring that more people encounter a point that deserves to form part of the wider conversation.

No serious participant in public life operates in an intellectual vacuum. We are all influenced by what we read, hear and discuss.

The difficulty begins when perfectly legitimate concerns about attribution are expanded into a much broader claim to own not merely a particular expression, but the underlying idea, observation, argument or theme itself.

Attribution is a matter of fairness. Ownership is a matter of law. They should not be carelessly confused.

As a media and intellectual property lawyer, I have perhaps spent more time than most considering the distinctions between ideas, information, attribution, expression and legal rights.

These are separate concepts. Conflating them invariably produces more heat than light.

Online debates about copyright often begin from the understandable assumption that copying and infringement are synonymous. The legal position is rather more nuanced.

Copyright is subject to a careful statutory analysis. Questions of originality, substantiality, provenance, ownership and exception all arise before one reaches a conclusion about infringement.

Copyright protects qualifying original expression. It does not confer ownership over information itself. Nor does it create proprietary rights in every observation, argument, caption, theme, insight or joke that enters public discourse.

The law has long recognised that knowledge and culture depend upon the ability of later speakers and writers to engage with what has gone before. Otherwise, the first person to express a thought would acquire an effective monopoly over everyone who subsequently wished to discuss, challenge or develop it.

If every idea carried a perpetual ownership claim, public debate would become a permissions department.

Lawyers build on precedent. Scholars build on earlier scholarship. Journalists build on previous reporting.

Indeed, this story itself follows and develops reporting first published by RollOnFriday. That is not a criticism. It is precisely how journalism works.

A later journalist may investigate further, test an earlier account, seek additional comment, identify a different angle or bring a story to a different audience.

The fact that later reporting would not have arisen without earlier reporting does not somehow diminish its value.

The important question is not simply whether something came before. It is what has been added: further reporting, analysis, context, challenge, criticism, adaptation or perspective.

Journalism builds on journalism, just as law builds on precedent.

The same principle applies more broadly.

Ideas are encountered, tested, challenged, refined and carried forward. Information is gathered and disseminated. Arguments are repeated, improved and occasionally demolished.

The history of ideas is not a history of solitary invention. It is a history of civilised borrowing.

Ideas are rarely born in isolation. More often they are inherited, adapted and transmitted to new audiences.

What interests me most about disputes of this kind is a broader cultural shift.

There is an increasing tendency to move beyond protecting particular expressions and towards asserting a form of continuing ownership over ideas, observations, themes, arguments and humour.

That is no longer simply a claim to authorship. It comes close to a claim over the subsequent conversation itself.

I am not persuaded that this reflects either the history of intellectual property law or the way public discourse has traditionally evolved.

It also risks creating an asymmetry in which established publishers may report, aggregate, quote and build upon the work of others, while individuals are criticised for participating in essentially the same process of circulation, commentary and discussion.

Of course, there are boundaries.

Passing off another person's substantial original work as one's own is quite different from repeating an idea, sharing an observation, adapting a familiar joke or contributing to an ongoing discussion.

Context, substance, provenance and fairness all matter.

But those distinctions are obscured, rather than illuminated, by treating every resemblance as appropriation and every copy as infringement.

The internet's greatest contribution has been the democratisation of information and debate. Society benefits when interesting ideas, challenging perspectives and humour travel freely between individuals, communities and platforms.

Culture is not a collection of fenced estates. It is a conversation between generations.

As for the Jason Arday post, its purpose was to satirise what I regarded as the racialised treatment and double standards directed towards both Professor Arday and Meghan Markle.

The target was that treatment and those double standards, not Professor Arday himself.

Once it became apparent that some readers were interpreting the post as criticism of Professor Arday rather than criticism of the treatment he had received, it ceased to serve its intended purpose and I removed it.

That episode also illustrates an unavoidable feature of humour. A joke depends upon a shared understanding between teller and audience. Some readers will understand its target immediately; others may interpret it differently. Once the intended target becomes sufficiently obscured, the joke may no longer do the work for which it was intended.

I remain firmly of the view that open debate, the exchange of ideas and the circulation of information are overwhelmingly positive developments.

Attribution matters. Fairness matters. Copyright matters.

But so too does the ability of ideas to circulate, evolve, be challenged and be improved upon.

Knowledge advances through sharing, not hoarding.

Culture evolves because ideas travel.

The internet did not invent that process. It simply gave a centuries-old human habit a larger audience and considerably more speed.

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