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Question and Answer: Who Owns the Copyright in an Interview?

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Who owns the copyright in an interview? While this may seem to be an obscure (or least inconsequential) question, it has relevance not just for journalists, but for freelance writers, documentarians, creators of non-fiction works and novelists.

We should distinguish between different *types* of interviews: (1) verbal interviews which are either transcribed (using short-hand, for example) or recorded (using, say, a digital voice recorder) by an interviewee; (2) filmed interviews; and (3) written interviews in which the interviewer and interviewee exchange written questions and responses (via email, for instance). Each of these interviews can be protected by copyright in a variety of ways: (a) an interview which is reduced to writing would be protected as a "literary work"; (b) an interview whose audio portion is recorded would be protected as a "sound recording"; and (c) an interview which is filmed would be protected as a "cinematographic work".

Who then "owns" the copyright in each of those three different situations? For verbal interviews which are recorded or transcribed, Canadian courts have concluded that the person responsible for turning the interview into written words is the presumptive author and owner of the work (we'll set aside for the moment the question of whether and when an interview might be a "work made in the course of employment" - such as where a journalist is a staff employee of a broadcaster or newspaper). The Federal Court of Canada, in *Neugebauer v Labieniec*, 2009 FC 666 (CanLII), noted the following:

[39] In *Gould Estate v. Stoddart Publishing Co.* 1996 CanLII 8209 (ON S.C.), (1996), 30 O.R. (3d) 520 (Gen. Div.), aff'd 1998 CanLII 5513 (ON C.A.), (1998), 80 C.P.R. (3d) 161 (Ont. C.A.). Glenn Gould, who was the subject of the literary work, contributed substantially to the content of the work in the form of statements given in interviews. However, the author was held to be the person who conducted interviews and performed the creative task of assembling his statements into a literary work. Accordingly, *Gould* states that people do not have copyright in a work simply because they are its subjects or respond to questions in interviews. Following *Gould*, *Hager v. ECW Press Ltd.,* 1998 CanLII 9115 (F.C.), [1999] 2 F.C. 287, 85 C.P.R. (3d) 289, at para. 24, noted that:

> Under Anglo-Canadian law, insofar as private interviews are concerned, it is the person who reduces the oral statements to a fixed form that acquires copyright therein. That individual is considered to be the originator of the work.

That reasoning would seem to apply with equal force to situations involving a sound recording of an interview or a filmed recordation of the interview: whoever was responsible for "fixing" the interview (ie responsible for the recording or the filming) would be the presumptive author and owner of the resulting sound recording or cinematographic work.

This seemingly straight-forward rule, however, still leaves some areas unclear: who owns copyright in an interview conducted via email? There, the person answering the questions will be the one responsible for "fixing" their responses, and so would appear to have copyright in those answers (the person conducting the interview via email would presumably have copyright in the questions which are posed, and in the arrangement of the questions and answers).

Questions of ownership can become important if an interview is used by a third party in some unauthorized fashion - for instance, if a blog, magazine or book reproduces some or all of a written interview previously published elsewhere, or if a blog or television show reproduces some or all of a filmed interview first broadcast elsewhere, the identity of the proper plaintiff to claim infringement would need to be considered.

Tangential to the question of "ownership", but often no less important, is the question of whether the use made by the interview of the interview constitutes a breach of a condition or limitation placed on the use of the interview by the interviewee. For example, an interviewee might say that the interview is conducted solely on a "no attribution" basis, or that the interview can only be used in connection with publication in a particular venue (such as a particular magazine or particular television show). In such a situation, the aggrieved interviewee may try to bring an action for breach of contract - and then the question will devolve into a consideration of what terms, if any, were agreed to by the parties.

[Inspiration for this post was provided by Mark Fowler at Rights of Writers - and that post is highly recommended for anyone interested in how the question this posts poses might be answered in the United States.]
