

## CENSORSHIP, COPYRIGHT AND COMPELLED EXPRESSION

# Should We Also Have the Freedom NOT to Speak?

By John Degen

**W**e tend to define freedom of expression as the right to speak, write, read and publish freely, without interference or threat. In other words, the rights we're concerned with are active rights. The *doing* of these things.

But what about *not doing* them? What about *not speaking*? *Not reading*? Are those rights as well?

It's difficult to think of an example where individuals are compelled to read something against their will. School, perhaps. Yet required-reading lists are more about completion of education credits than they are about compulsion. Any student may still choose to not read one of the required readings on a course list. That student simply has to find a way to absorb information about the reading in some other way or receive a low mark. Neither of those outcomes involves forced reading. So, yes, we do have the right to not read if we wish. Why anyone would wish to not read is a question I can't answer.

I would argue that we also have the right to not speak, to remain silent by choice, and that this right and the right of free expression are intimately intertwined.

Not revealing one's vote, not expressing a political or religious opinion, not posting that hundredth selfie on Facebook, not putting up one's hand in class when one is unsure of the correct answer: these are all instances we accept as valid claims of the right to not speak. Not speaking is, clearly, a right we cherish and protect. For authors, though, the right to not speak faces a growing threat: the increasingly blurred lines of copyright infringement.

Over the last couple of decades, writers have been fighting growing challenges to the ownership of our work from a bold culture of entitled infringement. Our print work is digitized without our permission. Our works are freely shared without our consent, altered without our consultation, sometimes even presented as original without acknowledgement of our authorship. All these experiences are routine for today's writers.



What's more, many educators now claim a right to disseminate unlicensed copies of our work to their students as part of a course curriculum. In other words, required-reading lists now contain the "speech" of authors who have not been offered the choice of not speaking in that context.

The case for considering infringement of copyright as forced speech is relatively obscure, but it's there. Dr. Abraham Drassinower, a legal scholar at the University of Toronto, published a paper called "Copyright Infringement as Compelled Speech." (See *New Frontiers in the Philosophy of Intellectual Property*, edited by Annabelle Lever and published by Cambridge University Press in 2012.)

Drassinower refers to Immanuel Kant's much earlier proclamation that

an author's copyright is "an innate right in his own person, namely, to prevent another from having him speak to the public without his consent" and concludes that "copyright infringement is ventriloquism practiced on an unwilling subject."

Consider, as an example of this ventriloquism, the recent development of the Clean Reader app for iOS and Android devices. Sold with the tag line "Read books, not profanity," Clean Reader is a legally suspect piece of digital technology designed to censor text. It blocks swear words from appearing in a given e-book file. It will also offer an alternative word to replace what it has identified as offensive profanity. "Damn" becomes "darn," for instance.

Clean Reader doesn't just censor writing: it changes writing from good to bad, from effective communication to inept babble, all with the original author's name still attached. In effect, the Clean Reader app forces good authors to speak as bad authors to their readers. Is it any wonder authors are offended by the very idea of Clean Reader?

As an author, I respond to the Clean Reader app by demanding my own silence. If the only way my work might reach a specific consumer is in a censored form, I'd rather the work not reach that consumer. In other words, as far as that particular reader is concerned, I choose to remain silent unless and until the app is disengaged from my writing. Is it my right to say this?

I believe it is. ♡

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