


Metaphors and Moral Panics in Copyright: The Stephen Stewart Memorial Lecture, November 13, 2007

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 Copyright; Lobbying

The reputation of metaphors in the legal literature is mixed: many judges delight in their usage; Lord Hoffmann famously wrote in *Designers Guild Ltd v Russell Williams (Textiles) Ltd*.¹ “Copyright law protects foxes better than hedgehogs.” Judge Fysh later praised this metaphor as a “sibylline observation.”²

Others have, however, regarded metaphors with hostility. Mr Jeremy Bentham condemned metaphor as the very antithesis of legal reasoning. Even some judges have sought to protect themselves from their perceived dangers. US Supreme Court Justice Benjamin Cardozo wrote, “[m]etaphors in law are to be narrowly watched, for starting as devices to liberate thought, they end often by enslaving it.”³

Outside law, metaphors have been valued, albeit in a blinkered way. Aristotle spoke highly of metaphors. In the *Poetics*, he offered that metaphor:

“is the one thing that cannot be learned from others, and it is also a sign of genius, since a good metaphor implies an intuitive perception of the similarity in dissimilars.”

Despite this praise, Aristotle regarded metaphor as ornamental, as “a happy extra trick with words,”⁴ as I.A. Richards wrote. Aristotle represents the traditional view, a view in which metaphors are not regarded as doing any cognitive work. Like movie stars, metaphors are just pretty faces.

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¹ [2001] F.S.R. 11 at [26], HL.

² *L Wooley Jewellers Ltd v A & A Jewellery Ltd (No.2)* [2004] F.S.R. 47 at 934. Whether Judge Fysh’s effusion was attributable to his having been boxed around the ears by Judge Hoffmann when appearing as counsel in *Designer’s Guild*, I leave to others.

³ *Berkey v Third Avenue Railway Co* 244 N.Y. 84 at 94 (1926). The passage was written, as the reporter indicates, when Cardozo was on the New York Court of Appeals. To the same effect are the remarks of Justice Gummow of the Australian High Court, see *Commonwealth of Australia v Ymirr* (2001) 208 C.L.R. 1 at 68; *Truth About Motorways v Macquarie-Infrastructure Mgt Ltd* (2000) 200 C.L.R. 591 at 625.

⁴ I.A. Richards, *The Philosophy of Rhetoric* (1936), p.90.