

PODCAST 43: LEGAL HAZARDS FOR AUTHORS & HOW TO AVOID THEM WITH DAVID BURGESS

James Blatch: Hello and welcome to podcast number 43 from the Self Publishing Formula.

Voiceover: Two writers, one just starting out, the other a best seller. Join James Blatch and Mark Dawson and their amazing guests as they discuss how you can make a living telling stories. There's never been a better time to be a writer.

James Blatch: Well Mark this time last we were in our nice little cubby hole that we found in Bloomsbury. It was a great little studio but what was fun was to be in person and record a program like it was a proper radio program sitting around a table.

Having said that, nearly everything I listen to on the radio I can tell you now. The BBC often in Manchester and the guests in London and so on. Everyone records like this but we live remote digital lives. This is normally how we connect but I thought it was fun last week and we got some feedback, didn't we on that?

Mark Dawson: We did, it was fun. It was good to do it all together and most of the feedback was kind of divided into two camps. Some people wanted more John, other people wanted less John so we'll have to sit down and work out how that breaks down, whether it's going to be more John or less John.

James Blatch: Well Mrs. Dyer wanted more John and everybody else wanted less.

Mark Dawson: That's pretty much how it broke down.

James Blatch: Actually she was only being polite she told me afterwards. No, it was fun, in fact John and I will do, I think we'll do a podcast interview soon on some of the technical aspects of putting together your website. We've learned quite a lot as we put together the 101 course and ask people feedback on what they're struggling with and the bits they don't understand, it's given some ideas for a really good detailed podcast for people who are struggling on what your author page should look like and the best ways to approach putting it together. We'll do that, John and I will sit down and do that shortly and that will be out in the next few weeks. In fact we've got loads of good interviews in the can. We plotted them out. In fact I've got, in a very matter way, I got my white board and I got photograph of your white board underneath my white board with stuff but you've plotted out the podcast and how it's going to run probably until about March 2017 so we've got lots in the bag.

Mark Dawson: End of March. Yeah, and I've got a couple I'm kind of waiting to hear back from, which we might slot in there as well in terms of new year stuff so some quite good, some very good interviews to be heard later as we press on into the new year.

James Blatch: Today's interview is legal and it's an area that, there's so much you've got to understand and learn about and we often say when you're an independent publisher, you've got to think about yourself as being a mini-publishing company so you think about the marketing, you think about the sales, you think about the packaging and everything else as well as writing the book, which isn't a big deal for somebody but what else does a company do?

It does its account so you've got to do that, and it also does legal. Publishing houses will have a legal department that have in-house lawyers, or if they're small they might use an external service. We also need to think about that now.

We don't want to alarm anybody and I think I talked to Mark who's obviously a trained lawyer after this about how this relates to us realistically, but it is something to think about. I think the best value we get out of this interview with David in a moment is partly there's somewhere and someone you can go to with fixed prices to make it a bit similar for you to approach if you want to get your books cleared.

It's a really good interview just to listen to the way that he talks, the type of issues that come up with libel and privacy and so on, defamation, almost certainly accidental, things you may not have thought of, and try to take those on board in a gentle way so you put your book together.

An interesting thing is, I have changed an aspect of my book as a result of this conversation with David and we'll talk about that a bit more so let's crack on. I'm just going to warn you that the sound quality is not brilliant on this interview but it's really worthwhile interview and worth listening to so let's hear from David.

David: I essentially started out doing a lot of work for celebrities doing newspapers and magazines and radio shows and television companies and that sort of thing. That's when I knew Mark Dawson. I saw the error of my ways and left that horrible world and then moved into the in-house side of things, so I moved over to MTV.

I was clearing all their TV content for a couple of years and then I went to work for a magazine company called the Hearst Corporation and I was the lawyer there, one of the in-house team there, clearing all their content for them. Then moved on to the Evening Standard and the Independent as I became their Deputy Head of Legal for editorial, clearing all the content for the newspapers, for the standards, for the MD, and decided I need to make a change and set up my own firm, Reviewed and Cleared.

I wanted to bring the in-house legal skills or in-house legal advice to people who couldn't necessarily afford big lawyers so I decided to set up

Reviewed and Cleared with lawyers who've been doing it for years and lawyers who love clearing content for people and love working with journalists and creatives and that sort of thing but provide it at a rate that people could afford. Trying to create a law firm where people weren't afraid to go to law firms. I know that big law firms can be terrifying so I thought what I'll try and do is create this small firm that will enable people to get legally cleared, not worry about the legal side of thing and do it on fixed base so they can just get their budget sorted and then go off and do what they need to do without worrying about it.

James Blatch: Obviously it's a great idea because I suppose two things occur to people when we think of the legal side of things and one is complexity and the other one is expense.

David: It's always expense for me. I always appreciated how expensive lawyers are.

James Blatch: I guess it's not top of most people's list when they're setting out on their author career, or probably any other career in the media, is to prioritize that moment that they're going to feed into the legal side of it. We should probably start by explaining why it's important and what that area is and how it can unhinge you if you're not careful.

David: Yes. If everybody's honest, the lawyers always follow the money. It's when you start to have a little bit of success that you start to find that not necessarily the lawyers will be there but people will be there and start saying, "Well I created that. You've stolen that from me. I can't believe you said this about me. I can't believe you said this about my family."

It's only when you starting out, you just don't think about these things because you're readership or your viewership aren't big enough to really cause ruckus outside your small circle of friends or colleagues. It's when the success starts to come that people crawl out of the woodwork and they start to think that they want, a lot of it may be money, a lot of it may be

things that they genuinely think that their reputations damaged or their things have been stolen.

What we try to do is head that off. I haven't met anybody who's writing about you who doesn't believe in it and doesn't think this is going to be amazing. Some are, some aren't, but it's better that you're at the beginning dealing with it and dealing with it for relatively inexpensive compared to when it blows up and blows up financially and legally. That's where I tend to see more of the problems. Where people, and I totally understand it, where people say, "Oh I'll be fine. It's fine. I'm sure it's fine," and then it turns out it's not fine and that's where the problems start to arise.

James Blatch: Can you be specific about the types of things that are going to get people into trouble?

David: The things I see that tend to come up more often; defamation where you're talking about somebody who is a real person or you're creating a character that's sufficiently close to a real person. It's a little bit more difficult in the U.K.

The defamation laws are a lot more strict in the U.K. than in the U.S. I'm U.S. qualified as well and frankly you can get away with a lot more in the U.S., especially if you're talking about public figures, but defamation tends to be when you're lowering someone's reputation by making statements about them. It can be in the most invasive ways, in ways that you would never imagine.

I remember dealing with one man who made rope mats and he decided he'd sue one of the magazines I was working on because we suggested he used a different type of glue than he did. To us it didn't seem like important but to him and his sphere it was important. These little things that you say about people or places or companies or family members or anything like that can come up to bite you if you can't prove it's true and if they feel it's

defamatory and you've got the privacy angle of things where everybody takes inspiration from all around them.

If your Auntie Mable's got cancer, that's her business. Sometimes people will think well Auntie Mable's got cancer, so I'll use Auntie Mable as a character or as a starting point or as a description point. Then Auntie Mable realizes she doesn't want the entire world knowing about her cancer struggle. Auntie Mable suddenly has a privacy claim against you and your publisher and anybody along the publication train.

James Blatch: Just on the U.S., U.K. point of view, so for a U.S. author, of course their book may well be being retail or they may well be selling it on amazon.co.uk for instance if they're self-publishing, so does that bring them within the remit of the U.K. defamation laws?

David: The U.K. is traditional known as sort of where everybody came for libel tourism. They view it being the same anywhere in the world. You come to the U.K. courts and so there because the burden of proof in the U.K. is different to the U.K. in that if I, as a publisher, make a statement, it's got to be proved that it's true, whereas in the U.S. I don't need to prove it's true, I just need to show that I had a reasonable belief that it was true.

Yes, people come to the U.K. and use the U.K. as a libel tourism hotspot. The courts have tried to change that but we live in a very international community.

It's very easy to show. If you have a reputation in the U.K. that reputation can be damaged. It doesn't take very much. There are a couple of trials going through at the moment where a man is trying to prove that he had a reputation in the U.K., shows a few hundred people knew him and he's doing quite well to show that that damage is there.

James Blatch: Okay, in terms of preventative measures, before we get to the legal services side of things, so when people are just sitting there writing their book at this stage, I mean every book is inspired by

something. Some people are writing obviously epic fantasies and stuff that might be quite far removed but even that will have some inspiration from the real world and my book certainly is inspired by my father's career in the 1960s.

What steps should people be taking?

David: What I'd be thinking about is, whether it's you or a friend, I'd take a look and read it with a new eye. I mean this is how I clear, you take it with a new eye and you read it and you think about how the person sitting on the bus next to you would be reading it. How they would think, what they would think of your father, your father's colleagues, are they identifiable. Say for example, your father worked for a famous shop, I don't know a Marks and Spencer's, and he was on the board during set time and you said, "My father always told me that everyone on that board was corrupt down to their very being." Now you don't name any of those people but it wouldn't take me very long to find out who those board members were within a certain space of years and those board members could also argue, we were all identifiable.

Things are quite eccentric so they would all say, "Everybody knew I was in the board between 1966 and 1971. Now everybody thinks I'm corrupt because of this book." You need to start to look at these things and think who's lives am I touching here?

What facts am I stating here? Can I back up these facts? Are they family mix or are they something I can show? Are they rumors? If they're rumors, is it something I can prove? Is it something that will turn out? Will those people be affected? Will their circle of friends and their wider circle of friends understand who they are and believe the things I'm saying? That's from the defamation point of view.

Then you need to think about privacy. Again, identification is a real key point. You think would the man on the bus next to be able to figure out

who I'm talking about? If he can figure out who I'm talking about, is this information intrinsically private? Does the person I'm talking about have a reasonable expectation that this information should remain private? My health scares, my sex life, my hobbies, whether their Max Mosley style hobbies or whether their train spotting.

James Blatch: Which of course because of his family history, he's an interesting character, but his father was a notorious black shirt leader, pro-Nazi campaigner in the 1930s. And there's his son who had a rather embarrassing episode spread across the British tabloids where he enjoyed the company of young woman who may or may not have been dressed up in military wear. We just explain that because it's an interesting legal case and Max Mosley to this day has moved on from the legalities through to campaigning for press restrictions in the U.K.

David: Max Mosley is the ideal case with looking at how privacy can touch us really. When I started at Shilling, I got another fact, the human rights act in the U.K. gives everybody an article eight right which is a right to private life, family life, home and correspondence.

And then there's the article 10 right which is the freedom of expression, which all those newspapers, publishers rely on to say we have a corresponding right to tell this story. When it all began, there was footballers claiming their article eight rights that basically they can sleep with as many women behind their wife's back as they like and the women were saying I want rights to tell how good this footballer was in bed. When it first began the women's article 10 rights always seemed to trump the article eight rights of the footballers.

Over time, close to 15 years, it's gone completely the other way to Mosley now. Whereas thanks to Mosley, if you're having ...

James Blatch: Sado masochistic.

David: Thanks, where sex workers behind your wife back for many many years, dress up, non-dress up, we can leave it there. That's all private information. You are entitled to private life, as long as there, there's only two ways in which the press can sort of delve into people's private life and this is what I deal with on a daily basis with the magazines I work for. You have to show that somebody's either a hypocrite or that there is a public interest that we all should know about their private life. Lord Coke is a quite interesting one. That's his nickname. He was the Lord who was in charge of the house of Lords Standards Committee. He liked to use his house of Lords money to go off and sleep with prostitutes and take coke. Hence the name.

He was interesting because, and he was a hypocrite because he was in charge of the standards committee but it was also public interest because a man in charge of parliaments standards committee, we should know whether he's having sex with prostitutes and snorting cokes in their bras. He was the perfect embodiment of those two things.

Now that's what the whole Mosley case was about with people arguing whether the public had a right to know he was doing this and whether he was a hypocrite. The public had a right to know argument, the newspaper ran was that he was the head of an international organization, is it the FIA, that promotes racing.

They said as he's the head of an international organization, all the public should have a right to know what he's doing in his private life. The judge dismissed that and I think quite rightly. Every company around the world has public money running through it at some point. I have no right to know what the had of Marks and Spencer's is doing.

The interesting argument was whether he was a hypocrite or not. As you mentioned his father was a black shirt and a fascist so Max Mosley had always said, "I have no truck with my father's political beliefs. I have no care for fascism, I certainly want to disassociate myself from it in any way."

The newspaper alleged he was having the S&M sessions, that's the element to them, they said he was in what appeared to be a concentration camp, that he was wearing prisoner uniform, that the women they were speaking German and that the women were wearing Nazi uniforms. In the few days of hearings, this was all cross-examined, his evidence was, which was accepted by the judge, was that concentration camps are something not an invention, they're invention of the British, pre World War II. The prison uniform he was wearing had arrows on, not stripes as in concentration camps in Nazi, Germany. Germany has a very good language for S&M because it's harsh nature and the women brought their own uniforms and they had no Nazi insignia on them.

James Blatch: It's a well thought through as a defense is.

David: You sit down and think about it, quite logical as well. All these little things that can, I've never been involved in that world but I can imagine they're all reasonable things.

James Blatch: Sadly he's right about the concentration camps because I know from history that they were started by the British in the South African campaigns. Yeah, they've done their history.

I'll tell you what's striking me already is, we talked about the complexity and my days as a journalist, there wasn't a lot of talk about privacy. We have the libel laws drummed into us and probably 50% of all the journalistic training I ever had was just legal.

I can probably still dredge up the five main defenses of libel, but what you've got here, so you name in your book have identified somebody even by implication because they were in that position on the board or whatever at that time, but you then think, "Well, okay I've said nothing libelous about them. They're a character here, they act quite honorable. In fact, they come out to be the hero."

What you're saying is there's another element here which is actually people might think that's how they behaved and that's a privacy issue, which I'm not as familiar with but this is obviously quite an important area.

David: You can also, with the defamation, going back to that, you can write something and imagine, "Why would they be upset about it?" But that upset can appear from nowhere, like that chat with the roadmap. I cleared a book about a guy, and the book was about something completely different. It was about a Warcraft game, but he tells in a chapter how he came to the game. He had a bit of a lonely childhood because he moved around and the reason he moved around was his father and his father's business partner had a falling out. Obviously, it became a family myth that the family had been screwed over by the business partner. I had to go back to him and say, "Okay, this is such a throwaway line but can you prove any of this? Can you prove that this man did these things to your dad that made him move?" He went, "Well no not really it's just what my dad told me."

The business partner was absolutely identifiable, it was just throwaway line but could have led to a lot of problems. That line had to be removed from the book and it's not necessarily your main protagonist or not necessarily your mainstream, it can be things that sort of flow off it that accepted myth or accepted, just accepted fact without really thinking about it. They're the things that tend to crop up in books more than straightforward I'm writing about this because that tends to be the area of focus that if you're smart enough to write your book, you're smart enough to get the simple facts right.

James Blatch: Obviously everyone wants to be authentic in books. Some people it's more important than others. In my book, and Mark's books, we're really big on authenticity and Mark will get comments from people who used to be in the shadowy side of government business who say to him, "That's actually not quite how it works," and they correct him on things.

On the other hand, I'm now thinking maybe I shouldn't, because in my quest in being authentic, I've used a genuine REF station as the base and I've datee it as well. Obviously, I then created a unit that didn't exist within it and my characters are members of that.

However, the station commander was above all of those units and would be identifiable and for that reason I've kept him out of it. I've mentioned the person not by name, just the rank at one point, but I'm now thinking actually he would probably have a case to say, "You've defamed me because these things were happening on my station, even if it's a made up unit."

I might be safer just to come up with REF Austin Green and just make something up.

David: He could say, "I know you don't mean to do this." A claim could come and say, "I know you didn't mean to defame me, it's quite clear you didn't, but people believe what you're saying, people believing that you based this on actual facts."

This one story, it reminded me there, we were doing a magazine piece about a Virgin air hostess who travels around the world, sleeps with pilots, has a whale of a time. We had her in a red uniform, a nondescript red uniform. You couldn't see a face and we changed her name but forgot to put a star, an asterisk in the article saying "Name changed." The name they changed just randomly happened to be a Virgin air hostess. She quite rightly came and sued. She had every right to sue us because we basically just defamed her without any proof whatsoever.

These things can crop up in the strange places. If that man's circle of friends or colleagues or ex-colleagues say, "Oh, is this guy writing this book for a reason?" It's a difficult thing, he has to show serious harm to his reputation and with the new defamation act it's changed.

It's a little bit more difficult to sue. You would have to show serious harm to his reputation. You and I know, your background as a journalist, the serious harm can appear from the strangest places. The way I wanted to come on is actually just say be aware as you're writing every line. What are you saying? Who are you saying it to? What are you communicating?

The privacy angle, privacy's getting really really tough. It's ruining a lot of stories. There's also, to complicate matters further, people have claimed for false privacy saying it's not true, but even if it was true it's an invasion of my privacy and succeeded.

James Blatch: Okay, so that is complicated. You don't want to be sued because that's one thing, if anyone's had any legal entanglements in the past, this idea that you can sit there thinking it's fine because it's factual or it's fine because I don't think this is a case of privacy, you just do not want to go down that route.

David: No, I mean it's assault. I tried to set up a cost-effective way of dealing but even my rates, I couldn't afford me. I'd never want to get a libel battle or a privacy battle or pay to protect battle or even a copyright battle. It's just not worth the time and the hassle and I've seen firsthand how much litigation can affect journalists who aren't going to lose money but their job's in peril. And I've also seen firsthand independent publishers getting in the middle and it can be devastating.

James Blatch: Legal advice, obviously as you say, tends to be out of reach. I mean we're lucky when I worked with the BBC, we had a team of very good lawyers, there was always somebody on hand and at any time of night or day you'd make the phone call, in those days hold the phone next to a speaker so they could listen to the script and the clips, you get a bit of advice and some of them we knew were quite gung-ho about it. They'd talk to you a bit about your source and so on and then say, go with it. The only important thing that mattered from my point of view, the journalist, is that I

took their advice. The big no no for me was to go ahead with something that said do not do because then I'd be in a lot of trouble.

Even if the BBC did get sued afterwards if he had said or she had said that's okay, that legal advice is a very important step but as you say, it's out of reach. These guys are probably some of the highest paid, I imagine, at the BBC and that's saying something because there are some high salaries there.

How is your service accessible to me?

David: For books what I do is I agree a fixed fee and I'm quite open to negotiation. What I'll often do is have a discussion with the author about the book and I will be able to give an idea after a 20 minute description which isn't charged, nothing's charged until we agree on a fee, if it is quite clear, and I do this with TV programs as well.

If it's quite clear that there's not going to be any problems they get a nice reduced rate. If it's quite clear there's going to be problems, the author knows that anyway, so we come up with an increased fixed fee rate but I always agree fixed fee.

Sometimes I'll take a hit. If a book I thought was going to be easy, suddenly turns into a nightmare, and it's happened. Sometimes I'll make a bit of money when the book isn't as bad as the author and I thought it was. That's how I've tried to change the legal landscape there is to give independent publishers the opportunity. It's still a reasonably big line on that budget, I can't deny that.

James Blatch: Can you give us an indication? I mean I know it's going to vary.

David: My books tend to be anything between 1200 Quid and 2000 Quid. Through speaking to you and I said to Mark, I'm happy anybody comes to

this I'm happy to offer a discount. I guess that it's still a reasonable chunk of money and I wouldn't say everybody should do it. What I'd say is that if you've got concerns, this might be a good idea to do it.

James Blatch: I think that's probably where most people will be and if they think their books are benign and they've published three before they're not going to come to you but the book where they think there might be an issue. Although I have to say we're getting value of this podcast because it's already given me some steers and I am serious about that.

I think I am going to rename the REF station to something fictitious. It's just too risky to go ahead, and the story ultimately is about corruption.

David: All it takes is one guy. They meetup once a year at their club and they say to him, "Well I read this book about your base and I'll tell you what it's pretty close." That's all it takes for a claimant who probably has deep pockets to get a bee in his bonnet, to eat lobster and shillings or whatever and writing very scary letters.

James Blatch: The other defense of libel I always remember is that the person's dead.

That's the other thing to look into because you can't libel the dead. That's not changed, right?

David: No. It's the one time I see completely disgusting human beings when I ask are they alive? No. Great.

James Blatch: You've got no problem.

David: Yeah.

James Blatch: It's a fragmented media world. It's changed so dramatically in 10 or 15 years. I think you're probably positioning yourself very nicely

because in the old days you made a TV program and you started at 45,000 pounds for half an hour to put a TV program together. Today people are making TV for substantially less than that and they can't afford, as you say, the old expense regime, so I hope it's working out for you.

How long have you been going?

David: It's three and a half years now and I do the same thing as the TV companies. Where I'm different to a lot of, pretty much all the law firms, is I put my prices on my website and I stick to them. There's a production company booklet, there's a publishers booklet, I do the same thing. I give production companies a clean bill of health. Some stop me from the beginning and we work right away through to broadcast. Some just send me the final edit and say, "Can you tell us if there's any problems?" What I'm trying to do, and you're absolutely right, there's no central media anymore. Some of my best clients are kids who have gone off and started a website and it's blown up. They're huge and they're doing incredibly well. The media world is so brilliant, so easy.

Another area I'm looking into is YouTube. The amount of power these kids have and I don't think they realize, the same thing I said at the beginning, once they have the power, the money, that's when the complaints start to arrive.

James Blatch: I know a great YouTube example is the woman who unboxes Disney toys and she makes 12 million dollars a year I think just from videos of unboxing. You're right, when money comes in. There was another example I remember of that which is the Borat film, which I used to be able to remember the whole title of it which I think is called Borats cultural learnings of America for make benefit glorious nation Kazakhstan. For all the times we had it drummed into us about release forms and getting the legals right, they throw everything out the window. I think they had a fake release form.

David: This is three guys in the van.

James Blatch: Yeah, the three guys in the van and the southern priest as well so there were two scenes in the film. We classified when I was working with BBC the bit about the background. Basically, as far as I know, they either didn't do release forms or the release forms were also kind of satirical, they matched what it looked like they were doing so they're signing a release form thinking this is a TV presented from Kazakhstan and actually fact it was kind of semi-reality. He was a comedy character but he used real people, and of course had the film died a death and no one knew anything about it they probably wouldn't have been any legal problems, but it was a phenomenal success. I mean it made millions of dollars. Inevitably people who came out thinking that they were doing one thing and it turned out they were having the mickey taken out of them came to them. Now of course they had a solution which I believe was to turn up with a checkbook and those cases got settled pretty quickly but not everyone's going to make that much money that suddenly they can write a big enough check to keep the people happy about it and I'm sure there's probably a new church somewhere in southern America where the priest worked.

David: The check they want is always five times more than it's actually worth.

James Blatch: Yeah, of course.

The other thing I was going to say is a little bit of money spend in the first place is going to save you.

David: Oh, yeah. You've got to remember I might sound like a money grabbing lawyer but I'm an in house lawyer by trade. I consider myself like those BBC lawyers, I consider myself an in house lawyer. There's a line on my website that's like having an in house lawyer. I find I've not changed my mindset maybe over a couple of years.

I find my mindset, all I'm bothered about is getting the editorial out, getting the editorial out, being involved from the beginning because when I'm involved from the beginning, I'm not the lawyer that ruins everything. I love working with journalists. I probably am a restrained journalist myself. I hate being the guy in the room going, "That seems great but you've got to get rid of it," or, "Oh that lines great," or, "Oh that chapters fantastic but God you've got to ..." I hate being that guy.

James Blatch: Yeah.

David: More on film, less on books, but if I get in the beginning and say this is how you approach this, than I'm not the guy at the end saying you're done.

James Blatch: The BBC lawyers were good like that and I always felt they were enablers. They wanted the story to go out, they wanted the documentary to be made. If they knew there was a risk there they found it in acceptable risk because you'd done your due diligence, because you'd put the work in beforehand and they could see it in their legal mind how it would stack up as a defense.

They weren't hugely thrilled the time I had to phone them to tell them that I'd got some names live, their live TV report when I was describing a notorious pedophile who had done despicable things and was being put away for a very long time and in the middle of a report, I hadn't even realized I'd done it, instead of saying his name I said the name of the two superintendent from Cambridge Police who'd arrested him and heroically put this guy behind bars.

I had no idea I'd done it. I think a lot of people didn't notice and I got a phone call from the gallery after saying we're pretty certain, we just checked the tape. You described his name. Sometimes that sounds like a training example of the worst possible thing you can do but actually it was so ridiculous and it was the policeman who arrested him. It made no impact

at all and the policeman laughed it off and I think the lawyers I phoned, obviously I had to phone them just to say this has happened and they had the same opinion, said, "It's too obvious and too bonkers that that policeman is not ever going to say I'm obviously not a pedophile." Obviously he's not. Anyway it was just one of those things as a journalist. That was a relief.

David: I clear everyday the rights. I do the live.

James Blatch: Oh do you? Was that live?

David: Yeah.

James Blatch: How does that work?

David: I just call the gallery and apologize but yes there's often times I'm imaging myself throwing coffee all over myself.

James Blatch: Yeah, it's Matthew Wright the tabloid journalist and he has a few guests and okay I'm with you.

David: The Daily News I'd say.

James Blatch: Yeah, yeah, sorry, I didn't mean to.

David: An ex-colleague of mine from MTV who's now head of legal at the ITV, loves doing the live stuff.

James Blatch: I can only imagine it's quite exciting.

David: Yeah.

James Blatch: Yeah of course and there's a topical news quiz in the U.K., called Have I Got News For You. It's been long running and they often refer to the lawyer who I think sits in the front row in the studio even and has to

make those big bucks decisions because they can potentially be very expensive if you get them wrong. I don't have to remind you of that.

David: You just have to really put yourself in, you're a good journalist, I mean Matthew Wright is tabloid journalist but he's a good gem, he knows his stuff.

James Blatch: They're the best journalists, the tabloid journalists. You may not like reading the writing but I can tell you from having worked in the industry, writing up stories in a tabloid sense is much more challenging and difficult and skillful than being able to ramble on for ages in the Guardian or the Times.

David: When I was clearing the Independent and the Evening Standard on Sunday I've got to say the Evening Standard was the one I enjoyed working on. I mean I guess I'm more of the, I do a lot of celebrities, I clear around 90 magazines, celebrity magazines and lovely cooking magazines and the fun ones of the celebs and the fast moving tabloid news type.

James Blatch: David, let me ask you a couple more questions that will bring us back onto useful advice I think for people in our position. First of all, what happens when, and I guess it could happen to any of your clients, they stick their feet in the ground and say, "We've heard your advice, we're going to go this way anyway."

An author might say, "Well I don't take it as seriously as you do, I'm sticking with this." Where do they stand down the road?

David: All I am and all I can ever be is an advisor. Even to my clients. Even when I was in house and just lawyers to sort themselves out. All I ever am is saying this is the legal positions as I see it and these are the risks as I see it. If somebody says, "Thank you for your advice, I don't want to follow it, what's the risks?" I'm more than happy to put that to one side and say, "Okay, if you want to keep it why don't we think about ways of minimizing the risk? Why don't we think about ways of either not letting that person

know it's them or thinking about obscuring facts or changing things just to minimize the risk. Rather than getting rid of it completely let's think about ways around it."

This is what I was saying, I'd rather be a lawyer. Every lawyer could be a blank page lawyer. There's no legal risk in a blank page. I always want to get stuff out but everybody's free to ignore their lawyer's advice. Often I will say, "It's a legal risk but I just can't see that person complaining," or, "I just can't see that this is a problem," and what you were talking about before with jurisdictions, especially with your American listeners is I could say, "Well here's Bob Smith, if anybody in the U.K. knows him, you're done for. I could have a talk with the author and the author says, "I'm pretty confident that nobody in the U.K. would know Bob Smith. I'm pretty confident his reputation in the U.K. is not at risk."

I've been in many positions where I have a clear American website where I say you find something, it might be a problem for the U.K. but I don't think anybody will sue you in the U.K. because I don't think you'll have the means to do it.

James Blatch: What about this passage that we see at the beginning of books and towards the end of the credits and films that go on about any resemblance to any person living or dead is purely coincidental. Is that something we should be sticking in our books? Does that help?

David: I think definitely. It's a great line for me to start any letter and it's a hard obstacle for the claimant to overcome.

James Blatch: There's a specific form of words we need to be using.

David: I use maybe two or three versions of it, but as long as the reader understands what you're trying to put across, you won't be called out by missing certain words or anything like that. What you convey to the reader is don't believe any of this is true.

James Blatch: Okay, so David you do this work in clearing text and pieces and so on.

Do you also work in the copyright side of things? Is that your area at all?

David: I've never been a private practice copyright lawyer but I do advise on copyright. I advise what would be untrademarked, what would be a risk, and what I'm very good at is spotting where complaints will come and advising on the overarching defenses you would have if you want to use it.

The new quotation defense is great. This is in the U.K. There's been no case law on it but it looks like if you want the quote, a poem or a passage, you properly credit it than you can start to get away with taking a little bit more.

James Blatch: For instance if you want to use some song lyrics to set the tone or move in your novel, in the past you might have had to reach out to Chrysalis Records or somebody for permission.

You think now there's some scope for quoting it?

David: Yeah. The prospects are looking good. There's been, like I said, there's been no case law for me to say definitively but I think a lot of people, I know I have written back to quite a few people and said, "All right this is clearly a quotation," and not heard anything.

James Blatch: I think for most authors when it comes to copyright it's probably the other way around where they're concerned particularly in this electronic e-book world, they're concerned about their books appearing and most successful authors, even moderately successful authors are finding their books for sale on sites which were not owned by them.

David: Yes. It's not a service I actually provide, which maybe I should if you think about it. There are organizations that will, in fact the law firm that passed on me, they also passed on a company called Incopro that sweeps the web looking for copyright material.

James Blatch: Yeah, that's good and I think somebody's brought that up in our Facebook group recently. It sounds like the same service so we'll check that for our discussion with Mark after this interview and try and make sure

people have got that link and there's also, there's a fairly straightforward takedown notice which you can send.

David: I've got one that I can give them. I've got a blank. It invariably works, the notice and takedown actually works quite a lot.

James Blatch: Once people know you've spotted it and you're on to it.

David: Having worked with brands like Cosmopolitan, you're like this just filling another glass up every time you put your finger in it. It's the wild west unfortunately and I'm talking to you about loving working with journalists. What I'm seeing is young kids coming into journalism where there's no scope to train them anymore, there's no money to train them anymore and they're concept of rights and select copyright rights is so far skewed to what you and I would imagine is the norm. They just have no concept of copyright, of ownership. Somebody called Google images a free geti last week to me.

James Blatch: Right.

David: That really sums up exactly where they're coming from.

James Blatch: That is a worry and I think it's more important now than ever before for people to respect and understand IP. You're right, it used to be something that had nothing to do with us. Companies dealt with it and it was very unlikely. But this day and age where everybody's doing a blog, everybody's making videos, everyone's doing podcasts, having respect for somebody else's IP which is their living, should be something that's worked on I think.

I can see that you're going to be doing that. David it's been fantastic talking to you. It's been, obviously it's a really interesting area. I think you and I could probably talk about this for hours.

David: Yeah. Once you get started.

James Blatch: I certainly as an author, I have certainly had the cogs turning in my head and I'm thinking about my text with a quasi legal brain now and so that's been incredibly useful for me and I hope it has for other listeners as well.

David: What I'll tell you is, don't necessarily go off and spend money on a lawyer, just take a moment to sit down and not be you, not be the writer, just try and be a quasi lawyer and say, "Am I affecting anyone's life with this?"

It's quite interesting. What I quite often do is write down the allegations that are being made and think about them and them standing alone. The problem when you're writing is you go, "I may not mention it and that's fine because I'm thinking about this and that's fine because I did that." Sometimes it's a good idea just to take yourself out of that and write down what you're actually saying.

James Blatch: Context.

David: Yeah.

James Blatch: David just give us a recap of the website where people can find you.

David: www.reviewedandcleared.com.

James Blatch: Reviewed and Cleared, that's what you want to hear.

David: Yes. You know what, I took that from an old client's clearing system so it was either Reviewed and Cleared or Reviewed and Commented and I thought maybe Reviewed and Commented didn't give the right message.

James Blatch: Better than Reviewed and Rejected.

David: Yeah.

James Blatch: That was David Burgess and as you mentioned at the end, reviewedandcleared.com is his place, his home on the internet if you want to go and have a look at that and he's got a very good brochure actually.

And unlike most law firms he sets out his prices because they're fixed prices so you can see in his PDF brochure what it is you're likely to pay for how many pages that he looks at and so on. That fits into exactly what he's trying to do which is to make legal services accessible to independent set of authors which is noble and it's a great thing isn't it, Mark?

Mark Dawson: Yeah. David's great. I've known him for years and years. We obviously worked together when I was practicing as a lawyer. One thing I would say though as people come out and sit with David is I don't want authors to think that they must now, as a matter of course, go to a lawyer and get their book, and it could be non-fiction or it could be fiction, need to get that checked for legal.

I would say, the best way to approach that interview is to listen to the practical advice that David gave an in particular to think about how other people might see themselves if they could identify themselves as a result of either being named in your book or being referred to in a way that made identification possible.

If that kind of identification is possible than think about how they would feel about the things that are being said about them and if you then feel that it's something that's negative, they might be upset, then I would say it's worth just having a thought about whether you might want to get that checked out or whether simple changes might be the most sensible way to proceed. That's something you've done with regards to your book isn't it James?

James Blatch: Yeah. My book I wanted it to be authentic and it's based in a real world so I set it in a real REF station, not too far away from where you are Mark, which is where they did the test flying in the U.K. so the equivalent to Edwards Air force Base in the U.S. Then I created a fictitious unit within it because it's corruption and so on within the story line so it's not the actual REF test flying unit, it's called REF test flying unit actually is what I called it I think so that's not real the the boss of that unit's not real and the pilots there can't be identified.

However, in that interview with David, as you heard, it occurred to me of course that it had a station commander, had people on the front gate who come into play at various points and it is possible that someone could identify themselves. I think taking aboard what you've just said, Mark, I think in my case, "Okay, it's a minimal risk" and it probably falls short of a risk of defamation but actually there's a kind of moral thing as well.

I don't want to necessarily identify somebody. It might cause them problems and it's almost worse for me that I haven't defamed them enough for them to sue me but I've just made their lives a bit unhappy because they, perhaps, there might be some sensitivity about their time there, particularly as I involve aircraft crashes in my book. I've changed it. It's now REF West Portan, which is almost real if you know the landscape where you are. It sounds like it could be an actual place there.

Mark Dawson: It definitely does, yeah, I think you've been cautious and there's nothing wrong with being cautious. As you say there is a legal and a moral situation. I think you're being quite sensitive, which is fine.

James Blatch: I am sensitive.

Mark Dawson: You are very sensitive. That wouldn't have bothered me particularly because I think the risk of causing offense is also probably on the slim side but authors are different. So if you feel that that's something you can change without causing damage to your plot, your narrative, and obviously just changing the name to West Portan is not going to have any

effect whatsoever on your plot and most readers might think that there is such a place as West Portan, Portan West absolutely is a good substitute. Sensible perhaps in your case but I would just reiterate again, authors need to think about it carefully but don't too alarmed by the prospect of getting sued. What you don't want to do is name someone and then libel them. That would obviously be a very bad idea. Just think about that test that David laid out. How would people react if they could be identified as a result of reading your book, fiction or non-fiction and if it is something that you're concerned about after making that assessment than it might be worth dropping someone like David a line just to see what they think.

James Blatch: Yeah, I mean the station commander in 1966 will be looking on 90 now if he's still alive so that's the other thing I could go and check.

Mark Dawson: Yes and of course the dead can't sue so there's that as well.

James Blatch: That is one of the defenses of libel. Okay, good, well I thought it was really interesting and I love the whole legal side of things. As a journalist you get a lot of legal stuff drummed into you and some of the most memorable times I had was sitting in a court, listen to legal debates, particularly the moment of a verdict and inevitably if I was there it obviously was fairly big, high profile court case and people's lives change on the whim of a jury. I could tell you some stories about jury's but that would be illegal. Good, thank you very much indeed.

I really think this was a very valuable podcast because it's a mindset thing and somewhere that we don't normally go, the legal side of things, but just to get you thinking about it. We don't want to over-complicate people's lives, but it is something to be aware of and have in the back of your mind. We are going to be back with a fabulous interview next week. I'm actually coming down to your part of the world. I might even drop in on REF West Portan. We're going to have an SPF meetup and start planning advertising for authors next course launch which will be next year so only a brief respite

for us. We may even get to record the podcast together again. We'll see if we've got time to do that.

Mark Dawson: Good. It's nice sometimes.

James Blatch: They are. What a time to be alive. Literally you say nothing to that. There's no repost.

Mark Dawson: I'm falling asleep.

James Blatch: You are, you're barely alive. Thank you for listening, we'll speak to you next week.

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