

A Modest Proposal: Copyright and Scholarly Journals



Copyright?

- Often told that copyright is good for us...
- Protects authors' interest in their creative work (fairness)
- Gives authors reason to create (incentives)
- Keeps publishers in business (more incentives)

- And copyright can be good ... but not always
 - For scholarly journals, it has become "unbalanced"
- To understand how, need to understand some history



History (17th c England)



- Stationers (=publishers) control all printing
- Stationers' copyright
- No author rights (Milton's *Paradise Lost*)
- Monopoly: perpetual ownership
- Licensing Act- *political* construct of monarchy

More History (18th c England)

- King's power eroded...publishing anarchy
- Statute of Anne (1709)
- Copyright for 28 years (14+14) – to anyone!
- Stationers persisted; angry about losing perpetual rights
- Brought legal action...over 65 years



“Author Rights” Argument



- Creative work is property (like farmer's field)
- Authors own their creative work
- Ownership is perpetual
- And, by the way, if you own something you can give it away...
- ..perhaps to a publisher?

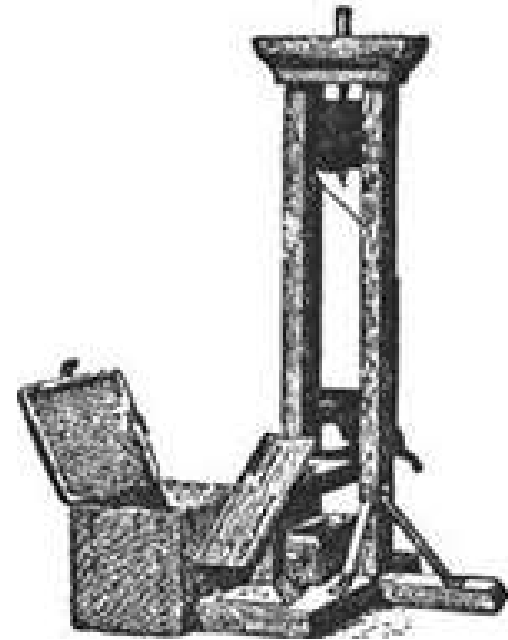
Donaldson vs Beckett

- In 1774, definitive case was decided
- House of Lords ruled:
 - Yes, authors owned their work
 - But Statute of Anne superseded those rights
- Stationers lost ... but they also won



Intellectual Property

- From 1774 forward, Intellectual Property was recognized
- Copyright was viewed as an author's right
- In France, Diderot argued author "property" rights
 - at the request of Paris Book Guild!
- Condorcet countered with notion that ideas belonged to world (John Locke's public good) -- But Diderot won...
- French Revolution produced new copyright law that was a blend: life of author plus 10.



Growth of Copyright (19th/20th c)

- Copyright covers more and more (art, photos, movies, music, performances, ...)
- Copyright driven by treaties (Berne, Universal, etc.), negotiated by those with financial interests
- Always emphasis on AUTHOR RIGHTS
- Increase length of copyright ("to be fair to author")



Approaching perpetual ownership...

Author's life + 70 yrs

Copyright laws and traditions



- Same for Renoir painting as mathematics article
- Same protections for "authors"
- Same kinds of incentives
- BUT... surely they are different

How are journals different?

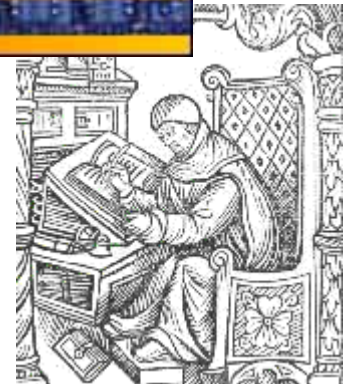
- Scholarly journals are a "public good"
- Few authors own work: most work result of many who went before
- Few authors need financial incentives (since they don't have financial interest)
- Authors creative interests protected by scholarly traditions (against plagiarism)

- Yet... copyright can be great impediment to journals (e.g., retrodigitization and similar updating in future)



Scholars take action...

- Why should same copyright culture protecting rock stars apply to scholarship?
- Need to fight back...
- **DEMAND** that authors keep copyright!

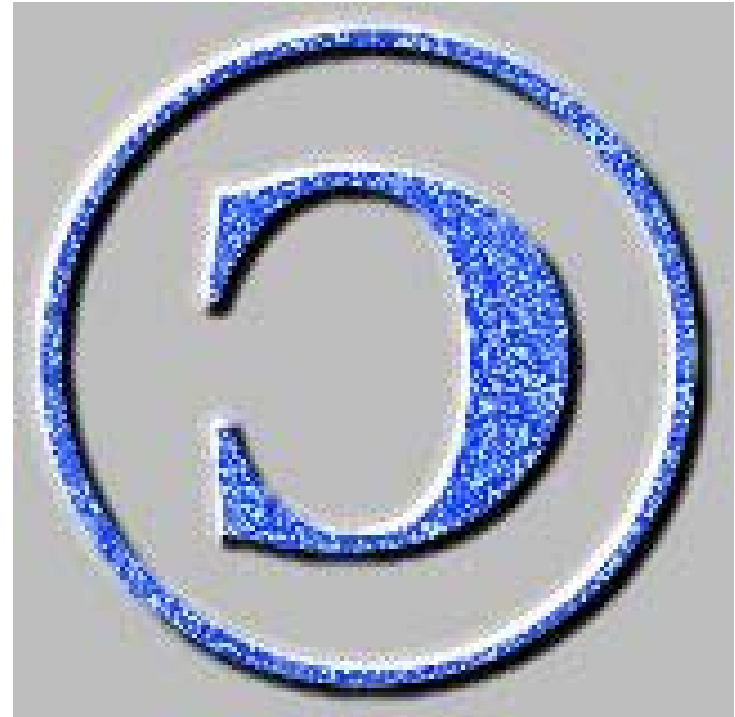


What happens when authors keep the copyright?

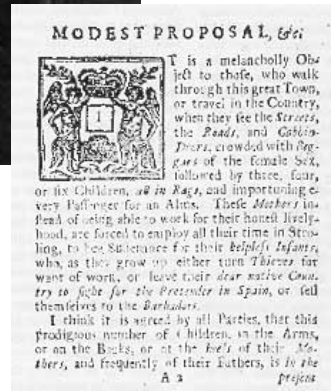
- S'pose a journal publishes thousands papers each year
- S'pose all authors keep copyright (giving the publisher a “license” to publish)
- Thirty years in future ...go to repackage material
 - Must look for all authors;
 - Many missing; some dead; some do not respond
 - Hopeless to get permission from all
- Who then controls the journal?

Same old trap...

- Copyright not about author rights... it is about balance
- *Balance...*
 - Authors /Publishers /Public
- For journals, need to shift balance to public



Modest Proposal



- At the time of publication...
- Authors agree to dedicate their work to public domain after 28 years
- Until then, publishers control the work
 - ...entirely

Objections...

- Publishers will lose money.
 - Yes they may... copyright not guarantee
- Publishers will have no incentive to archive
 - Partially true; but no one trusts publishers, and many don't want to archive
- Someone else may make money
 - True, some entrepreneur may... is that bad?



Objections (other side)

- Why wait for 28 years?
- Incentives are important – costs are real; profits are good (make journals stable)
- Publishers can still give open access after X years, while retaining exclusive control



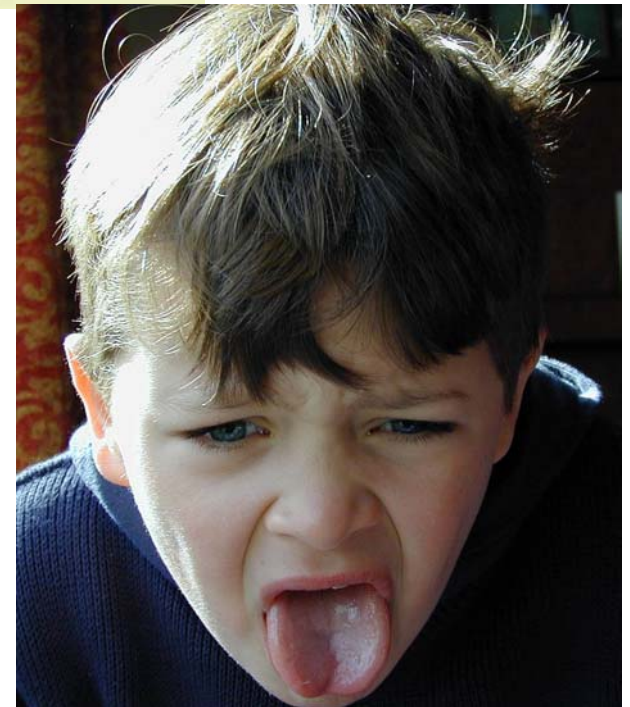
Benefits

- Serves community
 - Philosophically sound
 - no one owns ideas
 - Flexible in future – can update necessary
- Practical
 - Simplicity for authors
 - Simplicity for pubs



Can it work?

- Won't be easy: laws differ throughout world
- Won't be easy: publishers recoil at idea
- Won't be easy: some scholars are uneasy about releasing control
- We are conditioned by 300 years of history: we believe we own the work we create



Working for the future...

- Won't solve any of our problems today with copyright
- But it will leave a far better copyright legacy for future generations.
- That's what science is all about...

