The Common Sense of Copyright

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Librarians see copyright and the high prices paid for information in academic journals as unnecessary constraints on their ability to provide the desired quality of service to their users, especially when the information is often produced by those same users. Authors and publishers see copyright and journal revenue as a necessary reward for creative effort and the value added to the information by the publishing process. These contrasting views are explored with special reference to the ownership of copyright, electronic publishing and the viability of learned publishing.

As an author, editor, publisher and ex-academic I am sometimes bemused at the stance of librarians toward copyright. Too often, there is the perception that copyright represents value stolen from the academic staff and that the abolition of copyright would reduce costs to universities, which, it is argued, re-purchase the work of their faculties from publishers. True, faculty members produce much of the raw material, but the published manuscript is usually markedly better than the submitted version, having been checked, corrected and often re-written. That is what is meant by added value.

Librarians also feel that publishers are resisting the trend toward electronic communication, largely because they wish to protect the revenue from their printed publications. Publishers are naturally cautious in making large investments in the absence of any certainty of return, but to judge from the increasing output of electronic journals, progress is being made, though their viability is far from certain. In the meantime, it remains common sense to build upon existing print-on-paper publications. The academic community is also urged to take control of copyright, as if copyright were a kind of wonder drug that would cure the ills of libraries, and there is the curious idea that copyright can be managed by universities for the benefit of all. While it is implied that the copyright in question relates primarily to serial publications in the scientific, medical and technical fields, justification for this restriction is commonly lacking. The Follett Report1 argues that publishers must recognise that the ‘free’ use of copyright material within higher education is inevitable and by no means unreasonable and illegitimate. I beg to differ, and on several grounds. Thus, what is so special about the higher education sector? Should all of the material collected by an higher education library, including fiction, music, travel, film, video and art, become free of copyright? Or if ‘academic control of copyright’ refers to material produced by academic staff, then, naturally, all of the profitable books of fiction, history, current affairs, political commentary, art and science produced by academic luminaries should also come within their grasp. Would that be welcome? Another question: what is meant by the higher education sector? In higher education, teaching and research go together, with much research being
funded by commercial, charitable and Government bodies, such as research councils. Within a higher educational institution, with a variety of links to outside bodies, where can lines be drawn? Should commercial organisations making use of the library take advantage of such liberality and be able to use copyright material freely? Much copyright material is used in the course of medical research and medical practice. Should university medical schools and hospitals have free use of copyright material, while other hospitals and medical practitioners, lacking such connections, are debarred?

Quality control

Publishers do not seek to control the electronic communication of research findings, nor do they control copyright. They are, however, concerned to protect their rights, and those of their authors, from illegal exploitation. Or, if you prefer, from piracy and the unwarranted and free use of their valuable material. There is no way that publishers can control the promulgation of research findings, whether electronic or in any other form; nor are they attempting to do so. Rather, journal publishers aim to transfer the benefits of the tried and tested refereeing and editorial systems of the conventional journal to the electronic medium. At a recent joint meeting of the International Council of Scientific Unions and UNESCO in Paris on Electronic Publishing in Science there was total and unqualified support for the maintenance of refereeing and quality control in the electronic world. Inevitably, publishers (commercial, learned society or university) charge for these services, but in return, the client (librarian or end user) receives an assurance of quality, order and some new bibliographical research tools. The free-for-all alternative represents anarchy.

The need for quality control must not be underestimated, for in some fields life, or death, can depend upon the accuracy of the information published. Consider medical research or clinical papers that describe the use of a particular drug or therapeutic agent. An error in the dosage printed could have devastating consequences for patients. Careful checking of proof against manuscript becomes essential, and skilled editorial staff deserve to be well paid. These are necessary and unavoidable expenses, for proof-reading (as many of you will lament) is not best done by the author. Such costs will have to be borne by university presses, just as they are by learned societies and their commercial counterparts.

Copyright as a property right

Now let us take a closer look at copyright, and at the meaning of copyright. Despite assertions to the contrary, copyright was not devised to restrict the flow of information, but rather to promote the progress of science and the useful arts, as the US Constitution states. From the point of view of the British Copyright, Designs and Patents Act, 19882, ignoring films, sound recordings and non-printed media, copyright is a property right that subsists in the typographical arrangement of printed editions. This does not mean that publishers are automatically accorded copyright, for the Act also states that the author of a work is the first owner of any copyright in it, subject to the proviso that 'where a literary, dramatic, musical or artistic work is made by an employee in the course of his employment, his employer is the first owner of any copyright in the work subject to any agreement to the contrary'. That copyright is a property right merits reiteration, for property has value and, likewise, information is regarded as property to be bought, sold and protected. In essence, there is no difference between information and food, clothing and other necessities. Libraries are (or should be) held in great esteem for the information they contain. The books or journals they guard are merely the storers of knowledge, as are jars for jam, or bottles for wine. The containers can sometimes take on an importance of their own, but that does not vitiate the general principle.

Copyright generally passes from author to publisher in return for some consideration. In the familiar cases of books, for the payment of royalties by the publisher after negotiation between the two parties. With journals, there is most often no financial consideration, for the author transfers his copyright in return for publication in a well-refereed and well-edited journal. That said, even after the assignment of copyright the author retains the right to be identified as the author and to object to derogatory treatment of his works. These 'moral
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rights' are of crucial importance for academic authors, who do not set out to gain financial reward for their articles but want the credit for their work. The acclaim of others, and the resultant prestige, is much more significant than a fee.

There can be no dispute over the reality of copyright and its operation in relation to conventional print-on-paper material. For librarians, problems arise in paying for the range of published material that they would like to stock, and difficulties are generated by the seemingly inexorable rise in the costs of journals that outstrips the abilities of libraries to pay for them.

No panaceas are on offer on this point: even libraries accept that as circulations steadily decline, the fixed costs for any publication (those associated with the collection, refereeing and editorial processing of the material) must be covered by fewer subscriptions, and so prices rise. Additionally, in the world of the learned journal, the driving force is largely the author not the publisher. Papers for publication are pressed upon the editors of good journals and if the paper proves acceptable then it must be published. Once a paper is accepted, it is generally added to the publication stream and issued as soon as possible. Few editors are able to indulge their idiosyncrasies and favour one research group or field over another; the response of an editorial board to the manifestation of such favouritism is likely to be extremely hostile. Likewise, editors watch out for possible bias on the part of their referees. Accordingly, if a subject is thriving, more papers are generated for publication and the journal fattens. And, just as certainly, this forces a rise in subscription to pay for the extra work and extra pages.

Copying

One result of the increased cost of journals, and decline in subscriptions, is the rise of photocopying. Librarians argue that it is only right, in these difficult times, to share the use of expensive journals: that copies of articles in a journal taken by one library should be made freely available to other libraries. The Copyright Act is quite clear on this point: the owner of the copyright has the exclusive right to issue copies of the work to the public, and the copying of a work is restricted by the Act.

When libraries legally make copies of journal articles (and parts of books), they take advantage of the fair dealing provisions of the Act. These should be engraved on the hearts, and minds, of all librarians, and make these conditions:

(a) that copies are supplied only to persons satisfying the librarian that they require them for purposes of research or private study, and will not use them for any other purpose;
(b) that no person is furnished with more than one copy of the same article or with copies of more than one article contained in the same issue of a periodical; and
(c) that persons to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library) attributable to their production.

The fair dealing provisions of the Act are sensible and acceptable to publishers of the learned society ilk. They should be, for ALPSP lobbied hard for them to be included in the Act and was successful, for learned societies never forget that they publish on behalf of their members, and that their members are eager to help others make use of their findings. But that enthusiasm does not extend to the provision of free licences to photocopy, with the stock of one library serving the needs of many others, for then the viability of the journals themselves may be threatened, when everyone suffers. Indeed, in the United States resource sharing of this kind is coming to be regarded as systematic copying, for the copies made substitute for a subscription to the publication. The 'fair use' provision in the Copyright Act was intended to cover incidental, occasional, or private copying, and not the systematic plundering of a resource.

The Libraries Association/Joint Consultative Library Committee Working Party on Copyright and the Digital Environment seeks to undermine these provisions for electronic publications by asserting that 'without incurring a charge (apart from a possible subscription charge taken by the library) or seeking permission, individual members of the public should be able to: read, listen to, or view publicly available copyright material on site or remotely; browse publicy
available copyright material; have made available for them by a librarian, a copy for personal use in digital or print format of a reasonable proportion of a digital work in copyright for the purposes of education, research or private study (fair dealing); make copies over and above fair dealing using simple payment schemes'.

Thus, the right is sought to access all of the material available on line, regardless of its value. The definition of 'publicly available' could prove interesting. Is it intended that the act of making the information accessible online renders it publicly available? Is valuable and ephemeral financial information, normally accessible only upon payment of a substantial fee, to be revealed to any librarian without charge. Who then would bother to pay any fee at all? And how would the database survive?

The University as publisher

Some universities argue that, as the employers of academic staff, they own the copyright of any works produced by their professors, lecturers and others. And they are correct, although it has been customary for universities to allow their staff to publish at will, and without restriction. This is what is known as academic freedom. By requiring university staff to publish through a university press, or through publishers that will not retain the copyright of the works issued, the simplistic thinkers reckon that the cost of information will fall, and the problems of libraries greatly eased. There are several arguments against this scenario, and some have been touched upon earlier: another is that universities do not employ all those working within them. There are many research fellows and others in colleges and universities who are supported by research grants and who owe their prime allegiance to their funding body. They do not see why copyright in their work should be given to the university, rather than, say, a cancer research fund, or a humanities research trust that has a much greater right to the material. Such a policy would also generate opposition from those who claim that much writing is done in spare time and off-campus, although universities can counterclaim that their (mainly senior) staff are contracted and paid to devote all of their time to academic pursuits, of which writing is but one.

Suggestions that the universities themselves could set up publishing operations in competition with the academic publishers and learned societies cannot be taken seriously, for at least two reasons. First, because the margins are small and there are few savings to be made, and second, and more importantly, because any journal issued by a university and solely devoted to the works of its staff is likely to be of little appeal. A university journal, to be fair to all of its departments, must be general in content. However, the range of subjects covered in the papers of a university journal is likely to be so great, and of such uneven quality, as to discourage library purchase. Very few university departments are productive enough to sustain a journal of their own. And if they could, the need for independent refereeing of their papers would mean that help from outside the university would be sought - so re-inventing the specialist journal. As a glance along the shelves of a good library readily shows, the trend these days is for increased specialisation among journals with each attracting a small but devoted readership. General journals, such as Nature, now break themselves up into sections that can be bought individually. In other words, very few truly general journals remain.

There is another hazard for university publishing houses: the pressure from their staff to publish material of little appeal. An academic naturally wishes to publish his research findings or thoughts in the best journal in his field, but if that journal shows little interest and the work is really not very good and rejected by others of as minor significance, then what is more natural than to turn to the university publishing house for succour? If the publishing house bows to persuasion and publishes, then its finances are likely to suffer; if it does not, then it is showing proper commercial sense, and behaving no differently from the much criticised commercial publishers.

Clearly, any university wishing to engage in journal publishing will have to establish an editorial office, and will necessarily incur the costs borne by publishers, so that, overall, the savings are likely to be vanishingly small. The economies predicted from the use of electronic networks for the transmission of material for peer review and editing, and the delivery of the
finished article in electronic form to the customer, will also be achieved by most journal publishers so that universities will be left with little to offer.

Electronic publishing

In case you feel that much is being made of very little, and that universities are unlikely to venture into the heady world of publishing, I should remind you that the Association of American Universities has asked all fifty-eight of its members to contribute $30,000 each to establish a $1.7 million venture capital fund, intended to support new modes of scholarly communication and to give universities more control over the electronic publishing of scholarly material. The proposed electronic network would levy charges 'based on the cost of information, rather than 'cost-plus'. The network is intended to counteract 'the growing dependence of universities on commercial publishers', and to offer faculty members a low-cost outlet for their research findings, but would appear only to duplicate the activities of the specialist bulletin boards, of which more below.

One misconception to be attacked is that electronic networks and electronic journals are free: they are not. While they may appear to be free at the point of use, someone is paying for the Internet infrastructure, the cost of memory space on the server, and the management costs of the system and the journal. Generally, these expenses are subsidised by the higher education system, but this condition may not last for very much longer, for the expense in not small. According to Clifford Stoll, in his Silicon Snake Oil* the Internet links in the University of California cost well over $10 million a year - a sum that would buy many books and journals - whilst the famous 'free' Los Alamos electronic archive in physics of Paul Ginsparg is supported by grants worth millions of dollars.

To judge from a recent paper by Charles Oppenheim5, the Follett Implementation Group for Information Technology (FIGIT) favours the view that academics should only give publishers limited rights to publish in a favoured journal, with the academics retaining the rights for further exploitation, as in an electronic form. As Oppenheim states, "One clear possibility is for academics to retain electronic copyright rights for themselves, and then to offer electronic versions of their work on the Internet at no cost, whilst still offering print publishers the right to reproduce the article for archival purposes." Few publishers are likely to go along this route, and publish for posterity rather than for today. Some of the reasons for this conclusion have been touched upon already, but merit reiteration.

The best journals invest heavily in quality control and, to this end, may accept only 20%-50% of the papers submitted to them, despite the waste of effort in refereeing and assessing the 50%-80% of discarded articles. Then, as any good editor will tell you, few papers are ready for publication as submitted, and most benefit immensely from careful editing and checking. You might well be amazed at the large proportion of authors who send wrong illustrations with their manuscript, or who continue to refer to tables or figures that were in a draft version but later deleted, or cite articles not included in the reference list, or give the citation or mis-quote it, and so on. Good journals devote much effort to these matters, even though their achievements are seldom properly applauded. Authors often write to thank editors for the work done on their behalf, but seldom admit their errors and omissions in public. This may help to explain why no self-respecting journal would ever agree to re-publish solely for archive purposes material that has previously been circulated electronically. That is a task for a copyist, not for a publisher taking pride in its work.

Bulletin boards

The perils of the Oppenheim possibility are well illustrated by reference to a Psychology Preprint Bulletin Board (PREP) now on offer and intended to be an academic preprint archive and distribution system*. Attracted by the seeming success of preprint bulletin boards in physics, mathematics, chemistry and philosophy, the psychology version sets out to cover all fields of psychology and psychology research. Papers in the development stage, drafts, finished papers currently in submission, and papers accepted but not yet printed can all be posted there. 'It is hoped that eventually PREP will publish every paper that has not found publication', so by-passing all means of peer-review and quality control and
providing ample opportunity for vanity publishing. In the absence of any control of input, articles by the naive, the fraudster and the charlatan could all be accepted, to the detriment of the user.

It is hard to believe that the organisers of this board have explored the consequences of their plan in any depth. The thought of trawling through thousands of papers, often in draft or preliminary form and inevitably full of errors, in an attempt to separate the gold from the dross is most discouraging. How will the serious student ever know whether changes have been made to a document and whether the amendments simply reflect second thoughts, rather than the correction of serious errors? Is no limit to be placed on the capacity of the board as it becomes ever bigger, so that a series of searches retrace old ground and take ever longer? How does the user assess quality without the downloading of masses of unimportant or irrelevant material? Will each version of a paper displace its predecessor? Is the material to be archived?

In a bulletin board like that offered in psychology, questions of ownership of copyright, priorities and proof of first publication will come to the fore. Priority of publication is rarely questioned in print-on-paper journals, but could be hard to prove on a bulletin board, where a draft of a paper could appear and then be deleted on publication of the definitive version in print. Deletion of the draft must be expected, for no author likes to see rough and polished, or good and bad, versions of his gems co-existing. Priority can then only be claimed for the printed version, although a competitor could have made use of the draft in rushing a rival version of the work into print first. This is not an ethical procedure, but quite possible in a competitive world. In reality, those producing significant, and valuable, findings are more likely to keep them confidential and press for rapid hard copy publication, with the result that the quality of the bulletin board content further declines.

Although the peer review system is often criticised, largely by those whose work fails to meet the quality criteria, the system has not been imposed upon the academic community. Rather has it evolved from the exchange of letters and circulation of the minutes of meetings to the preparation of full accounts of research findings and review of them by independent experts. As noted earlier, the peer review system also protects authors from opinionated editors, as well as shielding editors from disgruntled authors. Those enthusiasts who object to any prior scrutiny of their work are likely to find their 'publications' regarded with indifference, in contrast to those appearing after peer review, which will be taken seriously.

**Future trends**

Almost inevitably, academics will continue to send their best work to the quality journals, which are run by their peers and whose competence is unquestioned. More important, the readers of these journal know that a great deal of sifting and refinement of the content has been done before an issue or paper reaches their desk. Indeed, Oppenheim accepts this point, noting that libraries will still be under pressure to subscribe to the most prestigious sources, and to subscribe to new sources in developing sub-fields, and adding that the research assessment exercise helps to confirm the need for prestigious journals by rewarding academics not for the volume of publication, but their ability to get articles published in the most prestigious journals.

Oppenheim is encouraging academics to publish in journals issued by learned societies and university presses, largely on the basis of mutuality of interests with the higher education community, but also with the feeling that learned society journals are less expensive than their commercial counterparts. This perception can only be applauded, though the savings are likely to be small, for both learned society and academic publishers face the same quality control and publication costs, while all journals are expected to generate revenue in return for the work involved in publication. Learned societies, like universities, are having to cope with hard times and must generate income to survive. In coming to terms with electronic alternatives, publishers are exploring a variety of ways of delivering information to their customers. Many publishers are now making electronic versions of their journals available to subscribers, usually in parallel with a subscription to the printed version. Some journals are being made available in a purely electronic form, with no paper
counterpart, in order to explore customer preferences and potential demand. But it is becoming clear that authors are reluctant to entrust the fruits of their research to electronic storage in the absence of a national archiving system, as is illustrated by the failure of Current Clinical Trials. Here a national electronic archiving system would be of immense value in storing the definitive versions of properly refereed material. Their authors would then have the assurance of preservation of their work in the foreseeable future. Ways would have to be found of protecting the subscription income of journals, where appropriate, by ensuring that the archive is used for reference purposes only and is not accessible for general use or for the dispatch of copies to readers.

The Association of Learned and Professional Society Publishers is involved in experiments on electronic document delivery in an effort to determine the problems for small publishers and arrive at solutions that generate income and favour continued existence. Learned societies are founded in order to further knowledge in well-defined areas and to deliver highly specific information to their members and clients. The very specificity of the information demands the employment of specialists in their particular subject in the selection and editing of the information, and these costs must be recovered. In essence, learned societies cannot afford to deliver their valuables free of charge, so that ways must be found for adequate reimbursement. Perhaps we are being driven toward the licensing of use, with publishers offering, alongside the conventional journal subscription, licenses allowing unlimited access by all academic staff and students, or permitting librarians to provide access only to a restricted number of users. The journal could be made available on a read-only basis, with no down-loading or copying, or copying may be permitted for a particular category of user. Electronic storage of the downloaded material may, or may not, be allowed despite the acceptability of printouts, or printouts may be allowed for research purposes but not (in multiple copies) for teaching. The permutations are endless, as those involved in the current experiment on UK Site Licensing are learning to their cost.

Finally, I should remind you that academic publishing is an international activity, and that it is easy to overlook the fact that the bulk of readers of the better British journals are located overseas. For such journals, with 80% of sales being made abroad, nationalistic views about copyright then become distinctly unhelpful. Two major developments in copyright control are coming: European union harmonisation and a new Copyright Act in the United States. Both will have profound repercussions in the UK.

References