

A Modest Proposal: Copyright and Scholarly Journals

I am a reactionary—at least when it comes to copyright. The first copyright law in 1709 provided protection for up to 28 years. In most countries today, copyright extends for 70 years beyond an author's life, which means copyright can extend for more than 150 years! The period of 28 years was a compromise between anarchy (zero) and perpetual monopoly (infinity). It balanced the rights and interests of publishers, authors, and the public. The balance worked.

Modern copyright law seems to work for novels, music, and movies, but it doesn't work well for scholarly journals. Journals record the knowledge of one generation for the next—they are long-term affairs. Recently, scholars discovered that copyright was a major impediment to making the older literature available online because obtaining permission decades after a journal was published was often impossible. And scholars realize that these difficulties will increase as we migrate to new formats in the future. For scholarly journals, copyright protection is an obstacle, not a safeguard.

We cannot change the laws that protect novels, movies, and music for the sake of scholarly journals. Publishers have persuaded both themselves and lawmakers that our present copyright laws provide the right balance for these creative works, and we are unlikely to change their minds. We should look for practical solutions, not ideological jousts.

What's a practical solution? Be reactionary—revert to the older traditions of copyright, without changing the law. We should urge scholars when publishing journal articles to dedicate their work to the public domain after 28 years.¹ Until then, authors and publishers control their work as at present (perhaps giving free access much earlier). After 28 years, the work belongs to the world, in keeping with the historical traditions of copyright.

Why not merely insist that authors retain copyright? Author-held copyright sounds convincing at first because it sounds "fair". But think what happens in practice. A publisher produces a journal with thousands of articles by thousands of authors. If all the authors retain the copyright, but give the publisher exclusive rights to publish for a period of time, anyone who wants to make the journal available to the public after that period must contact thousands of authors to obtain permission. Some authors will decline permission; some will be hard to find; some will be missing altogether. And since the publisher already has permission, it's the publisher, not the authors or the public, who retains control.

The problem of copyright is not author rights or fairness—the problem is balance.

¹ Some countries declare certain rights inalienable, making it difficult to devise simple statements that place a work in the public domain everywhere. One scheme for dedicating work to the public domain can be found at <http://creativecommons.org>, although this scheme is not directly relevant to the proposal here.

Publishers are usually horrified when they hear the 28-year proposal, because they misunderstand copyright's purpose. Publishers point out that they will lose revenue from sales of older issues. They will. But copyright is not meant to guarantee publishers every possible penny from a publication. Copyright is meant to provide financial incentives, not guarantees that no one else can make money.

Some publishers object that they will have no incentive to archive legacy material. That is only partially true. In any case, most scholars do not trust publishers to archive their material, and many publishers have little desire to archive. As the older literature falls into the public domain, many different groups will be able to set up archives, with many different motives. That is the essence of good archiving, multiplicity.

Some authors object that they will lose control as their work moves into the public domain. And it is certainly true that someone in the future can appropriate a work, either in whole or in part, without attribution. But the legal system has seldom played a role in addressing these problems. No one sues for copyright infringement in such cases—the academic community maintains high standards, and those standards come into play when scholars exhibit poor scholarship.

Finally, publishers *and* authors object that an enterprising entrepreneur may rise up in the future to repackage journal articles as they fall into the public domain, creating new ways to make them available to the public and thereby making a profit. Is that bad? Surely authors, who shared none of the profit initially, should not object to sharing none in the future.

This is a practical proposal. Because journal publishers make most of their money in the first few years after publication, a shorter copyright still provides financial incentives. Because most authors recognize that scholarship derives from the work of countless scholars who came before, placing scholarly work in the public domain appears reasonable. And because the action is simple (unlike complicated licensing arrangements), dedicating work to the public domain is easy to understand.

Why should publishers give up their exclusive right to the material after 28 years? Why should they lose even small amounts of revenue? Why should they let anyone else profit? Because restoring balance to copyright serves the public interest. But also because it's in the publishers' self-interest—our journals are under attack by people who have little understanding of scholarly publishing, but who use the evident flaws in copyright to advance their cause.

We ought to leave a better copyright legacy for the next generation of scholars than the legacy left for us.

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