Copyright Reform: for Whom?

Maria Chiara Pievatolo

Università di Pisa

pievatolo@dsp.unipi.it

October, 7 2022

A Workshop on Adding Copyright Reform to the Open Access Agenda

This work is licensed under a Creative Commons by-sa license
Overview

1. Why copyright should be made simple
   - Public education
   - Does science still need commercial publishers?

2. Statutory licensing: a backward-looking solution?
Copyright in the age of printing

Richard Stallman, 2001

Copyright in the age of the printing press was fairly painless because it was an **industrial regulation**. It restricted only the activities of publishers and authors. Well, in some strict sense, the poor people who copied books by hand may have been infringing copyright, too. But nobody ever tried to enforce copyright against them because it was understood as an industrial regulation.
Copyright in the Internet age?

Richard Stallman, 2001

Copyright law is now a Draconian restriction on a general public. It used to be a restriction on publishers for the sake of authors. Now, for practical purposes, it’s a restriction on a public for the sake of publishers. Copyright used to be fairly painless and uncontroversial. It didn’t restrict the general public. Now that’s not true. If you have a computer, the publishers consider restricting you to be their highest priority. Copyright was easy to enforce because it was a restriction only on publishers who were easy to find and what they published was easy to see. Now the copyright is a restriction on each and everyone of you. To enforce it requires surveillance – an intrusion – and harsh punishments.
Why ”copyright” should be made simple

- It does not concern just publishers and researchers but
- it affects everyone’s everyday conversations
- it interferes with the freedom of speech and of learning
- its enforcement requires a pervasive surveillance
Article 1, Section 8, Clause 8 - U.S Constitution

The Congress shall have Power ... to promote the *Progress* of Science and useful Arts [end], by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.[means]
Enlightenment was not just about ”scientific production” [Willinsky, 2022, 66-69]

It involved:
- public education
- spread and diffusion of science (Malla Pollack)
- popular information as basis of popular government (Madison)
Enlightenment as personal emancipation [Kant, 1784]

Enlightenment is man’s emergence from his self-incurred immaturity. Immaturity is the inability to use one’s own understanding without the guidance of another. This immaturity is self-incurred if its cause is not lack of understanding, but lack of resolution and courage to use it without the guidance of another. The motto of enlightenment is therefore: Sapere aude! Have courage to use your own understanding!
Enlightenment as public conversation

There is more chance of an entire public enlightening itself. This is indeed almost inevitable, if only the public concerned is left in freedom. For there will always be a few who think for themselves, even among those appointed as guardians of the common mass. Such guardians, once they have themselves thrown off the yoke of immaturity, will disseminate the spirit of rational respect for personal value and for the duty of all men to think for themselves. The remarkable thing about this is that if the
Monopoly

- Monopoly was just a means to an end, in the age of printing.
- In the Internet age, can we pursue the same end without resorting to it?
- Can we promote a public use of reason without making texts difficult to access?
Publishing in the age of printing
Evaluating research in the age of printing
Evaluating research in the age of the Internet?
Unbundling research evaluation from publishing

https://open-research-europe.ec.europa.eu
ORE: open science without monopoly

- all the content is under a CC-by license
- a publisher is hired just as a (replaceable) provider of publishing services (i.e. services making research public) without any copyright transfer
- the peer review process is public (rather than secretive and private)
And yet...

https://www.timeshighereducation.com/blog/natures-oa-fee-seems-outrageously-high-many-will-pay-it
Monopoly: of what?

Why paying € 9500 to publish an article on ”Nature”, when we could publish it in a Diamond OA journal for free?

- We do not need ”Nature” to do a public use of reason.
- We can find cheaper publishing services elsewhere.
- But we cannot do without its branding value
- ... because of the current administrative research assessment system.
J. Willinsky’s proposal of copyright reform

"I suggest that the Copyright Act recognize “research publications” as a **distinct category of work**, which it currently does not do, and that it subject such publications to statutory licensing. This licensing will qualify the publishers of research to royalty payments from its principal institutional users (universities, industry research and development, research institutes, etc.) and the sponsors of this work (foundations and government agencies). The rate will be set by **copyright royalty judges**, much as happens with the licensing of music—only in this case, the publishers will be required to make these research publications immediately open access.” [Willinsky, 2022, 9]
Breakdown

1. Recognizing “research publications” as a distinct category of work by means of a scholarly publishing review board curating a Research publications registry

2. tracking the usage of publications included in the registry

3. distributing royalties accordingly

4. on the basis of a statutory but non compulsory licensing system (publishers may opt out at any time).

5. Excluded publishers have the right both to petition the board and to resort to a judicial review
Saving publishers, stiffening science?

1. Starting new "scientific" publishing initiatives would be a leap in the dark for publishers and a tricky bet for authors.

2. The very presence of the list would increase the amount of court litigations - for who can afford them.

3. The need to track usage would make (or continue to make) acceptable a pervasive surveillance system.

4. The possibility of opting out might make difficult to lower the prices of royalties, or it could contribute to preserve a parallel commercial system involving high APCs.
Italian crazy lists

The stiffening of science in Italy

The Italian research assessment authority is maintaining a list of "scientific journals.

- when it tried to be inclusive, it became an object of jokes ("Anvur’s crazy lists")
- when it tried to be exclusive, it was sued

Is the medium actually the message?

Does the quality of being scientific depend on the literary category of its containers?

For instance: how should the *Legend of the Grand Inquisitor* be listed? Just as a part of a novel or as a philosophical work?
Libraries would become a tool of the capitalism of surveillance

https://elephantinthelab.org/when-your-journal-reads-you/
Would Springer-Nature accept royalties lowering its current profit margin, or would it take advantage from the possibility of opting out because of its dominant position in the research assessment game?

Copyright reform: for whom?

- The statutory license system would guarantee scientific publishers an income.
- The possibility of opting out would preserve the high profit margins connected to dominant positions in the research assessment system.
- Institutions and funders would keep on paying publishers fees not necessarily reasonable.
- Libraries would become parts of a surveillance capitalism system.
- The transaction costs would affect everyone - but more the poor than the wealth.
(Open) science could be much more, much worse *and* much better than an administrative system of royalties and lists

"We should have hope, however, that the participants in networked science understand far better, by virtue of their participation, how science actually works. This reaches beyond those who directly participate in online science projects. The sense of scale and the inevitability of disagreement that the Net makes manifest to most of its participants are in fact characteristics of the eternally humble scientific outlook: The universe is vast and impossible to know perfectly. At its best, however, our experience of the Net will educate more people about the real nature of science as a grand, continuing collaboration among fallible humans. At its worst, the Net will enable us to be more emphatically wrong about the methods, attitudes, and results of science. Which will happen, the best or the worst? Both.” [Weinberger, 2011]
John Willinsky (2022)

Copyright’s Broken Promise. How to Restore the Law’s Ability to Promote the Progress of Science

David Weinberger (2011)

Too big to know

Immanuel Kant, 1794

An Answer to the Question: what is Enlightenment?