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Copyright and research: an academic publisher's perspective

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As a publisher working on the legal and rights' side of the business at present, but who used to be a Commissioning Editor responsible for research books in the Humanities, the author finds himself sympathetic to the needs of academic authors and keen to find ways of ensuring that their copyright interests are adequately protected.

Rights are often at the heart of things for authors, but among any group of authors there will always be a wide range of attitudes towards the way their rights should be exercised. The British Academy's Review entitled *Copyright and Research in the Humanities and Social Sciences*, launched in London on 18 September 2006¹ and the subject of a day-symposium in Edinburgh on 30 March 2007, rightly focuses on the need of academics to re-use other people's copyrighted materials for research purposes without over-paying for the privilege; yet academics are copyright owners as well, and they are sometimes the first to be concerned when they see their own materials re-used inappropriately or without adequate remuneration to them. There is this dual aspect to copyright, and as the Intellectual Property Director at Cambridge University Press (CUP), I tend often to be looking both ways: towards the widest possible dissemination of an author's work on the one hand, and towards assiduous protection of their copyrights on the other.

The range of submissions to *The Gowers Review* (December 2006)² also demonstrated this diversity of attitudes towards rights, and the writer, in his day-to-day work regularly encounters the entire spectrum. This ranges from academics who unreservedly support Open Access models and would unhesitatingly make all of their

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¹ <http://www.britac.ac.uk/reports/copyright/report.pdf>

² http://www.hm-treasury.gov.uk/media/6/E/pbr06_gowers_report_755.pdf

written outputs freely available on the internet as soon as possible for others to re-use on the principle that maximising the most widespread accessibility should be any author's priority; all the way to those who are highly concerned with protection and control to the point of scrutinising the small-print of every sales invoice and every end-user licence to be sure that their publisher is squeezing every last penny from their copyrights on their behalf.

A publisher has to mediate those attitudes and come up with models that satisfy to some degree, both ends of the spectrum. Consequently, once it is averaged out, the academic authors are *not* very far apart from academic publishers on any of the key rights' issues. In fact, in almost all cases with academic books these days, certainly with those published by the CUP, it is the *author* who retains the copyright. The copyright notice on the imprints page of the book is in the author's name and the copyright is not assigned to the publisher or any other party. The publisher is granted the exclusive right to publish, distribute, sell and sub-license the work, but the author retains essential ownership of the words she has written, which includes an assertion of moral rights. Even in special cases (such as volumes like *Cambridge Histories* or *Cambridge Companions*), where CUP requests that an overall copyright in the work be assigned, partly for branding reasons, the copyright is then assigned for a legal consideration, and that consideration is generally the terms and conditions of the contract. In other words, if the contract is actively terminated, or ceases to remain in force through breach or non-fulfilment, the copyright will naturally revert to the author. Copyright arises inalienably from authorship and is not something that the author can be permanently or unconditionally divested of. To that extent, copyright is certainly on the side of authors. Publishers exploit it; but without authors it would not exist.

An example of an attempt to create an acceptable author-publisher balance would be the rights which the authors of journal articles retain to deposit their work in institutional and subject repositories and to re-purpose their work in other publications of their own. Another example would be the willingness of many publishers to experiment with Open Access, author-pays or funding-agency-pays publishing models: CUP now operates that model for fifteen of its journals, with the Open Access content covered by the excellent Creative Commons *Attribution-NonCommercial-ShareAlike* licence designed for such purposes.

As such, copyright is a two-way street: it is there to protect authors from losing control of their work as well as to allow free and effective communication of that work. And this duality has in fact characterised copyright from the very beginning. Throughout the eighteenth century copyright evolved as a protectionist framework to the financial benefit of the stationers' companies, and still today it is possible to bring many arguments about copyright-infringement down to economic causes and effects. If a work is illegally copied or distributed, in breach of the laws of copyright, then the legitimate market for that work is effectively devalued. If for example, a textbook published by CUP is scanned to PDF by an enterprising student who then sells copies of the PDF at a knock-down price on eBay or some other download service (and this happens regularly) it may fairly be argued that sales of the legitimate book will be thereby damaged, to the financial detriment of both publisher and author.

Yet in such examples there are always counter-currents in play, and these point towards a different aspect of copyright: the aspect that has its origins in the French Enlightenment and is more to do with the creative right of the individual to

communicate his or her ideas; a right which transcends, or is at least quite apart from, the economic context, and may be regarded rather as an aspect of the freedom of expression. An example here would be the academic author who encourages the free electronic dissemination of his book, on the grounds that his mission is to reach as many readers as possible, no matter how this is done. To provide an example from practice, an author, whose book was published by CUP, brought to its attention the list of websites from which free PDF versions of his textbook were available for illegal downloading. The author went on to say that he himself welcomed and applauded this activity, even though he assumed that CUP would not take the same view and would want to take steps to stamp it out! This is a significant example of the tension at the heart of copyright: the tension between protection and communication. While recognising his legal responsibility to alert his publisher to infringements which would financially detriment both CUP and himself, the author was also pleased by the idea that his work should be considered worthy of widespread free dissemination, even if this meant less money for him. It is worth noting that the academic in the above example was in an established career, hence receiving a salary, and not someone who aspired to make a living out of his textbooks. Nonetheless there is a tension there, and it is perhaps the same tension that we see in the debate around the Open Access movement in the Journals world.

A recent Position Paper on copyright from the Association of American Professional and Scholarly Publishers, published in May 2007, is tellingly sub-titled 'An Appropriate Balance'³: the writer believes that it is this 'balance', which we have to achieve and we *are* in practice achieving. As an academic publisher, I agree with almost everything contained in the Supplement to the British Academy's Review document, *Guidelines on Copyright and Academic Research*. Academics and academic publishers can unite behind documents of this kind.

The Gowers Review takes a very balanced line on copyright, for good reasons. The copyright industries represent at least 7% of GDP in Britain and book publishing generates at least £5billion per annum for the British economy, with Journals adding a further £1billion.

A full-scale tilt into unrestricted Open Access would be too big a shift. Someone has to pay, and it can be argued that the current mildly regulated framework which 'publisher-controlled' copyright represents does the job quite well: of keeping the economics in equilibrium. In my view, *The Gowers Review* seems to point towards a secure future for copyright. Whenever the utopian vision of a copyright-free world is discussed, it soon becomes clear that *some* form of regulation would at some point be required both to protect Intellectual Property and its commercial interests and to shore up the author's right of communication – and whenever the nature of that regulation is explored it begins to look very much like copyright.

Copyright is a mature form of regulation which has evolved over hundreds of years. To conclude on a cheerful note, it is my belief that copyright *will* adapt to the electronic world, and to the needs of the academic community going forward, in a manner that will serve the interests very well. Copyright is here to stay.

³ <http://www.pspcentral.org/>

A version of this article was given as a talk at the event Copyright and Research in the Humanities and Social Sciences, co-hosted by The British Academy and the AHRC Research Centre for Studies in Intellectual Property and Law in the University of Edinburgh, 30 March 2007. Some sections first appeared in Kevin Taylor's article 'Plagiarism and Piracy: A Publisher's Perspective', Learned Publishing, Volume 19, No. 4 (October 2006), 259-265.

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