# WHO OWNS THIS SENTENCE?: A HISTORY OF COPYRIGHTS AND WRONGS

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California, home to entertainment giants and Silicon Valley, has a huge stake in the development and application of copyright law. While lawyers rely on *Nimmer on Copyright* for depth, curious readers interested in a broad and engaging overview of copyright's history and modern challenges will enjoy reading *Who Owns This Sentence?* by David Bellos and Alexandre Montagu. The book efficiently covers authorial rights from antiquity to today, including the impact of technology, international perspectives, and robust criticism of copyright law.

David Bellos, a literature professor and translator at Princeton, and Alexandre Montagu, a multilingual attorney specializing in intellectual property law, bring a combined expertise that enriches the text. Montagu's background in law and Bellos's literary knowledge allow them to offer a multifaceted analysis of copyright issues, blending legal, historical, and literary insights.

The authors begin in antiquity, and proceed through the Renaissance, England's Statute of Anne, the Berne Convention, and United States copyright law, up to the present. The international dimension covers England, France, Russia, China, the United States, and the Berne Convention, underscoring that authorial rights overlap but are not necessarily identical to rights protected by copyright. The impact of technology touches upon paper, woodblocks, Gutenberg, etchings, photography, film, software, and the most challenging technology, AI.

As with a harsh but clever review of a poorly written book, the most bracing part of *Who Owns This Sentence?* is the authors' sharp critique of copyright wrongs. Among the criticisms of copyright, two standout: copyright law exacerbates economic inequality and copyright law stifles creativity.

The authors argue copyright law now generates hundreds of billions of dollars of income, authors get a pittance, and the real profiteers are corporations having the ability to obtain and enforce copyright law. Over the years, copyright has expanded from books and other writings to engravings, sheet music, cloth designs, plaster casts for farm animals, circus posters, photographs, movies, and software.

A key example of the expansion of corporate power is the 1909 Copyright Act's definition of employers as "'author[s]'" for "works made for hire." This is an example of "word magic," since the Constitution's copyright clause intended to protect authors as individual creators. A more recent example of copyright "word magic" is turning computer programs into "literary works."

The collective value of copyright has been increased by "copyright creep," the expansion of copyright law to include new

types of works and to extend protection periods. The authors cite the Sonny Bono Copyright Term Extension Act of 1998, which extended corporate copyrights to 95 years from publication or 120 years from creation. This law notably benefited Disney by keeping iconic characters like Mickey Mouse under corporate control. Such legislative changes demonstrate the power of corporate lobbying.

Not only does copyright law promote domestic inequality, it also promotes international inequality, because royalties flow toward developed countries, with little flowing in the other direction.

The provocative arguments about copyright and inequality will invite counter arguments. First, the arguments that corporations, lobbyists, and legislators have created an unequal playing field largely overlap similar arguments leveled against the tax code. If the authors' goal is to pay authors a living wage, there are ways to accomplish that goal besides tinkering with copyright law, such as beneficial tax breaks for artists (Ireland) and subsidization of the arts (Germany).

Though the authors suggest changes to copyright law, they quote former Justice Stephen Breyer, who suggested alternatives: "A more equitable distribution of the cost burden, and one that will widen the dissemination of serious works, can be devised without great difficulty in the form of subsidies, grants, or prizes from the government, foundations, or universities. It is not unfair to finance through taxes the creation of works that benefit not only those who buy them but also many other members of society as well."

Second, corporations are able to monetize copyrights and use some of the projected income stream to pay authors. Individual authors, especially if they are not well known, lack the power to monetize their work. A similar argument is made in support of patent trolls, who are able to purchase and monetize inventors' patents and pay inventors a discounted amount for a projected income stream. But one feels uncomfortable relying on patent trolls to make an argument in favor of corporate copyright.

Third, the "works made for hire" word magic allows corporations to hire and pay employees who create products that become intellectual property. Curiously, the authors have little to say about the videogame industry, which swamps the movie and music industries in terms of revenue. Yet the videogame industry includes many employees and teams working on the script, visual images, music, and other aspects of the game. The fact that the final product is protected by copyright is vital to the industry. Perhaps, the videogame industry receives little mention because its cultural merit does not interest the authors as much as first-time authors and impecunious independent documentary filmmakers.

Fourth, who are the underpaid authors? Under current copyright law, authorship covers a broad and varied swath of activities. An enormous amount of writing, software, music, photographs, and video appears on the Internet. The amount will explode as a result of AI. Much of it will be protected by copyright, though AI will create a copyright muddle for a while. Many of the creators receive no or little compensation. Much of what is freely created for the Internet is self-promotion. Much of it is junk. Are the authors underpaid? The Chicago School economist Milton Friedman wrote in support of inequality, "The girl who tries to become a movie actress rather than becoming a civil servant is deliberately choosing to enter a lottery, and so is the individual who invests in penny uranium stocks rather than government bonds." Friedman, were he alive, would argue that unrecognized authors have been incentivized to enter a lottery too. However, as discussed below, Bellos and Montagu roundly reject the "myth of the incentive effect" as a satisfactory explanation for creative work.

Fifth, newspapers that have not adopted new revenue models indisputably suffered economically. But the economic loss suffered by newspaper journalists can be attributed to Craigslist and other Internet advertising that decimated newspaper revenue, to an aging subscription base, and to a Gresham's law of social media, whereby free junk writing available on the Internet overwhelms a better, more expensive editorial product. The authors write, "Authors' incomes have been falling ever since the [Copyright Act of 1976] was passed." But is this an example of post hoc ergo propter hoc?

The second major criticism of copyright wrongs is that the law, intended to promote and reward authorship and creativity does not do so. Quite the contrary, argue the authors, who describe a "cooked-up culture of fear of infringement that burdens us today." Today, copyright creep "means that there is a rights issue in almost every medium or long shot you can take with a movie camera outside a studio." The authors explain that documentary filmmakers simplify backgrounds to remove anything conceivably covered by copyright, trademark, a right to privacy, or a claim to personality.

It can be very difficult to find a rights-holder who will grant permission to copy from a book, a letter, a movie, or music. As the authors point out, "the vast majority of created works have no commercial value within a few years of publication," but "the laws of inheritance, the diversity of family trees and the results of human mobility" may make it hard to obtain permission to copy.

The rationale for copyright was that it incentivized authors to create more public goods. Samuel Johnson quipped, according to his biographer James Boswell, "No man but a blockhead ever wrote, except for money." However, the authors note, Boswell's next sentence is often forgotten: "Numerous instances to refute this will occur to all who are versed in the history of literature." The point is that people write for a variety of reasons: "self-expression, score-settling, inner compulsion, sheer pleasure, to acquire prestige…." The authors conclude that arguments for the incentive effect are confined to an "evidence-free" and "logic-free" world.

Against the "incentive effect," the authors observe that many authors wrote before copyright law or when copyright terms were much shorter. In France, England, and eventually the United States, there "was a progressive lengthening of *post-mortem* protection." The authors point to difficulty explaining how *post-mortem* rights incentivize authors to write, unless they continue to write beyond the grave. In any case, the stranglehold ever-lengthening copyright protection places on authors wanting to make use of others' writings now outweighs the benefits of the arguable incentive effect. Lengthy copyright protection now creates a vast "orphanage" of modern culture to exist, "from which escape will only come for a tiny percentage on the first of January each year." The stifling of creativity occurs today because good artists cannot copy and great artists cannot steal without permission. And permission must first be sought, found, extended, and sometimes paid for.

Even free areas of expression risk being locked up by the threat of copyright infringement. Authors might claim that their borrowing is "fair use." But the terms defining fair use are vague and open to interpretation: "purpose and character of the use," "commercial nature," "nature of the copyrighted work," "amount and substantiality of the portion used," and "potential market for or value of the copyrighted work." Many uses will have no damaging effect whatsoever on the copyright holder. But the authors counsel, "[o]nly courageous and deep-pocketed gamblers should risk a 'fair use' defense against a powerful rights-holder in an infringement suit."

The authors close with speculative alternative history. What if copyright holders didn't have translation rights? Would not this be a great benefit for global culture and for those who do the work of translation? (Bellos is a distinguished translator of George Perec, Ismail Kadare, and Georges Simenon). What if post-mortem authorial rights remained 10 years? Would not this free for creative use a vast amount of writing from the copyright cage? And what if legislation had not created corporate copyright, defining the corporation to be the author in the case of works made for hire? Would not this help to empower the true author?

While the authors observe that arguments in support of the incentive effect exist in an evidence-free universe, the same might be said of some of their criticisms of copyright. The authors' idealistic hope is that "[a] return of copyright to its original purpose of providing limited support to living creators might actually be the dawn of a less unequal new era." Good luck.

In addition to being thought-provoking and wittily written, *Who Owns This Sentence?* will please readers with excellent trivia concerning copyright and authors. Two works in England have perpetual copyright: Peter Pan received perpetual copyright, "to great popular acclaim," because J.M. Barrie contributed his proceeds to the Great Ormond Street Hospital for Sick Children; and, the Authorized Version of the Bible, which has Crown Copyright. Negotiations to translate George Bernard Shaw's works in the Soviet Union broke down because Shaw insisted on being paid in diamonds to avoid U.K. tax liability. You still can't copyright your personality — but you can register your "personality" in the Bailiwick of Guernsey. And the first Berne Convention provided "the manufacture and sale of instruments that reproduce musical compositions mechanically would not be treated as infringements of anybody's right." This was a favor to the convention hosts, "for Switzerland was the home of the musical box and the singing cuckoo clock." That last odd fact demonstrates a point made by the authors: the development of copyright law is marked by a generous sprinkling of serendipity and some absurdity.

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