Copyright, as it has been experienced by most academic writers, is about money and tiresome bureaucracy. This resentment has honourable roots, however. Those who value learning tend to value its free exchange. Knowledge must be there for all, no matter how poor or isolated they might be. The libraries and intellectual resources of the world are to be open to every honest inquirer. The international intellectual community depends on free exchange across national borders and cultures. Knowledge is not a commodity like iron ore or wheat. It has a higher purpose and depends on freedom of expression and freedom from fear. The future of mankind lies in educators, scholars and scientists and in the exchange of knowledge which transcends commercial interest and political intent.

Intellectual property and ownership

In October last year (1994) the lucky 30 per cent whose applications for large grants to the Australian Research Council (ARC) had been successful received their contracts. Included was a paragraph that had not appeared in the guidelines under which we had applied in the previous February. The contract now insisted that any intellectual property arising from this government grant was the property of our employing university, and if that university had no suitable intellectual property statute in place, then the ownership would revert to the Commonwealth Government. This Intellectual Property ambit claim included literary copyright. In other words, if our own university did not claim to own our words, then the Australian Government did.

I wonder how many other parliamentary democracies ‘own’ the words and therefore the ideas of their university scholars, teachers and scientists. Of course no-one for a moment intends to interfere with those words: to alter them, suppress them, misquote them or exploit them for partisan political ends. Oh no, this is Australia, ruled at the moment by True Believers - and probably we should believe them. But some of our powerful international neighbours and antagonists may not see it that way. They could protest mightily that a certain academic pundit was being ‘unfair’ and that could embarrass the government, as could the travel bans periodically placed on scholars in sensitive areas by nations in our region. Many things that scholars discover and write discomfort governments, our own above all. Should the government fund and then own the copyright of work which it dislikes or which criticises it? How different would be the moral and legal position of academic authors in such an Australia from what it was in the Soviet Union? How many foreign academics and scientists would refuse to work in Australia if their moral intellectual property rights were so denied?

The immediate problem with the Australian Research Council contracts was quickly resolved: a contract cannot have its conditions changed after applications have been made and so the clause was dropped. What was far more disturbing was the revelation of how the whole thing had been allowed to happen. No-one on the Australian Research Council - that is the academics - knew of the changed clause; the officers in the National Board of Employment, Education and Training had inserted the clause at the direction of a group within the Attorney-General’s Department.

Of course none of this is really about literary copyright at all. The Australian Research Council’s mission is to fund research which contributes to both basic and applied knowledge. The government also expects that if any such research is to be commercially exploited, then it should be to the ultimate benefit to the Australian economy. This is perfectly reasonable, but the intellectual property in question are patents, not literary copyrights. Similarly, universities must recoup proportionate income from research undertaken by its employees who use its equipment and resources: and the clever commercial exploitation of intellectual property must become one of the major ways in which universities fund themselves in the future. The ARC is now working very hard to formulate a policy on intellectual property that will be recommended as a model for all ARC and university research. The issue is very complex and it will take time. The only simple part of the intellectual property problem is literary copyright: where tradition, international custom and law have to date developed good practice. Even so, it has been a near thing - through carelessness and ignorance the Australian Government almost contravened the standards and traditions of intellectual independence and liberty.

The law of copyright

The law of copyright has been driven historically by advances in the technologies of copying and disseminating created work - printing, engraving, photography.
photographic reproduction and now electronic transmission. The law has a long history and named among those authors who have fought legal battles to secure control over the copying of their created work are Lord Byron and Charles Dickens. It enshrines and protects the ownership of the work as vested in the creator, and it both defines and empowers the body licensed to reproduce and disseminate that work. The law of copyright declares that the ownership of one’s words is as much a property right as the ownership of one’s house. The only difficulty is that the Australian Copyright Act does allow an employer to own the copyright of an employee whose writing or creating is a direct requirement of their employment. It is this anomaly which the Attorney-General’s Department and some universities are exploiting, even though until now it has always been accepted as part of our university tradition that academic writers own their own words.

I am quite deliberately speaking of copyright as the ownership of one’s words because it is this function of the law of copyright which is the most important to academics. In the international academic community, the law of copyright involves far more than control over the commercial exploitation of writing: it protects the very core of the scholarly and scientific knowledge - the integrity of one’s words and one’s scientific formulations. It legally fixes their form and the author’s intended meaning and expression: it fixes those words or formulations exactly. And it establishes in the eyes of the world that this person created that exact work: and that to use that exact work without due acknowledgment or due recompense is theft. Further, to pretend that someone else’s work is one’s own is not just theft, it is also fraud. Plagiarism and breach of copyright are not quite the same thing: breach of copyright, that is reproducing work without permission is theft; plagiarism is both theft and fraud. But the law of copyright is an essential legal deterrent to plagiarism and alerts the community to the legalised protection of words and ideas.

This function of the law of copyright affects scientists just as much as scholars. Basic and theoretical work may never reach the protection of a patent. Its form in a scientific journal, either printed or electronic, is the only legally protected form in which it exists. Not only must the ownership of that intellectual property be legally defined, so also must be the form. If the form and integrity of a scientific paper were to be changed, it could invalidate the whole work, which could lead to its being discredited in the eyes of the world scientific community. In fact our entire system of formal knowledge depends on the protection of the concept and the legal forms of copyright. And if the law of copyright loses its force, then our university and research culture will morally collapse.

Technological revolution

This apocalyptic vision is not the overworking of a feverish imagination. It is a disaster which has already begun. As I said earlier, the law of copyright has been driven historically by changes in the technology of reproduction and dissemination. We are now in the midst of yet another exciting revolution in such technology. The electronic information superhighway beckons, but with it come the hackers - that is, the thieves. If hackers can break into the computer system of the Pentagon or the Australian Attorney General’s department, they can break in anywhere. On the hard disks and central computing systems and libraries of universities and research institutes are stored the original works of our scholars and scientists. What is there really to prevent a desperate doctoral student from Wisconsin from raiding a Ph.D. thesis from La Trobe, and part of another from Witwatersrand and, lastly, a snippet from Stockholm? Why should a drug company bother with intellectual property rights, contracts, licences and royalties when it can steal work in progress? The commercial and personal incentives and rewards are too great. All this has already happened, but those who are caught are but a fraction of those who are guilty. The world is full of clever men and women who would love to be academics and research scientists; unfortunately the supply of secure jobs is quickly outstripping the demand. For some, the temptation to cheat will be overwhelming. So too will be the temptation to enlarge one’s curriculum vitae by self-publishing on the internet. And this will be work which has not had to pass proper professional quality controls such as the referee system or the selection processes of commercial publishing. Theft of intellectual property - plagiarism and abuse of copyright - has always occurred. Now new technology will make it easier and less detectable than ever before.

Publishing and the market-place

The law of copyright has been woven into the intellectual and legal fabric of universities since the seventeenth century. The Universities of Oxford and Cambridge, Edinburgh and Dublin shared copyright rights with the Crown. Since the development of printing, scholars have depended on the publishing process to both protect and disseminate their words. The refereed journal is a more recent mode of publication, but both academics and scientists depend on the fixed text, vetted by their peers and improved by the editorial skills of the publisher, to present their ideas and findings to the outside world. In books, the market-place has imposed disciplines which have determined the way scholars should write and present their work. This is not an entirely amenable situation. What academics want to do and what the buying public will tolerate are not always compatible. Academic writers are in fact financed by commercial interests, for even the
university presses have to operate as commercial operations: they are not allowed to act as charitable institutions which lose thousands of dollars every year publishing specialist books that only a hundred people and two hundred libraries in the world want to buy.

And here comes the rub. There was an immense expansion of universities around the world from the late 1950s. All those new institutions had libraries. The number of academics wanting to write books began to grow and the number of students wanting the buy their books grew even more. For quite a time, the library market in the United Kingdom and the United States alone assured an academic title two thousand sales which made it a viable commercial proposition. The quality of the best books was very high.

The publishers began to make money out of academic publishing as never before, and they got greedy. They began recruiting on campuses, offering young academics a contract - it didn't matter how good the book was, the library sales would make it pay regardless. It wasn't long before 'a book' became as necessary as a Ph.D. for job selection and promotion. Soon there were too many books, many of them not very good disguises of the Ph.D. theses they had originally been. The sheer volume of titles in a given field made it difficult for university and higher secondary teachers to set basic texts which covered a significant part of a course. The number of authors a student might be required to read in books and journals multiplied almost exponentially. In the United Kingdom, where university libraries were fewer and students poorer than in the United States, sales of individual academic titles began to fall. Then came economic rationalism and cuts to library funding. Suddenly the market contracted, while the demand from authors, many of them very good indeed, continued to rise. In England the publishers coped by slashing print runs, and of course books prices shot up. And as they rose, libraries couldn't afford to buy as many, and so they rose again and are still rising. In the United States the cuts to library funding were sufficient to damage even that vast market. Academic publishers began looking again to the general reader, but it was almost too late for the academy which, after twenty-five years of being big enough to write just for itself, had forgotten that the person in the street existed.

Collapsing markets

But there was another cancer eating away at academic publishing - the photocopier. It is a marvellous invention, but at first it was expensive, slow and of poor quality. But soon the copies were of excellent quality, fast and getting cheaper. Students found it easier to photocopy texts in the library rather than to borrow them and take analytical notes. Teachers found it more efficient to prepare customised text-books which were anthologies of articles and chapters. Textbook sales fell further. The publishers cried 'foul - what about copyright': the universities cried 'fair-dealing' and 'democratic access to learning'. The result was the CAL licensing agreement with educational institutions. The universities have done very well and it has been a disaster for the publishers. In the first semester of 1995 six million A4 pages of photocopied texts have been sold to students on campus at the University of Melbourne: all lost sales of text books. No-one would dream of asking APM and Rank Xerox to donate paper and technology to the cause of free education; only the authors and publishers are expected to. And where are the new books to come from in ten years time? The Australian Book Publishers Association has been savagely criticised by the International Publishers Association for its weakness over copyright, and the academic book market has collapsed. Already this year, three major academic publishers in Australia have announced that they are ceasing to publish academic books and are concentrating on school texts and trade books. Others have made the same decision more discreetly. Academics all around Australia are having their existing contracts cancelled or drastically modified and those with new manuscripts are receiving regretful refusals. At least one of the largest international academic publishers is considering leaving Australia altogether. Academic book publishing in this country is on its knees, and all because of abuse of the intent and purposes of copyright.

The superhighway

That leaves us with the electronic information superhighway. Perhaps academics should forget altogether about printed books. Should I commit the 150,000 word text I am writing on the social history of women's health and the story of the Royal Women's Hospital to the internet? But how many individuals are going to read 150,000 words on a screen - or meet the costly burden of down-loading it? The answer is very few. I know that an attempt to make the text electronically user-friendly is going to cost even more to produce than to publish it in printed form. Just as important, if it goes on the internet, who is going to protect my copyright for me. If I publish it as a book, my publisher has a very strong commercial incentive to go out and defend my copyright in the market place. This has so far been quite important. My first book Straggletown has been anthologised many times: there's not a lot of money in it, that's not the point: it is the protection of my moral right as the author that matters to me. If copyright law did not exist, I would be finding bits - both big and small - of Straggletown all over the place, unacknowledged and distorted to give meanings I did not intend - all without acknowledgment for my skill and the seven long unpaid years it took me to research and write the book. Why bother to create something if it is to be stolen; why bother if few will ever read it; why bother if I can't own my words and have them recognised worldwide as my original work.
There is plenty of enthusiasm at the moment about university libraries becoming the academic publishers of the future, about information from around the world being at one's fingertips and happening 'now', and yes that is thrilling and will come. But it could be at a terrible price. It could see the big seven universities in Australia being the only institutions capable of providing adequate research environments. It could see the information superhighway serving only the already abundantly endowed. It could see the theft of intellectual property and the erosion of scholarly values around the world on a scale that can scarcely be imagined. It could see universities financially crippled by the costs of publishing and servicing the electronic network to their constituents and the international community. It could see the final loss of intellectual property rights by the very people - its scholars and scientists - who make it all possible in the first place.

One attempted solution has been for a university to lay claim to the intellectual property rights of its staff and students. This was tried by the University of Melbourne where I currently hold an ARC Fellowship. The university claimed that we can have our literary copyright assigned back to us, provided that the university retained the right to use our work without restriction for its own educational purposes. The University of Melbourne did not want to pay twice for the use of the work of its staff and students: that is, because it pays for their salary, it should not have to pay copyright fees as well. The publishers say - oh no, you can't have it both ways, for its investment in your staff member's book that is at risk. As with the ARC contracts, the University of Melbourne's intellectual property statute was really addressing the complexities of patent law and licensing, and literary copyright inadvertently became tangled in an inappropriate web. And, as with the ARC, the danger to free speech and the damage done to scholarly culture were never anticipated. Naivety is no defence, however, in something as serious as this.

But in the concern over money, another set of problems has been ignored - the legal potential for interference, censorship, sabotage and distortion of texts when they are not owned by the creator from the beginning and are subject to assignment agreements. And when they do not have a self-interested party - that is the exclusively licensed publisher - who will go out into the marketplace and defend that copyright, who will fight for their rights? If universities and their libraries are to be the academic publishers of the future, they will have to take this grave responsibility upon themselves. If they are to finance their publishing, they are going to need to recoup income and to control the use of the intellectual property. They are going to have to break all the principles of freedom of access that they now espouse. If they are going to survive financially, so that each year they can continue to publish their journals and monographs, they are going to have to make money out of it. And if they are going to do it all professionally, they are going to need a lot more money and skill to get started than they now have. In other words, the electronic information super-highway is going to cost the universities and readers far more than books and journals do now.

There is a quantum difference between printed and electronic publishing. Electronic texts can be used in secret by people thousands of miles away from their source. Even worse they can be entered and altered, sabotaged and filched, so that no one may ever know it happened and how. The internet has no quality control and its vast scale makes it impossible to police by peer review. Certainly, we will gain speed, but we could lose control over truth and the rightful ownership of our own creations. Copyright for academics goes to the heart of our scholarly and scientific enterprise. It is the cornerstone of freedom of speech and the protection of all learning. And if the universities do not recognise and defend the concept and practice of copyright, then they could self-destruct.

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