Forum

The Control of Copyright

To the Editor:

In “The Hostage of Harvard” (vol. 138, no. 2, Mar. 2023, pp. 406–07), Zachary Turpin called attention to the obstructive ways that Harvard University exercises its copyrights in Emily Dickinson’s corpus. Any who wish to cite certain portions of her poetry must obtain permission from an entity more interested in monopolizing editions of her work than in encouraging new and groundbreaking scholarship. We support Turpin’s critique wholeheartedly and think this a fine opportunity to link his story of institutional overreach to broader conversations about copyright in the academic profession and society writ large. As courts construct the doctrine (and as businesses wield it), copyright has a profound impact not only on academic research, but also on the composition and availability of textual expression. Though there are good reasons to believe that a proportional entitlement can incentivize creativity, our purpose is not to debate regulatory policy. Our point is simply that literary scholars do a disservice to themselves and their students when they ignore copyright’s pervasive effects on what they do.

Turpin’s opening sentence—“Scholars of nineteenth-century American literature do not often find much reason to be upset or confused about copyright claims”—suggests that those studying older periods seldom have to worry about copyright liability, because their primary sources have fallen into the public domain. Though correct in a technical sense, this assessment could be taken to support the wrong idea that copyright only affects literary historians when it keeps them from publishing on these materials. Without denying the egregious anti-intellectualism in holding Dickinson’s poetry hostage, it is also crucial to acknowledge that *everyone* cites copyrighted texts, and that it is only thanks to the affirmative defense of fair use that translation, theory, and criticism can be quoted without legal risk. Turpin teaches us an urgent lesson in the fallibility of this doctrine, even when the use has a clear academic purpose and dubious commercial value. Scholars often lack resources to ward off stray infringement claims, and narrower constructions of fair use also discourage more creative and reinterpretative

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research methods. In 2023, for example, the Supreme Court decided that Andy Warhol's silkscreen of Prince was insufficiently "transformative" of Lynn Goldsmith's photograph to support a finding of fair use, because both were licensed to appear in magazines (*Andy Warhol Foundation for the Visual Arts v. Goldsmith*). That ruling may make publishers more hesitant to accept critical studies utilizing techniques such as erasure, montage, and pastiche.

And yet, constraints on scholarship are the tip of the iceberg, when we take into account copyright's power to select and legitimate certain works over others. Book historians have known about the doctrine's importance long enough to become leaders in its historiography, yet that rearview expertise has not translated into robust commentary on today's regulatory system and its ongoing effects on textual production. Admittedly, a bunch of English professors clamoring "Copyright is our field" looks a bit disingenuous when lawyers are the ones credentialed to argue current matters in law. But that does not mean copyright has become any less impactful in its command over literary publication.

Consider how fan fiction has failed to find a foothold in traditional publishing markets, despite its obvious commercial appeal. In the hands of Disney, copyright compels fan writers to "file off the serial numbers" before publication—which is to say, remove potentially infringing material and efface the community behind the reinterpretive work. As much as literary scholars know that every text comprises an intertextuality made up of other texts, corporations use copyright to limit that inherent connectivity of linguistic expression. This practice begs the question: How many queer and decolonial reimaginings of the Marvel Cinematic Universe will never be seriously studied, because they were removed from the Internet or never published in book form? What other works of art will never see the light of day, thanks to the control of copyright?

The problems multiply when we turn from copyright's effect on what gets made to its effect on what gets saved. As the world enters an age in which content is increasingly born and accessed digitally on ephemeral platforms, copyright will become a tool for economic discrimination by dictating what is visible, to whom, and for how long. Historically, material publication and preservation have enabled affordable access to older copyrighted works through lending libraries, but as literary and entertainment markets evolve toward ebooks and streaming, owners will have unchecked power to condition access on commercial licensing. That means pricing out different readerships, as scholars know from online subscription fees in academic publishing. But it could also mean the strategic obfuscation and obliteration of the record, when Disney alone can determine the preservation and availability of its digital releases.

All told, if literary scholars wish to profess competence in the textual archive, we must contend with these suppressive capacities in the law. Copyright may be confusing, but isn't it our job to parse the obscure power dynamics behind literary texts? Perhaps with the exception of free speech, no other legal doctrine more materially determines who can say what. As up in arms as academics can be about matters of intellectual freedom, we let copyright bias our work and cabin our expertise when we do not attend to its widespread ramifications. Literary scholars cannot pretend to have every solution for today's imperfect regulatory system, but the profession will suffer if we do not recognize that copyright is *always* our field, when it so thoroughly conditions our work and the objects we study.

If nothing else, we owe it to our students to cultivate a sensitivity to copyright, so they can leave our classes with more knowledge about their information ecosystem and its many biases. This emphasis will empower them to see how histories are erased and why their own record remains precarious, imparting greater appreciation for the durability of the book, the serendipitous community behind an Internet meme, and the fragility of public memory. These lessons can make for better readers and better custodians of the future, but that will require dedicated instructors trained in all the contingencies of textual expression.

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