



What to do about copyright?

Hal R. Varian

UC Berkeley

Math Digitization Project

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Outline

- Focus of discussion
- Acquiring copyright
 - Out-of-print books
 - Recovering copyright
 - Negotiating copyright
- What do you do with copyright once you've got it?



Focus of discussion

- Consider pre-existing works, where copyright is owned by known party, e.g., publisher or author
 - Often author has assigned copyright to publisher who now owns copyright
- Other issues
 - Problem of “orphan works”
 - Problem of verification of rights holder

Out-of-print clause

- Book contracts often have an out-of-print clause
 - “If book is out of print for 6 months (i.e., not available in U. S. through normal retail channels then copyright reverts to author.”
 - No longer in contracts due to ambiguity of “out of print”, “normal retail channels”, etc.
 - Reasonably common clause earlier

What about mathematics?

- Did boilerplate mathematics book contracts have this clause in 19xx?
- Useful to find out, since many authors may own copyright in their books without knowing it...
- Not hard to compile a database of contract clauses
- Proposal: compile such a database

Copyright termination

- Suppose an author assigned copyright to a publisher after Jan 1, 1978
 - This grant may be terminated by the creator, spouse, grandchildren or estate during a 5-year window starting 35 years after date of publication
 - Must send notice to assignee not less than 2 or more than 10 years prior to the window opening
- So authors who signed away a U.S. copyright can in fact terminate that assignment later on

Problems

- More complicated for works prior to 1978 – but look at IRS/TurboTax
- Foreign works – different laws
- Orphan works – identifying rights holders. Inquiry: <http://www.copyright.gov/orphan/>
- Errors – need safe harbor for mistakes
- Complexity management, legal issues

Issues

- Authors want their works to be read and need a way to make it easy to acquire rights
- Role of legal clinics: Berkeley (Samuelson), Stanford (CC), Harvard (Berkman)
- Role of portals: maintain list of rights/holders
- What should author do once copyright is acquired?
 - Probably don't want to personally hold copyright
 - May want to assign copyright to an organization or use some form of creative commons license
 - But which one? Commercial use? Derivative works? Require future sharing?



Negotiating rights

- This is a bargaining problem
 - Access to prior publications in journals are worth something to math community
 - Currently no cash flow to publishers (but what *could* the cash flow be?)
 - How are the gains from trade divided?
 - Note: academics tend to be somewhat naïve about such issues...
 - Need to think about strategy on both sides

Network effects

- If everyone goes to a particular portal to access math literature, that site has a strong bargaining chip: eyeballs
- Similar to the network effect that supports current industry: readers \Leftrightarrow authors
- But how do you get the network started? Hardest part is getting the ball rolling.
 - But it can be done: See Roger C. Shoensfeld: *JSTOR: A History* for useful history
 - Once you get critical mass it is easy...



Possible business models

- Negotiated purchase of back lists
- Charitable donation deduction
- Donate past work, get to link to current works
- Revenue share from general advertising
- Lump sum access fee, based on ability to pay, divided among publishers (JSTOR)
- Note: there will likely be many co-existing business models