

Jonathan Davis

A Means of Survival

Can traditional copyright exist in the Digital World, and what can Creative Commons and Open Access provide as alternative licensing options?



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Abstract

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A Means of Survival: can traditional copyright exist in the Digital World, and what can Creative Commons and Open Access provide as alternative licensing options?

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The conventional idea of copyright as a necessary incentive for the creation and protection of literary works has become challenged due to the access consumers have to books and journals in the Digital World. Online perpetual access has called into question copyright's effectiveness; the challenge comes from both sides of the copyright spectrum: the users and producers of creative works. This dissertation will highlight the following in regards to the social and business challenges that the academic publishing industry are facing, such as: the enforcement of copyright on the World Wide Web; the opportunities and potential benefits and risks of creating an open access environment; the use of alternative licensing (e.g., Creative Commons) in stating the permissions of use of literary works online and in print; the potential impact of Google Book Search on academic publishing; and business models adapting to the medium of the Internet. Research conducted through an extensive literary study, personal interviews and case study presents a current picture of what it means to be a publisher of academic work in today's society. It has been found that traditional copyright, in order to be effective in the 21st century, requires amendment on a country-by-country basis if the advantages of the digital economy are to be utilised.

Keywords: copyright, Creative Commons, open access, commons, alternative licensing, publishing

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1 Introduction

A change is occurring within the world of the literary word; a change that will shape the way creative content is created, accessed, stored and attributed. Whether you read a book in its traditional form (i.e., between two covers) or access the same content online, it is the way in which we consume this content that is changing. Increasingly information is being held digitally, stored online in multiple formats and around the world within many virtual repositories. Electronic archiving has created an “access-for-all” mentality, making information stored half-a-world away instantly accessible. This change is dissolving the notion of geographical borders and boundaries, as well as the limitations that distance once imposed on our quest to access this information.

The rise of digital access and the fall of access barriers have created a shift in the attitudes, values and assumptions towards the understanding of intellectual property rights (IPR) and the accessibility of information, not only in the humanities and scientific research communities, but the general public as well (Globe and Mail, 2009a). Consequently it has created a cause for concern within the traditional copyright regime. It is this regime that provides the incentives and protection for creation to the creative communities; in particular artists, musicians and writers who require this protection in order to sustain themselves.

Historically, copyright found its place in the early 18th century whereby the Statute of Anne, a purpose-built copyright law created in 1709, created the first set of ideals and principals towards the enforcement of intellectual property (IP). Moving forward towards the introduction of the Berne Convention¹ in 1886 and the Universal Copyright

¹ The Berne Convention of 1886 is the longest-serving copyright convention in the world. Administered by the World Intellectual Property Organisation it includes the signatories of over 150 countries; the latest revision was staged in Paris France in 1971. (Jones and Benson, 2006, p. 246)

Convention established in 1952, these two treaties offered owners and creators of IP the opportunity to safeguard their rights and protect them from the users who may have wished to circumvent those rights and allow that information to be made public on a larger scale. These safeguards have now changed in what we now know as the “Digital World.”

The aim of this thesis is to examine how IPR, within a literary context, are responding to the challenges of the 21st century. The power of access is increasingly being placed in the hands of the users; as a result the original owners or creators of a particular work have less control over its consumption and distribution. For example, once something becomes digitised and hosted on the Internet the control of that work has been lost by the owner. This dissertation will investigate what traditional copyright means in the year 2009. It will explore its need for evolution in an ever-increasing electronic world within the international book publishing industry, specifically the United Kingdom (UK) and Canadian markets. I propose to highlight these issues and raise the following questions:

1. Is the current form of copyright and its enforceability balanced between the needs of the consumer and the creator? How is the nature of copyright answering the demands of globalisation?
2. Can traditional copyright cope with the ever-increasing use of the Internet and function effectively within the realm of perpetual access?
3. What are the problems and challenges that current business leaders see in the protection of the IP they seek to control and protect; what does it ultimately mean for their profit margin?

4. Has the Internet created a business model that is fair for all? What measures have publishing companies taken so far to safeguard their content to ensure their rights, and the rights of their authors are protected from infringement?

I have asked a select group of publishers, lawyers and law professors these questions. Concurrently I have conducted my own research in order to better understand what the alternatives to traditional copyright could look like in the 21st century. Are we moving towards a world of open access, where all content is freely accessible to all? If so, who will pay for the production of this content and its access; how will it be managed?

The inspiration for the exploration of this topic arose from a book that suggests a balance between the spheres of art and commerce in what can be described as the ‘hybrid economy’. Lawrence Lessig’s *Remix: making art and commerce thrive in the hybrid economy* (2008) proposes a starting point for a change in copyright through the use of Creative Commons (CC) licensing as opposed to a possible alternative to traditional copyright. Established in 2001, CC works within the framework that copyright already provides. CC offers creators a unique set of licences with various levels of protection ranging from the most accommodating and open access licences to the most restrictive. These varying degrees of usability present several options to the creator to license their work in both the sharing and for-profit economies; these will be explained further in upcoming chapters.

The ethos of CC licensing is based upon the idea that creators wish to be acknowledged for their work and want to share their creations with the largest amount of people possible, ‘regardless of the underlying rules of copyright’; this required a ‘simple way to say what their preferences were’ (Lessig, 2005). In addition, Lessig explains how CC allows creators to ‘mark their creativity with the freedoms they intend it to carry’:

If you're a photographer and don't mind if others collect your work, but don't want *Time* magazine to take your work without your permission, then CC would give you a licence to signal this (Lessig, 2008, p.277).

This is an interesting premise because as the lines between creator and consumer become increasingly blurred, the publishing industry can learn from the lessons that started with online file-sharing and the rise of the MP3 music file. What that movement did to the music industry has forever changed the way artists' fans consume their music; publishing companies can ill afford the effects of what individually suing copyright infringers brought to many record labels (including the negative press that came with it). But what are the arguments against the use of CC licences? Are there companies working within those licences and trying to create a successful business model? These arguments will be subsequently explored.

The publishing industry in the UK, and around the world, has arrived at a cross-road in the 21st century. The rise of the Internet and its transcendence of geographical boundaries and global citizenry allows publishers to reach their audience with the products they demand in many different ways, while still striving to protect their authors' creative work through the utilisation of IPR.

The traditional idea of copyright is in flux. Publishers are routinely trying to protect themselves from online piracy and the wholesale uploading of creative works; concurrently the public's definition and idea of copyright is transforming from the understanding of what you pay for is what you get, to the demand for free content and free access. What are publishers to do? Is it time to shut the doors and call it a day? Richard Charkin, Executive Director of Bloomsbury Publishing Plc (Bloomsbury) disagrees. "Now is the time to experiment ... at least as far as I'm concerned, we should try every experiment we can," he said in a recent interview with the author about his

company's decision to use alternative licensing formats. The company's newest imprint, Bloomsbury Academic, not only carries the company's hopes into the academic publishing arena, but also uses CC licensing. Charkin's company is one pioneer on this changing frontier; their business model, and its impact on academic publishing, will be examined.

As we move through the various sections, I will begin with an overview of the literature I reviewed and present my understanding alongside their arguments (Chapter 2). Chapter 3 will outline my methodological approach. Turning to my findings, chapter 4 will examine what the British copyright system means in the context of the European Union (EU) and compare that system against the current landscape of copyright in Canada. Chapter 4 will conclude with an analysis of foreign titles and how the practice of territorial rights created the financial gain that many publishing companies experience today. The infiltration of foreign English titles into the domestic UK book market has created competition for domestic publishers as the books they have licensed to sell abroad are returning home in different formats.

In Chapter 5, CC will be explored in more detail as well as its influence on the communities it helps to shape and the ideas/content it creates. This will be supported by an examination of what this means for the UK publishing industry. The benefits and perceived risks of such a business model will be highlighted through a case study analysis of Bloomsbury Academic.

Chapter 6 will outline the arguments that can be found against the use of alternative licensing, including CC and Open Access. I will also introduce a very critical factor that will shape the academic publishing industry for the future: Google's entrance as an online book repository. It has the potential to be the biggest repository in the world

and has generated a very large debate (in support and against) around the Google Book Search project. The impact of the Google Book Settlement and its legal proceedings will not be known until late 2009, so an overview will be provided. Finally in Chapter 7, I will draw my conclusions from the evidence presented.

The information and debate surrounding the Digital World's impact on publishing is constantly in flux; it appears to move from a state of embrace, to one of worry as quickly as one can click a mouse. Not wanting to speculate, or take liberties, about how the future will look, I know I cannot propose a solution to the concerns publishers face. However, I will provide my position relative to the findings that arose from the questions previously highlighted; keeping in mind the central question: can the traditional model of copyright exist in the Digital World, and/or what opportunities can be found in CC and Open Access?

2 Literature Review

Over the course of the research two themes emerged within the area of copyright in the Digital World. In regards to ownership, the issues of protection, retention of profit, and the continued generation of revenue emerged. Additionally, the issues of content accessibility, the methods of publication and consumers' rights are central to the discussion. The discussion surrounding copyright can be quite radical in nature, yet thought provoking and potentially influential to legislation. From online to print the influence of copyright is extremely pervasive. Increasingly, copyright is reported upon within the national press circuits around the world, in trade industry publications, online, in academic journals and non-fiction books, continually shaping the understanding and evolution of copyright.

The key literature reviewed is largely in favour of some kind of reform in copyright. This review is not an exhaustive list; however, the following chapters will highlight further resources that may be considered. Opposition to copyright reform was limited, which may be attributed to one reason in particular. A majority of pundits who analyse and extend the argument of copyright law agree that changes in the law have to take place to meet the changes in demand. Alternatives have recently been developed and applied; however, the impact of proposed reforms upon the economic market (specifically the publishing industry) still requires consideration. Further to this, there appears to be limited opposition to the idea of alternative licensing formats.

The main alternative to traditional copyright comes from Lawrence Lessig, a Stanford Law Professor and expert on copyright, who pioneered the idea of CC with several others in 2001. CC has not had the same amount of time nor influence on society that traditional copyright has exerted. As a system of rules and regulations dating back

over 300 years copyright has had considerably more time to be accepted, regulated, continually extended and applied in a variety of environments. It is the de facto standard for the protection of intellectual property. While CC continues to grow, the support and opposition will do so as well. There is scepticism towards the effectiveness of any change that takes place, but there doesn't appear to be much fervent opposition to Lessig's ideas. Niva Elkin-Koren highlights the unanticipated effects of CC licensing, but the idea of change and reform remains central to her argument and will be examined below.

2.1 The moral argument for a new model of copyright

There is evidence to suggest that a change in attitude towards the accessibility of information is occurring between the users and the creators/owners of creative content. On the side of copyright protection, creators and owners of IP, thought to be safe inside the realm of copyright, with its legal protection, stated barriers of access and its economic incentives to create more creative works. On the other side there are the users who are increasingly becoming producers themselves. The public perception of how content is obtained has become increasingly blurred. The idea that content first had to be paid for and then rightfully becomes available to use and access has started to move in a different direction. This direction suggests that users shouldn't necessarily be persecuted when content is accessed through alternative means.

The Internet has demonstrated this with its multiple avenues for discovery through content sharing sites, (e.g., YouTube and photo-sharing site Flickr). Social networking sites like MySpace and Facebook instantly allow for pictures, music, videos and written works to suddenly have an audience spanning the globe. The greatest fear however, is that while the younger generation naturally adapt to this form of content

sourcing, copyright in its current form will marginalise them in the eyes of society for doing something that is completely natural and acceptable to them.

Lessig presents his views on the changing nature of art and commerce in the digital age. His previous books *The Future of Ideas* (2002) and *Free Culture* (2005) revolved around the ideas that surrounded the freedom of creative expression and the delayed development of certain industries because of copyright. *Remix* extends these positions and stresses the moral argument of what locking down content and increasing copyright control will mean to the younger generation.

Options for accessing creative works vary greatly, and have moved forward from the way it was created and spread prior to the Internet. What appears to be standard practice to the current generation that regularly logs on, downloads, tweets and posts, Lessig argues, may end up making their behaviour a criminal act if copyright law restricts use and access even further. Therefore, 'it is time we stop wasting the resources of our federal courts, our police, and our universities to punish behaviour that we need not punish' (Lessig, 2008, xix). He not only makes the call for this review but lays out a plan underpinned by three sections involving the changes that should occur in our culture towards the treatment of new creative works; the economy, with its traditional business models, giving way to a new "sharing economy"; and how we ought to enable the future to make this change a reality.

In order to consider future evolutions, past progressions must be reviewed. Lessig suggests a theme that continues throughout his book which hinges upon the importance of amateur creativity and where copyright laws should not go. Addressing the United States Congress in 1906 John Philip Sousa, a composer and 'copyright extremist' of his time 'had come to Washington to push for ... a radical increase in the reach of copyright'

regarding commercially viable works, however, he too saw the limitations of its application, 'a place where copyright law would reach too far' (Lessig, 2008, p. 31): the act of coming together to sing and perform in public. Understanding the impact of what increasing copyright could do to amateur culture, would simply not allow it to survive because of the restrictions it would have placed on it. Sousa's testimony was largely focused on the commercial entities' successful exploitation of creative works, yet even he recognised that copyright had its limits.

Lessig suggests, our current culture has changed, it has changed from one that was strictly "read-only", whereby what we consumed culturally we could not change or even copy (without a loss in quality), to one we must recognise as a "read-write" culture. The read-write culture has a tremendous level of importance towards amateur creativity. But it certainly doesn't have to be the case of less read-only and more read-write – they can exist harmoniously Lessig explains. Through his illustration of the "copyright wars" Lessig describes where the line in the sand has been drawn, and it is to the detriment of understanding. 'We're about to lose something important that we've been, or we're going to kill something valuable that we could be' (2008, p. 34). This is where the value of awareness, education and information play a key role in re-shaping not only the traditional view of copyright, but helping the users of the digital age understand and respect the concerns of the copyright regime, and in some way help find a middle ground.

Lessig provides a starting point for the idea of what the future could be for creativity and its cultural influence. Concern about what the result of increased regulation might look like has generated an increased interest in following the current debate. Copyright is incredibly complex, but this does not mean that the issues and debate has to be limited to the experts as it affects the activities of people everywhere.

This increased understanding and acceptance of alternative licensing is examined through an overview of CC licensees presented by Kim (2008). Kim's stated objective in *The Creative Commons and Copyright Protection in the Digital Era: Use of CC Licenses* was to analyse the kinds of content licensed under CC and the relationships to the licences chosen. Their use and perception amongst those who use CC to protect and share their work was also examined.

Data presented shows that CC could be used to help solve the conflict of copyright in the digital age, and distinguish between two widely held-views on intellectual property and its use: private property and public policy. Kim shows that the adoption of CC licences can help create a flexible copyright system whereby the motto of "some rights reserved" is embraced and challenges the more restrictive "all rights reserved" attitude currently practised today. Within Kim's survey, which gathered responses from 280 users of CC licences, over 50% of respondents said 'they licensed their work under CC licences because they believe in sharing' (Kim, 2008, p. 198). This is a key factor which helps build the commons community, and is supported by a favourable satisfaction rating in the licences used. On a scale of one to five, an average of 4.25 was shown as good evidence towards the licensors' understanding of the format and level of protection the licences offered their work. Importantly the licences provide two main benefits: providing the creator with a way of official attribution; and the kinds of actions the licensee can take in using the creative work.

One opportunity for study Kim had not examined was the potential of commercial viability that CC licensed work could provide; her survey however did examine expectations of income generated through CC licensing. Kim's sample indicated that 'about 3% of CC licensors ... said it is their main source of income' (2008, p.193). The

gap in this research shows that there is room for further study as the uptake of licensing increases. 25 respondents reported that the wider availability of their work ‘might bring future opportunities to make money’ (Kim, 2008, p. 198). A complete list of CC licensed works does not currently exist, but the CC organisation now provides a facility for users to search for CC licensed material on their website as does Google, Yahoo! and others.

Estimates as recent as 2008 indicate over 130 million licensed works are available for use (Creative Commons, 2008). At present there are over 50 countries (commonly referred to as jurisdictions) that have adopted, or ported, CC into their legal framework. Porting involves the translation of the licences, both linguistically and adapting them legally into that jurisdictions existing legal system.

Further evidence of this support comes in the form of a balanced analysis by Herkko Hietanen and his doctoral thesis, *The Pursuit of Efficient Copyright Licensing* submitted in 2008 to the Lappeenranta University of Technology in Lappeenranta, Finland and made publically available under its own CC Non-Commercial Non-Derivative licence. Hietanen acknowledges that there is a need for a change in the “all rights reserved” paradigm and its involvement in the Digital World. The CC licensing scheme is one such method of shifting the paradigm, because it creates increased freedom of availability to creative works and he states is ‘well suited for low value – high volume licensing. It helps to reduce transaction costs on several levels’ (Hietanen, 2008, p. 3). However, Hietanen points out, that CC licensing is not the ultimate resolution to the problem as there are a variety of issues to take into consideration including: privacy rights; the moral assertion of the creator; and the problems of compatibility with other open source initiatives.

How copyright wields itself in the market place is another key component of Hietanen’s thesis. Described as a static right, copyright limits the use a work through its

exclusion of abilities, such as making alterations or mass-reproduction. Licensing is the dynamic action to copyright's static position. Hietanen states that, 'licenses enable the dynamic use of copyright in trading, which essentially creates financial value for works' (2008, p. 11); therefore, without a marketplace to allow such transactions to occur copyright would not have a place to reside in. 'It relies on markets to provide an optimal solution for a society's cultural needs' (Hietanen, 2008, p. 15). Production and distribution is a major expense for any product to be created and a marketplace helps subsidise those costs for the creators and 'works are produced by authors who are confident of their success in recovering the costs of production' (Hietanen, 2008, p. 12). However the introduction of the Internet and modern technology has significantly lowered the costs of production and distribution resulting in a change in the economics of creation. Hietanen describes six ways in which these changes occur, and I will highlight the following three:

1. Niche marketplaces for niche products have come about with the introduction of the Internet. What we know as the "long tail" of marketing has allowed even the smallest producer to find success with their speciality products amongst the larger corporate conglomerates who offer products en masse.
2. We have started to see how one or two people enterprises now have the tools and wherewithal to create quality products that could have 'only been produced by professionals in the past' (Hietanen, 2008, p. 12). This creates a value and need for their product, with a market to serve. The availability of non-proprietary software has also allowed a creator's desktop computer at home to become her place of work.

3. Finally, distribution costs have dramatically been reduced through the introduction of peer-to-peer networks. Linked together around the world, these networks not only provide a means of collaboration and a sharing of ideas but ‘perhaps more importantly, an uncontrollable channel for content distribution’ (Hietanen, 2008, p. 12).

This has resulted in, as Hietanen cited from Benkler’s *The Wealth of Networks* that we are witnessing the democratization of the digital culture (Benkler, 2006). The combination of these cases presents an argument worthy of consideration in future copyright reform. Lessig’s (2008) moral argument about safeguarding the younger generations’ behaviour from prosecution in the future may be regarded as a call for action now. The next generation’s methods of accessing information will become the de facto standard and we cannot risk the alienation of a generation and drive their actions underground. Kim’s (2008) evidence supports this. It is a snapshot of the awareness of CC licensing today and it is clearly gaining ground and interest, with more and more creative works being licensed under CC. Offering alternatives to a locked-down sense of copyright may generate further creativity and a sharing of resources.

2.2 Where Creative Commons and Open Licensing falls short

For every argument that states the favour of a new, more flexible system of copyright, there will be those who oppose it. More specifically, the alternatives are opposed because there are situations in which traditional copyright versus alternative licensing formats may be better applied to certain creative works over others. This is the quagmire copyright legislation finds itself in the Digital World: copyright applies across the Internet but its adherence is another matter.

Most new licensing alternatives presented against the traditional copyright regime have created opposition. The “copyleft” scheme, for instance, described in Owen’s *Selling Rights* (2006) was a movement in direct opposition to traditional copyright during the 1980s. It was an example that stressed the opposition to traditional copyright and the ‘philosophy that anyone who receives a copy or a derivative work of a work can use, modify or redistribute the work ... discouraging users who might seek to develop a proprietary version’ (Owen, 2006, p. 21-22). Ultimately the copyleft movement was seen as too much of a release of freedoms for the author, or creators, who wanted to have some control of their work. In the future they may desire to use their work commercially and the copyleft movement, once applied, did not allow for this.

Owen provides a basic review of the actions that have been attempted in the face of copyright before describing the process of selling rights territorially from a publishing perspective. As an established territorial rights director, Owen’s book provides a good primer with an updated analysis on the impact of the Digital World and rights management.

CC is also in this area of examination, even by those who have supported the movement in the past. Séverine Dusollier who led the project for CC’s porting into the legal system of Belgium does not ‘recommend its use in all contexts’. Her article highlights some surprising, and potentially, unanticipated effects of the CC licensing regime on ‘culture and creation, due to the project’s somewhat ambiguous ideology and its hidden agenda’ (Dusollier, 2005, p. 271). However, Dusollier does agree that alternative licensing does work to provide the resources to the public at large, and ‘cure[s] a symbolic failure of the present copyright regime’ (2005, p. 272) through its support of content dissemination to promote free access.

CC's view on copyright is that it impedes the creative process and enjoyment of cultural resources, and in this way it is easy to identify that copyright can be a restrictor to creativity instead of a 'necessary element of the creative process and access to artistic culture' (Dusollier, 2005, p. 272). However, the case for CC's use applies only in certain situations and is personified through Dusollier's citation of the black feminist, poet and activist, Audre Lorde with the phrase "the master's tools will never dismantle the master's house" (2005, p. 272).

CC wants to work within copyright's current form (the master's house), but the application of its tools is different and at times surprising. While CC does not want to impose the full limits of copyright onto content, they do push some aspects of the traditional model onto creative works, under a CC licence. It is creating something new while at the same time using a traditional method. Dusollier's analysis doesn't discredit the CC movement as a whole but does 'identify the potential defects and risks of the model' (2005, p. 272).

In support of this critical analysis, Niva Elkin-Koren records the limits of private ordering in facilitating a creative commons. Private ordering, in the wake of increased IPR on a global scale, has increased amongst communities and individuals because they want to bypass the 'global intellectual property regime' (Elkin-Koren, 2005, p. 376). However, if this self-regulation can take on the big parties and win, what tools can be used that are already available? The short answer, replies Elkin-Koren, is contracts. CC has stated its ethos as being a tool for social change, 'the copyright/public domain dichotomy emphasizes copyright as a key factor in allocating informational resources' (2005, p. 376), and currently CC 'lacks a comprehensive vision of the information society and a clear definition of the prerequisites for open access to creative works' (2005, p. 377). However,

this is not just about open access and its dissemination coming at no cost to the user. The Open Access alternative will never truly be free, a cost will always be associated with its availability, but its payer has yet to be established be it the publisher, research funding body, or the author themselves.

It is the social order and reallocation of power that drives the ideology of CC. It is an attempt to reshape the copyright framework from the inside-out, 'to remedy [the] deficiency of current copyright law by designing an innovative licensing scheme' (Elkin-Koren, 2005, p. 383). By opening up access and defining a smaller set of rights and limitations, CC places the power back into the hands of the creators. However Elkin-Koren (2005, p. 390) states that CC suffers from:

A fuzziness of ideology and its broadly defined agenda would normally serve the purpose of a social movement. It may help to expand public support and facilitate alliances among different social actors.

If the lack of social consensus is where Elkin-Koren believes CC falls short, who should they be looking to for guidance? It is easy to admit that CC's ambitions are too large because it 'seeks to address the needs of a diverse group of users, exploiters and creators of very different backgrounds ... and countries' (Elkin-Koren, 2005, p. 420). Compare this to the Free Software movement which was isolated around a particular group of programmers, who already had a shared interest and held similar values. 'This creates a sense of community that not only motivates contribution to the communal effort, but also reduces attempts at abuse ... and encourages collaboration in enforcement efforts,' said Elkin-Koren (2005, p. 420). Further to this, some form of standardisation would need to take place should CC become the alternative to copyright. 'At the ideological level, this would involve relaxing the libertarian sentiment of letting owners rule their property' (2005, p. 421). This would require CC to take a step backward from its

original mission statement. Elkin-Koren concludes that perhaps there is nothing wrong with copyright, but only the way in which it has been exploited by copyright owners.

To understand the role and order of copyright, regarding whether or not its legal interpretation or its application should come first, this much CC has brought to the public's understanding. But can meaning exist without application, in other words can the understanding of rights outweigh the application of rights? CC has at least changed the social practice of applying copyright to creative works – it has offered an alternative. However, should it come to replace the current model it too will need some form of enforceable legal measures; further, any change to copyright will require reform at a governmental level.

The final counter-argument to highlight the unforeseen impacts of CC licensing is presented by Zachary Katz. Through the *Pitfalls of Open Licensing*, Katz (2006) creates a larger awareness about the relationships certain variations of the CC licence deeds have, or don't have, and how they spread virally. There appears to be some inherent contradictions in the combinations of certain licence types because 'more restrictive categories of licenses trump less restrictive ones, and those certain licenses are per se incompatible with others' (Katz, 2006, p. 400). This is in reference to the basic attribution licence with the share-alike condition included.

The BY-SA (as it is expressed) spreads 'the SA license virally; any derivative work that uses an SA-licensed work as an input must itself be licensed under SA' (Katz, 2006, p. 401). Every product created thereafter will also have to use the licence the original work was created under. There is no derivation from that point. Supposing there was a non-commercial (NC) element included from a different piece of creative work, the SA-licence overrides any additional terms being applied, like NC, to derivative works. These two

properties work against each other; therefore we see very few of these licences in existence.

For example, if video producer 'A' created a short film under a share-alike CC licence, but wanted to include a song (which was licensed under an NC-licence), the film's licence would override that of the musician and any subsequent work thereafter. Katz states that 'the regulation of derivative works will likely be the broadest and longest-term effect of a CC licence because of the viral nature of the SA provisions, which spread through the creations of derivative works' (2006, p. 399-400). If this is the result, how can derivative works promote the use of cultural goods for personal, political and economical activities? Certain categories will restrict other categories from being applied, thereby halting the creation of further works in some situations.

The implication of this will give rise to confusion in knowing which licences work best for the creator's project, and will result in 'islands of CC licensed works that cannot be combined with other types of works' (Katz, 2006, p. 393). This analysis is important for several reasons, Katz explains, including the avoidance of any setbacks by people and projects that wish to 'develop and deploy tools to facilitate sharing' (2006, p. 394). It is clear to see how conflicts may arise in the use of CC licensing.

The decision and motivations to use exclusive rights and restrictive licences as a way to promote cultural exchange requires further examination if the promotion of full and transparent open access is to be offered by customised licences that suit the creators' needs. Dusollier is in agreement with Elkin-Koren because she doubts that CC 'will ever be able to dismantle copyright by using the very tools that have created the monstrous creature that CC seeks to fight' (Dusollier, 2005, p.283). Katz's evidence supports this by highlighting the unintended effects certain characteristics licences have.

This was an important realisation in my own reading as I had not anticipated a variable such as this. Driving further forward with this in mind allowed for a larger awareness of what are still the good intentions of CC. Instead of offering the ultimate resolution in its current state, CC licensing will need the consultation and guidance that traditional copyright can offer, purely by way of experience, if the reform, which is very much needed, takes place at the macro-governmental level. These positions will be carried forward through to the methodology where we will see how the positive support in the arguments for and against alternative licensing shaped my approach towards the research I conducted.

3 Methodology

This chapter outlines the methodology and the rationale underlying its use, as well as the method of data analysis. The research comprising this dissertation used a mixed-methods approach. Specifically, a case study and a review of the literature that surrounds the area of copyright were conducted. Included within the scope of this examination was the growing acceptance of a commons² (or a sharing society) in an online environment and the possible impact this could have on the publishing industry. The case study was an analysis of Bloomsbury Academic, a publishing imprint of Bloomsbury that was recently formed in late 2008.

Bloomsbury Academic's main subject areas include: the social sciences; humanities; media studies; and the communications. The rationale for selecting this company was based on its unique business model that directly affects how the content it publishes is licensed. It is a business model not currently embraced in the major trade or academic publishing industries. Licensing creative content under CC is not unique in its practice around the world, but holds an interesting possibility when coupled with the territorial rights model currently used in publishing. Through the use of CC licensing combined with a retention of worldwide rights, Bloomsbury Academic has found its own way of disseminating the subject matter contained within the books they publish (both in print and digital formats). Interest in this area and business practice grew out of initial work experience activities I was personally involved in at Bloomsbury Academic from February to May 2009.

The objective of my analysis was to better understand the experience I gained through personal involvement and examine the movement taking place towards making

² David Bollier defines the commons as 'a new paradigm for creating value and organizing a community of shared interests' made up of like-minded people who 'are locally rooted but internationally aware citizens of the Internet' (2008, p. 4)

content openly available. At a time when publishing companies need to reach out to their audience through a variety of channels, CC licensing can create options in the for-profit economy. This examination of how content can remain protected through the reinterpretation of traditional copyright that CC provides will be presented in Chapter 5. The methodology chapter will begin with a summary of the proposed research plan and any amendments that occurred.

A rationale for the selection of my research methods and the strategy involved in their execution will follow. This included one-to-one interviews with several key figures in publishing companies, in combination with experts in law and copyright, and its application in both the real world and Digital World.

3.1 Background and Rationale

The sharing and accessibility of information digitally is on the rise. Everyday tasks performed offline are now completed online, from ordering groceries, paying the bills, or in this case reading a book. Being immersed in the phenomenon we call the Digital World has influenced my understanding of the Internet on traditional copyright. Therefore the theories surrounding free culture have shaped my understanding considerably. The constructivist approach recognises the influences these associations and connections make with the reality around us and our understanding of it.

For instance, Lessig (2008) acknowledges the reality he sees around him has influenced his theories on the interaction of art and commerce through the creation of a sharing economy. This creates a bond between the observations he makes and the theories, questions and solutions he proposes. This was the main approach to my own work, and through this dissertation I will report the findings of my own research.

It should be acknowledged that events in the UK and throughout the EU and North America continue to shape the debate surrounding copyright. To stay current and up-to-date is to be involved in a continuous cycle of reporting, and re-interpreting these facts which opens up the possibility of becoming lost in the amount of information and opinion presented. As a result a cut-off period for the research was assigned; however I continued to monitor the issues, because of personal interest and possible inclusion. Every attempt has been made to keep the issues surrounding the subject as relevant and as current as possible. This did impact upon the initial research plan and highlighted certain issues that were not considered initially (e.g., the continuing debate around the Google Book Settlement).

The research design of this study was non-experimental. The descriptive approach resulted in a variety of online and print resources being found through various searches in academic databases, journal articles, industry websites and personal conversations with my selected sample of business professionals, lawyers and experts in e-commerce. The final research questions came from the initial study and the refinement of the topic for this dissertation.

This process began in December 2008 and allowed for further engagement with the ideas around Fair Copyright in Canada. Fair Copyright for Canada was a movement organised by Professor Michael Geist, Canada Research Chair for Internet and E-commerce law, against a proposed bill the current government of the time attempted to pass in the summer of 2007. Geist's proposals in conjunction with Lessig's book *Remix* provided the impetus for my research. I wanted to explore the possibility of there being an appropriate balance between the users and creators of creative works; and to better understand the impact of the digital convergence with the changing of the rights

landscape in the publishing industry. Specifically, was it being anticipated, and what shape would the results take? In a qualitative study, my initial research questions were developed around the long-held business practice of territorial rights in publishing.

This mode of business appears outdated and out-of-step not only due to the increase of online material being made available, but also the infiltration of foreign titles into the domestic market (be it the UK, Canada or America). The idea of territorial rights is to slice the permissions of use for a particular book for its distribution and sale in that particular territory where the rights are guaranteed. Like a cake, the slices are cut as thinly as possible to maximise as many rights deals as possible. The approach to this practice has now changed with various trade agreements now in force around the world which can allow duplicate titles, from a different territory, to enter another market unhindered. It provided a back door approach for certain books to trade in markets they normally would not have a presence in. In respect of the relationship territorial rights has with the larger issue of IPR it was decided to broaden the analysis further to include an examination of how the traditional form of copyright is coping online, with specific reference to academic publishing.

The book trade industry is a large machine, one which moves and groans slowly with the changing times. However academic publishing, in combination with the Scientific, Technical and Medical (STM) journal industry, have embraced the idea of making content more accessible through online business models. A successful business model has yet to be found and exploited successfully, but alternatives are being presented. In light of this, the eventual research question to be asked was how traditional copyright will survive in the Digital World and what the impact of CC licensing and Open Access will have on copyright in its present form. Initially, the objectives of the research were

seven-fold; these were narrowed down to the four major points presented in the introduction. Narrowing from seven to four helped focus the scope of inquiry.

3.2 Primary Research Analysis (One-to-One Interviews)

The decision that influenced the data collection of my primary research was based upon the realisation that insight gained from a variety of professionals, with expertise in copyright law, the Digital World and the academic publishing industry, would prove invaluable because of the specialist knowledge of copyright and publishing they would hold. The relationship between copyright and publishing would allow for an effective means of representation because the industry survives through its application of traditional copyright on the IPR companies hold through the books they produce. An expert sample from those areas was selected.

To first understand copyright law and its application in the UK, an investigation of how a larger governing body can influence and shape the application of the current law was conducted. For instance, copyright law in the UK is governed locally, but is shaped by the directives and regulations made by its partners in the EU through changes in policy and law. With this in mind I selected two professionals within the field of copyright to understand its application in different jurisdictions, one from Britain and another from Canada. The selection of Canada and its supervision of copyright law will be explained further.

Joss Saunders is a British lawyer and partner at Blake Laphorn Solicitors; he specialises in providing advice to a range of commercial and not-for-profit businesses including publishing companies. Saunders' secondary role is to provide legal counsel to the worldwide charity organisation Oxfam. His role in the firm is to advise clients of their legal options that are available through the Copyright, Designs and Patent Act of 1988 in

the UK. As a lawyer practicing in England and Wales, Saunders' knowledge of the British legal code and its relationship to any changes under the direction of the European Parliament proved to be very valuable.

Obviously, copyright law is specific to the country of its origin, or its jurisdiction, and in order to compare and contrast at least two different models Canada was selected as the other model. This came with several reasons, not least being Canada's status as a Commonwealth country and its relationship with the UK. It has also been noted that it has one of the most progressive copyright protection acts in the world (The Globe and Mail, 2009). Canada's legal system is not only comparable to the British courts through its shared history and the applications of the common law code, but also the use of fair dealing practices. Fair Dealing provides certain exemptions to activities that would normally constitute copyright infringement. The material must be cited to qualify as fair dealing. This would include 'private study or research...criticism, review, or news reporting' (CIPPO, 2009). A more flexible approach to fair dealing would enhance education and enable valuable creativity.

Summarised briefly, common law is the adjudication of law through a series of findings, or obtainment of facts, in order to know what the law is in its application of the case before it. Through this process, decisions result from the precedent set by previous cases and its fine-tuning by judges. Judges have the responsibility of creating precedent where none may have existed before in accordance with the law (Jones and Benson, 2006, p. 5).

The United States of America (USA) was not included in this analysis because it was believed the similarities of Canada and the UK would adequately represent the publishing activities in what we know as the first-world. Further, fair dealing is also

interpreted differently in the USA. For example, the fair dealing practices of Canada and the UK fall under the domain of fair use in the USA.

My expert from Canada was Professor Michael Geist, author and holder of the Canada Research Chair in Internet and E-commerce and Law. Geist has increasingly become an advocate of the consumers' rights in an increasing virtual marketplace. He highlights the concerns of consumers, decisions by government and opinions held by industry on a daily basis through his web log, or blog. His involvement in the Fair Copyright for Canada movement in 2007 made him an ideal candidate for interview.

The publishing industry contains many experts in many fields, including the arts and humanities, and the hard and soft sciences. With this in mind, soliciting the opinions of the professionals specifically with experience and knowledge of the academic market made sense because it is undergoing a transformation in accessibility and delivery of content. The alternative licensing schemes which are being examined in this dissertation have yet to be applied to the fiction and non-fiction markets. Therefore it was decided to exclude those markets from the analysis.

Three candidates with a publishing background were selected: Dr. Frances Pinter, Publisher of Bloomsbury Academic; Richard Charkin, Executive Director of Bloomsbury; and Richard Balkwill an active consultant for the Oxford International Centre for Publishing Studies and visiting lecturer at City University London and Oxford Brookes University. Balkwill specialises in Publishing Law and offers training and advice through his external consultancy, Copytrain.

The combination of these five interviewees would increase my own understanding of copyright in a publishing context, and highlight some of the concerns held by top-level executives in publishing. The demand of the Digital World has meant that publishers

(large and small) have had to respond in different ways in answer to these demands. Those actions will be examined further.

The approach adopted for the interviews was to engage them in a non-formal conversation, as if the ideas around copyright law, alternative licensing, and the Internet were something to be discussed over a cup of coffee. There was a pre-planned structure to my interview guide with a list of prepared questions based upon the subject the interviewee was being interviewed for and historical research in regards to their careers and involvement in their fields of speciality. The opportunity to travel laterally between subjects was encouraged by both interviewer and interviewee through additional questions around additional resources and the professional insight of the interviewee.

There are a variety of opinions in the publishing field relating to its role in a digital environment, including speculation, forecasting possible scenarios in regards to consumers' behaviours and attitudes towards digital content and copyright. Other positions have been reinforced by data around the following: the importance of increased citation listings; increased library accessibility; sales figures and the impact on those figures by releasing free content on the Internet.

Ultimately, publishers want to draw in revenue from their projects in order to re-invest that money into the company to create new and ideally a better means of access. Whatever form of exploitation works best, publishers will likely follow it provided the research is balanced fairly between the risks and rewards.

To better understand the depth of knowledge and insight my subjects displayed during the interviews, an analysis of their language and linguistic style was conducted. The Linguistic Inquiry and Word Count (LIWC) (Pennebaker et al, 2001) is a computer programme that analyses word use in written texts. The LIWC programme determines the

frequency that authors/speakers reference certain words including: positive or negative emotions (e.g., “happy” or “sad”); the process of insight (e.g., “because” or “therefore”); or reference to the self (e.g., “I” or “me”) or the use of pronouns in reference to others (e.g., “you” or “they”). Composed of an internal dictionary of more than 2,300 words and word stems, LIWC searches through the words of written texts and assigns them to specific linguistic and psychological categories. When summarised, a value (i.e., percentage) is determined which indicates the prevalence of particular words in comparison to the total word count. In combination with the application of my own descriptive codes (see Appendix 2), the emotional and topical analysis offered a more comprehensive picture of the interviews conducted.

Moving towards the findings section of this dissertation, it must be acknowledged that the retention of rights is of utmost importance to publishing companies and their non-digital channels of product distribution of their long-form publications (i.e., the book). However the options of using CC licensing for commercial gain in future uses, both digitally and physically, is economically important to the survival of not just the academic publishing industry, but the creative industries as a whole. An examination of Open Access will be presented in further chapters to see if it can provide the same options. The social impact of alternative licensing in the academic community was also shared between publishers, consultants and executive directors³. An enrichment of the scholarly community was only seen as a positive action.

We will now move into the findings section of this dissertation and begin with an investigation of how previous proposals of reform to copyright in the UK is shaped by

³ For further details and findings of the interviews, please see Appendix 3

the actions of a larger body, the European Parliament. A comparison between the UK and Canada's copyright acts will also be presented.

4

4.1 British Copyright in the context of the European Union

Prior to the UK's inclusion in the EU in 1973 (Europa, 1995), its system of copyright was tailored to suit the needs of individuals contained within its borders. There are strengths and weaknesses to this system. For example, a written work created in the UK has the full protection of British copyright; however, should an infringement of that work take place in a foreign territory (e.g., India or China), the UK laws the work is protected by will not apply in that foreign territory.

Since the formation of the EU and its 27 member states, the execution of the UK's legal system is now shaped by the influences of a governing body larger than Westminster; direction now comes from the European Parliament and its 736 representatives from all member states (Europa, 2009). Copyright is still managed domestically in accordance to the country's legal framework that recognises and regulates the activities of its citizens, but its direction and amendments in law are shaped and influenced by the requirements of all the member states.

As a member of the EU, the UK is subject to the rules and regulations created within the EU system, and the elected representatives that sit in the European Parliament. Every member nation participates in the administration and the creation of EU laws through the appointment of Commissioners. These Commissioners hold portfolios for a wide variety of departments including: agriculture; the environment; energy; regional development; and the impact of IP in the information society. These activities are in pursuit of a broad harmonisation of the various EU legal management systems, and is an attempt at what is described as the 'level playing field' by Jones and Benson (2006, p. 4).

Any changes to these activities come largely in the form of EU Regulations and Directives. EU regulations have a 'direct effect' on member states; directives set out the 'directions to member states to amend their own laws in accordance with given rules' (Jones and Benson, 2006, p. 5). There is precedence given to both these actions over domestic UK laws.

The attempt to harmonise copyright throughout the EU originated in Directive 1993/98/EEC; passed in October of 1993. Known as the Duration Directive it 'required the then member states of the EU ... to amend their domestic intellectual property legislation' (Owen, 2006, p. 14). The directive states the rights and processes of implementation of EU law. It is not an entirely new set of directives to govern by, but a set of amendments that must be made to the existing copyright act enforced in the UK today. Previous to this directive being issued, the last major change in domestic copyright law came through the adoption of the Copyright, Designs and Patent Act of 1988.

This Act introduced the full concept of moral rights and ownership for the author of a creative work, making them free from paternity, integrity and false attribution of authorship. The inclusion of the EU Duration Directive changed the UK's Act in order to become harmonised with the rest of the EU in 1995 through the Duration of Copyright and Rights in Performances Regulation. The duration of copyright in a literary work, and other creative works, was extended from life of the author plus 50 years, to life plus 70 years.

Legislatively, extending a regulation (rather than shortening it) is bureaucratically easier; Saunders supported this assessment in an interview with the author:

For lawyers and for Parliament it's very difficult to undo what you've already done ... it's easier to lengthen a period of copyright and that's what the EU did when it increased it from life plus 50 to life plus 70 years.

The premise of life plus 70 years, Saunders explained, was already in effect in Germany “and it’s very difficult to say to German rights holders that they should have their rights taken away, where it’s quite easy to say to other people that they should extend [their] rights.” This extension of protection allowed some creative works in Britain to benefit from an extended period of copyright, and other works, already in the public domain, to fall back into copyright. This included authors who died between 1925 and 1945 cites Owen ‘provided that those works were still protected by copyright in another European Economic Area’ (2006, p. 14).

For example, Irish novelist George Bernard Shaw, and Nobel Prize Winner in Literature in 1925 (Nobel Foundation, 1925) was another author who benefitted from this extension after his death in November 1950. Before the change, the copyright for Shaw’s published works would have expired in the year 2000. However the retroactive application of this law means Shaw’s works will stay in copyright for another 20 years, to the year 2020.

Since the precise date of death can be difficult to determine, copyright law dictates that protection comes into force at the end of the calendar year in which the author died. In Shaw’s case this would have been 31 December 1950, this enforced date also applies to an author whose death occurred in January, for instance, in the same year. Arguably the extension of copyright benefits only the rights holder. It not only secures those associated with the ownership of the rights further monetary gains, but also the protection of their IP. However in the Digital World there would be no compelling logic to retain that same length of copyright when a work is disseminated instantly.

4.2 *The current landscape of Canadian copyright*

In comparison to the Copyright, Designs and Patent Act of 1988 in the UK, Canada's Copyright Act sets out similar guidelines within its own domain. Introduced in 1924, the act shares the same relationship to the Berne Convention similar to the UK. However, one striking difference between the acts is that in Canada the duration of copyright is life plus 50 years, as opposed to life plus 70. Since its conception various amendments have been made to the act⁴.

Canada is also a signatory of the World Intellectual Property Organisation's Internet Treaties of 1996 which addressed several key digital copyright issues (WIPO, 1996). However, Canada has not reformed its Copyright Act in light of its signature; this lack of adoption also applies to the UK. One example of the treaties inclusion is the USA Digital Millennium Copyright Act (DMCA)⁵.

However, there have been attempts to extend the term of copyright and reforms in favour of the WIPO treaty in Canada. In 2003, Bill C-36, also known as the L.M. Montgomery Copyright Term Extension Act⁶ was set to extend the duration of copyright a further 20 years. This was struck down and re-framed to not include that extension and was eventually passed by parliament in the form of Bill C-8 (McOrmond, 2006).

Over the last two years, further amendments have been attempted. The initial introduction of Bill C-61 in December 2007 generated a large amount of controversy for a number of reasons: the manner in which it was introduced (during a Parliamentary recess); the lack of public consultation; its measures against consumer rights; and the inclusion of technical protection measures that would have not allowed the exemptions currently

⁴ Amendments in 1997 created the Canadian Private Copyright Collective for the collection and disbursement of music royalties and clarification of the Fair Dealing provisions were also introduced (McOrmond, 2006).

⁵ The DMCA was signed into law in 1998, by then President Clinton (ARL, 2007).

⁶ Montgomery was a Canadian author, most famous for the popular children's novel *Anne of Green Gables* (McOrmond, 2006).

present in Canada's Fair Dealing legislation to stand against the proposed reforms. These reforms would have created a Canadian Copyright Act too similar in shape to the USA's DMCA, says Professor Geist:

I actually thought [Bill C-61] was taking us in the wrong direction. It was taking us precisely down the path that we'd seen in the United States and in some other countries, which I think, you know, was largely based on those mid-1990s models coming out of the WIPO Internet treaties ... What I wanted to see was changes made to the law that really reflected a fair approach to copyright to balance the various interests and I didn't think the legislation did that.

Geist's public advocacy campaign against the bill, Fair Copyright for Canada, garnered major media attention for its use of the social-networking site Facebook and outlined 61 reforms to C-61. Geist's campaign involved the consultation process that the government did not undertake, and now includes over 85,000 members with an interest in copyright: the consumers and creators. Further, he adds that many of the users are also creators themselves, "so that this blurring of user-interest and creator interest [is] often very difficult to distinguish."

Bill C-61's passage through Parliament was eventually killed due to a general election being called; however in July 2009, the current Conservative government announced another initiative to reform Canada's Copyright Act. This time the government will be listening carefully to the voters' concerns. Round-table meetings are to be held across the country to generate new ideas and individual submissions are being requested in order to help shape any proposed changes to the Copyright Act. A new bill is scheduled to be presented in the autumn of 2009.

The last public consultation took place in 2001, 'a timeframe that pre-dates the iPod and Facebook' (Geist, 2008, p. 1), and the law hasn't been updated since 1997 (two years before the file-sharing website Napster was launched online). Canada's current act

lacks provisions that embrace the digital economy and without input from creators, owners, and users the act will languish in its effort to keep up with the advancements in web technology being made today. As a framework for the creation, investment and identification of new marketplaces for cultural products, Canada's Copyright Act cannot afford to be outdated.

4.3 Copyright and the Publishing Industry

This section examines the impact of territorial rights with its once held belief of safe, monopolistic marketplaces and the threat that globalisation poses to this business model. We have seen from the above that copyright plays a crucial role commercially and culturally in every society. Its use sets up the initiative and protection of creativity for the creators, and also sets out the conditions of use by the consumer; nowhere is this more present than in the publishing industry. Since the creation of the Statute of Anne in the 18th century a defined duration of time has applied to the length of copyright; as time advanced, this duration was increased to keep the interests of those in ownership of the rights happy and profitable.

In publishing, territorial rights are understood to include the exclusive right-of-use to print, distribute, and sell a book in a defined geographical market place. Without this exclusivity, cites Owen, 'the local publisher or distributor has little incentive to invest time and money in stockholding and promotion' (2006, p. 101). This lack of incentive is especially relevant if foreign editions of that same book are allowed to freely enter the marketplace. The British and USA marketplaces are perhaps the most active rights allocation territories; however Canada, with its own well-defined publishing industry and

proximity to the USA, is playing an increased role in what has become known as the ‘turf wars’⁷ between those two countries’ publishers.

Parallel importation is a hotly debated issue amongst publishers in both the UK and USA because the ‘doctrine of international exhaustion of rights holds that once a book is first sold in its country of origin, it can then freely move into other markets without restriction’ (Owen, 2006, p. 101). Therefore, regardless of the contractual rights a publisher may hold for a certain book, this back door approach to book sales is allowed to occur naturally. As a result, lower-priced foreign editions can be found on the shelves next to the domestic editions. It is a breakdown in territorial restrictions, and one that Richard Charkin does not agree with:

The whole thing about copyright, fundamentally, is that it is a legal monopoly ... It is in order to give the author, his intellectual property...a monopoly. If by dint of commercial activities and legal activities you create a duopoly, you have de-facto damaged the monopoly.

Charkin is not alone in his concerns the damage parallel importation can do to the domestic UK market. The Publishers Association in Britain advises that when a UK rights holder exists for a book, any imported copies would ‘constitute a breach of an exclusive licence to that work’ (Owen, 2006, p. 101). The proposed remedy to this problem is for publishers to retain world rights and the simultaneous publication of new titles takes place should territorial slicing occur. In light of the Internet, online retailers such as Amazon do their best to conform to territorial restrictions, but holding world rights can be more beneficial for academic publishing than the trade industry because they are more likely to distribute their own books worldwide, instead of through an agent.

⁷ Historically, the British Publishers Market agreement of 1947 retained the UK and Commonwealth countries as the exclusive marketplaces for British Publishers. However this was revoked in 1976 by the USA Department of Justice because of the sheer monopoly this created for British and American publishers (Owen, 2006, p. 104).

The use of copyright in the protection of creative works is a flexible system, able to adapt to any number of conditions that each country imposes through its own copyright acts. It remains in place as a necessary incentive to the creation of creative works. However, the publishing industry's answer to globalisation has not been met with worldwide support. If a less-expensive foreign English title is available then why not make it available worldwide? If copyright were to fall away, territorial restrictions removed, and free access given, who would pay for this to occur? These are some of the ultimate questions being asked amongst publishing companies in both the academic and trade markets.

The answer perhaps, lies in the re-working of this sustainable system which has been slow to make changes; however change costs money. In the next chapter we move forward to an alternative licensing option being launched in the academic market place, and it is an option that is currently working within the flexible system of copyright today: Creative Commons.

5

5.1 Creative Commons: redefining the sharing culture

CC has helped create a shift in the cultural values of sharing. Having adopted the values of how a commons operates, CC has been doing what they do best for nearly 10 years: helping creators share their work. This section outlines the purpose of the organisation, how it has contributed to the understanding of traditional copyright in the Digital World, the steps they have taken to further that understanding, and the benefits it has created.

Working alongside traditional copyright instead of against it, CC has enabled cultural exchange to take place at the most basic level: between one creator and another without the need of intermediaries (i.e., lawyers). In creating relationships on a global scale, the colloquialism of ‘wanna work together?’ has allowed authors, artists and musicians to collaborate in the ways that suit them best. ‘When you share your creative wealth,’ as one of CC’s informational videos states ‘you can accomplish great things’ (Creative Commons, 2006). This freedom to exchange new works lies at the heart of CC; sharing creativity without restrictions enables people around the world to use content anywhere, learn from it and be inspired by it.

CC was established in 2001, with the support of the Centre for the Study of the Public Domain at Duke University. A Board of Directors was established and initially led by Lawrence Lessig. CC has slowly redefined the pre-conceptions surrounding copyright through the application of its alternative licences. Long before CC’s creation, a creative work had to be registered with the copyright office once it was written, photographed, or

recorded; this no longer is the case⁸. Creative work is automatically enforced by a model of “all rights reserved”. However, what if the author didn’t want this to happen? What if instead of “all rights reserved” there were “some rights reserved”, and the author defined those rights through the application of an alternative licence? CC licences answer these questions.

Created with three distinct parts, the licences contain: a “commons deed” that expresses the freedoms associated with the content in a human readable form’ (Lessig, 2008, p. 277); a legal code comprising the actual copyright that lawyers can understand and apply; and a machine-readable code, in the form of metadata, expressing the permissions of use that a computer can understand⁹. “This is part of the great move to educate people to a ‘some rights reserved’ concept online,” said Dr. Pinter in an interview with the author, and this education has helped identify the economy the creator creates for.

The sharing economy presents itself in two ways: for-profit; and not-for-profit. Some creators create their work as their sole source of income; whereas other creators create for the sake of creating something new to share it with the world. CC helps creators do what they have set out to achieve because ‘humans act for different motives, and the motive to give deserves as much respect as the motive to get’ (Lessig, 2008, p. 227). Yet the question still remains: if CC helps create a sharing economy for creative works, what does this mean for the for-profit economy and more specifically can it be used within the publishing industry?

If there is a successful for-profit model working within the realm of CC, how is it being practised? Understanding that CC has redefined certain areas of copyright for the

⁸ The act of registration was eliminated in 1988 in the United States (ARI, 2007).

⁹ A full outline of the licences available can be found in Appendix 1

creator hasn't yet provided the reassurance publishers, movie distributors or record companies have come to rely on with the active application of an "all rights reserved model". Unfortunately the traditional model has, cites Lessig, the moniker of 'don't share' (2008, p. 266) applied to it. However, that could all change in the publishing industry with the introduction of a new business model in academic publishing.

5.2 Case Study: Bloomsbury Academic

DESCRIPTION: Bloomsbury Academic was established in 2008 and is developing research-based titles in the Social Sciences and Humanities, while applying the traditional virtues of scholarly publishing.

WEBSITE: <http://www.bloomsburyacademic.com>

LICENCE USED: Creative Commons Attribution Non-Commercial Licence <http://creativecommons.org/licenses/by-nc/3.0/> plus another agreement which provides more Permissions.

MEDIA: Text

LOCATION: London, UK

Overview

Bloomsbury Academic is a publishing company that does not enforce the traditional concept of copyright, but instead applies copyright through CC licensing. With simultaneous publication online and in print, the imprint's approach to attract high-quality authorship is to "share the risk," said Dr. Pinter, publisher at Bloomsbury Academic.

Academics are facing a changing landscape in the world of scholarly publishing. Without some level of value added by the publisher, the promotion of an academic's book and the validity of their research, as well as the tracking of their tenure and career progression would be non-existent without the services traditionally offered by publishers. These services offer thorough peer-review, professional style and editing, and concentrated promotion. Bloomsbury Academic now provides the tried-and-tested model of academic publishing in a new form.

Bloomsbury Academic entered the academic publishing arena in late 2008 with support from many parts of the academic and trade publishing community¹⁰. However, this was countered by an element of scepticism from within the industry, due to the imprint undertaking something no other professional publishing company had done previously. By not charging academics a fee to publish with them, for instance, the imprint bears the majority of the financial risk themselves. The risk appears to be paying off however, with the acquisition of two lists from Hodder Education and Tottel Publishing, in addition to four original titles due to be published in 2010.

This case study came as a result of work experience placement from February 2009 to May 2009¹¹. My main objective during the placement was to experience and take part in the activities of a small publishing imprint and learn more about their application of copyright through CC.

Licence Usage

Bloomsbury Academic's business model has the potential of being successfully recreated elsewhere in the academic publishing industry because the CC licences are ready for application and public interest is on the rise. By combining a base level CC attribution, non-commercial licence, plus another licence stating further permissions, Bloomsbury are using a model called CC+. It is a model that holds CC's non-commercial ideals at its core but will include an exclusive world rights acquisition arrangement which could lead to positive commercial opportunities.

The structure of CC+ affords businesses a simple way to move between the sharing and commercial economies: CC will never provide these commercial links, but 'it

¹⁰ See Bloomsbury Academic's News section online for a full listing of initial coverage: <http://www.bloomsburyacademic.com/news.htm>

¹¹ Primarily interest was generated from use of CC licensing as a practical business model.

will enable others to use this CC+ infrastructure to leverage commercial value out of otherwise freely distributed content' (Creative Commons, 2007).

As a channel of content delivery, the launch of Bloomsbury's online platform is nearing completion and will hold the base level content of their forthcoming titles with additional functionality. Bloomsbury's business model is described best by Dr. Pinter's analogy of a visit to the ice cream parlour. Asking for vanilla ice cream means you get the basic content of the book for no cost, but Pinter states:

If you want vanilla ice cream in a fancy sundae and you want it with chocolate sauce and nuts and sprinkles and fruit, that's what you are going to have to pay for. So we can produce and sell both printed copy and enhanced e-content.

The risks arise through offering content, online, for free. This can result in wholesale piracy by individuals or companies anxious to copy and distribute the content and host it elsewhere themselves. However, as the licence already states, the imprint does not lose out by having other parties host its content. Other parties are free to distribute, remix and add to the original so long as attribution is given. It is the additional functionality, which will be protected and come at a cost for the consumer. It is in this area that Bloomsbury hopes to create revenue for itself, and will be regulated by additional permissions.

What that functionality includes is not yet known. As libraries are Bloomsbury's primary market, both Pinter and Charkin have suggested this may mean membership schemes, statistics for library staff to do their job, bookmarking annotation facilities and extra metadata. Discussions continue to be held with university libraries to better understand the needs of that community and how Bloomsbury Academic can facilitate that use. All of which helps lay the foundation for a successful entry into the academic

arena and shows that “there are enough people who get it and who are interested in being part of this; and that number is growing every day,” said Pinter.

In summary, Bloomsbury’s business model will require some modification as it finds its place in the publishing industry. CC licensing is still an idea that requires time and investment in order for it to be successful. However, its acceptance is growing amongst academics and with time publishers and executive directors will recognise the opportunities that are available and potentially apply Bloomsbury’s own business model to their own. Bloomsbury is demonstrating that working alternatively within the traditions of copyright can be done; this is why Charkin is a great supporter of CC because it is “working with the framework, and you don’t have to throw it out to achieve what you want to achieve...you retain a degree of control.” It might be easy to dismiss the possibilities of CC or Open Access, but what is most important for publishers is to optimise their resources in order to be as competitive as possible with the larger competitors, and we will consider how this can be done in the next chapter.

6

6.1 *The challenge in creating a true Open Access environment*

This chapter will begin by examining the potential challenges of creating an open and accessible model for academic publications. Defining the principal concepts of open access, Charles Bailey refers to Suber's description of removing the barriers that block the access of academic content. Barriers are present in the form of subscription fees and copyright permissions that limit access to research due to financial constraints. 'Making them available with 'minimal use restrictions' (e.g., author attribution)' (Bailey, 2006, p. 15) would be the appropriate action because of the increased role the Digital World plays in accessibility. However, what if access to scholarly research suddenly became free?

Publication of research would not occur without some form of financial investment. Funding a journal's publishing model largely comes from the institutional subscription fees¹² levied against academic libraries, in addition to the membership fees collected by the societies that own the journals and the author-pays for publication scheme. Funding is also required to carry out the research; this is often funded by one of a number of research councils. This paid-for access presents a serious ethical consideration which will be examined momentarily.

Journals and academic publishers have to cover the costs associated with the "added value" they provide. As a result, publishers have created a two-tier payment process as a form of compensation for the risk and investment they incur: the first tier is the subscription fees; and the second, in some instances, is through the author-pays fee. An author-pays fee allows an author's articles release in an open access format. Fees

¹² For example, an institutional subscription fee to the *British Journal of Medicine* is £566 per year to access its print edition (BMJ, 2009). *Nature* charge £1500 per year (Nature, 2009) and *The Lancet* is £780 for an annual subscription fee (Lancet, 2008).

charged by publishers range between \$800 - \$3,000 USD. This results in a mixture of open access and restricted articles for any given publisher (Bailey, 2006, p. 24). Charkin recognises that not charging any author-fees is the number one risk Bloomsbury Academic face with the CC+ licensing model because it:

Values [the] future at zero and [the] past at a value ... The risk is that you spend a lot of money on it [the book], so you see, your costs don't decline much if your standards are going to be maintained, and the big costs are the maintenance of that high level of editorial standard.

Consequentially that is why Bloomsbury Academic will charge for the access to the additional functions they will provide (as described in Chapter 5), and reinforces the case for other publishers to charge fees to cover the costs associated with adding value. The revenue generated from the sale of a journal, or book, allows publishers to “pump the money back through the business and build a better business,” said Charkin, adding that securing employment is of the utmost importance.

There are two additional two factors included in combination with the two-tier payment system journals practice suggests Richard Balkwill, in an interview with the author. Using a term pioneered by Stevan Harnad, academic staff and universities face what is called the “quadruple whammy” when it comes to accessing their own academic research.

Financial investment first comes from governmental bodies to the researchers; writing is subsequently undertaken by the academic, for no payment and during their free time; publishers then sell back to the libraries and researchers their own articles for a hefty fee which libraries struggle to meet with continual budget cuts; finally, the fourth action, is the licensing fee paid to the Copyright Licensing Agency for the copying and scanning scheme taken up at academic institutions.

This extraction of funds is a result of Research Assessment Exercises conducted about every six years in the UK which evaluates ‘the research output of every department of every UK university’ (Shadbolt et al, 2006, p. 203) and assigns a rank based on this assessment; consequently funding is then granted on a proportional basis.

As the concept of Open Access evolves, there are options for publication. The archiving and publication activities, for many commercial and not-for-profit journals, tend to follow a colour scheme. Principally there are two levels: the first-level is the “gold road” in which a publisher ‘provides open access to its research articles, without delay’ (Bailey, 2006, p. 20); the second-level is the “green road” and calls for researchers to make ‘their own articles...open access by self-archiving them free for all on the Web’ (Harnad, 2006, p. 73). However, a completely open access journal can also pose its own problems.

If research becomes truly open the result is free hosting of research online in any repository in the world, allowing it to be used in a variety of ways. However, this can create the potential for an article to be reproduced multiple times; creating a fragmentation of knowledge and difficulty in identifying the article’s channel of first publication. In addition to this it causes concerns around legitimacy in the event of research not being peer-reviewed or published through official channels. Researchers rely on brand specific journals to provide the most up-to-date and verified content. Balkwill points to the reasons why certain journals justify their high subscription charges because of “the care with which their editorial board ratifies scholarly writing. [The] peer-review system plays a huge part in this argument.” History is also another plank to the argument added Balkwill, because “you won’t have the reputation of *The Lancet* or *New England Journal of Medicine* unless you create something in which the building of the brand...involves high subscription charges.” Branded journals will give its readers the access to irrefutable

research but the selected distillation of knowledge gives rise to the ethical consideration of access.

Addressing the ethical dilemma surrounding access to scholarly research is important. Resolution of this issue was attempted in an inquiry in 2004 by the UK's House of Commons Science and Technology Committee with the central question of 'Scientific Publications: free for all?' (Jacobs, 2006, xi). Former Member of Parliament, Ian Gibson, cites that 'vast amounts of public money is used to fund research, it should allow that such research should be freely available to the public to boost their knowledge and appreciation of science' (Jacobs, 2006, xi). That said it would be hard to argue in support of the increased profits publishing houses continually report¹³ when vital research is not being released to the impoverished areas of the world. However, these barriers exist for a reason; specifically, to ensure that only high quality research is published and recognised as legitimate and trustworthy. One recent example of accuracy being called into question relates to an editor-in-chief of an academic journal accepting a fake article (Shepherd, 2009). However this case did not call into question the legitimacy of open access journals, just poor editorial practice.

In closing, the positive aspects of open access are as follows: information flow and access becomes accessible to all; acquiring new knowledge becomes easier; and as a result it flattens the hierarchy of academia. Furthermore, CC offers open access a form of legitimacy via its set of alternative licenses. The process of basic attribution will always refer back to the original article regardless of the possibility that it has been re-mixed or supplemented, and hosted elsewhere. Credit must be given where credit is due, and CC

¹³ In 2008, Reed Elsevier recorded a profit level of £568 million on revenue of £1.7 billion (Reed Elsevier, 2008); additionally John Wiley & Sons marked an intake of revenue as \$1.6 billion and a profit of \$223 million (John Wiley, 2008).

accomplishes this. We now come to what may be the most contentious issue of all, for both publishers and authors: Google Book Search.

6.2 Google Book Search: a new home for academic publishing?

In university libraries¹⁴ across North America and Europe, a collection of knowledge is undergoing a transformation from its traditional print form into a digital format. It will likely prove to be the largest collection of academic works published before January 2009 in the world, and will be stored in the only area with enough room for such a collection: the Digital World. In partnership with Google¹⁵ the scanning and digitisation of centuries-old book collections from these libraries will be brought back to life through the power of the World Wide Web. What initially appears to be an altruistic practice that makes the world's knowledge accessible to all is not seen that way by everyone.

In 2005, as Google continued to scan thousands of books a year, a class action lawsuit, in the USA, was brought against the company by the Authors Guild and the Association of American Publishers¹⁶ claiming that it was scanning books still in copyright, without permission from the rightsholder. Google never denied this, but continue to defend its approach under the provisions of the USA's fair use agreement and displaying "snippets"¹⁷ in response to search results on its website. As this case is now before the courts, a decision is not due to be made until October 7th, 2009. In the meantime the impact and consequences of Google's actions are being felt in the USA and around the world too; it has created a furore of opinion and debate.

¹⁴ In 2004, the first academic libraries became partners of the "Google Print" Library Project: Harvard; University of Michigan; Oxford University; the New York Public Library; and Stanford University (Google, 2009).

¹⁵ More information about Google can be found here: <http://www.google.com/intl/en/about.html>

¹⁶ The following are also included in the suit: Mc-Graw Hill Companies, Simon & Schuster and John Wiley & Sons (Butler, 2009).

¹⁷ Snippets are defined as 'three or four lines of text from your book' (Butler, 2009). The complete book however, will never be displayed all-at-once.

Google's responsibilities, should the settlement be approved, will be to provide funding¹⁸ of the Book Rights Registry, a third party organisation that will 'locate rightsholders and create a database of their contact information' (BRR, 2009), and will distribute the revenue from the access of works that Google will provide online. The benefits of this arrangement for authors and publishers are as follows: the creation of the registry will act like a directory of copyrighted works; a guaranteed income split¹⁹ for the commercial use Google makes of the books; and facilitate the distribution and accessibility of their books that will benefit consumers around the globe. It has been described as a "win-win-win" for authors, publishers, Google and libraries because of the additional revenue streams and channels to market created (Constantine, 2009, p. 18).

However, Piers Blofield suggests that the potential for Google to make the 'greatest intellectual land grab in history' (2009, p. 12) not been fully considered. These concerns have been raised by numerous parties including Microsoft, online retailer Amazon²⁰ and Yahoo! (Helft, 2009). Sitting back and doing nothing is perhaps what Google may want many orphan works²¹ rightsholders to do, however the deadline for speaking out against the settlement is fast approaching.

Eric Saltzman, of CC, describes this event as a 'terrific teachable moment for people who are authors but not members of the [Authors] Guild to appeal the Google Book Settlement' (Berkman Center, 2009a), and while many European publishers in France, Germany and Spain oppose the settlement due to a lack of representation on the proposed Book Rights Registry, there have been calls for a unified approach against Google's efforts (O'Brien and Pfanner, 2009). Despite the consternation generated within

¹⁸ Total initial amount of funding is \$34.5 million (BRR, 2009).

¹⁹ The terms of the arrangement include a pre-defined split of 63% for the author/publisher and 37% to Google and a one-off payment of \$60 per book scanned (BRR, 2009).

²⁰ Amazon will face direct competition in the shape of Google's book distribution plan should the settlement be approved.

²¹ Orphan works are books still in copyright, but out of print, and the rights holder cannot be located. (Berkman Center, 2009).

the industry, “Google are playing a very clever game,” Balkwill said, “because they’ve actually started by winning the hearts and minds argument of discovery, of finding things that were difficult or impossible.”

This is what a centralised system of knowledge for referencing works in and out of copyright provides to the consumer. However; the principle concern is of those books deemed to be orphan works. Works without an identifiable rightsholders potentially have the most to gain from Google’s actions because they make up about 75% of the 18-million books they are scanning (Berkman Center, 2009).

No doubt the settlement will have a lasting impact on the accessibility of books, but it will have to be a wait-and-see approach for the time being. It is an interesting debate to observe because should the settlement be rejected, it will allow additional concerned parties the opportunity to help re-frame a new settlement--one that could truly embrace the Open Access model.

7.1 Conclusion: striking a fair balance

In this dissertation I have examined the current state of copyright in its traditional format and its anticipated reform in light of the increasing importance the Digital World is having on our daily lives. Influencing this change, and its wide-reaching consequences, are a number of factors including: the socially desirable effect of having a fair copyright system; increased accessibility to academic works in journals and books; and the current alternatives available for use (e.g., CC and Open Access). In Chapter 1 four key points relating to the objectives of the research were introduced, they will be summarised now.

The nature of copyright has not met the demands of globalisation nor has it kept pace with the alternatives available. Government policy makers and legislators around the world have a difficult task ahead of them should they wish to change their countries' copyright laws. The key consideration in their decision making process will be striking a balance between users of IP and the creators of IP. Further, legislators should consider the importance the digital economy has on their own countries economic performance. If this includes a shortening of copyright's enforcement, the limitation of technical protection measures, or the implementation of a notice-and-notice system for copyright violations, then these are the choices that must be considered. However, consultation opportunities must be available to those that require it, specifically the users and creators.

Even though traditional copyright has not kept pace with technological developments, IP rightsholders now have the opportunity to embrace alternative licensing as the online business model provides perpetual access to their IP for the consumer. Business leaders have acknowledged that online piracy is a critical issue to their survival. However, increasing restrictions and individual lawsuits do not appear to work when it

comes to protecting IP effectively. The music industry suffered the backlash first for other industries to learn from their mistakes. The publishing industry is next in line for the digital revolution with the increased use of electronic books and readers; however, the restrictions digital rights management creates for the user is not the answer.

In order to safeguard their content, further investment in alternative licensing schemes from publishing companies could help the current form of perpetual access to be utilised in the for-profit economy. We have seen one company utilise CC for the protection of their IP in the case of Bloomsbury Academic, but admittedly the benefits of their business model will not be known for some time. I propose a review of their model within five years. Open Access journals in the STM industry continue to make their presence felt; however, the ultimate question of who will pay for the contents' production and maintenance still remains. Rather than having academic institutions in the dual role of user and creator on one side of the divide, and various STM journals being the facilitator on the other side, perhaps the two parties could come together to facilitate a workable membership model for all to benefit from. Increasingly universities are creating their own repositories to store and safeguard their knowledge supply for future use; these could prove to be the staging grounds for archiving legitimate research the world over.

The Internet has clearly created a business model for all companies to benefit from; online commerce is now the primary business of publishers and the success of companies in the Digital World has been well documented. In the publishing world Amazon has played a large part in exposing publishers' books to more people, Google is another success. Each, admittedly have their own drawbacks, but academic publishing companies are in a unique position to benefit from the Google Book Settlement. The primary aim of this dissertation was not to persuade the reader that my research is the

definitive answer on the issue of copyright, but to provide evidence of the importance of the issues that lay ahead for the publishing industry in the digital age.

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Appendix 1

Creative Commons Licences		
Licence	Symbol	Explanation
Attribution (CC BY)		<ol style="list-style-type: none"> 1. Most basic CC licence. 2. Guarantees the right to be recognised as the creator. 3. Allows others to share and remix original work as long as original creator is given credit.
Attribution Share Alike (CC BY-SA)		<ol style="list-style-type: none"> 1. Secondary uses include ability to remix, tweak and build upon existing work (even for commercial purposes). 2. All new works must carry the same licence.
Attribution No Derivatives (CC BY-ND)		<ol style="list-style-type: none"> 1. Secondary uses are restricted only to sharing the original work, as is, for commercial and non-commercial uses. 2. Attribution must be given and no alterations can be made.
Attribution Non-Commercial (CC BY-NC)		<ol style="list-style-type: none"> 1. Original work can be shared, remixed and tweaked. 2. Use of original and new works applies to non-commercial situations only.
Attribution Non-Commercial Share Alike (CC BY-NC-SA)		<ol style="list-style-type: none"> 1. Lets others remix, tweak and build upon original work. 2. Credit must be given; same licence must be applied to new derivative works.
Attribution Non-Commercial No Derivatives (CC BY-NC-ND)		<ol style="list-style-type: none"> 1. The most restrictive of the six licences. 2. Allows for distribution only and attribution must be given to original creator.
		<p>Information compiled from Creative Commons website: http://creativecommons.org/about/licenses</p>

Appendix 2

Descriptive Codes		
Code	Explanation	Example
©	Insight into the application of traditional copyright through the practice or intellectual property/territorial rights.	<ul style="list-style-type: none"> • Copyright law is clear. • Copyright in the digital world is no different from copyright in any other world. • Copyright is actually very flexible. • The whole thing about copyright, fundamentally – it is a legal monopoly.
© Canada	Isolates and provides examples of copyright practice in Canada.	<ul style="list-style-type: none"> • Fair Copyright for Canada • Bill C-60, Bill C-61
© EU and UK	Highlighting the synthesis of copyright practices in the United Kingdom and European Union.	<ul style="list-style-type: none"> • Most of the cases I've been involved with... • The EU is a semi-harmonisation directive.
CC (+/-)	Neutral assessment of application of Creative Commons.	<ul style="list-style-type: none"> • Creative Commons is neutral in that sense ... it doesn't take a position. • It's still subject to law, it's not a free-for-all.
CC +	Positive support of the Creative Commons movement	<ul style="list-style-type: none"> • You can remix as much as you like. • There is a great move to educate people on the 'some rights reserved' concept.
comparison	Comparing past with present or different genre types.	<ul style="list-style-type: none"> • The number one risk is that you are valuing your future at zero, and your past at a value.
digital world	Current state of the digital world on publishing and copyright.	<ul style="list-style-type: none"> • Publishers have got to do a far better job of what you might call digital rights management. • Google was after their distribution.
google	Attitudes towards Google's role in online academic publishing.	<ul style="list-style-type: none"> • My instinctive reaction to the Settlement was ... thank goodness. • Google really aren't fundamentally interested in selling content. • Google are playing a very clever game.
open access	Involvement of Open Access in books and journal publishing (positive and negative).	<ul style="list-style-type: none"> • The Open Access model for journals is one that works fine for a 20 page article. • Open Access is about the terms under which people should have access.
partnership	Possible partnership between publishers and libraries. The trust between two people	<ul style="list-style-type: none"> • Working with librarians • Share the risk with us. • We trust good people because there's no way that we have enough brains to get our heads around all the issues.
professional insight	Knowledge of topic through previous study or experience	<ul style="list-style-type: none"> • I became familiar with... • There's a very interesting legal argument about something called indirect effect.

Descriptive Codes (continued)

qualification	Qualifies previous point, seeks to contextualise or provide an example to illustrate a point	<ul style="list-style-type: none"> • I saw the odd case study... • I think that's a real interesting development in France. • So, just to give you an illustration...
social impact	How subject sees the impact of alternative licensing in relation to the greater social good.	<ul style="list-style-type: none"> • Enrich the content of scholarly communication. • Subject repositories make more sense to me.

Appendix 3

Overall, the findings and tones of the interviews did not display a negative view on alternative licensing. What was displayed was a sense of hope and positivity for a future in the shape of reformed copyright laws around the world. Discussions revolved around the present situation, and the effects of copyright, but there was always a fixed view of looking towards the future. Over the course of 209 minutes of recorded interviews, the subjects expressed a high-level of knowledge surrounding the topics discussed: copyright law and its use in the publishing industry and what the Digital World is providing by ways of access, exposure and business opportunities.

During the coding of the subjects' speech, ideas and opinions between the copyright experts presented a common trend in their professional insight and the flexibility of copyright today. Their knowledge of the challenges currently presented by the Digital World also displayed their acceptance of the CC project to work within the system, but all agreed that reform of the current acts is needed, to bring the traditional system up to a digital standard. It was also interesting to note that my sample from the publishing spectrum see copyright as perfectly adequate to their needs. However, while there is flexibility in the system the introduction of a business model built around CC, instead of a system exclusively built on the idea of Open Access is the preferred option.

That said, a concurrent theme of optimism was evident over the course of all the discussions; there was no opposition to CC or Open Access, and copyright reform must take place to allow the digital economy to grow and flourish. This indicates clear support, both from key stakeholders in publishing and the authors of the literature presented in preceding chapters. However, the ideas surrounding access, publication and funding were of greater concern, and the social impact of possible copyright reform is unclear because it

is ultimately up to the current government in power to affect any changes to the system. There were also positive emotions directed towards the changes that might occur, in conjunction with the increased awareness the general public's perception on copyright will be through education. The shared perceptions and beliefs that book publishing will not continue in an off-line world can be understood as embracing a future of digital possibilities, but not forgetting the lessons that came before this transition occurred. Books and journals will continue to be available in one physical format or another, however the Digital World will increase accessibility in ways not yet known but only assumed.

