**QUESTIONS – KARL FOGEL**

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* *When and why did you start to be interested in copyright and open source initiatives?*

I first looked into the origins of copyright after I started learning computer programming. My programming education took place in a free software (open source) environment, and my programming jobs have generally been in open source software as well.

This naturally made me ask why we seemed to be doing fine without restrictive copyrights in programming. My direct experience didn't match what I had been taught about copyright -- you know, the standard lesson: that copyright is the system that allows people to create new copyable things, by giving them a monopoly on reproducing those things. In programming, that monopoly was clearly not a necessary ingredient, because we were getting everything done without using monopolies.

I began to wonder if in other fields, the monopoly might be less necessary than I had been told too. I already had some notion that this might be the case, because my family was in the classical music business, and I could see first-hand that copyright royalties were not a major economic force in the lives of most of those musicians either.

* *Copying isn’t theft, but if you don’t pay the author for their creations, they will have more difficult to continue creating (in economics terms). What do you think about it?*

I think that is the standard explanation we have all been taught about the purpose of copyright :-). So does it match the "facts on the ground"? Historically, how *do* artists actually get paid? Do most of them get paid by selling or renting this monopoly power?

If you look at their actual activities and incomes, the answer is no. It is true that some artists -- a minority -- are successful at constructing a living in a monopoly-based system. Well, any system will favor some modes and disfavor others. But copyright is not paying for most art (and I am including non-fiction writing, in both short and long forms, in the category "art", for the sake of this discussion).

This is not surprising, because copyright was in the first place invented to subsidize distribution, not creation. It was primarily a means of providing up-front reassurance to printers that they could make back their investment in publishing a new work. The economics of creation, of the writer, were secondary to this -- as they have been ever since.

One must also ask: What are we losing this way? We restrict a vast number of works from being reproduced, for the sake of subsidizing the relatively small number of creative people who rely on the copyright system.

Here's just one example of what we are losing:

You can view most libraries and bookstores as being largely empty -- because most books in most languages never get translated. This is not from of a lack of willing translators, nor from a lack of willing readers. Rather, it is because we suppress the possibility of those translations, through copyright. If you want to publish a translation, you have to first negotiate rights, which is a long and complex process that sometimes is impossible to begin because it's hard even to figure out whom to negotiate with. Importantly, we have no signaling mechanism for noticing or valuing what is *lost* when we suppress this kind of activity. I discuss this phenomenon in detail, with some concrete examples, in <http://questioncopyright.org/translations_a_tale_of_two_authors>.

* *You say that copyright was designed by and for distributors. Why do you think that?*

Well, I think that because it's what the historical record indicates (See my answer to the next question.)

* *How do you really think copyright was born?*

Copyright law, as it exists in most of the world today, was an outgrowth of a sixteenth-century censorship law in England. In order to control the new technology of the printing press, the government created a private guild, the Company of Stationers, and gave them sole right to own and operate printing presses in the kingdom. In exchange, of course, the guild had to make sure that whatever was printed was acceptable to the government.

Later, when the government decided liberalize its censorship policy (this was one of many consequences of the so-called Glorious Revolution of 1688), it was simply going to let the guild's monopoly expire. The guild members naturally did not like this, because their monopoly on printing was quite profitable. So they came back to the government with a proposal: that there is newly-discovered natural monopoly right held by authors, and that, not coincidentally, this right could be rented or sold in the marketplace. If you were an author, who might you sell that right to? Well, a publisher might be a good buyer -- and thus the guild members got back most of their monopoly power, only this time with a commercial justification: they argued that this arrangement was necessary because of the economics of printing. Without a per-book monopoly, a competitor might watch someone else's first printing to see what sells, and then print up only those things. There would be no incentive to take risks.

This was not a bad argument, and one can understand why the government of England decided to accept the proposal. However, consider the options the printers did *not* suggest (and what the government did not suggest either). For example, a set rate for printing, whereby *any* printer could print anything, as long as they paid a fixed percentage of sales revenue to the author. The absence of a strong printing monopoly would be good for authors, but it would have weakened publishers' bargaining position considerably, and would not have addressed the publishers' concerns about the economics of running a printing press.

The fact that the printers argued for, and the government accepted, a system so clearly designed around the needs of distributors -- not around the needs of writers -- shows us who this system was designed by and for.

You can read more about this at [http://questioncopyright.org/promise#history](http://questioncopyright.org/promise" \l "history) (and I give some sources there, for those who wish to read further).

By the way, there is a parallel tradition of copyright, coming from some European countries (in particular France and Germany), named for the so-called "moral rights" or "*droits moraux*" of the author. Despite its different name, it has a basically similar history: a censorship system that was then transformed into a publisher-oriented subsidy with origination in the author. Naturally, it appeared at the same time -- that is, with the spread of the printing press, not with the invention of writing.

* *What’s your opinion about downloading? Is it always illegal?*

It is clearly not always illegal: for example, one may have paid for the download, entirely legitimately. But there are many more situations where it is legal anyway, depending on what jurisdiction you are in. For example, what if you own a legal copy of that digital file already? Then if you download a second identical copy, is that illegal? (I don't know, perhaps in some countries it is illegal, but that would clearly be an insane law, since you could just as easily make a copy of your original file.)

But even when downloading a file is not legal in a certain jurisdiction, is it *wrong?* If so, why would it be wrong? Is the theory that if you hadn't downloaded the file, you might possibly have paid someone for a copy? How can anyone be sure you would have done so? And even if you did pay someone, what are the chances that that someone has any economically meaningful connection to the original source -- the performers, authors, etc -- of whatever it is you are downloading?

A better way to look at it, I think, is this:

We have just finished building a world-wide copying machine, called the Internet. On a per-copy basis it costs nearly nothing to use, and it makes perfect copies every time. It also has mechanisms for transferring money, even in small amounts, directly to artists, without the need for anyone in the middle taking a percentage.

Now, in this kind of environment, think about the overall effect of a strong monopoly law like copyright. Who is it helping? Is it helping artists? Or is it helping the kinds of centralized organizations who are extremely competent at collecting and using monopolies?

I think the answer to that is clear, and that's why I think copyright is a poor system for both artists and audiences in an Internet-enabled world.

* *What alternatives do we have to the traditional model?*

Copyright is not the traditional model. It has been in existence for only a short period of time: about three centuries, out of the thousands of years of human creativity.

It came into existence as a response to the appearance of the printing press, a distribution technology that involves relative high up-front costs per work being duplicated, and that is very sensitive to economies of scale in the number of copies of a given work.

Copyright should go out of existence now, in response to the appearance of the Internet, a distribution technology with completely different characteristics: zero up-front costs per work being duplicated, and economies of scale that are based on the number of users, rather than on the number of copies.

The Internet provides a multitude of ways for people to pay artists. And people *want* to do this; all the artists have to do is make it easy.

Here's how you can tell that publishers are not in the business of supporting artists: have you ever seen a book in which the publisher printed information, right in the beginning on the title page or copyright page, about how you could send money directly to the author if you really liked her work? Some kind of bank address, or Internet payment service, or even a Bitcoin address? No. Even though this would be *great* for authors, publishers never do it, because publishers are about distribution, not about supporting creators.

I do not mean this as an insult to publishers. There are many excellent publishers out there, who take risks and even sometimes lose money supporting an author they believe in. Publishers are human, and have complex motivations. But the issue is fundamentally structural: if you are in a monopoly-based distribution business, you are going to think like a monopoly, and expect all the money to flow through you. Your business is distribution, not creation.

But for authors and artists, *their* business is creation. As they learn to draw their natural allies -- their audiences -- into supporting them, structures will spring up to make this easier. This is already happening with IndieGoGo, Kickstarter, Patreon, and other similar services. Meanwhile, organizations that rely on monopolistic models will find fewer and fewer creators willing to sacrifice their newfound freedoms. This process is slow, but I think it is inexorable.

* What is QuestionCopyright.org?

Question Copyright is a non-profit organization, dedicated to expanding the range of acceptable public debate about copyright, and to reframing how artists and audiences think about copyright. Most of our activities fall into two main categories:

1. Provide examples and provocations so that people start to question the usually-unquestioned belief that copyright serves artists;
2. Help artists be allies to their audiences, by avoiding monopoly-based distribution and relying on freedom-based distribution instead (for example, as with our Sita Distribution Project: <http://questioncopyright.org/sita_distribution_project> .

* Why do you stand up for Open Source?

Fortunately, I don't have to stand up for open source, as it stands up quite well on its own. Open source software (also called by its original name "free software") is a shining success story for non-monopolistic creation. I think the reason it worked so well from the beginning is that computer programming is the first creative activity to develop largely simultaneously with the Internet -- actually, programming started a bit earlier than the Internet, but not by much in historical terms. Other fields are still absorbing the implications of unrestricted copying, but for computer programming, those implications are native and have shaped the field from the start.

* How do you see the future of intellectual property and copyright laws?

I don't use the term "intellectual property" because it groups together two unrelated things: trademarks on the one hand, versus copyrights and patents on the other hand. "Intellectual property" is really a non-category, a term made up by lawyers and publishers, trying to associate a cause we all agree on -- accurate attribution -- with a cause we're not so sure about: monopoly control of distribution.

As for trademarks, there's nothing wrong with them. Trademarks are about attribution, that is, they're basically an anti-fraud measure. The idea is that people should know whom they are dealing with, and that one person (or group) should not be able to falsely claim to be some other person (or group). That's a good principle. Of course there are always a few complications in practice when enforcing it, as with any general law, but the basic idea is a good one.

Copyrights and patents are another matter entirely. They have nothing to do with attribution. When you download a song illegally, you don't replace the musician's name with your name, right? You don't pretend you wrote or performed the song. In fact, you might even share the file with someone else, thus spreading the attribution of the original performer to new places -- exactly as the performer would want you to. Similarly with patents: they are not about proper crediting, but instead are about restricting who can use certain ideas.

Copyrights and patents are a kind of *artificial scarcity*. They are so strict that we don't even have any kind of public-interest escape hatch from the monopoly. In the case of copyright, it seems as though the economic needs of an obsolete distribution model still dominate all other concerns, at least as far as our legal system goes. (Patents are a slightly different case, and although they are similar in many ways to copyrights, they are different enough that I won't treat them in detail here.)

There are better arrangements possible. I think abolition should be seriously considered, but even if there is something about the system worth preserving, we can still do better than we are doing today. Here is one example of how to provide an escape route that uses market forces to decide when it's time to cancel a monopoly: <http://questioncopyright.org/liberation_point> .

But you asked how I see the future. I see a future in which people disregard copyright law more and more frequently -- as they already do, but even more so -- because the law is so clearly disconnected from their daily lives. I also see people taking advantage of opportunities to support artists directly. This is already happening, and it will happen even more as artists realize that this is much better than being controlled by monopolistic distributors.