Letters

Copyrights: How Long Is Too Long?

Hayward Cirker, president of Dover Publications, in his letter on the proposed revision of the U.S. Copyright Law [*Science* **141**, 483 (9 Aug. 1963)], made a number of erroneous statements and observations—so many, in fact, that a mere cataloging of the more important of them is an embarrassment. But they should be noted in the interest of a proper understanding of the arguments for and against the proposed extension of the present copyright period from 56 years to 76 years or longer.

1) It was wrong to state, "A major bill for copyright revision is before Congress." No such bill has as yet been introduced, and it is probable that none will be introduced before the middle of 1964.

2) In commenting on a possible extension of the copyright period, it was wrong to state, "In a hearing on the bill, the Department of Justice quite properly opposed this aspect of the bill. . . ." Obviously, since no bill has been introduced, there have been no Congressional hearings. Apparently Cirker has confused the proposed general bill with a more specialized copyright bill which was passed by the last Congress. In any case, one may be sure that there will be full hearings and lengthy debate on the new bill when it is introduced.

3) It was wrong to say, ". . . the major forces behind the bill are powerful publishing interests who want to see their monopolistic grants of copyright strengthened and extended. They are quietly, but vigorously, pushing this bill through." I know, from 4 years of recent experience as chairman of the book industry's Joint Committee on Copyright Problems, that publishers are not vigorously pushing the passage of new copyright legislation. In truth, most publishers, including McGraw-Hill Book Company, of which I am chairman of the board, seem to like the Copyright Law pretty much as it is; they find little fault with its basic character. It was the Register of Copyrights who proposed an extension of the copyright period to 76 years. The Authors League of America proposed a period of the author's lifetime plus 50 years, which is the practice of almost all the major publishing countries of the world. In the book industry there is at present no strong preference for either of these proposals over the other, but the life-plus-50-years period seems to be narrowly favored as a matter of international convenience.

4) It was wrong to say, "Publishing is becoming bigger and more centralized" and "What we need now is legislation to slow down this trend." It is true that in recent years a dozen or so large firms have grown larger through mergers and natural growth, but certainly there has been no trend toward monopoly. Witness the increase in the number of book publishers in the years 1956–60, the period in which most of the larger mergers occurred. In 1956 a total of 340 firms published five or more titles; in 1960 the total had grown to 372 firms. In 1956, 41 firms issued half the books published in the United States, but it took 45 firms to account for half the titles published in 1960.

5) In speaking of low-priced reprint editions, it was wrong to say, ". . . the availability of these cheap editions tends to limit the price for all books which are still protected by copyright." A study of book prices in recent years reveals no evidence in support of this statement. New books are universally priced on profit-and-loss formulas related to estimated markets. If anything, the tendency of low-priced reprints to reduce markets for new books would cause higher pricing of original editions.

6) It was wrong to argue that in case the copyright period should be extended, "The increase in price [of books] will be substantial, and most of the money will go to a small group of publishers and authors. . . ." How could an extension of the copyright period possibly cause an increase in current book prices? By what economic magic would a publisher be able to get a higher price for a book simply because it might be kept in copyright for 60 or 70 rather than 56 years?

7) It was most wrong to say, "Congress does not generally give public property to private interests, but it may very well do so unless the public asserts its rights and indicates that it objects to this usurpation of public property." This is a confusing statement because the literary creation of an author is private property, not public. The Copyright Law currently permits this kind of property right to continue for 56 years; most private property rights in this country continue indefinitely. So this would not be a case of giving public property to private interests, but of securing to authors, or their heirs, more lasting benefits from their own private literary properties.

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By reading the letter of Paul L. Latham [*Science* **142**, 148 (11 Oct. 1963)] regarding the proposed revision of the Copyright Law, I have been reminded of an earlier letter by Hayward Cirker on this same subject.

I submit that everything in Latham's letter is either irrelevant or incorrect:

1) Statutory copyright does not create a new right of prohibition which did not exist under common law copyright. The proprietor under common law copyright may also protect his work from infringement; and his common law rights are not limited as to extent and time as they are when the author must surrender them for statutory copyright.

2) A patent is not analogous to a copyright. A patent protects a device or invention; copyright protects, not an idea, but only the particular expression of the author through a unique arrangement of words.

3) The owner of a copyright cannot successfully "bring a charge of infringement against anyone who uses a similar arrangement [of words]." The holder of a patent may keep others from his field. But Latham and I could independently make very similar portraits of Cirker, using paint, or a camera, or words—and these portraits could both be copyrighted so long as we did original work and did not copy from one another.

The last sentence of Latham's letter is nonsense; no copyright can be claimed on material that is not original.

Cirker's letter is not wrongheaded, it is merely special pleading. He complains that "the major forces behind the bill are powerful publishing interests." He himself speaks for his individual powerful publishing interest—a special kind of publishing interest which doesn't like the idea of copyright in any form. He calls a copyright a "monopolistic grant," which is of course absurd, as the Department of Justice has discovered.

I mention one more of Cirker's special pleas: his implication that reversion of copyrighted material to the public domain makes the material available to consumers at cheaper prices. There is nothing in the history or statistics of publishing to support that statement.

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Many readers of *Science* are authors, working under the limitations of existing copyright law and at a disadvantage in protecting their investment as compared with their neighbors who have spent time developing real estate, grocery stores, or bowling alleys. They may well prefer supporting any move to extend copyright protection to joining Cirker in opposing it.

Cirker points out that books may be sold more cheaply if authors are deprived of their royalties at the earliest possible date. He is correct. What is surprising is that he fails to carry this argument to its logical conclusion by proposing that publishers, printers, bookbinders, and booksellers join the author in this act of abnegation, thereby providing the public with books at no cost at all!

Behind this thesis, and behind copyright law in general, is the interesting assumption that, after a certain time, the public has a "right" to benefit from an author's labor without paying him for it. An extension of the copyright period beyond the current 56 years is thus seen, by Cirker at least, as an instance of giving "public property to private interests." What should be made clear is that present copyright law gives away private property to the public in a manner that would provoke great uproar if it were applied in the field of real estate and other areas of the business world. To argue that the 56-year protection of the law covers the lifetime of most authors is absurd. If writing is to be treated like any other kind of labor, then its fruits should be secured to the writer and his estate in the same way that a title deed to his house is secured.

We are asked to believe, however, that the availability of books is of such vital public interest that the property rights of authors must be limited for the common good. Here again it is difficult to see why this principle is not even more applicable in other fields—to such commodities, say, as food, medical care, housing. The availability of these commodities at low cost is surely more crucial to the general welfare than the production of cheaper books. While it may be flattering to conclude that the written word takes primacy over the necessities of life, it is a little unrealistic.

But even if books *were* more important than bread, we move into an Alice-in-Wonderland kind of logic when we maintain that the more valuable something is to society, the less right there is for the man who produces it to receive his reward!

Does the royalty-rate factor seriously reduce the reading resources of the man in the street? British practice, as Cirker points out, provides much longer copyright protection for a writer—his lifetime plus 50 years. Yet, if some recent reports are to be believed, more people read more books in Britain than in the United States, and they do so within the framework of a lower standard of living.

The "censorship" issue is utterly misleading, and mention of the *Mein Kampf* affair irrelevant. How would Cirker resolve a problem of that kind? By unlimited pirating of foreign works in "the national interest," perhaps? Any author can prevent the public from knowing what he is thinking by not writing a book in the first place; or, having written it, by withholding the manuscript from publication. Curtailing copyright will not affect the tendency of governments, on both sides of the Atlantic, to keep some of their documents from the public eye.

Cirker has confused two issues, copyright and royalties. There is no reason why authors should not retain their right to royalties after copyright has expired. Copyright is concerned with the right to copy material. It is perfectly possible to construct copyright laws that provide for general permission to republish a book after a certain period of time has elapsed but that require anyone doing so to pay royalties at some statutory rate to the author or his estate. Why not? The reprinter of books in the public domain is already free of many of the risks taken by the original publisher. He is not investing in an unknown author; he can find out what the sales have been over the years and plan his printing with a smaller margin of error. It is not unreasonable to demand that he pay the writers who make his own profits possible.

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I.Q. Scores and Genetic Trends

Newcombe [*Science* **141**, 1104 (1963)] implies that a decrease in I.Q. scores in a large sample of subjects over generations would indicate a decline in intelligence. This, in turn, would support the hypothesis that the frequency of superior combinations of alleles in the collective pool of human genes is diminishing. I suggest that this line of reasoning will not stand up under closer scrutiny.

Let us, for the moment, ignore all other theoretical and methodological difficulties and focus on the problem of test instrument artifacts. What instruments could one select so as to obtain comparable data over two or more generations? If identical tests were used, any changes, up or down, would much more likely be due to cultural changes, and no test is completely culture-free. If there were a real decline in biological intelligence (whatever that may be), such a decline would be very small in any one generation. Indeed, it would be much smaller than the error of measurement for any one particular individual. It can be argued very strongly that even the most culture-free test imaginable would be subject to cultural changes over one generation at least as large as the largest changes that might be produced by hereditary factors.

Let us assume, then, what might happen if a different test or battery were used in each generation. Such a test would have to be standardized on a presumably representative sample of the generation to be tested. Now, theoretically, any factors affecting our original population sample should be affecting the entire population of which it is representative, and therefore also the new standardization sample drawn