Whose Book is it Anyway? is a provocative collection of essays that opens out the copyright debate to questions of open access, ethics, and creativity. It includes views – such as artist’s perspectives, writer’s perspectives, feminist, and international perspectives – that are too often marginalized or elided altogether.

The diverse range of contributors take various approaches, from the scholarly and the essayistic to the graphic, to explore the future of publishing based on their experiences as publishers, artists, writers and academics. Considering issues such as intellectual property, copyright and comics, digital publishing and remixing, and what it means (not) to say one is an author, these vibrant essays urge us to view central aspects of writing and publishing in a new light.

Whose Book is it Anyway? is a timely and varied collection of essays. It asks us to reconceive our understanding of publishing, copyright and open access, and it is essential reading for anyone invested in the future of publishing.

As with all Open Book publications, this entire book is available to read for free on the publisher’s website. Printed and digital editions, together with supplementary digital material, can also be found at www.openbookpublishers.com.

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Cover design: Anna Gadd.
Foreword

Versions. And more versions. The comics industry is adept at selling its fan base the same content, again and again, differently packaged and presented. We buy individual comics, and then trade paperback collections, hardback editions, deluxe hardbacks, omnibus collections, slipcase editions and more. Often, we buy simply because we want the best possible version of the work available. But also, these subsequent versions typically include additional material, making the new version an almost essential acquisition for the dedicated collector and fan. This material can take many forms: an insight into the author’s writing process, or excerpts from his or her original pitch to the publisher; early development ideas and drawings reproduced from the artist’s sketchbook; sample pages of artwork reproduced in pencil, then inked, then coloured, offering a window into the highly collaborative process that delivers the finished story in whatever version we care to read. In any event, we buy multiple versions; we are fans, collectors, addicts.

This essay is also a version of an earlier work. Indeed, different versions of it have been made available online twice before. The first time was in December 2013 as a work in progress, released as part of the working paper series managed by CREATe, RCUK’s Centre for Copyright and New Business Models in the Creative Economy. This version was in turn based on my inaugural lecture delivered in October 2013 at the
University of Glasgow. For that lecture, I had decided to speak to some of the tensions that bind copyright and academic publishing, explored through the prism of the emerging discipline of comics scholarship. My reason for choosing the field of comics scholarship was simple enough: I love comics. They have been a part of my life for over three decades. As a teenager and through my student years at university, I worked in the first comic shop to open in Belfast: Dark Horizons. Sadly, Dark Horizons no longer exists, but the friendships I forged there remain true today. And, in many respects, but for Dark Horizons you would not be reading what you are currently reading.

The first version, made available online in late 2013, featured quotations and extracts from the work of numerous comic artists and authors such as Mark Millar, Chris Ware, Dave Sim and Chester Brown. I didn’t seek any copyright permission to make use of their work; I didn’t need to. That was the point. But the first version was also illustrated in part by Jason Mathis, a comic artist and friend. If I was going to deliver a lecture about copyright and comics I wanted to produce a version of that lecture that was, in part, a comic. The resulting collaboration was enjoyable and educational in equal measure. My initial idea was simply to produce an illustrated afterword to a more traditional piece of academic writing: a two-page ‘manifesto’ to sign off the work in an atypical but hopefully engaging way. Working with Jason, I learned much about writing for and creating comics; about structure, flow and narrative; about the interplay between text and the visual. In turn, we decided to create a written account of my inaugural lecture that was more ambitious and more playful than I had originally envisaged. Our joint labour produced the first version of this work.

The second version was a bona fide publication, made available in May 2014 through The Comics Grid, an online, open access journal dedicated to comics scholarship. That version was a more traditional academic piece, more fitting for a scholarly journal. It was published with the same illustrative material that had been included in the CREAtE version but without any of the illustrations specifically created by Jason, and without the ‘manifesto’. This was an article, not a comic. But, the Comics Grid version also included additional material outlining a more technically complex argument about the scope of the copyright exception for non-commercial research. This was material
I had decided not to present as part of my inaugural lecture, in part because of time restraints but also because I was mindful of writing for and speaking to a public and largely non-expert audience. And so, producing a second version of the work as an article in The Comics Grid offered an opportunity for presenting important additional arguments about copyright and scholarship before the very community I hoped to engage: comics scholars. What the Comics Grid version lacked in visual appeal (Jason’s wonderful illustrations), it made up for in additional, rigorous academic commentary.

This version that you are reading now — whether in analogue or digital form — represents a coming together of the CREATe version and the Comics Grid version. Essentially, after a period of three years, I have taken both previous incarnations and created a new, enhanced, all-singing, all-dancing version of an argument that, in my opinion, still has currency, still has value within the current climate of scholarly publication. Almost all of Jason’s illustrations from the original working paper have been re-introduced to the Comics Grid version. In addition, new illustrated material has been added, specially commissioned for this new ‘deluxe’ version. This is probably the definitive version of this work, but who knows what the future may hold.

The law, of course, has moved on. When both earlier versions were first made available, I speculated on the possible impact of forthcoming changes to the copyright regime in the guise of a new exception for quotation. That exception was subsequently introduced in October 2014. I have chosen not to amend the structure of the original argument to reflect or accommodate this and other changes to the law. Rather, I have introduced clarifications and additional information within new footnotes to signal when and how the law has changed (see for example footnotes 10, 21, 30 and 31). I have also introduced new information concerning other documents, publications and websites that have been amended since first publication (again, within footnotes). For example, the Publishers’ Association’s Permissions Guidelines are discussed throughout the piece; they too have been updated by the Publishers’ Association to reflect the changes to copyright implemented in October 2014. Only very occasionally have I made alterations to the main body of the text itself, and often those changes are simply to smooth the transitions between text and image in this new ‘deluxe’ edition.
In the two previous versions, I suggested that the impact of the new quotation exception for academics was likely to be marginal ‘if not entirely bargained away as part of the publication process’. In short, if proprietary academic publishers choose not to take advantage of the new exception, there would be little scope for the academic community to do so either. And certainly, little appears to have changed regarding the publishers discussed in this essay. For example, *European Comic Art* still requires contributing authors ‘to submit copyright agreements and all necessary permission letters for reprinting or modifying copyrighted materials, both textual and graphic’. There is no need for them to do so. There is no need for publishers to insist that authors secure copyright permissions whenever their use of third-party content falls within the scope of one or more of the copyright exceptions. But, publishers are risk averse. And in any event, they are dealing with authors that are intellectually entrapped: scholars who want or feel compelled to publish in proprietary journals for a myriad of reasons, whether personal, professional, institutional, or otherwise; so, why not rely on the scholar to mitigate and manage the risk? In the complex ecology of academic publishing, this is just one of the ways that academic publishers extract value from the academic community at large. As a community, we produce and then peer review content for publishers for free, and the economic value of that subsidy to publishers is staggering. Requiring academics to manage (and often pay for) copyright compliance is just another form of subsidy. But, the research-monitoring apparatchiks tell us that these are the journals we should publish in; so, for the most part, we do it.

And in recent years, a new revenue stream has opened up for academic publishers, driven by the UK government’s commitment to ensuring open access to publicly funded research. As you read this, it is worth reflecting on the fact that almost all journal articles currently published by UK academics are made publicly accessible in some shape or form under various open access routes. This has been driven by research council mandates, by the emergence of a network of institutional repositories at universities, and by HEFCE’s announcement in March 2014 that almost all publications must be made open access to be eligible for submission to the next REF exercise. Much of this is managed through Green open access: placing pre-publication versions
of published articles in institutional repositories, often to be released after a publisher-imposed embargo period. Just like the comics industry, academia too now deals in multiple versions of the same work. The impact, relevance and benefits offered by this recent proliferation of versions is a matter of some conjecture.

But in any event, this is not the government’s preferred mechanism for ensuring open access to research: that lies with Gold open access and involves paying an Article Processing Charge (an APC) to the relevant publisher in return for making the work immediately available to anyone in the world without restriction. So, in addition to the cost of producing and peer reviewing content for academic publishers, in addition to the cost of undertaking unnecessary copyright compliance activities to ensure publication, and in addition to the cost of journal subscriptions that UK universities pay to the publishers already benefitting from these subsidies, we now provide an additional subsidy in the form of APCs. In 2015, the spend by UK universities on APCs was estimated at £33M; and this could rise to £83M by 2020 (Tickell, 2016). Moreover, this new revenue stream does not appear to have been offset by a commensurate drop in journal subscription charges, or at least not yet. Proprietary academic publishing has many virtues. But it’s also a con, a cheat, and a fix. You know it. I know it. They know it.

But, this is not a piece of work about the current state of the art regarding open access publishing. It is about comics, copyright and academia. It is about missed opportunities, about how we ignore or are required to overlook the opportunities the copyright regime offers for making use of other people’s work without the need for permission. In that respect, it’s also about autonomy and freedom of expression. And it’s about resistance. But above all else, it is a love letter. We hope you enjoy it.

Ronan Deazley
March 2017
Introduction

Hello, I'm Ronan Dazley. It's nice to meet you.

The comic that you're reading is a comic about comics.

Or rather, it is a comic about comics scholarship, copyright, and academic publishing. I'm an academic. I'm interested in this kind of stuff.

If you're still reading, that probably means you are too.

Excellent! I think we set along just fine.

But let me give you some background.

The original idea for this comic came about when I met Ernesto Fresco - the editor in chief of the comics grid - at a conference in Durham, April 2013.

Good to see you again!

The comics grid is one of a small but growing cohort of scholarly publications dedicated to the study of comics.

As a long-standing comics fan, I spent my formative years in Dark Horizons, the first comic shop to open in Belfast and an academic with an interest in the way that the copyright regime can often inhibit the dissemination of scholarly research.

The comics grid appeals to me for a number of reasons -

One, it is committed to the principles of open access and open peer review.

Two, it genuinely embraces the potential that digital publication offers to academics in its commitment to rapid scholarly publication.

And three: to my knowledge, the comics grid is the only journal in this domain that is actively trying to improve the study of comics by educating its authors and readers - in an informed and reasonable way - about copyright and the place of copyright in comics scholarship.
8. Comics, Copyright and Academic Publishing

Fig. 8.1 Millar and McCrea, Crisis #31 (1989), pp. 17/5–6.
Comics Scholarship and Clearing Rights

Academics who research and write about the visual world often complain about the way copyright law can hinder their scholarly endeavours, and with good reason. Writing about visual work without reproducing that work is an impoverished exercise, for both writer and reader. But reproducing visual work can trigger concerns on the part of the conscientious author or — more often — demands on the part of the publisher about the need to secure copyright permission. In this respect, comics scholarship is no different from any other field of visual or cultural studies. Clearing rights for publication can be a frustrating and time-consuming business, and academic publishers often manage the business of copyright clearance by making their contributors responsible for securing permissions. *European Comic Art* is typical: in its information for contributors, it sets out that ‘[u]pon acceptance [for publication], authors are required to submit copyright agreements and all necessary permission letters for reprinting or modifying copyrighted materials, both textual and graphic. The author is fully responsible for obtaining all permissions and clearing any associated fees.’

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1 ‘Information for Contributors: Copyright/Permissions’, journals.berghahnbooks.com/eca/index.php?pg=notes. A declaration of a similar nature is set out on the ‘Journal Contributors’ Page’ of the publisher’s general website: ‘When your article is accepted for publication, you must clear any required reproduction rights for any figures, photos, or text belonging to a third party, including any content found on the internet unless you can provide proof that no explicit permission is needed […]. Your journal’s Editor will require written correspondence attesting to the granting of permission. Should a fee be required, please first check that the quality of the materials you would receive is acceptable to the journal. Please also note that contributors are responsible for clearing any fees related to the reproduction of any copyrighted materials’, journals.berghahnbooks.com/index.php?pg=authors. For another example, see also *Studies in Comics*, published by Intellectual Books; the journal’s ‘Notes for Contributors 2010’ sets out that: ‘Copyright clearance is the responsibility of the contributor and should be indicated by the contributor’.
Not all publishers, however, adhere to such a black and white position. The *Journal of Graphic Novels and Comics* is published by Taylor & Francis. In the *Authors Services* section of its website, the publisher acknowledges that reproducing short extracts of text and other associated material ‘for the purposes of criticism may be possible without formal permission’.²

² See http://journalauthors.tandf.co.uk/copyright/usingThirdPartyMaterial.asp. Since first publication, the advice on the publisher’s website has been revised. That said, the website still provides ‘that the reproduction of short extracts of text and some other types of material may be permitted on a limited basis for the purposes of criticism and review without securing formal permission’. See http://authorservices.taylorandfrancis.com/using-third-party-material-in-your-article/
To better understand *when* permission is required, the publisher directs authors to the Publishers’ Association *Permissions Guidelines*.\(^3\)

To better understand *what rights* need to be cleared, Taylor & Francis direct authors to the publisher’s own FAQs about using third-party copyright material in an academic article. There are twenty-two FAQs to which the publisher provides boilerplate responses.\(^4\) Of these, thirteen expressly relate to the reproduction of visual material. To the question, ‘[d]o I need permission’ to reproduce the work?, the answer is typically: ‘Yes’. Consider, for example, the following: ‘Do I need permission if I use an image from the Internet? / Yes, you will need to find out the

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\(^3\) Since first publication, the Publishers’ Association have updated these guidelines. Their new 2016 *Permissions Guidelines* are available at http://www.publishers.org.uk/about-us/useful-links/pa-permissions-guidelines-2016/

\(^4\) At the time of preparing the ‘Deluxe Edition’ of this work, there are now only six FAQs on the publisher’s website concerning the use of third-party material. They relate to the following: Do I need permission to reproduce text quotations from other sources? Do I need permission even if I have redrawn figures? Do I need permission if I have reused information and data from a table? Do I need permission is I use an image from the Internet? Do I need permission to reproduce the cover image of a book as part of a book review? Do I need permission if I use material from my own work? See http://authorservices.taylorandfrancis.com/using-third-party-material-in-your-article/
status of the image and find out who owns the copyright (this may be the photographer, artist, agency, museum, or library). You will then need to get permission from the copyright holder to reproduce the image in a journal article'. Indeed, only two of the thirteen FAQs relating to visual material acknowledge the potential to reproduce work without permission for the purpose of criticism or review; these relate to, respectively, the use of ‘screenshots or grabs of film or video’ and the use of ‘very old paintings’.

What is not clear from this FAQs document is whether the publisher is purporting to accurately represent the law in this area. If so — as we shall see — the FAQs document is clearly deficient. If, however, the publisher is simply using the FAQs document to set out the parameters of its own editorial policy on the reproduction of copyright-protected third-party material, then so be it: the publisher is perfectly entitled to adopt such editorial guidelines as it sees fit. I would suggest, though, that in cleaving to an editorial policy that fails to take full advantage of the scope that the copyright regime allows for the lawful reproduction of copyright-protected material without need for permission, the publishers are missing an opportunity to enable their academic contributors to augment and enrich comics scholarship as a discipline.

5 Taylor & Francis, ‘Using third-party material in your article: Frequently asked questions’, https://authorservices.taylorandfrancis.com/using-third-party-material-in-your-article/. See also the stock responses to the questions: (i) Do I need permission even if I have redrawn figures? (ii) Do I need permission to reproduce the cover image of a book as part of a book review? (iii) Do I need permission if I use a facebook screenshot? (iv) Do I need permission to use an image from Flickr? (v) Do I need permission to use ClipArt? (vi) Do I need separate permission for an image that will appear on a journal cover? Other questions prompt a response that directs the potential contributor to other third-party guidelines: (i) Do I need permission to use an image from Google Earth? (ii) Do I need permission to use an image from Yahoo? (iii) Do I need permission to use a crown copyright image? (iv) May I describe and illustrate a patent in my article?

6 The FAQs response at the time of writing was as follows: ‘Films stills, film clips, and extracts of video should be used specifically within the context of the article for criticism or review. Each clip should be no longer than is necessary to illustrate the point made in the text. You should always provide full credits for the source of every image or clip’. Ibid.

7 The FAQs response at the time of writing was as follows: ‘In most cases, if the image you are using is specifically within the context of the article for criticism or review you should not need to get permission from the artist and the owner. However, some artwork falls under stringent copyright management. See www.dacs.org.uk/ for further help’. Ibid.
In this respect *The Comics Grid* is more ambitious and forward thinking: it actively promotes the lawful use of copyright-protected content for the purposes of academic scholarship. The journal’s copyright policy sets out that third-party copyright material reproduced on the grounds of ‘educational fair use’, with readers and contributors directed to Columbia University Libraries’ *Fair Use Checklist* for further information. This is a checklist that has been developed to help academics and other scholars make a reasonable and balanced determination about whether their use of copyright-protected work is permissible under s.107 of the US Copyright Act 1976: the *fair use* provision.

Obviously, the journal locates its copyright advice within the context of US copyright law. But, as a Belfast-based academic, with an interest in both the history and the current state of the copyright regime, my focus within this essay concerns the extent to which UK-based academics — or indeed anyone interested in writing about comics — can rely upon the UK copyright regime to reproduce extracts and excerpts from published comics and graphic novels *without* having to ask the copyright owner of those works for permission.

To address that issue, we must consider three key questions. What constitutes a *work* protected by copyright within the context of comics publishing? What does it mean to speak of *insubstantial copying* from a copyright-protected comic? And, what scope do existing — and forthcoming — *exceptions to copyright* afford the academic in this regard? Where appropriate, we will also reflect upon how the PA *Guidelines* address these issues.

**What is ‘a Work’?**

The CDPA, the Copyright, Designs and Patents Act, 1988 provides a detailed and exhaustive list of eight types of work that qualify for copyright protection within the UK (CDPA: s.1). So, before we can

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8 At the time of first publication, I was the Professor of Copyright Law at the University of Glasgow. I have since moved to Queen’s University Belfast.


10 Traditionally, it has always been thought that the list of protected work set out within s.1 of the CDPA was finite and exhaustive. That is, in order for something to be protected by copyright in the UK it had to fall within one of these eight prescribed categories. However, the idea that the list is exhaustive — or closed — has begun to be undermined by recent decisions of the Court of Justice of the European Union (the CJEU), through the Court’s interpretation of various EU copyright
properly appreciate what latitude there exists within the copyright regime for the reproduction of copyright-protected work without permission, one must understand what constitutes ‘a work’. This is axiomatic: one can only sensibly and reasonably interrogate notions of substantial copying and fair dealing — about which more below — in relation to an identified ‘work’. To be sure, for most copyright-protected content, to establish what constitutes a work will not present many conceptual challenges. The work is: the novel, the poem, the playtext, the score, the painting, the photograph, and so on. Like the proverbial elephant, we tend to assume to know the work when we see it. With the medium of comics, however, things are not always so straightforward.

One characteristic of comics is that individual stories are often presented to the reader, played out across a number of issues: similar to the serialisation of literary works — often published with accompanying illustrations — by Victorian novelists such as Charles Dickens and Wilkie Collins. If Dickens’s work was still in copyright today would we regard, say, *Great Expectations* as ‘a work’, even though it was first published in serial form? Almost certainly yes; few would seek to argue otherwise. Should we read (certain) comics in a similar vein: that is, works first published in serial form?

Consider Dave Sim’s *Cerebus the Aardvark*. Published over a period of nearly thirty years (1977–2004), this ground-breaking work is best understood as a series of ten ‘novels’ collected into sixteen ‘books’. The third of these ‘novels’, *Church & State*, was first published across fifty-nine issues between 1983–1988 (Issues 52–111) before being collected and published in book form as two volumes (*Church & State Volume I*, and *Church & State Volume II*) in 1987 and 1988 respectively. So: for copyright purposes, what is the ‘work’? Or what about Chester Brown’s adaptation of the Gospel of Matthew (see Fig. 8.2)? Brown began his

directives. In short, the CJEU has suggested that literary and artistic works should be copyright-protected whenever they constitute an author’s ‘intellectual creation’. See, for example: Bezpečnostní softwarova asociace v Ministerstvo kultury (2010) C-393/09, http://curia.europa.eu/juris/liste.jsf?num=C-393/09 (concerning a graphic user interface), and Nintendo v PC Box (2014) C-355/12, http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=c-355/12&td=ALL (concerning a video game). What impact these European decisions will have upon the concept of ‘a work’ within the context of the CDPA remains to be seen.

11 For a discussion of the concept of ‘the work’ within copyright discourse, see Brad Sherman, ‘What is a Copyright Work?’, *Theoretical Inquiries in Law*, 12.1 (2011), 99–121.
adaptation in *Yummy Fur*, Issue 15 (March 1989). It continued in the remaining issues of *Yummy Fur* (Issues 16–32), and then in Brown’s next project: *Underwater* (11 issues, 1994–1997). The most recent instalment (‘Chapter 20, verses 1–29’) appeared in *Underwater* Issue 11 in October 1997 and, at the time of writing, Brown has yet to complete his work on the remaining eight chapters. But again: what, here, is the ‘work’, and does our understanding of ‘the work’ shift depending on what we know about the author’s own creative process?

Fig. 8.2 Brown, *Yummy Fur* #21 (1990), p. 18/6.
Brown, in this respect, provides an intriguing case study. In *Yummy Fur* Issue 20 he offers his readers an insight into the way he constructs his comics (at least, circa 1990) (see Fig. 8.3). Brown typically works with page layouts of between five and seven panels, which panels are rarely uniform in size or shape. But, whereas most comic artists sketch or draft a page of comic art as a single page, Brown draws each panel individually, on a separate sheet of paper (often ‘cheap typewriting paper’ (Matt 1991: 67/19)), and then assembles each ‘page’ of the comic by arranging these individual panels on a larger sheet. Given this, should we regard each of Brown’s panels as a ‘work’?

Fig. 8.3 Brown, *Yummy Fur* #20 (1990), pp. 5/1–4.
One final example: Chris Ware’s *Building Stories*, an exquisite artefact, beautifully rendered by the artist, and luxuriously produced by the publisher. Its unconventional format challenges preconceptions that anyone — whether a long-standing comics fan or not — might have about the form and format of the comic. It consists of fourteen different types of printed work (individual books, newspapers and broadsheets, flip books, a poster, accordion-style fold-outs, and so on) which present the reader with a complex, multi-layered story centred around an unnamed female protagonist, but one that eschews narrative linearity. Produced over a period of ten years, these ‘works’ are collectively presented to the reader in an illustrated box: a format inspired by Marcel Duchamp’s *Box in a Valise* (1935–1941). So, what is ‘the work’ that is the subject of copyright protection: the box and its contents? Should we understand each of the fourteen vignettes as separate works in themselves, rather than parts of a richer, more ambitious and intriguing narrative project? Is the box ‘a work’?

My point here is not to make things more difficult for those writing about comics who are grappling with copyright clearance issues, or to further obfuscate an already problematic legal landscape; quite the reverse. But one cannot escape the fact that the very nature of comics problematise what are otherwise often simple, conceptual distinctions in other fields of literary and artistic publishing. And as we shall see, these definitions matter; for example, the courts routinely identify the *amount of the work that has been copied* as a significant factor in determining whether the unauthorised use of the work constitutes ‘fair dealing’. To return to *Cerebus*: reproducing one page from *Church & State* — a work that runs to 1220 pages in its entirety — is a very different prospect to the reproduction of a single page from one of the 59 individual issues that progress the *Church & State* storyline (see Fig. 8.4). Quantitatively speaking, it is the difference between reproducing 5% of an individual comic and reproducing 0.08% of the *Church & State* novel.

But we will return to the concept of ‘fair dealing’ in due course. For now, it is enough to reiterate that identifying what constitutes ‘a work’ when dealing with comics is often conceptually problematic, which in turn blurs the boundaries of permissible and impermissible use for both copyright owner and user. Let us assume, however, that one can confidently identify the ‘work’ with which one is dealing; that being the case, there are three obvious strategies that an academic or researcher
Fig. 8.4 Sim, *Church & State* Vol. I (Windsor, Ontario: Aardvark-Vanaheim, 1989), p. 421.
might rely upon when reproducing material from that work without the need for permission from the copyright owner. They concern: (i) insubstantial copying; (ii) fair dealing for the purpose of non-commercial research; and, (iii) fair dealing for the purpose of criticism and review. We deal with each in turn.

**Insubstantial Copying**

Section 16 of the CDPA sets out the various ‘acts restricted by copyright’: that is, the different types of protected activity (copying, distributing, communicating online, and so on) that require permission from the copyright owner. The legislation provides, however, that the protection granted to copyright owners only extends ‘to the work as a whole or any substantial part of it’ (CDPA: s.16(3)(a)). Put another way: it is lawful to make use of another’s copyright work, so long as you are not copying any more than a substantial part of the work. But where does one draw the line between substantial and insubstantial copying?

It is often said that the issue of substantiality depends upon the quality of what has been taken rather than the quantity (Sillitoe v McGraw 1983: 545), and courts of late have demonstrated a marked willingness to find infringement so long as the part used is not ‘insignificant’ or de minimis (per Lord Bingham, Designers Guild v Russell Williams 2001: 11). This would seem to militate against the likelihood of successfully relying upon an argument of insubstantial copying when reproducing any material — even a single panel — from a comic without permission. Without wishing to indulge in cliché, if there is any truth in the conceit that a picture paints a thousand words, the argument that reproducing even a single panel from a comic might be regarded as qualitatively substantial copying is likely to enjoy some traction.
To understand what lawful insubstantial copying might mean in relation to a comic, one must understand the comic as sequential art, a term famously coined by Will Eisner in 1985. Scott McCloud develops the notion further in the landmark *Understanding Comics*. Of particular interest is what McCloud has to say about ‘closure’ (the experience of ‘observing the parts but perceiving the whole’), a foundational concept in the psychology of narrative. McCloud argues that comics rely upon ‘closure’ as an agent of ‘change, time and motion’: a phenomenon that occurs in the space between comic panels, often referred to as ‘the gutter’. He writes as follows: ‘Comics panels fracture both time and space, offering a jagged, staccato rhythm of unconnected moments. But closure allows us to connect these moments and mentally construct a continuous, unified reality’. And whereas closure in the context of film and television is ‘continuous, largely involuntary and virtually imperceptible’, with comics closure depends upon the active participation of the reader.

Consider the single panel from *Understanding Comics* (Fig. 8.5). If you are reading this essay online, then, with this panel, you are looking at a digital copy of a digital copy of a printed copy of an image that

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13 Ibid., p. 68.
incorporates a drawing of an iconic twentieth century painting. By itself, the image is simply an image bearing as much significance (or not) as the observer cares to invest in the same. However, when presented as part of a sequence, as McCloud puts it, ‘the image is transformed into something more: the art of comics.’ It is the sequential nature of the comic form that is imperative here and, I would suggest, when applying well-established principles of copyright law to the comic as ‘a work’, the law should be sensitive to the unique vocabulary and grammar of comics as an art form. That is, if the phenomenon of closure is as integral to the very nature of the comic as McCloud suggests, then — without a sequence, without the gutter — the reproduction of a single panel from a comic should not typically be regarded as an instance of substantial copying: at least not from a qualitative perspective.

Fig. 8.5 McCloud, Understanding Comics (Understanding Comics: The Invisible Art, Northampton, MA: Kitchen Sink Press, 1993), p. 25/6.

14 Ibid., p. 5.
There is, of course, something counterintuitive about this analysis: one presumes someone writing about a comic chooses to reproduce a specific panel from the comic precisely because it is significant. And, on its face, this logic appears to be at odds with my argument that a single panel from a comic should not be understood to be qualitatively substantial or significant. And yet, adhering to that argument does not mean that the panel cannot or should not be regarded as significant within the confines of a scholarly essay. In this respect, it is essential that we hold in mind — and clearly differentiate between — the two different contexts within which the image is reproduced: the comic as a copyright-protected ‘work’, and the scholarly essay. There is no contradiction in the idea that the same image might be qualitatively insignificant in the former context, while simultaneously being intellectually or illustratively significant in the latter.

Also, I make no claim here about whether a single panel from a comic may or may not be a quantitatively significant part of the comic within which it appears. That will always depend upon the individual circumstances under consideration. Quantitatively, for example, it is easy to see how reproducing a single panel from a three or four panel daily newspaper comic strip would amount to substantial copying. But consider again the panel from Understanding Comics: it is one of six panels from a page in a book of 215 pages. It represents approximately 0.1% of the work that is Understanding Comics. Does that amount to substantial copying — from a quantitative perspective — for the purposes of the CDPA?
Exceptions to Copyright

Fair Dealing …

The concept of fair dealing is common to both the exception permitting non-commercial research and that concerning criticism and review. But what constitutes fair dealing with a work?

On the first point, I would offer a correction: fair dealing is not determined subjectively (that is, from the perspective of the claimant alleging copyright infringement). Time and again, the courts have stressed that the concept of fair dealing is to be tested objectively. Lord Justice Aldous put it very succinctly: ‘the court must judge the fairness [of the use] by the objective standard of whether a fair minded and honest person would have dealt with the copyright work [in the same manner as the defendant]’ (emphasis added) (Hyde Park v Yelland 2000: 38).

Otherwise, this is, in many respects, a reasonable, albeit brief summation of current copyright doctrine on the concept of fair dealing. Recent court decisions have indicated a number of factors worth bearing in mind that may be of relevance, many of which are alluded to in the PA Guidelines. For example, in 2001 Lord Phillips identified three considerations to be of particular importance (the so-called ‘Laddie factors’): (i) commercial competition with the claimant; (ii) prior publication; (iii) the amount and importance of the work taken (Ashdown v Telegraph Group 2001: 66–77).

In 2005 Justice Mann stressed that the motives of the user are also important, as is the

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actual purpose of the new work that is being produced; in addition, he indicated that, depending on the circumstances, reproducing an original work in its entirety could be regarded as fair (Fraser-Woodward v BBC 2005: 55–70).

... For the Purpose of Non-Commercial Research (CDPA s.29)

Section 29(1) of the CDPA provides that fair dealing with a work for the purpose of non-commercial research does not infringe any copyright in the work. Before considering the internal logic and scope of s.29, is it worth considering what is meant by ‘research’? In addressing this question, it is important to appreciate that the current exception was amended in 2003 to ensure compliance with A.5(3)(a) of the European Information Society Directive 2001.16 Article 5 of the Information Society Directive sets out a list of mandatory and optional exceptions to copyright that Member States can incorporate within their national copyright regimes, and 5(3)(a) specifically establishes that Member States are entitled to provide for an exception ‘for the sole purpose of illustration for teaching or scientific research [...] to the extent justified by the non-commercial purpose to be achieved’ (emphasis added).

And so: what bearing does the reference to ‘scientific research’ in A.5(3)(a) have on the meaning of ‘research’ within s.29? Influential opinions differ.

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Laddie, Prescott and Vitoria on Copyright suggests that, as the exceptions set out in the Directive are to be strictly interpreted (see: Infopaq v DDF 2009: 56), ‘there would not appear to be any justification for interpreting the exception broadly to encompass matters which involve no enquiry or investigation which is scientific in nature’;\(^7\) this reading of the legislation was subsequently endorsed by Justice Arnold (Forensic Telecommunications Service 2011: 109), albeit as obiter dictum.\(^8\) The authors of Laddie continue that, as such, research conducted in the arts and humanities ‘could not by any stretch of the imagination be called scientific.’\(^9\) Compare, however, the line taken in Copinger on Copyright: ‘although the Directive refers to scientific research, it is reasonably clear that this includes the humanities.’\(^10\) If the interpretation advanced in Laddie is correct, then s.29 would have almost no relevance for researchers and academics working outside explicitly scientific domains. That would be extremely unfortunate. From my perspective, if, as and when a court does hand down an express ruling on the meaning and scope of ‘research’ within the context of s.29(1), it is to be hoped that an interpretation is adopted that is as wide and as purposive as possible, albeit one that is consistent with the requirements of A.5(3)(a).

Turning to the arrangement of the exception, it will be useful to set out the relevant parts of s.29 at length: ‘(1) Fair dealing with a literary, dramatic, musical or artistic work for the purposes of research for a non-commercial purpose does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement. / (1B) No acknowledgement is required in connection with fair dealing for the purposes mentioned in subsection (1) where this would be impossible for reasons of practicality or otherwise. / (1C) Fair dealing with a literary, dramatic, musical or artistic work for the purposes of private study does not infringe any copyright in the work […] (3) Copying by


\(^8\) For the non-lawyer: obiter dictum refers to a remark or comment made by a judge which, although included in the main body of the court’s opinion, does not constitute part of the reason for the decision of the court (what is referred to as the ratio decidendi). As such, comments that are obiter are not binding in any way upon the decisions of future courts, although they can be highly persuasive.


a person other than the researcher or student himself is not fair dealing if — [...] (b) [...] the person doing the copying knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time and for substantially the same purpose.’

Notice two things: first, the exception provides for two types of permissible copying in two separate sub-clauses: copying for non-commercial research (s.29(1)), and copying for private study (s.29(1C)); second, the lawfulness of fair dealing for non-commercial research turns upon the copying being ‘accompanied by a sufficient acknowledgement’, whereas copying for private study does not. Intuitively, this suggests two contrasting types of activity: one that has a purely internal or personal dynamic, and one that anticipates external and public engagement.

In relation to the latter, consider RCUK’s Policy on Open Access, a policy developed to ensure that publicly funded research is as freely accessible as possible: ‘the Research Councils take very seriously their responsibilities in making outputs from this research publicly available — not just to other researchers, but also to potential users in business, charitable and public sectors, and to the general public’.

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21 Since first publication, the exception has been amended to include all types of copyright work (effective: 1 October 2014). The exception now reads as follows: ‘(1) Fair dealing with a work for the purposes of research for a non-commercial purpose does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement. / (1B) No acknowledgement is required in connection with fair dealing for the purposes mentioned in subsection (1) where this would be impossible for reasons of practicality or otherwise. / (1C) Fair dealing with a work for the purposes of private study does not infringe any copyright in the work [...] (3) Copying by a person other than the researcher or student himself is not fair dealing if — [...] (b) [...] the person doing the copying knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time and for substantially the same purpose.’

22 That is: copying for private study is personal to the student, the academic, the individual seeking to acquire knowledge. Note, however, that the CDPA further defines ‘private study’ to preclude ‘any study which is directly or indirectly for a commercial purpose’ (s.178).

23 As Burrell and Coleman put it: if the research exception does not extend to copying when a researcher’s results are presented in an essay, a thesis, a published paper or a book, then ‘the requirement of sufficient acknowledgement is anomalous’; R. Burrell and A. Coleman, Copyright Exceptions: The Digital Impact (Cambridge: Cambridge University Press, 2005), pp. 117–18.

what about the recent observations in the 2012 Finch Report on expanding access to published research findings: ‘[T]here is an increasing tendency across Government and other bodies, both in the UK and elsewhere, to regard information generated by researchers as a public good; and to promote the reduction, if not the complete removal, of barriers to access. [...] Also associated with such ideas is a recognition that communication and dissemination are integral parts of the research process itself’. In short, research — as a concept within contemporary academia — is necessarily a public-facing activity, and the dissemination of research is a vital part of that activity.

That said, there is a cogent argument that the research exception does not enable the dissemination of research, but is instead largely confined to facilitating access to material for research purposes. The PA Guidelines suggest as much in offering that: ‘As a general rule, [this] exception is limited to personal copying’. The root of this argument lies in s.29(3)(b): that copying is not fair if it results in copies ‘of substantially the same material being provided to more than one person at substantially the same time for substantially the same purpose’. On this provision, Burrell and Coleman write: ‘It seems that this was intended to ensure that the research and private study exception could not be used to justify classroom copying, but its effect is to prevent entirely any reliance on the research exception to justify the inclusion of a substantial part of an earlier work in a published research paper.’ The point is well taken, but I would offer a technology-directed rejoinder.

Consider the difference between research that is published in print and born-digital form. If the essay that you are currently reading had been published in a traditional academic journal, physical copies of which were sent to as many research libraries as subscribe to the journal then, applied literally, s.29(3)(b) would likely preclude the lawful inclusion of copyright-protected material within this essay based on s.29(1). That is, more than one copy of the work will be distributed to more than one person (various subscribing libraries) at substantially the same time for substantially the same purpose.

26 PA, Guidelines, p. 2 (emphasis added).
However, the essay you are reading has not been published in a traditional academic journal. Rather, this essay, in its current incarnation, has been published by Open Book Publishers both as part of a print-on-demand edited collection (available in hardback and paperback), as well as online in a variety of file formats (HTML, XML, PDF, epub and mobi). In terms of publication in physical form, s.29(1) presents less of a problem here precisely because the works are published and distributed on demand: that is, only when an order is placed by a specific institution or individual will the material be supplied to that specific institution or individual. A similar logic applies to material that is made available to the public online. From a technical perspective, this essay is stored in PDF, epub and mobi versions on Open Book Publishers’ server, and has
also been archived with the British Library, Portico, and the Internet Archive’s WayBack machine. Now: does that mean that copies of this essay ‘are being provided to more than one person at substantially the same time’? Much would depend on what one understands by the phrase: ‘at substantially the same time’. Are two people likely to access, or download, this essay simultaneously, or even nearly simultaneously?

One of the great advantages to communicating work online is that it facilitates asynchronous engagement with the work from a place and at a time individually determined by the reader. The flip side of this technological reality is that scholars who are minded to do so might be able to square Burrell and Coleman’s circle by making informed choices about how and where they publish their research. That is: publishing in non-commercial, born digital journals such as The Comics Grid or with publishers such as Open Book — rather than more traditional, for profit, subscription-based print journals — might afford academics greater scope to rely upon s.29 to reproduce copyright-protected material without the need for permission from the owner(s). Put simply: it may be that there is wriggle-room for reliance upon s.29 when disseminating one’s research, depending upon the technique of dissemination.

But, as with my commentary on insubstantial copying, I do not want to labour the argument concerning the capaciousness of the research exception, and for two reasons: first, within the context of our current legal framework, there is a more obvious strategy that can be relied upon: fair dealing for the purpose of criticism and review; and second, as we shall see, the government are currently planning to introduce a new exception permitting quotation for any reason.

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27 Established in 2002, Portico is a digital preservation service provided by ITHAKA intended to help the academic community preserve the scholarly record. For further details, see: www.portico.org/digital-preservation/about-us/our-organization

28 For further information about the Internet Archive’s WayBack Machine, see: https://archive.org/web/

29 Obviously, the argument regarding asynchronous engagement with online publications and the opportunity for availing of the exception for non-commercial research does not hold true when dealing with material published (and distributed) in print form by someone other than the researcher (for example, a university publisher). In this situation, print-based dissemination will more obviously depend on the exceptions for quotation, criticism and review, which are discussed next.

30 Since first publication, the new exception for quotation has been introduced (effective: 1 October 2014). See the next section — Current Proposals for Reform [in 2013] — for further commentary.
... Or, for the Purpose of Criticism and Review (s.30(1))

Section 30(1) permits fair dealing for the purposes of criticism and review, and sets out as follows: ‘Fair dealing with a work for the purpose of criticism or review, of that or another work or of a performance of a work, does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement and provided that the work has been made available to the public.’\(^{31}\) But what constitutes ‘criticism and review’?

Consider again the PA Guidelines: that fair dealing with a work is permissible provided there is ‘a significant element of actual criticism and review of the work being copied (i.e. substantial comment, as opposed to mere reproduction), although this is sometimes interpreted liberally.’\(^{32}\) Unfortunately, the PA’s suggestion that the criticism in question needs to be directed at the work being copied is out of step with both the literal wording of the CDPA and with existing copyright jurisprudence; in short, it is likely to mislead. The legislation is unambiguous that criticism can be concerned with ‘the work’, ‘another work’, or ‘a performance of a work’. Moreover, the courts have established that the scope of the exception is not confined to a critique or review of the style or merit of a work or performance per se, but can extend to the ideas, doctrine, or philosophy underpinning the work (Hubbard v Vosper 1972), as well as to its social or moral implications (Pro Sieben Media v Carlton 1999). The comments of Lord Justice Robert Walker LJ provide a useful touchstone: that ‘criticism or review’ [is an expression] of wide and indefinite scope; that ‘[a]ny attempt to plot [its] precise boundaries is doomed to failure’; and that it is an expression ‘which should be interpreted liberally’ (Pro Sieben Media v Carlton 1999: 620). Without doubt, s.30(1) offers the academic working in the field of comics scholarship — as well as academic publishers — much greater scope for reproducing copyright-protected work than the PA Guidelines appear to suggest.

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\(^{31}\) Since first publication, the exception has been amended (effective: 1 October 2014). The exception now reads as follows: ‘Fair dealing with a work for the purpose of criticism or review, of that or another work or of a performance of a work, does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise) and provided that the work has been made available to the public.’

\(^{32}\) PA, Guidelines, p. 2.
Consider, for example, the various images that I have included within this essay. I have offered no criticism or review of the works from which these images have been taken. So: upon what basis do I reproduce them here? I could offer justifications that rely upon all three strategies discussed thus far: insubstantial copying; fair dealing for the purposes of non-commercial research; and fair dealing for criticism or review. The latter, I have suggested, provides me with my most robust defence, but what is ‘the work’ that I am critiquing or reviewing? Dear Reader, I have a number of ‘works’ in mind, including (but not limited to): *The Comics Grid*; Taylor & Francis’s FAQs document concerning the use of third-party material in academic articles; the Publishers Association *Permissions Guidelines*; and the *Copyright Designs and Patents Act* (the Act is itself a copyright-protected work). Without hesitation, I would defend my reproduction of the copyright material reproduced within this essay as lawful, and without the need for securing permission from the relevant copyright owners concerned.

Only in relation to one illustration did I bother to seek permission from (what I took to be) the copyright owner: the two panels from *Crisis* Issue 31 (Fig. 8.1). Now, it is important to be clear that I did not seek permission because I considered it necessary. There is nothing about this illustration — when compared with the rest of the copyright-protected material that I have reproduced in this essay — that marks it out as warranting special attention or consideration (at least, not from a rights-clearance perspective). Rather, my motivation was far more self-regarding and mundane. Dear Reader, the young man in those panels is none other than myself. That said, my experience in trying to clear rights in that particular image is one that will no doubt be familiar to many academics that write about visual culture. On 6 May 2013, I wrote to the Permissions Department at Egmont UK Ltd as follows:

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33 For those interested in how I came to feature in *Crisis* #31, the explanation is simple enough. Between the ages of 16 and 22 I worked in Northern Ireland’s first comic shop — Dark Horizons — which, at that time was part-owned by John McCrea. When John was commissioned to illustrate ‘Her Parents’ he asked if he could draw me into the story (apparently the protagonist in Millar’s story reminded him of me). Photographs were taken; the rest is history. (And yes, those are my actual clothes. I was a fan of a nice cardigan even at the tender age of 17.)
I'm an academic currently writing an article for publication in a scholarly journal concerned with comics and graphic novels. I'm hoping to reproduce two panels from a short five page story first published in 1984 in Crisis #31. The story was one of the first pieces ever published by Mark Millar (subsequently of Kick Ass fame). I understand that Fleetway's portfolio (including Crisis) was purchased by Esmont UK in 1991, and that you still hold the rights to the Crisis comic (1984–1991). Is that correct? If so, could I have permission to reproduce the two panels in question... if not, could you let us know who does hold the copyright?

Many thanks for your query about the Crisis artwork. I am afraid that we cannot authorise this use.

I'm afraid the situation is complex and I can't give more details.

Is that because you don't have the rights, or because you do hold the rights, but you're not prepared to licence the use of the image as requested?
Current Proposals for Reform [in 2013]: An Exception for Quotation

Why is he bothering to tell us about the exception for criticism and review when the law is about to be changed?

It’s true. For the last seven years or so, the UK government has been discussing reforms to the copyright regime, including reform of the copyright exceptions. One of the proposed reforms concerns a new exception permitting quotation for any reason – an exception that will replace fair dealing for criticism and review.

The thing is, European copyright law permits an exception for purposes such as criticism and review but not limited to criticism and review. Our law only allows use for the purpose of criticism and review.

For some people, it just doesn’t make sense. It doesn’t seem fair.

This means that, at the moment, people can’t quote from work in contexts similar to criticism and review, without breaking the law. So, for example, a short quotation in an academic work, or the use of a few bars of music in a book about the history of pop music, would infringe copyright if not used in a critical context.
The decision to introduce the new exception for quotation is to be welcomed [indeed, since this work was first published, the new exception for quotation has been introduced]. Again: the government-funded UK Research Councils make clear that research should be relevant to society and wider societal concerns; it should engage the

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34 The new exception for quotation was introduced as of 1 October 2014. This new exception (s.30(1ZA)) states as follows: ‘Copyright in a work is not infringed by the use of a quotation from the work (whether for criticism or review or otherwise) provided that — (a) the work has been made available to the public, (b) the use of the quotation is fair dealing with the work, (c) the extent of the quotation is no more than is required by the specific purpose for which it is used, and (d) the quotation is accompanied by a sufficient acknowledgement (unless this would be impossible for reasons of practicality or otherwise).’ The substance and scope of this new exception has little impact on the nature of the arguments set out within this section and the next.
public and empower people; it should have impact. It is right that the copyright regime should enable, not inhibit, those aspirations. And it is right that government should take advantage of the latitude afforded under the 2001 Directive, to ensure that both s.29 and the new quotation exception facilitate research endeavour, including the dissemination of that research, to the fullest possible extent, but without unduly compromising the economic interests of copyright owners.

Indeed, in this context, the IPO strike the right note in emphasising that the quotation of works should be permitted ‘only to the extent necessary, and without competing with sales of the original work.’ And again: ‘[a]s this exception will be limited to “fair dealing” and extracts will be limited to the extent necessary to serve their purpose, works using extracts will not substitute for, or complete with, originals.’ This focus on the likely commercial competition between the two works in question accords with the first of the so-called ‘Laddie factors’ and underscores the extent to which quotation — within the context of academic scholarship and publishing — should generally be unburdened from the various costs (financial, administrative, and otherwise) associated with copyright clearance. Would anyone sensibly claim that the copyright-protected material that I have reproduced within this essay, without express permission, commercially competes with, or acts as a substitute for, any of the underlying works?

To be sure, a less nimble and less enlightened copyright regime — one that was less minded to enable freedom of expression — might

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35 HMSO, Modernising Copyright, p. 1 (emphasis added).
36 Ibid., p. 2 (emphasis added).
legitimately require that users seek permission for all such quotations, and thus secure a potential revenue stream for copyright owners. But copyright has never been concerned solely with securing any and every potential revenue stream for copyright owners; nor should it. The type of use and quotation that we have discussed and envisaged within this essay is not such use as should require permission or payment. Put another way: these types of use fall outwith what might reasonably be regarded as the normal exploitation of copyright-protected work; neither do they unreasonably prejudice the legitimate interests of the authors concerned.37

Conclusion

Will these proposed reforms make a difference? Will the new quotation exception make it easier for academics writing about comics — or indeed any academic working in the digital humanities — to reproduce copyright-protected work within their published research without needing to clear rights in that work? Probably not: at least not in any meaningful way. Where they might make a difference is in relation to researchers who disseminate their work through websites and blogs, as well as other types of grey literature such as responses to government consultations or independent research reports. Rarely is the content of this type of material subject to editorial or other third-party intervention and as such researchers can choose to benefit from an exception that enables greater use of copyright-protected content without the need for formal permission.

But the mainstay of academic publication lies in books, book chapters, and journal articles, with journal publication firmly established as

37 The Berne Convention (which originally dates to 1886) is an international agreement that requires the signatories to the Convention to recognise and confer copyright protection on the literary and artistic works of authors from other signatory countries. In this way the Convention enables the operation of the international copyright regime. In addition, the Convention sets out certain minimum criteria that signatory countries must ascribe to in their national copyright regimes. Article 9(2) of the Convention provides that ‘[i]t shall be a matter for legislation in the countries of [the Berne Union] to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author’. 
the predominant format across all disciplines, including the arts and humanities (a dominance that also appears to be increasing). For so long as these types of output dominate the research landscape, academic publishers will remain the principal gatekeepers to the dissemination of scholarly research. And for so long as they do, any meaningful opportunity for researchers to benefit from the scope of these new exceptions is likely to be marginal, if not entirely bargained away as part of the publication process. We know that the Publishers Association interprets the existing exceptions far more narrowly than it needs to in the advice it gives its constituent members on copyright permissions. We also know that, in any event, academic publishers typically manage the business of copyright clearance by making their contributing authors responsible for securing permissions (even when the use of the material is covered by an exception). The imperatives underpinning those behaviours — maximising profit and minimising the risk (or fear) of copyright litigation — are entirely cogent, and they are unlikely to diminish in the mind of the publisher anytime soon. In short, it will make no difference to an academic that the copyright regime enables quotation from a work for purposes such as criticism and review, if the publisher chooses not to avail themselves of that exception. Rights will still have to be cleared, and fees might have to be paid.

And, of course, it is reasonable to ask: why shouldn’t academic publishers seek to maximise profits and minimise their risks? The reality is that academic publishing is a global success story, one that should be celebrated and supported. In 2007, the estimated annual revenue generated by (English-language) scientific and scholarly journal publication was just under $8bn (or just over £4bn), the bulk of which revenue (68–75%) was generated through academic library subscriptions.###


Moreover, this is an industry that has sustained year on year growth throughout the current economic crisis.\footnote{Ibid., p. 22.} By 2011, for example, the annual revenue generated by journal publishing had risen to $9.4bn.\footnote{Ibid., p. 19.} (To contextualise that figure: in the same year the global revenue generated by the sale of recorded music (physical formats only) was just $10.4bn.\footnote{International Federation of the Phonographic Industry, \textit{Digital Music Report} (London: UK IFPI, 2012), https://www.ifpi.org/content/library/DMR2012.pdf})

To be sure, the nature of research communication is changing, but academic publishers will continue to perform an integral role in the future of scholarly endeavour and enterprise for many years to come. Indeed, it is important that they do so. They certify and review research, copy-edit, type-set and proof it for publication; they advertise, market and distribute the journals in which the research is published, develop new tools and platforms for engaging with that research, and archive and preserve it for the longer term (IASTM 2008). They add value in making our work easier to discover and navigate through citation linking and the allocation of persistent identifiers (digital object identifiers, or DOIs), coding for web dissemination, and other semantic publishing techniques (IASTM 2008; RIN 2012: 24–26). \textit{How much value} academic publishers actually add is a question for debate, but certainly they do add value.
AND YET, WE SHOULD NEVER LOSE SIGHT OF THE FACT THAT THE MOST SIGNIFICANT INVESTMENT IN ACADEMIC PUBLISHING LIES IN WHAT RESEARCHERS BRING TO THE TABLE.

THE FIGURES QUOTED ABOVE ON THE REVENUES AND COSTS OF JOURNAL PUBLICATION REPRESENT ONLY A PARTIAL SNAPSHOT OF THE ECONOMICS OF PUBLISHING SCHOLARLY ARTICLES. THEY DON’T ACCOUNT FOR THE COSTS INCURRED BY RESEARCHERS WHO FACILITATE THE PEER REVIEW PROCESS: IN 2007, THAT WAS ESTIMATED AT £11.9 BN. NEITHER DO THEY ACCOUNT FOR THE COSTS INCURRED BY FUNDERS AND RESEARCHERS IN PRODUCING ORIGINAL RESEARCH FOR PUBLICATION THAT WAS ESTIMATED AT £11.8 BN.

PUT ANOTHER WAY, THE SUBSIDY THAT SCHOLARLY PUBLISHERS ENJOYED IN 2007 – RESULTING IN PROFITS OF £820M – WAS THE TRENCH OF RESEARCH INVESTMENT IN PRODUCING AND PEER REVIEWING ARTICLES FOR PUBLICATION.


WITH THAT IN MIND, IS IT TOO MUCH TO ASK THAT ACADEMIC PUBLISHERS ADOPT EDITORIAL POLICIES AND PRACTICES THAT ENABLE THEIR AUTHORS TO TAKE FULL ADVANTAGE OF THE SCOPE WHICH THE UK COPYRIGHT DE cmake ALL THE LAWFUL REPRODUCTION OF COPYRIGHT-PROTECTED MATERIAL, AND WITHOUT INCURRING THE FRUSTRATION AND COST OF SECURING UNNECESSARY COPYRIGHT PERMISSIONS?

£117 bn

I DON’T THINK SO.
SO, THAT'S IT. THANKS FOR LISTENING.

LISTENING? SORRY, I MEANT THANKS FOR READING. THAT IS PRETTY MUCH ALL I HAVE TO SAY... ALTHOUGH... THERE IS ONE FINAL ACT, IF YOU'RE INTERESTED?

YES? OK THEN...

ERNESTO, CAN YOU GET THE CURTAIN PLEASE?

I'LL JUST GO GET MYSELF IN POSITION...

THANKS AGAIN, IT'S BEEN GREAT FUN.
DEAR READER: THIS IS THE Point IN THE ARTICLE IN WHICH I MAKE THE SHIFT FROM CONTEXT TO SUBJECT.

MORE OF A MAN'S GROUND CONVERSATION ALTHOUGH MIGHT WANT TO STOP READING NOW.

IMAGINE A LIFE AFTER 1 DECEMBER 2013, A WORLD IN WHICH UK ACADEMIA'S PREOCCUPATION WITH THE REF HAD CHANGED, AT LEAST TEMPORARILY.

WHAT IF, IN THAT PERIOD OF CALM, A COMMUNITY OF SCHOLARS CAME TOGETHER TO CONSIDER HOW THE OBLIGATIONS OF COPYRIGHT CLEARANCE CAN BETTER ACADEMIC SCHOLARSHIP?

AND WHAT IF THEY DECIDE TO ACT? HOW MIGHT THEY EXERCISE LEVERAGE WITH THESE PUBLISHERS?

THERE IS ONE BEAUTIFULLY SIMPLE BUT POWERFUL OPTION WITHOUT CONTENT AND EXPENDITURE.

THING IS MORE LIKELY TO FOCUS THE MINDS OF ACADEMIC PUBLISHERS THAN THE PROSPECT OF MAINTAINING JOURNALS WITHOUT ANY JOURNAL ARTICLES.

I DOUBT THAT LEGAL ACADEMICS COULD BE MOBILISED IN THIS WAY. THERE ARE TOO MANY JOURNALS, AND THE GUIDELINE IS TOO LURBIE AND DIVIDED TO HOPE FOR CONTESTED, DISINTERESTED UNANIMITY OF THOUGHT AND ACTION.

BUT WHO COULD DO SUCH A THING?
But with a more obscure community of scholars, collective action—

ALBRIGHT: Radical.

Might be realizable in furthering the interests of the discipline as a discipline.

What if, for example, the general editors of every major journal concerned with comics scholarship firmly refused to read access, review, manage, and process content for their respective journals?

...For a year in the first instance, perhaps two.

To be sure, the national and international community of comics scholars would have to support the initiative. They would have to hold the line. Solidarity would be imperative.

But imagine what might happen. Imagine what might be achieved.

The gains could be considerable and not just for comics scholars, but in all areas of academic publishing.
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