

From a personal email from David Weinberger to Meredith Sue Willis
Fri, Jan 11, 10:13 AM

MSW:

What's the short answer to why my sentences in a book aren't the same kind of property as, say, Richfamily Manor, as far as passing down to my great greats?

I get the separation between ideas and an object like a first edition of *Jane Eyre* or a scrap of lace my grandmama made, and I am certainly in favor of redirecting wealth via progressive taxation and inheritance taxes. But is there a difference between my book (not just my plot or my idea for a book) and that Richfamily Manor?

Do I have to reread James Boyle's book (*The Public Domain: Enclosing the Commons of the Mind*), which obviously didn't stick in my brain?

DW: Oy. Such a big little question! And, yes, Jamie's book is where to look for an actual answer.

Caution: mansplaining ahead. I know you know all of what I'm about to say.

There are obvious differences between real property and books. E.g., RichFamily Manor exists in space, whereas your book is an idea that exists apart from its many instantiations. E.g., RM gets much of its value from its exclusivity, whereas your book has more value (in some sense) the more people "trample" through it. But there's no way to tell if those sorts of differences matter without taking a step back and ask why property exists in the first place.

After all, property is a social invention. We invented it for a purpose. It initially and most obviously applied to real goods that we wanted (for various reasons) to render exclusive to their owners. Real property conveys control to the owners, and for reasons we've deemed that to be a good thing for society.

Printed books are like any other object that someone can own: you can choose to buy my book (as of May 14) at which point you can choose to prop up a couch with it, burn it, or give it to a friend. And we can make laws that treat real books differently than real houses or real pens, if we choose. We have tried at times to do this, e.g., laws prohibiting the resale of books...laws that have, thankfully, failed. But the thing that copyright protects is not the real book but more or less the Platonic ideal you, as an author, created. You get to control who can produce a real book based upon that ideal.

The book that copyright protects is wildly unlike RF Manor. But that in itself doesn't matter. Because there is no natural law that determines what property is or what owners' rights are, we can make up whatever laws we want depending on what sort of society we want. Do we want one where people can have the security of owning a plot of land they can farm or live on? If so, let's do that. Do we want one where authors or publishers can control who publishes real copies of books, so that authors are compensated for their work and contribution? Sure.

But our Constitution's framers wanted a society in which we have books not primarily to reward authors but to build a culture lively with arts and sciences. They valued the sharing of ideas and knowledge most of all. So, they struck a compromise: the author gets control over publication of her works for 14 yrs and then it enters the public domain in order to serve the higher purpose of creating an educated, cultured society.

The argument over copyright should, IMO, be about what sort of culture we want to create. Copyright should serve that goal. It is not a natural right. It is not an author's "moral right" (as per the Europeans and increasingly us). As far as I can see, there are no -- zero -- arguments for extending copyright beyond the life of the author that serve the establishment of the sort of culture we (presumptively) want. On the contrary, this copyright extremism works against those values.

Personally, I'd be very happy with a 14 year term of copyright. I'd also favor requiring people to mark a work in order to get it copyrighted, as opposed to copyright being the default. Larry Lessig has suggested that people be allowed to renew a copyright after, say, a 14 yr term but at the cost of a dollar, just so works more easily will enter the public domain. Why? Because that would help create the sort of society we want.

Anyway, that's why I think your sentences aren't necessarily or naturally like your house (AKA Richfamily Manor, which is what I shall henceforth call it).