

## **Copyleftists and the Liberation of American Intellectual Property**

By Jennifer Godwin (written 2002)

Let's talk about *Eldred vs. Ashcroft*. John Ashcroft is the Attorney General and Eric Eldred runs this online etext archive called the Eldritch Press. Eric is suing the government, and this month the case hits the Supreme Court of the United States.

The dispute is this: Eldred wants to put etexts online for public consumption, but American copyright law forbids this until decades, and sometimes more than a century, after the work is first created. Thinking this was a bit much, Eldred went ahead and sued, because he believes that endless expansions of copyright protection shrink the public domain at a great cost to the public, both here and abroad. The tug-of-war between the feds and Eldred went all the way to the Supremes. This fall they look at the case, and by extension, American copyright laws, and they'll decide if those laws are structurally unfair.

Now don't get me wrong, I like copyrights. I'm a writer, and my brother is an artist, and we'd both like to live by our creativity. But it's not obvious that our heirs should own *our* creative output in perpetuity. Sure, they can roll around in the cash we bring in during our lifetimes, but should they really own a not-theirs idea outright for, like, ever? What would the world be like if only Edison heirs owned the idea of a light bulb? What if all patents improving the light bulb were

deemed 'sampling' and therefore an illegal violation of patent law? I think the world would either be darn dark or damn expensive. Or maybe both.

The infinite copyright extension thing sucks and the Supreme Court should side with Eric Eldred and his band of copyleftists.

Here's why:

### **The Property Lines**

The value of the things that no one knows about and almost no one cares about, are, in total, far more valuable than the few totems held by the multimedia multinationals. A pyramid is topped with gold, but that capstone cannot exist without the support of the granite tons beneath it.

It's the unsexy things that make the world work. And it's the unsexy things that don't sell, so they don't get sold. For example, you can make a penny or two off reprints of Edna Ferber's *Giant* – it's got Elizabeth Taylor and James Dean shilling for it – but what about Edna Ferber's *So Big*, *American Beauty*, or *Saratoga Truck*?

Who the heck ever heard of those books? Nobody outside the college English department, that's who. So when some kid in Schenectady goes all fannish on Ferber, Some Kid is stuck with the books-into-movies books – that narrow, callow track – and some kid is cut off from the obscure titles because the

opportunity cost to publish them is too high for your average mass market publisher.

'So what,' you say?

Creativity is exponential. Ideas are exponential. If you build it they will come. You have to walk before you can run. Blah blah blah. Stay with me.

There's no telling what the Ferber fan might do if she read *Saratoga Trunk*. The consequences are unknown.

Maybe – as so often happens with enterprises of all stripes – nine out of ten of Some Kid's attempts at intellectual sparkage will fail to make a light. But maybe, just maybe, *Saratoga Trunk* has an idea that connects with another idea already in her head, and maybe that generates a third idea, a progeny idea, and so on, ideas breeding into infinity, and suddenly there you are with fire and the wheel and rocket ships.

Unfortunately, mitosis and growth are impossible without that first conception, the birth moment of connection between reader and writer. It would be rude, but perhaps true, to say that copyright unto infinity kills those ideas aborning.

All culture, pop or otherwise has a backstory, one that is often forgotten in the blast of stardom or success. To understand the now, we, of course, must

understand what came before, what the parent ideas were, where the forgotten seeds of an idea were collected and planted before their great bloom.

Edna Ferber's obscure works may mean nothing to most, and everything to the passionate individual, and any group is no more than heck of a lot of passionate individuals, tied together with a big, thick, snappy rubber band.

The only true social enervation comes from the people – the vigorous masses nourished by boundless fantasies and dynamic realities.

Let freedom of information ring.

### **The Illegal History of Rockford, Michigan and the No One Cares Factor**

I like to think I practice what I preach. Or maybe I preach what I practice. It's so hard to tell.

Anyway, for about two years, I ran a website not unlike the Eldritch Press. It was an online archive of valuable source material. Only it wasn't novels and literature, it was a collection of works of historical and genealogical significance. Specifically, works relating to Kent County, Michigan, the seat of which is Grand Rapids.

We transcribed marriage records and census records and all sorts of goop, but my favorite texts were the histories. When we got started, we figured out the

canonical works, and we put them in our sights – if they weren't transcribed and online now, we would work to bring them online in the future. We were hooked up. We had our trim little bibliography and we were on our way.

Surprise!

My surprise was the history of Rockford, Michigan. Woohoo. I know. Stay with me.

As a rule, I like to keep an eye on eBay – you can pick up all sorts of interesting history even if you happen to live thousands of miles from where the history actually happened. One day, while poking around, I stumbled upon *The Centennial History of Rockford, Michigan 1839-1939* – cool! – and I snapped it right up.

For the record, Rockford, Michigan is a city of 4,600 in Kent County, best known as the home of Wolverine World Wide, the company that manufactures Hush Puppies.

Basically, Rockford, Michigan is a sweet little town, but it couldn't be more nondescript if it tried. But, because I'm a geek, geeked out on this little part of the world, I'm jumping for joy about a 60-year-old, 46-page throwaway festival program which offers a short, parochial history of the aforementioned entirely boring town.

Why am I so excited? Because a quick check of the Clarke Historical Library bibliography for Kent County, Michigan shows no trace of this book. The Library of Michigan doesn't have it in their online catalog. The Library of Congress hasn't heard of it.

So, I'm like, woohoo, yay me, viva eBay! An undocumented document! There's stuff in here that's never before been available for research by the public.

Nowhere. Ever! Again, woohoo!

So once I have it in my hot little hands, I want to put it online for the researchers who visit our site, except *I'm not supposed to*, because it was published in 1939. Something published in '39 is still copyrighted to the original authors and I have no right to reprint it, in any form, electronic or otherwise. But let's put the aside for a moment and skip ahead to the no one cares factor.

Let's take a head count, shall we? How many of you give a yank about this book? Raise your hands high so I can see them. Okay, there's one guy down in San Diego, a matron in North Dakota and a couple of librarians in Grand Rapids. That's four. What about the other 280 million of you? No?

Oh, wait, wait, throw me in and you've got a whopping total of five.

So, I want to put the *The Centennial History of Rockford, Michigan* online, and those other four guys want to read it, and *all* of the rest of you are stuck in traffic,

deciding whether you should make the lasagna or the tetrazzini for dinner tonight.

If I was a good girl – and I'm not – I'd hunt down the authors and/or their literary executors and obtain written permission from each of them to reprint the book. Actually, the authorship is unclear – it's hard to tell exactly who's responsible, but let's assume the authors are W. C. Young and J. F. Peppler, who were the Centennial Committee Chairmen in charge of "Historical." How the hell am I supposed to find W. C. Young and J. F. Peppler, much less their kids? It'd take years, and more money than it's worth to anybody, and since the book was produced by committee, there's still the question of whether the entire committee is the author or if the individual writers are the author or perhaps it's actually the property of the advertisers who sponsored the book in the first place?

This is an outlandish problem – it's hard enough to get what you want from 2002, much less 1939 – and it ain't worth the effort. This problem is duplicated all over America as archivists are precluded from sharing research materials for fear of copyright violation liability. They suspect they're on safe ground, but without incontrovertible proof, their lawyers won't even let them think about it.

To make a long story longer, I put the thing online. Anybody who wants to can now read about "The History of Algoma Grange No. 751" and "The Boy Scout Movement in Rockford."

It's sexy stuff.

It's also illegal, and even if the Supreme Court does the right thing with *Eldred v. Ashcroft*, it'll probably still be illegal, but the bottom line is this: I'm not hurting anyone, no one is losing anything of value, hardly anybody cares anyway, and I'm helping, hopefully, the teeny-tiny micro-community that cares about Rockford, Michigan by using the web to narrowcast a drabble of obscure, but potentially valuable, historical information.

"No one cares" isn't a legally valid argument, but I think I did good because there are a lot of grandmas listed amongst the 1939 officers of the Rockford Royal Camp Neighbors of America, and I'm pretty sure J. F. Pepler would want the grandkids of those grandmas to know more about them.

Everybody has a history of Rockford, Michigan.

Law is built on precedent.

Science hoists itself up on the shoulders of giants.

Art and the social sciences need equal opportunity to generate new product from old ideas and predecessor works.

*Ulysses* begat *The Invisible Man* (Ellison not Wells), *Peanuts* begat *Calvin and Hobbes*, *Nightmare on Elm Street* begat *Buffy the Vampire Slayer* – it's called



intertextuality, or cultural clamor, or the life of the mind, or hackery – take your pick – but it breeds ideas like minks in heat breed other minks.

### **Joel Schumacher Sucks**

The last two *Batman* movies were outrageously bad, and Joel Schumacher and Warner Bros. are to blame.

Companies have a right to make money of their products. Duh. Capitalism 101, as we know and love it. But sometimes, the content/product grows beyond its creator's control. It's like the Blob. Or Frankenstein. Or the 50-Foot Woman. You create something, and you think you own it, but the truth is that it was its own thing the moment it was born. It's the same for ideas as it is for monsters.

Once your "content" is in the world, it's shaped as much by the audience's reaction as it is by your guiding hand. Arguably, Warner Bros. owns the rights to Batman, but in reality, the stories told by Schumacher and Warner Bros. depend on the approval of the audience if they are to be financially successful and/or mythologically significant.

You see, once a story is out of the typewriter and onto the printing press, it ceases to belong to its author, to its parent, corporate or otherwise. It's a rowdy teenager out on the world, sowing wild oats and getting drunk and backpacking through Europe in a quite-possibly-futile effort to find itself.

Joel Schumacher has as much right as anybody to reinterpret Batman, but in the end, he failed. You don't tell the story right, your chapter of the mythological choose-your-own-adventure gets ripped out and tossed away.

Great swathes of our culture have TM, ® and © stamped on their injection-molded plastic butts. But the truth is, those symbols are just birthmarks. Their real story is told by their tattoos and T-shirt slogans and the signatures on their casts. (When they were really drunk one night in Rome, they fell into a pothole and broke their arm.)

The culture grows up and goes out on its own, and belongs to the world and to itself as much as it ever belonged to an individual or owner or museum or so-called corporate author.

### **Our Library Can Beat Up Your Library**

There are more than 70 countries worldwide where English is an official and/or major minority language, including the United States, the United Kingdom, Canada, Australia, New Zealand, South Africa, Singapore, Hong Kong, India, Pakistan, the Philippines, the Bahamas, Jamaica, Nigeria, Kenya and Israel. According to UNESCO, as of the year 2000, English was tied with Mandarin Chinese for most widely spoken language on the planet. Both show up to the party with about a billion speakers.

One presumes that at least some of these English literates, wherever they reside, might be interested in American thought. In fact, at this point in the new millennium, i.e. a year after September 11, 2001, one might desperately hope that they would have such an interest.

If we don't get our ideas out there, Canada will beat us to the punch. Or Australia. Or, even, possibly, heaven forfend, Kiwi philosophers could begin elbowing out our American thinkers. We need to share. As our mothers told us when we three years old, sharing is the right thing to do. And if we don't, everyone else will cultivate the good will and intellectual ties that we need to keep ourselves vital, powerful and popular.

**'There is no frigate like a book...'**

Seriously folks, we gotta represent. The majority of countries worldwide use a life-plus-50 standard for copyright, meaning 50 years after the death of the author, the work enters the public domain. So, generations of international thinkers will be available online while American thinkers of the same era will not just be dead, but will be twiddling their thumbs in their graves. Moreover, plenty of American-authored work that's still under copyright here is blithely placed online overseas for the betterment of all mankind. People *will* place intellectual matériel online – whether contraband, legit, parody, homage, fair use or amateur brand extension. The content-providing industries need to deal with this reality, once and for all. Because whether they deal or not, it's going to happen.

Given that MP3s continue to trade, and that novels still under copyright here are available online under the pretext of being virtually published solely in public domain of physical Australia, I suggest that we might want to have a hand in the way our collective work is posted and presented. Otherwise, in time, those own ideas will be weaponized and turned against us.

Simply put, the West needs to be properly armed in the ongoing global battle for ideological supremacy. If the present wants to talk back to the past, as embodied by our proudly medieval enemies of the moment, the present needs a voice.

We could do it, and easily, if only we wouldn't confound ourselves with greed. America is currently the number-one book producing country in the English-speaking world. Until recently that honor was held by the U.K., but we went gonzo in the '90s and our numbers highjumped from 46,743 unique titles in 1990 to 119,357 unique titles in 1999.

If we open up the marketplace of ideas, we're gonna kick ass, because we've got the backlist of all time.

When the world comes online to speak and read and think, let them do it in the language of the world's oldest modern democracy. We already dazzle the vision of media consumers worldwide, let's dizzy them further with literate visions of contemporary American liberty and lifestyle. Let's realize that the ratio of Thought Published in America in 1923 to Thought Published in Tanzania in 1923

is orders of magnitude more dramatic than the already indiscreetly outrageous ratio of today. Let's win this thing.

### **Hack the Planet**

They say information wants to be free.

My father says it's a bad idea to give anything away for free, because then people think it's worthless.

I say that information isn't quite worthless, but that it's a raw material, like crude oil or metal ore. Information, like those resources, becomes valuable once it is refined and processed.

Information, refined and processed by the free human mind and spirit, becomes knowledge and then wisdom...which in turn is a fuel for democracy, capitalism and peace.