

Purchase Replaced by License: Impact on Cultural Heritage & Research

Michelle Polchow, mpolchow@gmu.edu
University Libraries, George Mason University

ABSTRACT

When libraries broaden acquisitions to include not just sales, but to also encompass licensing in their business models, the effect has far reaching implications. The terms of a license trump copyright privileges, in turn with detrimental impact to scholarship, drains budgets with repetitive lease terms, exposes institutions to risk of liability, and threatens the preservation of cultural heritage. Transitioning to open models of scholarship, strengthening library cooperation and implementing more rigorous vendor negotiation will help, but still this dark era remains. Ultimately, educating librarians, who can subsequently inform the greater population as to the current imbalance between public and private interests, which has resulted in the devastating burden licenses place on cultural heritage, will in turn build consensus that a smarter copyright law is needed to correct the unsustainable injustices of excessive protection.

FINDINGS

Tomas Lipinski, professor of Library Science & JD: “While copyright originally granted special privileges which libraries have come to rely, it must be remembered that the terms of a license trumps copyright.”

American College and Research Libraries states “Librarians must accelerate the transition [of content] to a more open system of scholarship.”

The status of leasing is challenging in the current climate, as original copyright law intended to protect the creator’s profit, but today profit is made by aggregators, who are also subject to rights that come and go, making resource stability uncertain for uses such as textbook and course-adopted readings.

Theodore Bergstrom, Economist, suggests monopolies, particularly using non-disclosure clauses, has allowed publisher profits to soar.

2CUL grant from Andrew W. Mellon foundation finds 22-27% of journals in their electronic holdings have actually implemented preservation strategies.



The Waltz of License Negotiation

- Plan ahead
- Evaluate
- Usage
- Reinstate copyright in terms
- Group power –purchase/ILL
- Vendor profit history & stability
- Standards for discovery
- Preservation terms
- Renew at renegotiated amount
- Know walk-away point
- New funding/content sources

REFERENCES

2CUL, <https://www.2cul.org/>

Alvin, Glenda. Collection Management Matters—The Database Dance: Waltzing with a Big Budget Cut. *Against the Grain*. April 2015.

Association of College & Research Libraries. Environmental Scan 2015: By the ACRL Research Planning and Review Committee. March 2015.

Bergstrom T., McAfee R., Courant, P., and Williams, M. Secrets of the “Big Deal.” April 2, 2014. Accessed June 20, 2015.

https://ibe.eller.arizona.edu/docs/papers/Bergstrom%20T_secretspnasplainApril1.pdf

Center for Research Libraries. Liblicense. <http://liblicense.crl.edu/>

Lipinski, Tomas A. The Librarian's Legal Companion for Licensing Information Resources and Services. Chicago, IL: Neal-Schuman, 2013. Print.

NISO. Open Discovery Initiative: Promoting Transparency in Discovery. A Recommended Practice of the National Information Standards Organization. Prepared by the Open Discovery Initiative Working Group. Approved June 25, 2014.

Ruth St. Denis in Scherzo Waltz. Digital ID: DEN_0274V. The New York Public Library. The New York Public Library for the Performing Arts. Jerome Robbins Dance Division.

Weiss, Andrew. Using Massive Digital Libraries: A Lita Guide. Chicago: American Library Assoc, 2014. Print.

“We are the first generation to deny our own culture to ourselves.”

James Boyle, Professor, Duke School of Law

Works Free of Copyright

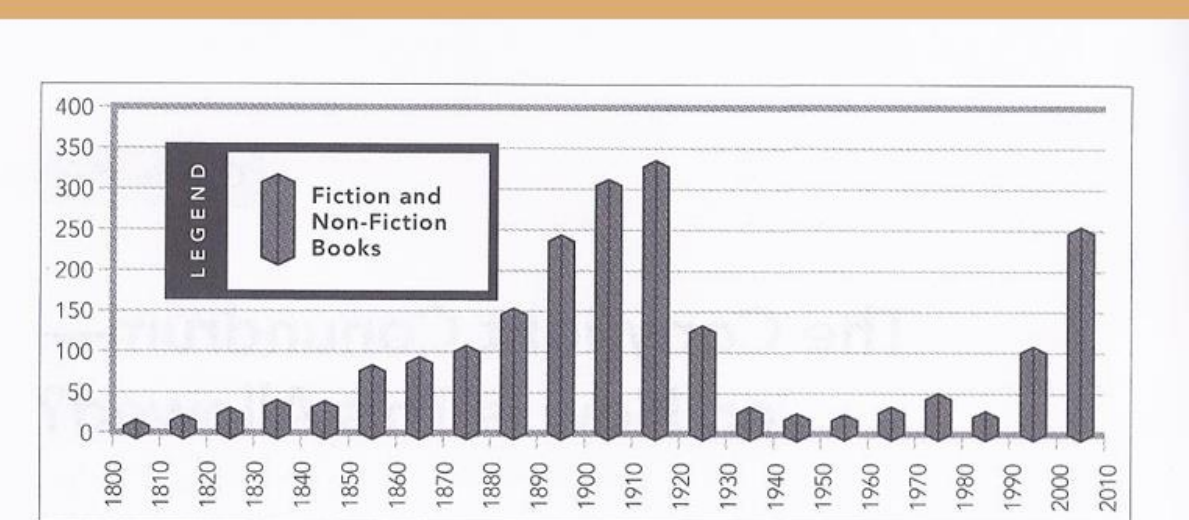
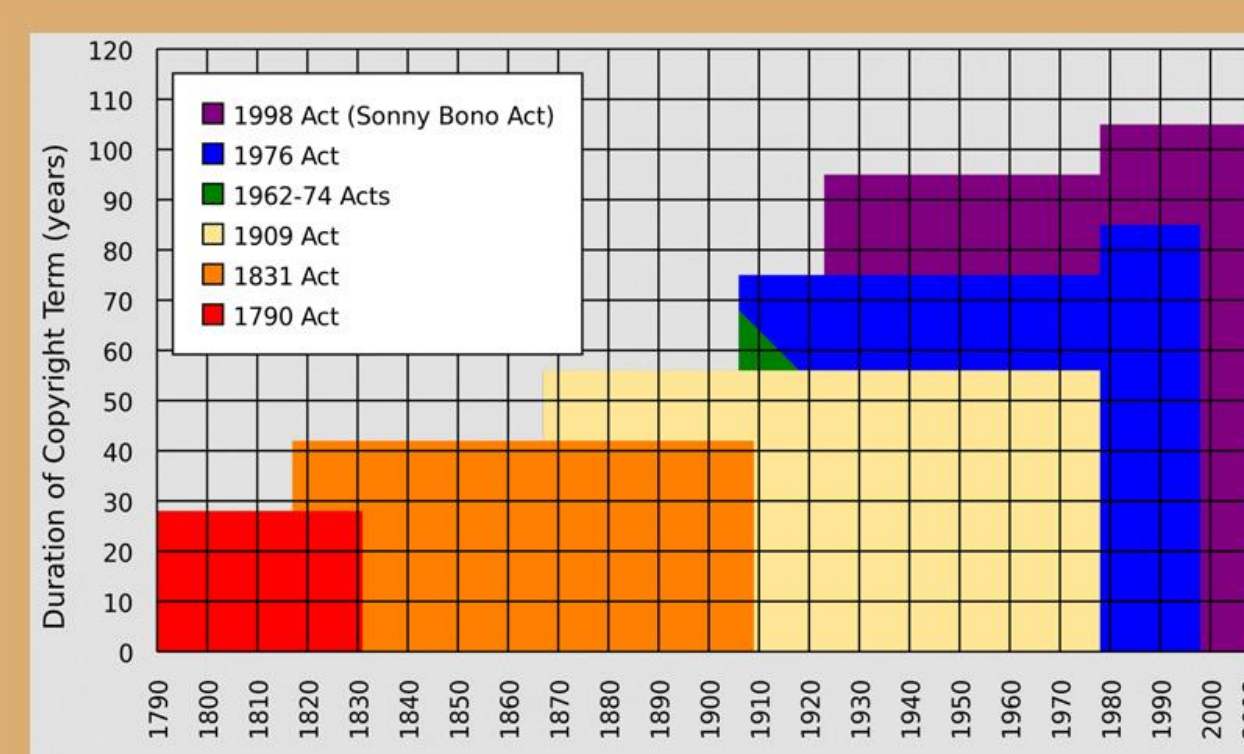


FIGURE 5.1
Copyright law severely limits accessibility to works in copyright.
The number of editions available of material from 1910 is greater
than that of the last decade. (Courtesy of Paul Heald)



Expansion of U.S. copyright term (Assuming authors
create their works at age 35 and live for 70 years)

(C) 1999-2008 Tom W. Bell. All rights reserved.

INTRODUCTION

Terms of license trumps copyright.

Collection Development –

- Owning perpetual rights or subscribing to e-resources resembles rental access
- Viable plan lacking for digital preservation to ensure access to perpetual purchase

Scholarship

- “Fair use” is not a right unless specified in the license.
- Barriers to equitable discovery due to proprietary nature of property
- Digital Rights Management creates significant impediment to creative transformation

Risk

- Purchase is finite, but licensing repeatedly buys same content over and over
- Legal liability to library and its stakeholders
- Access barriers, such as compliance with Americans with Disabilities Act
- Privacy issues regarding exploitation of a patron and scholar’s digital footprint

RESULTS

As long as works receive copyright protection beyond the original 14 years, with option to extend 14 additional years, the strain to our cultural heritage and research will continue. Additionally, creators have the burden to take action for their works to be copyright exemption, where previously this was the default. Although license negotiation, international standards, and open access publishing offer relief, it does not address the underlying injustices of cost, access, discovery and preservation for greater good.

Journal cost vs. CPI

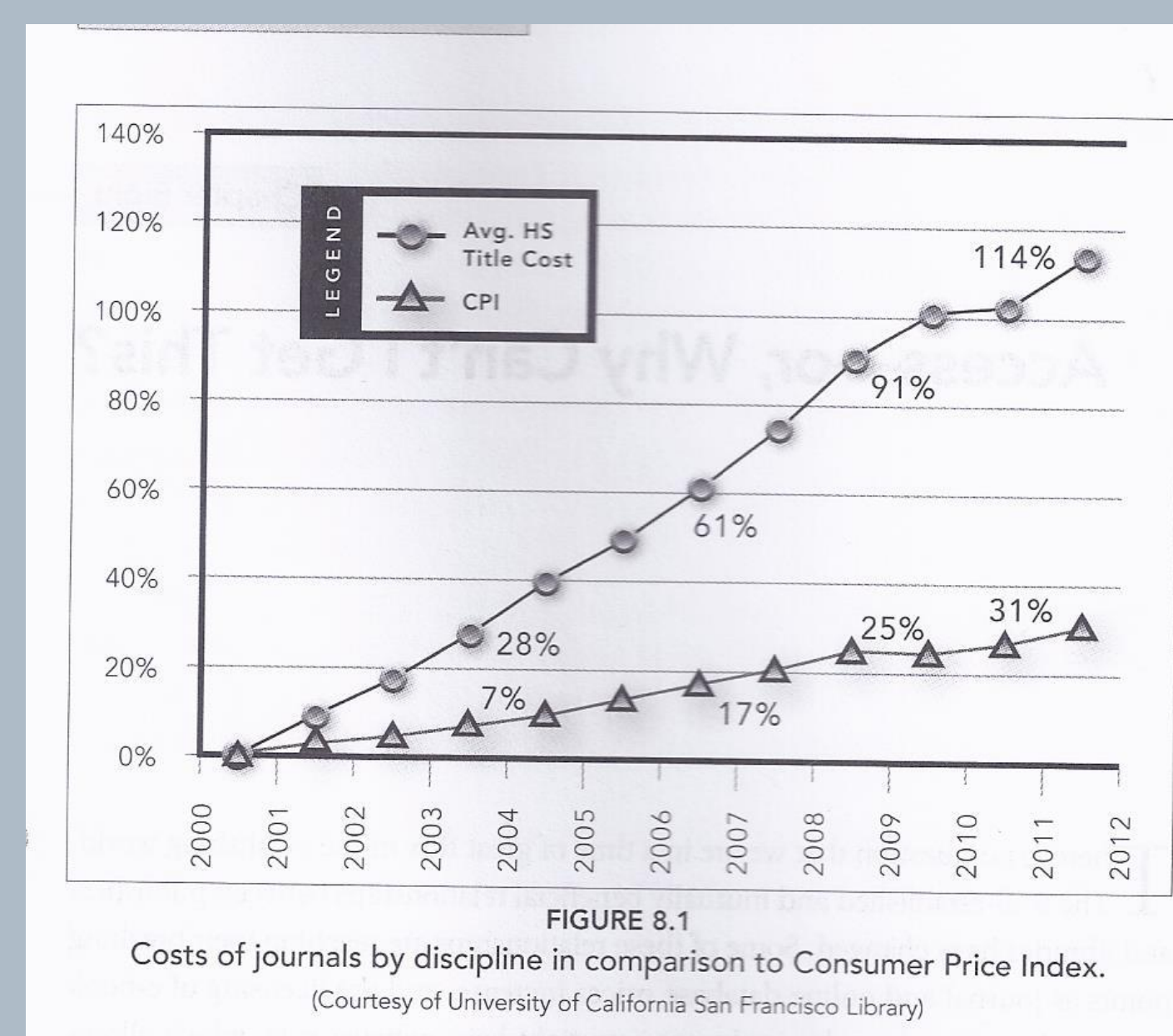


FIGURE 8.1
Costs of journals by discipline in comparison to Consumer Price Index.
(Courtesy of University of California San Francisco Library)