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Piracy creates the worst of times for authors — just ask Dickens

On Feb. 7, we celebrated Charles Dickens' bicentennial. Most people think of Dickens as the author of "Bleak House" and "A Christmas Carol." But in international copyright circles, he is celebrated as an early fighter for international protection.

Dickens' experiences in the rough-and-tumble publishing world of the 19th century serve as an object lesson on the ills of piracy.

They also offer guidance on the way forward as copyright strives to find its footing in the rocky path between Internet access and economic need. Most importantly, they demonstrate that the best path forward is neither absolute protection nor complete abrogation of copyright. They show us the middle ground.

In his day, Dickens was a rock star who embraced new technologies to gain a wider audience for his works. His publication of "The Pickwick Papers" is credited with popularizing publication by "serialization." These serialized versions came with their own color-coded covers (Dickens' was blue) and colorful ads.

Such pioneering uses of new media was not without peril. Like Internet publishing today, serialization lowered acquisition costs so more people could read his works.

It also made piracy easier. Pirates could not only rush out even cheaper copies of each serialized chapter, enterprising ones could publish entire novels without compensation to Dickens or his publisher.

Enforcement was as difficult then as it is today. In fact, unlike today, there were no international standards for copyright protection.

To the contrary, as opposed to being the high-protection country that it is today, the United States was a virtual pirate haven. In the 1830s and 1840s, when Dickens was emerging as a powerful voice for social reform through his novels, U.S. copyright laws only pro-

tected the works of U.S. authors. In fact Section 5 of the 1790 Copyright Act explicitly stated that nothing in the act should be construed to prohibit the "importation, vending, reprinting or publishing within the United States" of any work printed or published by any foreign national.

To earn money from his U.S. public, Dickens had to place his manuscript on the fastest ship for New York or Boston, where it was raced from the docks to the printers to the streets. In a game publishers called "Beat the Pirates," Dickens earned money only from the first copies of his novels to hit the market before the bootleg (and cheaper) editions arrived in waves. Although a reader in London would need to pay the equivalent of \$2.50 for a copy of Dickens' "A Christmas Carol" in 1843, an American fan would only need to pay 6 cents, none of which was paid to Dickens.

Similar to singers today, Dickens was forced to go on tour to earn money from his works. In 1842, he gave "public readings" as part of an eight-city tour of the U.S.

The good news was, as his readings sold out, Dickens became deservedly aware of his popularity. The bad news was he also became aware that the popularity of his works did not match his modest U.S.-based income. Dickens left no question about his feelings. When he returned from his first tour, he wrote "American Notes" and "Martin Chuzzlewit," where every American is described as a smuggler and pirate.

Dickens was a strong advocate for international copyright. On every stop of his tour, he urged the U.S. to join early efforts to create what would eventually become the Berne Convention in 1886.

Unfortunately, he received the same public reaction that musicians today receive who support copyright protection. He was torched by the press. "We are mortified and grieved that he



Doris Estelle Long is a law professor and chairwoman of the intellectual property, information technology and privacy group at The John Marshall Law School. She has served as a consultant on IPR issues for diverse U.S. and foreign government agencies, including as attorney adviser in the Office of Legislative and International Affairs of the USPTO. She can be reached at tlong@jmls.edu.

should have been guilty of such great indelicacy and impropriety," exclaimed the New York Courier and Enquirer. Dickens declared the "shame was theirs" and vowed he "would not be silenced."

But Dickens' experiences also shed a pallid light on potential solutions to today's international piracy problems. First, merchandising options, such as T-shirts and concerts proffered to supplement monies lost to piracy, are not really geared to the literature crowd. Arguably few people

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would pay to hear today's popular authors give dramatic readings of their works.

Worse, it doesn't seem fair to force artists to do concerts and road shows in their waning years to earn money they can no longer earn from written or recorded works.

Dickens went on a second tour of the U.S. in 1867 and earned 19,000 pounds. But his diary entries make it plain he hated ocean travel. Worse, some allege the difficulties of the trip hastened his death at 55, within two years of his return.

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A stronger share of the merchandising profits would also help. J.K. Rowling, the author of the popular "Harry Potter" series earned her money by securing such rights at an early stage, before the books or related movies had an established track-record.

Unfortunately, Dickens did not have the ability to option a movie or even a play. Seven unauthorized theatrical adaptations of "A Christmas Carol" appeared on London stages within two months of its publication in book form. Yet in the 1840s, authors did not have the strong control over the preparation of derivative works they do today. To the contrary, "re-originations" were considered acceptable "new" works, regardless of the author's lack of permission. That may be the final lesson to learn from Dickens.

As opposed to rhetorical excesses about fair use, it may be time to reconsider the derivative right.

Not to eliminate it, but to return it to its economic roots as a rational tool for authorial compensation where the use usurps a viable third-party market. Such reconsideration would allow George Lucas to control the creation of a 3-D version of "The Phantom Menace," but would not prevent a YouTube mash-up.