

A COMPARITIVE STUDY OF COPYRIGHT. AN
ANALYSIS OF THE EFFECTS OF A LAXER SYSTEM OF
COPYRIGHT LAW ON THE RECEPTION OF ENGLISH
POPULAR BOOKS IN RUSSIA AND THE IMPLICATIONS
THEREOF TO COPYRIGHT LAWS AND THEIR SUCCESS
IN ACHIEVING THE AIMS OF COPYRIGHT.

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A COMPARITIVE STUDY OF COPYRIGHT. AN ANALYSIS OF THE EFFECTS OF A LAXER SYSTEM OF COPYRIGHT LAW ON THE RECEPTION OF ENGLISH POPULAR FICTIONAL BOOKS IN RUSSIA AND THE IMPLICATIONS THEREOF TO COPYRIGHT LAWS AND THEIR SUCCESS IN ACHIEVING THE AIMS OF COPYRIGHT.

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Abstract

The copyright system in Russia has historically been much more liberal on the matter of derivative works than western copyright systems such as those that prevail in the EU or America. It more closely resembles older systems in which a more utilitarian approach was taken to copyright with less of an emphasis on copyright as an innate right of the author to be protected. This has allowed works derivative of western works to be published in Russia that are not permitted under the systems prevalent in the EU, USA and other western countries. Looking at these works insight can be gained into the extent to which modern copyright systems are effectively achieving the stated aims that are attributed to them. These aims are said to be encouraging the production of further useful works and protecting the rights of an author but the approach to achieving them greatly varies between copyright systems. In this analysis the reception of three western works is considered. The first is *The Wizard of Oz*, the second is *The Lord of The Rings* and the third is *Harry Potter*. Each one of these works has had derivative works published in Russia that would not have been legal in the west. Three case studies are *The Wizard of the Emerald City* by Alexander Melentyevich Volkov, *The Last Ringbearer* by Kirill Yeskov (sometimes referred to as Eskov online) and *Tanya Grotter* by Dmitri Yemets. Each of these works are highly derivative of western works in different ways that present an interesting insight into the logic and consequences of the Russian copyright system. Looking at these works one can see that the relationship between them and the original is complex and varied as well as the legal questions raised but all have certain things in common. All represent an adaption of western works to a Russian context. All arguably (at least by western standards) infringe on the rights of the author. However, all are also of genuine literary value and therefore by banning them it could be argued that western systems in Europe or America are actually hindering the production of “useful arts”. The Russian system of copyrights thus has several advantages over the western one on the grounds of pure economics as it allows further valuable works to be published whilst the economic impact on authors is, in the case of the works looked at, minimal. It cannot, however, be guaranteed that this would be the case with all works as certain works might be more heavily affected by a looser copyright system than the ones presented. However, the moral rights of the author are arguably infringed by the Russian system as can be illustrated by the cases looked at and the way the works looked at often distort the ethics and morals of the original. Further insight into the two systems can be gained by looking at history when the western system was much more similar to the modern-day Russian system with the copyright controversy surrounding works like *Uncle Tom’s Cabin* and *Looking Backwards*. This demonstrates that the issues advantages and disadvantages of the modern Russian system were equally apparent in western systems in the nineteenth century. In a similar way, modern western cases such as the works of authors like Alan Moore and parody works like *Bored of the Rings* shed light on and call into question the consistency of the implementation of “moral rights” in the west. Overall, there is a case to be made that the modern Russian system is actually more consistent with the supposed aims of copyright law than the western system.

Introduction

Copyright exists to encourage creative endeavour by providing a reward to those that produce creative content or to provide the natural right of an author to keep control of his work.¹ Modern copyright generally does this by granting temporary monopolies or property rights to certain aspects of a work to the exclusive use of the author for a certain period of time.² The nature of this monopoly, the conflict between the two reasons stated above for its existence, and the practical results of various ways of it being enforced is what I discuss in this paper. The word copyright may suggest a relatively simple and universal right but it has actually changed repeatedly, generally increasing in its coverage, over history. This has happened not just over time and space, as national copyright systems are replaced by international ones and the length of time that copyright lasts have been repeatedly extended, but also in the very nature of the rights granted. In its original form copyright covered only the work itself and not any adaption of use of any the ideas thereof. A German translation of *Uncle Tom's Cabin*, for example, was found in the famous case *Stowe v. Thomas*, in 1853, not to infringe on any copyright.³ The same was true of any work that happened to make use of its characters, basic plot or any stage adaptations of a work.⁴ Since then, however, the extent of copyright protection has repeatedly increased both due to legislation and due to unlegislated increase in the actual judicial enforcement. The result of this is that a film adaption, or a work that is clearly derivative, unless it falls under the ill-defined category of parody, is now covered under copyright protection.⁵ It is the effects of this change that I hope this paper sheds some light on.

The situation regarding copyright is not the same worldwide. In certain countries such as Russia or China or on certain mediums, such as the internet, the copyright regime is, either legally or in practice, much looser. In this study I research the effects of a looser copyright regime in Russia, especially with respect to foreign works and how it has affected their reception. I discuss this by looking at the creation of derivative works of three western works of literature in Russia and how the copyright regime has affected their publication and how this contrasts with western systems both past and present. These works are (in the order I will discuss them) *The Wizard of Oz* by L. Frank Baum, *The Lord of the Rings* by JRR Tolkien, and *Harry Potter* by JR Rowling. The derivative works I will be discussing are *Tales of Magic Land* a Russian version of *The Wizard of Oz* by Alexander Volkov, *The Last Ringbearer* by Kirill Yeskov a retelling of *The Lord of the Rings* (as well as more briefly several other translations and retellings of *The Lord of the Rings* in Russia) and *Tanya Grotter* a highly popular Russian series bearing enormous resemblance to *Harry Potter* but which has, despite having sold millions of copies in Russia, not been able to be published in English for legal reasons, together with other works derivative of *Harry Potter* in Russian. All of these works have several things in common. All were works that, under the western system of copyright law, could not have been published. But all are enormously popular in Russia itself and (especially in the case of the first two, which are the oldest, although it would not surprise me if *Tanya Grotter* someday receives similar interest) have gained an admiring critical reception even outside of Russia. This raises significant questions about Russian and western copyright systems that I discuss in the light of the principle models of what copyright law is generally said to be intended to achieve.

¹ TEHRANIAN, J. 2004. Et Tu, Fair Use-The Triumph of Natural-Law Copyright. *UC Davis L. Rev.*, 38, 465.

² Ibid.

³ Ibid.

⁴ BRACHA, O. 2008. Commentary on *Stowe v. Thomas* (1853). *Primary Sources on Copyright (1450-1900)*: University of Glasgow.

⁵ TEHRANIAN, J. 2004. Et Tu, Fair Use-The Triumph of Natural-Law Copyright. *UC Davis L. Rev.*, 38, 465.

Two models of copyright law

Throughout this thesis I discuss the result and impact of the differences between copyright systems through the lenses of their achievement of the two goals that copyright is meant to encourage. The first and older goal, which has now been largely abandoned or at least become only a subsidiary justification in the west, can be summarised in the statement in the US constitution granting Congress the right, “To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”⁶ In this understanding of the purpose of copyright it is primarily aimed at encouraging the production of works of art. It is a primarily a practical purpose designed to further pragmatic and practical ends and says nothing about notions of whether or not an author should rightfully own his work.⁷ To quote John Tehranina on the matter,

To the Framers, copyright was a form of compensation—a quid-pro-quo for a benefit granted to society—not a natural right to which authors were inherently entitled for their creative efforts. Specifically, the Copyright Clause of the Constitution, the 1790 Copyright Act, and the early jurisprudence of the Republic envision copyright as a property right limited in both scope and duration with the particular goal of encouraging the dissemination of knowledge. Thus, while early copyright laws prohibited slavish copying of a protected work, there was no such interdiction against transformative uses of a protected work, as such uses were considered accretive to progress in the arts. Ultimately, however, this notion of copyright infringement would undergo a radical transformation.⁸

The model described here was typical of early copyright law. A similar ideal is put forth, in 1710, by *The Statute of Anne*, the first copyright law, which had the full title of “An Act for the Encouragement of Learning, by vesting the Copies of Printed Books in the Authors or purchasers of such Copies, during the Times therein mentioned.”⁹ Here the motivation of “the Encouragement of Learning” is explicitly stated with no reference to innate authors rights. I shall refer to this as the utility model of copyright. Its goals and justification are purely to encourage the production of further works and it does not attempt to claim to be a natural or innate right of the author. The implicit conclusion within this model of copyright is that the form of copyright that should be adopted is that which encourages the production of the greatest number of “useful arts”.

The second goal given for copyright is the innate right that an author is held to have for his work. It is held that an author has certain moral rights to the work he has produced not just for economic purposes but as the product of his mind and as his creative enterprise. The origins of this idea I will not discuss but since the days of the highly utilitarian original copyright theory it has grown in legal importance (although authors to some extent asserted it even in the very early days of copyright, witness the protests of figures like Bunyan at what they considered misuse of their works).¹⁰ Throughout the nineteenth century the moral rights of the author grew until we reach the situation today where according to the Bern convention, “Independent of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the

⁶ PATTERSON, L. 2003. Copyright in 1791: An Essay Concerning the Founers' View of the Copyright Power Granted to Congress in Article I, Section 8, Clause 8 of the US Constitution. *Emory Lj*, 52, 909.

⁷ TEHRANIAN, J. 2004. Et Tu, Fair Use-The Triumph of Natural-Law Copyright. *UC Davis L. Rev.*, 38, 465.

⁸ Ibid.

⁹ 1710. An Act for the Encouragement of Learning, by Vest-ing the Copies of Printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned. England.

¹⁰ SIMONOVA, N. 2012. Passing Through Vanity Fair: The Pilgrim's Progress in the Marketplace. *Authorship*, 2.

work and to object to any distortion, modification of, or other derogatory action in relation to the said work, which would be prejudicial to the author's honour or reputation."¹¹ In practice, however, especially in the west the authors moral rights extend even further than this. Any work that is clearly derivative of a previous work in a strong sense (i.e. using the same characters or retelling the same story if the story is original) can be said to violate the authors rights. This is in sharp contrast to most of the history of copyright where such works were permitted and not seen to be the business of a copyright regime that focused almost exclusively on economic rights. The theory behind natural law copyright can be best seen in the demands for perpetual copyright by authors such as Mark Helprin. He argues that, "No good case exists for the inequality of real and intellectual property, because no good case can exist for treating with special disfavour the work of the spirit and the mind."¹² One should note especially that in this theory copyright is seen as a form of property in the same sense as any other form of property thus the rights it grants depend on the innate rights of an author to his work and not to any utilitarian theory. This theory has been yet to be truly taken to its logical conclusion of perpetual copyright but it has led to continuous extensions of the length of copyright protection. A consequence of this theory, as it has been applied in the west, is the forbidding of certain literary works. Whilst the older model gives only economic rights to the original author and thus does not prevent any derivative works being published the newer model allows for the banning of derivative works and so, as I will discuss, stifles innovation in ways the first model does not.

I conduct this study by looking at the reception of Western works in Russia and how Russian law has protected them. In particular, I look at the publication of various works published in Russia derived from the three western works *The Wizard of Oz*, *The Lord of the Rings* and *Harry Potter*. I discuss how these works would not be permitted in the west and how they affect the reaction and response to these works in Russia. I discuss the nature of these works; how they relate to the original, the critical reaction to them, the cultural importance they held and the way in which they impact the moral and economic copyright rights of an author. I thus discuss through these works just what the practical results of these two theories of copyright law are and what is the practical difference between the use that can be made of a work under a system that leans far more the utilitarian theory of copyright (although, of course, neither in the Russia or any western country is either theory of copyright perfectly expressed by the law).

Throughout this dissertation I refer to Russian law and Russian works even when Russia was part of the Soviet Union. This is partly because all the texts I will be studying here are, in fact, Russian and partly because almost all my research has focused on Russian texts and translations into Russian. I cannot say for sure how similar the situation was in the other republics although it seems likely that it was very similar due to the lack of independence these countries had during the time of the USSR. I will briefly discuss some of the changes made at the end of communism and the fall of the USSR throughout the essay but here will simply note that while it obviously made huge changes in publishing – most notably an enormous decrease in censorship and increase in the role of private companies – the actual phenomena discussed here, the extremely liberal attitude to derivative works under Russian copyright law and the derivative works publishable under this system, seems to have remained surprisingly unchanged by the transformation.

¹¹ 1971. Berne Convention for the Protection of Literary and Artistic Works (Paris Text 1971). In: ORGANIZATION, W. I. P. (ed.). Paris.

¹² HELPRIN, M. 2007. A Great Idea Lives Forever. Shouldn't Its Copyright? *New York Times*.

Results

In concluding my analysis, I argue that the situation of western works in Russia is that while they possess economic rights they mostly lack moral rights (although as these two cannot be entirely separated there is some protection to what would be considered an author's moral rights in Russia and some failure to protect economic interests). In effect such works can be said to be operating under the older system that prevailed in the west in the early nineteenth century and has been discussed extensively by other researchers such as John Tehranian.¹³ I also argue that this makes Russia an interesting case study to look at the practical consequences of such a system. It is impossible to truly judge what would be the consequences of a new copyright system in the west. Nonetheless, the fact that existing copyright law is so blatantly and completely violated on the internet and the proliferation of derivative works on the internet of dubious legality in the form of fanfic leads one to consider if the present system is still serving the purpose of encouraging creativity.

In this study I make the case that a look at the Russian system indicates that the western is not in many respects encouraging creativity. Indeed, it is actually reducing the number of works published at least compared to other systems. The matter of moral rights is, however, more difficult as all the derivative works I will look at could be said in one sense or another (some only trivially and some more seriously) to violate the moral rights of the author. They also, however, raise the question of just what an author's moral rights should be and if the western system truly defines authors rights properly and consistently. I discuss this in some depth. I also discuss the similarities between cases in Russia and similar cases during the nineteenth century where America operated under a very similar copyright to the present-day Russian one law as well as some modern western cases. Looking at these cases and comparing them to the situation that exists under Russian law I conclude that a strong case can be made that a looser copyright system better achieves the ostensible aims of copyright law, especially when these aims are considered in the light of the more traditional model of copyright law.

Part 1 Case Studies

The Wizard of Oz in the USSR

The Wizard of Oz was published in America in 1900 and was followed by a great number of adaptations and sequels. It did not, however, come to Russia until the 30's and then in a strange form (strange that is in the west, such things were and are fairly typical in Russian children's literature). Rather than producing a simple translation Alexander Melentyevich Volkov produced a rewrite called *The Wizard of the Emerald City* in which the basic outlines of the plot of *The Wizard of Oz* were preserved but the details, names of characters, and many other points are extensively rewritten. Dorothy for example becomes Ellie Smith (Элли Смит). This version would become enormously popular in Russia especially in the 50's when Volkov would revise and expand it to create a whole series generally known as the *Magic Land Series*.¹⁴ The later books in the series diverged heavily from the later books in the Oz series. Indeed, although some points in the later books may be loosely inspired by elements in the later Oz series they are effectively entirely separate stories and not in any sense retellings like the first story. The Magic land series has proved enormously popular in Russia, and several other countries, spawning multiple cartoon and live

¹³ TEHRANIAN, J. 2004. Et Tu, Fair Use-The Triumph of Natural-Law Copyright. *UC Davis L. Rev.*, 38, 465.

¹⁴ MITROKHINA, X. 1996. The Land of Oz in the Land of the Soviets. *Children's Literature Association Quarterly*, 21, 183-188.

action adaptations, stage productions, and an extensive internet fandom as well written continuations by other authors.¹⁵

On the purely legal side of copyright the situation is rather complicated. It was obviously entirely legal under Soviet law but seeing as the point of the dissertation is to discuss the differences between legal systems and how they live up to the stated aims of copyright it is necessary to discuss how legal it would have been under western law systems. The first book in the series would have probably been unpublishable under western law and certainly under modern western copyright systems although it does change the names of characters. It follows the plot very closely, far more closely than the Tanya Grotter series (which I discuss later in this paper) that was rejected in court for too closely resembling the original. The sequels, however, are more doubtful. They are divergent enough from the later books in the series that they would not infringe on their copyright and by the time of their publication the copyright to *The Wizard of Oz* itself had expired. Under the law at the time they could have probably been published in the west. However, extensions to the duration of copyright since that date mean that under present law *The Wizard of Oz* would have still been under copyright at the time. The exact legal position this would have placed the series in is difficult to say since it would have certainly resulted in *The Wizard of the Emerald City* being forbidden but the rest of the series being more doubtful. This is due to the sequels to *The Wizard of the Emerald City* not following the plot of any on Baum's work. This would have placed the sequels in the unique position of being sequels to an undoubtedly copyright violating work whilst themselves being, taken in isolation, unobjectionable. I have not been able to find a case that discusses this exact situation but it is likely that given that works such a *Fifty Shades of Grey* that began their lives as copyright violating fanfic, but were later adjusted, are not considered in violation of copyright law that neither would the later books in the series had they been published alone.¹⁶ This, however, would have had little practical effect since it a series would be unlikely to be published without its first book. (At present, incidentally, with the copyrights of the original OZ books now expired, *The Wizard of the Emerald City* and its sequels are the only Russian books I will discuss here that have been legally published in the west.)¹⁷

All this leads to the question of how *Magic Land* highlights the way in which a looser system of copyright law effects the rights of authors described above. First, we must look at the financial side of the matter. The case for authors being threatened by looser copyright law is much stronger with this work than with the next two. The Magic land series was (and according to some sources still is) in many places more popular than the original *Wizard of Oz*.¹⁸ Since books are not perfect substitutes (i.e. just because a person purchases one book does not necessarily mean that they will not purchase another similar one and likewise just because a popular series is removed it does not mean that all who would have read it will automatically read a similar one) it is impossible to say how much of this popularity would belong to the original OZ series if *Magic Land* had not been published. Several factors, however, are relevant. *The Wizard of Oz* was not published in Russia until many years after *The Wizard of the Emerald City* long after perestroika opened up the market.¹⁹ Given the general popularity of the series it is at least possible that this is partly because the market niche was already filled (although it should be pointed out that in the USSR market forces were not

¹⁵ BLYSTONE, P. L. 2010. Translator's Afterword. *Tales of Magic Land 1*. Staten Island, NY: Red Branch Press.

¹⁶ ROMANENKOVA, K. 2013. The fandom problem: a precarious intersection of fanfiction and copyright. *Intell. Prop. L. Bull.*, 18, 183.

¹⁷ VOLKOV, A. 1991. *Tales of Magic Land 1*.

¹⁸ NIKOLAJEVA, M. 1995. Russian Children's Literature before and after Perestroika. *Children's Literature Association Quarterly*, 20, 105-111.

¹⁹ Ibid.

the only factor determining a work's success). Even today (when both are long available in Russia) many Russians reportedly regard *Magic Land* as a much superior series.²⁰ It is impossible to say for sure if the presence of *Magic Land* reduced the success of *The Wizard of Oz* series in Russia but it at least seems plausible. *The Wizard of Oz* was not widely available in Russia until after the fall of the USSR and it could be argued that it is unlikely that such a popular children's work would have remained untranslated had the substitute not existed. It is also, of course, at least possible that the work may have increased demand by provoking curiosity among Russians as to the original but the two works are so similar that someone who has read one may find the other uninteresting.

The second point to consider is the less pragmatic and more moral justification for copyright. Were Baum's moral rights violated by this publication? It is obvious that by the standards of western laws they were but looking at the rights as stated in the Berne convention the situation is less clear. In the west an author is generally seen to have the moral rights to "right to claim authorship of the work and to object to any distortion, modification of, or other derogatory action in relation to the said work, which would be prejudicial to the author's honour or reputation" as mentioned in the Berne convention.²¹ This right is stated to be separate from any economic right and is required to last even after the economic rights no longer exist.²² Let us look first at the right to claim authorship. The *Magic Land* series was not published under Baum's name. In some editions the fact that it was derived from Baum's work was stated in the epilogue but in some it was not stated at all and many Russian children grew up not even knowing that their beloved story was based on an American one.²³ Thus it may seem, at first glance, that the *Magic Land* series blatantly violates the author's right to claim authorship of his work. However, this heavily depends on the definition of author. Is Baum the true author of the *Magic Land* series or is Volkov. In modern law derivative works are seen as violating copyright since the original author takes precedence but this has not always been the case. That Volkov was heavily inspired by Baum is not in doubt. But his work has many differences. It does not just alter names but also rewrites the prose of the work, adds episodes to the plot and alters several character personalities. Does he still have the right to be recognised as author? Or does he have a right to be recognised as co-author or mentioned as inspiration in the epilogue as sometimes happened? This is difficult to truly judge. In the west the answer is in Baum's favour but that is not the case in Russia and it is not really self-evident who is in the right.

Next, there is the matter of an author's honour and reputation. First, the matter of reputation. In his own country, The United States, *Magic Land* could not affect Baum's posthumous reputation since it never gained any degree of popularity, although this is likely at least partly because it could not be published there, (although as far as I know no one ever tried) so can hardly be taken as evidence for the effect of the publication of such works! However, given the huge popularity of *The Wizard of Oz* it seems unlikely that it would have affected its reputation anyway. A series so well established is unlikely to be moved by any derivative work. In Russia, however, it resulted in his name being associated with a set of works that were different from those that he published himself. It is at least plausible that this resulted in Baum's name being associated with a set of works that might lower his reputation among those Russian readers that were only familiar with the Russian version especially if they were considered to be of low quality. In this particular case it is hard to see how it would since Volkov's works are enormously popular in Russia and very much loved. Ironically, in this case the fact

²⁰ Ibid.

²¹ 1971. Berne Convention for the Protection of Literary and Artistic Works (Paris Text 1971). In: ORGANIZATION, W. I. P. (ed.). Paris.

²² Ibid.

²³ MITROKHINA, X. 1996. The Land of Oz in the Land of the Soviets. *Children's Literature Association Quarterly*, 21, 183-188.

that Baum's name is not included is probably in the works favour, as far as this part of authors rights are concerned, since it is clear to everyone reading that these are not the exact works of Baum but rather those of Volkov and only based on Baum's so even if they disliked the work it would be unlikely to reflect badly on Baum.

Honour is a more complicated case if only because it lends itself to so many meanings combining as it does both the meaning of reputation as well as certain moral connotations. It is at least possible (although I personally find it a stretch) that certain aspects of *Magic Land* could be found objectional to the honour of Baum if one regards it as objectional to an author's honour for his works to be twisted to support causes or morals he would not approve of. Firstly, there is the fact that both in the original *The Wizard of the Emerald City* and in its sequels, there are scenes that could be said to reflect communist ideology. Indeed, there is an unconfirmed report that Volkov originally produced a more literal translation which was rejected by Soviet censors before producing the present version to be more in accord with Soviet sensibilities.²⁴ Whether or not this is true, it is certain that many elements of the story have been altered in ways that could be regarded as ideological. For example, it adds a plot element where Ellie Smith incites (or plan to incite since the story abruptly returns the more traditional ending of the witch being destroyed with a bucket of water) the wicked witches minions to revolt against her in a manner, and using dialogue, reminiscent of communist ideas of class uprising.²⁵ Whilst the politics of Baum have been the result of huge amounts of speculation, controversy and very little certainty it is likely that, as an American who lived at the beginning of the twentieth century, he was not a communist.²⁶ The Wizard of the Emerald City, however, was praised by many in the USSR for communist themes and for introducing socialism to a work that was capitalist and giving it "a new coloration, a new ideological direction".²⁷ Volkov himself wrote that he had "reduced the book considerably, squeezed all the water out, exterminated the narrow-minded morals typical of Anglo-Saxon literature, wrote new chapters, and introduced new heroes."²⁸ Precisely what these 'narrowminded morals' refer to is unclear but it is entirely possible that Baum would have considered them an essential part of the work and resented their exclusion just as might have resented the inclusion of "a new coloration, a new ideological direction" (In my opinion the changes that Baum made do not seem to significantly change the story in this respect. There seems to be very little, from a moral point of view, that is in the original that is not in the original but apparently Volkov would have disagreed with this assessment).

The quote about Anglo-Saxon elements raises a final point that is of some importance. It could well be argued that by reducing the "Anglo-Saxon" elements (I would prefer to say American elements but apparently from a Russian point of view the Atlantic does not make a difference worth noting) Volkov destroyed what might be regarded as an essential part of literature crossing between borders. He was certainly successful in this reduction. The books he wrote, although still based in Kansas, in many ways feel based in Russia. The characters eat Russian food and react in ways that (based admittedly on a rather subjective personal assessment from reading the work) seems more Russian than American. This can be regarded as a good thing, in that it allowed the book to be rewritten in a way more relatable to Russian audiences. Certainly, Russians do seem to prefer

²⁴ BLYSTONE, P. L. 2010. Translator's Afterword. *Tales of Magic Land 1*. Staten Island, NY: Red Branch Press.

²⁵ VOLKOV, A. 1991. *Tales of Magic Land 1*.

²⁶ DIGHE, R. S. 2002. *The historian's Wizard of Oz: Reading L. Frank Baum's classic as a political and monetary allegory*, Greenwood Publishing Group.

²⁷ NESBET, A. 2001. In borrowed balloons: The Wizard of Oz and the history of Soviet aviation. *The Slavic and East European Journal*, 45, 80-95.

²⁸ MITROKHINA, X. 1996. The Land of Oz in the Land of the Soviets. *Children's Literature Association Quarterly*, 21, 183-188.

Volkov's work. Nikolajeva remarked that Baum's original version was widely "viewed as colorless, and inferior to the well-loved classics for which they provided the model."²⁹ However, it could also be regarded as both denying the rights of Baum to have his work presented in its own cultural context as well as the opportunities of Russians to be exposed to a cultural context outside of their own.

We will discuss this more later when we discuss the possible creative disadvantages to a more liberal copyright system but for now let us simply note that this was hardly unique in the soviet system. Many works were similarly rewritten. Pinocchio is another famous example. Judith Inggs discusses at length in her paper *Censorship and translated children's literature in the Soviet Union: the example of the Wizards Oz and Goodwin*.³⁰ how Russian works systematically repackaged and culturally renovated western works to their liking. And while the censorship aspect of this process no longer exists the next two examples will clearly show that rewriting western works to make Russian points is far from over. However, I also hope to show, however, that this is far from a universally negative phenomena and may even have great value. This is demonstrated in the next two cases studied.

The last Ringbearer and other Tolkienia.

The Lord of the Rings is certainly the single most popular word of fantasy on earth today and has been for decades. Yet it was not officially published in in Russia until the nineties after the collapse of the Soviet Union (although several translations and partial translations had been made and circulated unofficially as samizdat). The Hobbit had been published but it is not with it, nor with any of *The Lord of the Rings* translations, official or unofficial, that we are here concerned. Rather we are interested in the works that were written deriving from them especially *The Last Ringbearer*. In 1999 Russian scientist Kirill Yeskov published *The Last Ringbearer* based on the characters and plot of *The Lord of the Rings*. Unlike *The Wizard of the Emerald City*, *The Last Ringbearer* was in no way a translation, even a highly liberal translation, of *The Lord of the Rings*. Rather it was a completely original story that uses the characters and settings created by Tolkien to completely reimagine the universe of *The Lord of the Rings*. The basic conceit of *The Last Ringbearer* is that *The Lord of the Rings* is a propaganda piece, like many real-life documents, written to glorify the victors and justify the brutal war crimes of the winners.³¹ *The Last Ringbearer* completely retells the story giving a version in which many of the heroes of the original are villains. The story is told from the point of view of two inhabitants of Mordor, the villains of the original story. *The Last Ringbearer* has achieved great success in Russia. However, when its publishers attempted to translate it and publish it in the west the Tolkien estate filed Cease and desist order. Thus, it has not been published legally in English.³² Despite this, translations are widely available on the web, created by fans, and it has gained a fair amount of attention and popularity in the west with articles in major papers discussing it and a generally, but not always, positive critical reception.

That *The Last Ringbearer* violates modern western copyright law is beyond doubt. Only as a parody could it hope to be published. As it is in no way a humorous piece, but rather a serious analysis of

²⁹ NIKOLAJEVA, M. 1995. Russian Children's Literature before and after Perestroika. Ibid.20, 105-111.

³⁰ INGG, J. A. 2011. Censorship and translated children's literature in the Soviet Union: The example of the Wizards Oz and Goodwin. *Target. International Journal of Translation Studies*, 23, 77-91.

³¹ DONAHOO, D. 2011. THE LAST RINGBEARER: A MORDOR-CENTERED PERSPECTIVE ON TOLKIEN. Available: <https://www.wired.com/2011/02/the-last-ringbearer/>.

³² PAGE, B. 2011. Lord of the Rings reworking a hit with fans, but not Tolkien estate. *Guardian* [Online]. Available: <https://www.theguardian.com/books/2011/feb/08/lord-of-the-rings-reworking-tolkien-estate> [Accessed 14/08/2018].

the original story, it could hardly hope for this under western law which generally (if very inconsistently) requires parodies to be humorous in tone.³³ Since Tolkien died less than fifty years ago his work is still copyrighted everywhere that holds to the standards of the Berne convention. It includes the characters, places and events of the original, not even making a token change in the name like the western parody of Tolkien's work *Bored of the Rings* does.³⁴ However, it is indicative of the state of copyright law that this has not prevented it from receiving a fair amount of (non-financial) success online. It has been translated and is widely discussed by many who clearly do not seem to regard doing so as a violation of any moral principle.³⁵ As I will discuss later the internet makes enforcing stricter copyright laws increasingly difficult, although it is still possible to deny much profit to such works. It is worth noting though, once again, that just a little over a century ago *The Last Ringbearer* would have been entirely legal and such works are, at least by many on the web, not seen as violating any moral copyright principle.

On the economic front they are likely correct. It seems unlikely that the success of *The Last Ringbearer* would in any way infringe on the profits of *The Lord of the Rings*. This is because the whole impact of *The Last Ringbearer* is entirely dependent on the reader having first read *The Lord of the Rings*. The entire story relies on deconstructing the moral basis and plot of the original and it seems unlikely that one would be able to appreciate it without the original. Indeed, while it is obviously impossible to prove, it seems not unlikely that the reverse might be the case and that *The Last Ringbearer* might actually increase the popularity of *The Lord of the Rings*. A reader who had read only the last ringbearer and liked it would likely be interested in reading *The Lord of the Rings* in order to fill in the gaps. Thus, it is difficult to see how this work and those like it could interfere with the first motivation for copyright stated above "the encouragement of useful arts".

However, one could argue that by publishing such a work the holders of the actual copyright are deprived of the opportunity to do so themselves and thus make a profit of their own on similar derivative works that they themselves may wish to produce. This is likely to be true for long running series or franchises. Whilst for various reasons this is unlikely in the case of Tolkien's work (chiefly the fact that the Tolkien estate has generally proved, up to very recently, unenthusiastic about derivative works and has shown no interest in publishing them itself with even the movies only being made due to Tolkien having sold the Movie rights to his work decades ago) there are some franchises in which the publishing of derivative works is of massive importance to the profitability of a franchise. An example would be comics in which the various cinematic universes and movies have made enormously more profit than the comic books themselves.³⁶ Companies like Marvel (the creators of the famed Marvel cinematic Universe that is presently enormously popular with Movies like the Avengers franchise) rely on a close and intimate relationship between their comics and their Movies which a more liberal copyright system would interfere with.³⁷ In this case the presence of copyright laws that allowed derivative works might cut into the production of comics even if it did not reduce their profits. The relatively small scale *The Last Ringbearer* hardly competes with any projects of the Tolkien estate might launch but this need not always be the case. It is at least plausible that if a similar copyright regime was adopted world-wide much larger projects, perhaps

³³ COKER, C. 2012. The Angry! Textual! Poacher! Is Angry! Fan Works as Political Statements. *Fan culture: Theory/practice*, 81-96.

³⁴ Ibid.

³⁵ DONAHOO, D. 2011. THE LAST RINGBEARER: A MORDOR-CENTERED PERSPECTIVE ON TOLKIEN. Available: <https://www.wired.com/2011/02/the-last-ringbearer/>.

³⁶ BRINKER, F. 2016. 4.2 On the Political Economy of the Contemporary (Superhero) Blockbuster Series. *Perspectives on Post-Cinema: An Introduction—Shane Denson and*, 433.

³⁷ Ibid.

Hollywood blockbusters, would be made along similar lines which could interfere seriously with the revenue of such works.

The second issue, the matter of an author's moral rights, is much more interesting in this case. The first point is that in this case the copyright owners have clearly indicated their displeasure at the work. The holders of the copyright of *The Lord of the Rings* have filed papers demanding that derivative works be taken off the market.³⁸ Perhaps more importantly Tolkien himself expressed distaste for derivative works while he was alive. When a reader sent him such one such work with a statement that he intended to publish it he wrote to his publisher stating that,

"I do not know what the legal position is, I suppose that since one cannot claim property in inventing proper names, that there is no legal obstacle to this young ass publishing his sequel, if he could find any publisher, either respectable or disreputable, who would accept such tripe. I have merely informed him that I have forwarded his letter and samples to you. I think that a suitable letter from Allen & Unwin might be more effective than one from me. I once had a similar proposal, couched in the most obsequious terms, from a young woman, and when I replied in the negative, I received a most vituperative letter."³⁹

Tolkien was wrong from a legal perspective, one can "claim property in inventing proper names" at least to the extent of preventing another from using characters you have created, but his attitude is a common one among writers and is sometimes expressed in very strong language. There is a definite feeling among authors that their works belong to them and that to use them without permission is a personal attack regardless of any matter of profit. GRR Martin, the author of the enormously popular *A Song of Ice and Fire*, in his blog referred to his characters as his children and discussed others using his characters as a "rape" of them.⁴⁰ In a comment to the same blogpost he stated that,

"there is a deep emotional connection between a writer and his characters. Reading other people's versions of them, and seeing them saying and doing things they would never say or do, would disturb me. How MUCH it would disturb me would depend on exactly what they were saying and doing, and how wrong it was."⁴¹

Centuries earlier, before any legal right of an author to his work existed Bunyan wrote of his own work being "my pilgrim" and criticised works which attempted to use his characters in a preface to his own sequel to *Pilgrim's Progress*.⁴² In general, the sense among authors that their works are "theirs" in a very fundamental sense is not uncommon and individuals like Bunyan would seem to demonstrate that this sort of feeling predates widespread social or legal acceptance among non-authors of this as a right. A work like *The Last Ringbearer* rejects this whole notion.

³⁸ PAGE, B. 2011. Lord of the Rings reworking a hit with fans, but not Tolkien estate. *Guardian* [Online]. Available: <https://www.theguardian.com/books/2011/feb/08/lord-of-the-rings-reworking-tolkien-estate> [Accessed 14/08/2018].

³⁹ TOLKIEN, J. 1966. To Joy Hill, Allen & Unwin. In: CARPENTER, H. (ed.) *The Letters of J. R. R. Tolkien*. Kindle Edition. ed.: HarperCollins.

⁴⁰ MARTIN, G. R. 2010. Someone is Angry on the Internet. Available: <https://grrm.livejournal.com/151914.html> [Accessed 13/08/2018].

⁴¹ Ibid.

⁴² YESKOV, K. 2011. Why I reimagined "LOTR" from Mordor's perspective. *Salon* [Online]. Available: https://www.salon.com/2011/02/23/last_ringbearer_explanation/.

This is made worse by the very thing that has made *The Last Ringbearer* so popular, the way he uses the characters and setting. We discussed earlier the way that *The Wizard of the Emerald City* could be regarded as introducing moral ideas different and maybe contradictory to those of Baum. *The Last Ringbearer* does so blatantly and deliberately. Whilst its author insists that its inspiration was originally to figure out how the geography of middle earth worked (and he is a palaeontologist leading some plausibility to this claim) it quickly developed into a moral critique.⁴³ In it the characters that are heroic in the original are portrayed as villainous and many of the villains are heroic. The story contains criticism of what its author considers Tolkien's anti-industrialism and the entire moral structure of the original. He portrays *The Lord of the Rings* as a propaganda piece produced to justify an in-universe genocide and clearly in referencing real world events.⁴⁴ In other words, *The Last Ringbearer* is not just using the characters that Tolkien created but using them explicitly to critique the original and the morals of the original which means that given that these morals were Tolkien's own means that it could be argued to be twisting Tolkien's own work to attack him. For authors who are threatened by the use of their characters and work few things could seem more threatening. This work represents not just a theft but a perversion of the work.

It is precisely in this, however, that a great deal of the value of *The Last Ringbearer* lies. Its violation of the moral right (as they would be regarded in the west) of the works of Tolkien is precisely the source of its effectiveness for better or for worse. The basic message of *The Last Ringbearer* is one that has been made by many. It is that Tolkien's work is highly militaristic and implicitly racist (or at least this is how the criticism has been made in the west, Russian writers have often considered it more anti-Russian or anti-Soviet than simply racist perhaps since this is less of a concern in Russia)⁴⁵. This is a view that has been put forth by many. A fairly recent article summing these critiques is that of IR Malone with his article, "What's wrong with Medievalism: Tolkien, the Strugatsky brothers, and the question of the ideology of fantasy."⁴⁶ Several authors such as Moorcock and even to an extent GRR Martin have published works of fiction that attempt to respond to Tolkien's work.⁴⁷ But with the copyright law in the west these responses must be indirect. They cannot interact with the characters and settings that Tolkien created. The last Ringbearer is able to do so. Thus, we see the Russian copyright system allows a critique that would not be permitted by the western system.

The author in this case is very aware of his ambiguous moral position. He invokes many classical famous works who have produced similar critiques in his defence stating that it is only by taking a different viewpoint from the original that a work of value can be produced.

This immediately creates a moral contradiction that's difficult to resolve. A view of any interest is only possible when one looks at a given world from an unusual ethical or aesthetical viewpoint, one that's most removed from that of its creator. Thus did Mark Twain, an orthodox adept of liberte, egalite, fraternite, plunge his Yankee into the idealistic knightly world, proving convincingly that all those Galahads and Merlins lied often and bathed seldom; thus did Sapkovsky gaily turn Wonderland into black horror, brewed, for good measure, from a clinical psychoanalysis of the relationship between Professor Dodgson and little Alice Liddell; thus did feminist Gloria Howard prove, from

⁴³ Ibid.

⁴⁴ DONAHOO, D. 2011. THE LAST RINGBEARER: A MORDOR-CENTERED PERSPECTIVE ON TOLKIEN. Available: <https://www.wired.com/2011/02/the-last-ringbearer/>.

⁴⁵ RUPPO MALONE, I. 2016. What's wrong with Medievalism: Tolkien, the Strugatsky brothers, and the question of the ideology of fantasy.

⁴⁶ Ibid.

⁴⁷ Ibid.

the viewpoint of Captain Ahab's wife, that the entire stupid hunt for the White Whale was but a game of a bunch of developmentally arrested guys, an apotheosis of male infantilism and lack of responsibility ... The literary worth of the aforementioned works is beyond doubt, but whether it's ethical to so treat the source texts by Melville, Carroll, and the Arthurian legends is not obvious.⁴⁸

He also discusses the potential negative consequences of such works on the originals but insisted that it need not always be merely destructive further insisting that,

Nor is this an idle question. For example, I've read Yankee at King Arthur's Court prior to the legends themselves, and Mark Twain had forever poisoned my perception of this part of the global cultural heritage for me with his vitriol: "Now Sir Kay arose, and began to fire up on his history-mill with me for fuel. It was time for me to feel serious, and I did." (And brothers Strugatzky made it even worse with their "comrade Merlin" and "fair sir Melnichenko...") Honestly – cross my heart and hope to die – the last thing I want is to poison some teenager's future experience of Tolkien. Looking for a place for "The Last Ring-bearer" in the long row of literary apocrypha, I dare place it next to my personal favorite "Rozenkrantz and Gildenshtern Are Dead" (the movie, not the play). An exquisitely paradoxical post-modern game Tom Stoppard played against the Shakespearean backdrop is precisely the relationship with the source Text that I sought to accomplish. Whether I have succeeded is for readers to judge.⁴⁹

Whether he succeeded in his aim and of how much value this aim is; whether it says anything worthwhile and whether it says anything that could not be said with original characters is a more complicated question. But at the very least a large amount of readers seem to have found it of value. Moreover, as Kirill Yeskov himself pointed out works of this type have been universally been recognised of being of value when published regarding works that are no longer in copyright. Unless, one submits to the absurd idea that no work whose author has been dead for less than 70 years can be usefully analysed in a way that is recognised as useful for older works we must admit that the Russian copyright law at least in this case allows a work to be published that are of some value.

Other Works

The works of Kirill are not the only ones, either inside of Russia or outside of it, that have been published within Tolkien's world. Another example is *Beyond the Dawn* (*По ту сторону рассвета*) by Olga Chigirinskaya published in 2003 but several others works have also been published in Russia.⁵⁰ Whilst *The Last Ringbearer* is a response and critique of *The Lord of the Rings* these works more generally take the role of filling in gaps or expanding places in the original story that are not filled in detail. *Beyond the Dawn* is an example of this approach. It tells at length the story of Beren and Luthien two characters which are only briefly mentioned in Tolkien's works. However, many of the same issues arise with them. As with *The Last Ringbearer* they rely so heavily on the existing popularity of Tolkien's work that they are unlikely to hurt the sails of their model. No-one is likely to read them if they have not already read *The Lord of the Rings* so these works cannot be said to be preventing the production of useful arts. Indeed, by permitting their publication Russia is allowing

⁴⁸ YESKOV, K. 2011. Why I reimagined "LOTR" from Mordor's perspective. *Salon* [Online]. Available: https://www.salon.com/2011/02/23/last_ringbearer_explanation/.

⁴⁹ Ibid.

⁵⁰ КОТ-РЕДАКТОР. 2004. Продолжения Толкина. Ник Перумов, Ниэнна и другие. Available: <https://www.mirf.ru/book/prodolzheniya-tolkina-nik-perumov-niennah> [Accessed 16/08/2016].

the production of arts that would be forbidden in the west. However, this is likely largely due to the fact that the Tolkien estate is not publishing more works of its own. The dynamic, as mentioned earlier, could be different for franchises that rely heavily on derivative works.

The similarities can also be seen in the author rights that we discussed earlier. Most of the works other than *The Last Ringbearer* are made in tribute rather than a criticism of Tolkien's work but they still often contain elements that Tolkien might well have objected to. *Beyond the Dawn*, for example, contains more sexual material than Tolkien (who was a very conservative Catholic who included absolutely nothing sexual in his own writings) might have been comfortable with. To what extent should this be considered insulting to the honour of Tolkien? Almost all of the works repackage, whether consciously or unconsciously, the work into a Russian context. Due to being written by Russians they can hardly help doing so. Yet Tolkien considered the Englishness of his work very important and objected to translators that diminished it insisting strongly that,

"After all the book is English, and by an Englishman, and presumably even those who wish its narrative and dialogue turned into an idiom that they understand, will not ask of a translator that he should deliberately attempt to destroy the local colour."⁵¹

Yet, and this is also important, these works are also very popular and precisely by this same cultural translation enable many people to enjoy stories that they could perhaps enjoy far less if it were not somewhat altered into a more Russian form. The optimal approach for copyright in this case is far from clear but it is likely to depend on which model one holds. If you insist on control over reception and use of a work as an absolute moral right belonging to the author (or in this case his descendants) Russian behaviour in allowing these works to be published is objectionable. If, however, you take a more utilitarian view then it has permitted the publication of popular works without hurting the sales of the original so is highly praiseworthy.

Harry Potter rip-offs in Modern Russia

We have looked at a western work from the beginning and middle of the last century so will now move to the very end of it and into the 21st with the Harry Potter series. The Harry Potter series has been popular in Russia as in many other countries (although not to quite the same extent). And as in other countries various spinoffs have been produced. Russia, however, in common with China and other such countries has Harry Potter spinoffs that cannot be published and sold outside the country. The most famous of these is the Tanya Grotter series by Dmitri Yemets and it is with this that we will begin our discussion but *Children Vs Wizards* published in 2006 by an anonymous author and other similar works have also gained varying degrees of popularity and even in the case of *Children vs Wizards* an animated movie. Beginning with *Tanya Grotter and the Magical Double Bass* this series told a story incredibly similar to the Harry Potter Series but with a main female protagonist, Tanya Grotter.⁵² This would lead to Rowling and Time Warner attempting to procure a cease and desist order for the novels in Russia. They would fail but would gain more success in the Netherlands when they would successfully forbid its publication despite the attempts of the publisher to argue that it was protected under parody laws as well as to claim that Rowlings own

⁵¹ TOLKIEN, J. 1956. 190 From a letter to Rayner Unwin. In: CARPENTER, H. (ed.) *The Letters of J.R.R. Tolkien*. Kindle Edition ed.: HarperCollins

⁵² 2002. Potter 'Twin' Causes Controversy. Available: <https://www.wired.com/2002/11/potter-twin-causes-controversy/>.

work was highly derivative.⁵³⁵⁴ After this the publishers would abandon attempts to publish the series in the west (although fan translations of dubious legality are, as with *The Last Ringbearer*, available online). In Russia, however, its popularity is simply enormous. In June 2006 *Tanya Grotter and the Pearl Ring* the eleventh book in the series was a number one best seller in Russia out selling JK Rowling's own books.⁵⁵

The plot of the first book bears close resemblance to the Harry Potter series. Both involve an orphan child with a scar on their forehead, both have a similar hidden magical world and many characters are obviously based on Harry Potter characters (most obviously Tanya Grotter herself whose name is an obvious take on Harry Potter. The most notable difference, apart from the female protagonist and humorous tone is the use of Russian folklore to add a Russian cultural flavour to the story. Yemets has stated that he intended the works as an "a sort of Russian answer to Harry Potter."⁵⁶ This places it in the Tradition of *The Wizard of the Emerald City* and *The Last Ringbearer* as a work that Russifies a previously western work. The author seems to consciously place himself in this tradition with his statements and have defended it on these grounds. This all being so we should not be surprised to find many of the same issues being raised regarding this story.

The Tanya Grotter stories and other Russian Harry Potter stories have attracted much more controversy and scorn than the other stories on the list perhaps because Harry Potter is a recent work but also for political reasons that I will discuss presently. On a legal front they failed to gain parody protection in the west despite the fact that they were obviously intended, to some extent, as a humorous take on the Harry Potter series. A court case in Amsterdam ruled that the name *Tanya Grotter* violated the copyright and trademarks of the Harry Potter books (this is interesting as in seems inconsistent with other rulings on similar matters which we discuss in our more general analysis).⁵⁷ In Russia, however, attempts by the Rowling estate to prevent their publication have failed. We shall look at the two issues we discussed with the previous examples, the economic and moral rights of the author. Since it is difficult to separate the effect and issues surrounding the Tanya Grotter series from the rest of the various Harry Potter spinoffs we shall also discuss them.

The economic issue is not clear. It is, as always quite possible that Harry Potter rip-offs are competing with the original and thus reducing its popularity. It is also at least plausible that they have no effect. It is even possible that they actually increase the popularity of the work. Having discussed these issues with previous works we will not repeat all the possibilities at length. It is worth noting, however, that books from the Tanya Grotter series are sold for half the price of Harry Potter books in Russia giving them this advantage at least. It is also worth noting that while the Tanya Grotter series contain parodic elements they are not, unlike the case of *The Last Ringbearer*, dependent on the reader having read the original for enjoyment. They make up an independent story of their own. The same is true, to varying degrees, of many of the various other imitations.

A great deal more can be said of the moral issues. It is here that the controversy about Russian Harry Potter knockoffs is often focused. It is often argued that they are nationalistic, racist and directly contrary to the ideals of the originals. Sasha Rapopina has criticised many of the modern

⁵³ KEMP, S. 2003. Court throws out 'Potter' appeal. *The Hollywood Reporter*.

⁵⁴ 2013. The Curse of Tanya Grotter. *The Piracy Years* [Online]. Available: <https://piracy.americanassembly.org/the-curse-of-tanya-grotter/> [Accessed 16/08/2018].

⁵⁵ ЕЛЕНА, К. 2006. Наши дети - это невыгодно. *Деловой Петербург* [Online]. Available: <https://web.archive.org/web/20061130200109/http://www.dpgazeta.ru/article/104243>.

⁵⁶ 2002. Potter 'Twin' Causes Contreversy. Available: <https://www.wired.com/2002/11/potter-twin-causes-controversy/>.

⁵⁷ KEMP, S. 2003. Court throws out 'Potter' appeal. *The Hollywood Reporter*.

Russian Harry Potter knockoffs for being reactionary and bigoted (although she singles out Tanya Grotter as being less bad than is common. She states that, “There are many more examples of this trend: slightly altered anti-semitic slogans, homophobic jokes, the stigmatising of various minority groups. The only rip-off series that seems to refrain from the tendency is Tanya Grotter (which is also the most progressive: it has girls as the main characters and regularly satirises the government)”.⁵⁸ She also complains that, “discrimination and bigotry are still quite widespread in the country, and the books seem to be depressingly in sync with this trend.”⁵⁹ In her opinion the various Harry Potter adaptations in Russia, “were never intended for true Harry Potter fans, they were just a way to make a quick buck. And perhaps they were written for those who already share such problematic views — especially since the books were touted as “the Russian answer to Harry Potter”. But whatever the truth is, what’s clear here is that the Russian answer to Harry Potter is weak — and probably responding to the wrong question.”⁶⁰

An extreme example of this nationalistic theme is the work *Children vs Wizards* by Nikos Zervas (almost certainly a pseudonym).⁶¹ It was published in 2006 and claims to be a translation of a Greek original. This is almost certainly not true but the selection of Greece as the country of origin probably relates to it sharing the orthodox faith with Russia as the work is highly Orthodox.⁶² It presents the heroes of the Harry Potter story as villains attempting to undermine orthodox Russia. In the story Russia is the only country not dominated by sorcerers due to its orthodox faith. It is, however, undermined by the popularity of Harry Potter series as well as the actual Harry Potter (Potter being a real person in the story as well as a series of books). A series of adventures in which the sorcerers (with the help of NATO and various Jewish sounding villains) attempt to kidnap and ensnare Russian children follows. Eventually orthodox faith and Russia prevails, at least for a time. Whilst considered somewhat absurd even in Russia (based on my internet searches of Russian reactions it is most often mentioned as a punchline and subject of mockery) the series was popular enough to receive an animated adaptation in which the explicit references to Harry Potter (and apparently some of the more egregious anti-Semitism) is excised.⁶³

All these works represent the extreme development of a point that we have raised with all three of the works we have looked at about the honour of an author being upheld due to the work. *Children vs Wizards* is not only in direct contradiction to the original ideals of the Harry Potter series but is so in such an absurd and crudely insulting way (I was unable to find any praise for the work in English and even Russian sources seem to be mocking, although, given that it received an adaptation it must have some fandom) that it represents that strongest possible case for the right of an author to prevent its publication. The works include direct and rather crude insults to almost every aspect of the original series (even Tanya Grotter apparently contains snide comments about the original series due to its authors annoyance at Rowling’s attempts to suppress it). Yet these also do undoubtedly represent genuine Russian reactions to the Harry Potter franchise in Russia. To say with Rapopina that the Russian response is weak is in my opinion to miss the point somewhat. Weak or strong they are undoubtedly real and genuine responses that represent popular ideas in Russia towards an increasingly resented west. The ideas in these works are increasingly popular in Russia where such

⁵⁸ RASPOPINA, S. 2016. Expecto patriotism: the magical yet dark world of Russian Harry Potter rip-offs. Available: <https://www.calvertjournal.com/articles/show/5650/harry-potter-jk-rowling-Russian-rip-offs> [Accessed 13/08/2018].

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid.

themes are increasingly popular. In the second half of this study I will look more generally at the value of such responses and their expression through derivative works relating to both Harry Potter and the other works that have been discussed in this essay.

The final issue raised by *Tanya Grotter* is the defence made in court that the *Harry Potter* series itself cannot claim to be original. Ted Striphas in his work *The Late Age of Print: Everyday Book Culture from Consumerism to Control* discusses this is his analysis of the case,

Byblos's attorneys weren't content merely to defend Yemets's book. They went on the offensive, challenging the substance of Rowling's own copyright. Like numerous scholars and critics before them, the attorneys noted that Rowling had appropriated many elements of the Potter stories— orphan tales, British boarding school dramas, fantasy stories—from already existing literary materials, only some of which were in the public domain. At worst, they contended, Yemets's novel was a derivation of an already derivative work. If that were the case, what would be the point of adjudicating the legitimacy of one author's acts of appropriation over those of another? At best, they insisted, *Tanya Grotter and the Magical Double Bass* was a substantially original work whose differences flowed from Yemets's creative acts of appropriation.⁶⁴

This raises the point that the entire structure of literature depends, and has always depended, on imitation and the repackaging of past works. The line between plagiarism and inspiration is always vague (especially in fiction where citation is, happily, not required). The statement of the court rejecting this, as well as the idea that *Tanya Grotter* could be regarded as a parody or critique is interesting in that it focused partly on the literary value of the work. To quote Striphas once again,

The court's decision, which was handed down on November 6, 2003, reads like an assiduous work of literary criticism. It adjudicated the originality and distinctiveness of *Tanya Grotter and the Magical Double Bass* largely by conducting a side-by-side close reading of the Potter and Grotter stories. Having made a detailed inventory of the similarities, the court moved on to address the issue of their differences by critiquing Rowling's and Yemets's writing styles. It called the former's more "sober and subtle" and the latter's "superfluous," "complex," and digressive... It began by noting the book's genre, which it described as a fairy tale, and asserted that such works don't lend themselves well to making polemical arguments. (The court evidently hadn't read Gregory Maguire's *Wicked: The Life and Times of the Wicked Witch of the West* or John Gardner's parody of *Beowulf*, *Grendel*, two exemplars that mobilize the fairy tale genre for the sake of polemic.)... Where the court did admit to Grotter's parodic dimensions, it immediately downplayed them. In particular, it took issue with those moments in which the novel seemed to "wink at the hype surrounding Harry Potter." A true parody, it insisted, would rail more directly "against the book [*Sorcerer's Stone*] itself."⁶⁵

This is interesting in the way it betrays the way in which the enforcement of copyright law is very dependent of the perceived value of a piece of work. Derivative works (especially Russian derivative works) are perceived as being of less value and therefore less worthy of being counted in those works which copyright is designed to protect and of less weight than authors rights. In the next section I analyse just what these values and rights might actually add up to.

⁶⁴ STRIPHAS, T. 2009. *The Late Age of Print: Everyday Book Culture from Consumerism to Control*, New York, Columbia University Press. pp. 164-166.

⁶⁵ Ibid. pp. 164-166.

Part 2 General Analysis

Economic rights

What then can be concluded from these examples about the impact of each system. Let us return to the two rights, economic and moral, that we discussed earlier. We will begin with the economic side of things. One of the most common arguments made by supporters of a strict copyright system is that it deprives authors of their reward. GRR. Martin in his critique of fanfic argues that by allowing others to use their works authors open themselves to the possibility of enormous losses. He discusses the two popular authors Edgar Borroughs and Lovecraft (ERB and HPL respectively),

“...ERB created Tarzan and John Carter of Mars. HPL created Cthulhu and his Mythos. ERB, and later his estate, was extremely protective of his creations. Try to use Tarzan, or even an ape man who was suspiciously similar to Tarzan, without his/ their permission, and their lawyers would famously descend on you like a ton of bricks. HPL was the complete opposite. The Cthulhu Mythos soon turned into one of our genres first shared worlds. HPL encouraged writer friends like Robert Bloch and Clark Ashton Smith to borrow elements from his Cuthulhu Mythos, and to add elements as well, which HPL himself would borrow in turn. And in time, other writers who were NOT friends of HPL also began to write Cthulhu Mythos stories, which continues to this day.

Fair enough. Two writers, two different decisions.

Thing is, ERB died a millionaire many times over, living on a gigantic ranch in a town that was named Tarzana after his creation. HPL lived and died in genteel poverty, and some biographers have suggested that poor diet brought on by poverty may have hastened his death. HPL was a far more beloved figure amongst other writers, but love will only get you so far. Sometimes it's nice to be able to have a steak too. The Burroughs estate was paid handsomely for every Tarzan movie ever made, and collected plenty on the PRINCESS OF MARS movie I worked on during my Hollywood years, and no doubt is still collecting on the one currently in development... though the book is in the public domain by now. Did the Lovecraft estate make a penny off THE DUNWICH HORROR movie, the HERBERT WEST, REANIMATOR movie, the recent DAGON movie, the internet version of CALL OF CTHULHU? I don't know. I rather doubt it. If they did, I'll betcha it was just chump change. Meanwhile, new writers go right on mining the Cthulhu mythos, writing new stories and novels.

Cthulhu, like John Carter, is in the public domain by now, I know. But it wouldn't matter. Because HPL let so many others play in his sandbox, he essentially lost control of his own creations. That's what I mean by (2), above. The fan fiction door, once opened, is hard to close again.”⁶⁶

This is the essence of the economic or utilitarian argument for the strict copyright system that exists today. It is necessary for authors to eat and without a strict copyright system they will end up dying in genteel poverty. For it to be justified one must demonstrate that a laxer system such as Russia's will actually move popular authors from being Burroughs to being Lovecrafts. But Lovecraft and Burroughs were different in far more ways than their attitude to derivative works. Most notably Burroughs works were, during his lifetime, enormously popular whilst Lovecraft barely made a ripple outside of artistic circles. A comparison between two whole separate countries with separate

⁶⁶ MARTIN, G. R. 2010. Someone is Angry on the Internet. Available: <https://grrm.livejournal.com/151914.html> [Accessed 13/08/2018].

systems might be more fruitful. And when we make this comparison the results are far less clear. The Russian publishing industry has been historically one of the most healthy and dynamic on earth which is especially impressive when you consider the rest of its rather anaemic economy.⁶⁷ In terms of titles produced annually it was, in 2012, third in the world after the U.S. and China.⁶⁸ It is, indeed, one of the few countries where, relatively recently, physical bookstores have still been opening in the digital age.⁶⁹ It is true that recently there has been a fall in physical book sales and the industry has run into some difficulties but this is true world over and digital sales continue to grow. One cannot, of course, attribute this solely to the copyright regime especially when one considers Russia's strong literary tradition but it is certainly evidence that the copyright regime is, at any rate, not crippling Russia's book industry. This is despite the fact of the enormous transformation that transformed the book industry from a state-run enterprise to a capitalist one in the nineties. Many of Russia's industries did not survive this and those who regard a strict copyright regime as essential for the publishing industry would do well to consider how well the Russian industry fared under these conditions.⁷⁰

But this does not prove that the industry might not be even better if it had another system. One could also argue that the Russian book industry is parasitic on the west (this argument is often made of the Chinese book industry). Whilst it can do little damage to the western book industry from a distance (where, after all, works must be translated to travel between the two languages which cannot be done without considerable effort) a great deal of damage could be done if one extended this system worldwide. Let us look at the examples we have considered. We concluded that it is at least possible that in two of the cases that the derivative works could have hurt the originals economically and in at least one (the case of the *Wizard of Oz*) one could even say it was likely. But is it at all likely that these works could discourage the production of more *Wizard of Oz's* or *Harry Potter's*. The answer is obviously no. The works in question are so enormously popular that they have already made enormous amounts of money by the time any derivative works were produced. And this is true of almost all works that are likely to have derivative works of this sort made. One does not need a "Russian response" (or any other sort of response) to an unknown work. One can see this clearly just by looking at online fanfic where almost all the published material is of a very small number of ultra-popular works. *Harry Potter*, for example, has over 794000 fanfics published on the site Fanfic.com more than triple that of the next most popular work.⁷¹ On the same site (the largest fanfic site on earth) many books have only a single work or none at all and this despite no barrier at all to anyone publishing.⁷² Therefore, it is likely that the enforcement of a stricter copyright system would accomplish the exact opposite of its intended role of encouraging useful arts. It would prevent the publication of the Russian response whilst not seriously encouraging the publication of the works protected. Unless one is of the belief that a publisher with the next *Harry Potter* (which has now produced over 25 billion dollars) will seriously be discouraged by the fact of a few derivatives which will likely not even be published until after the work has made millions) the book industry seems safe. Whilst as discussed earlier this is not the only relevant point, franchises especially might suffer from a new system, franchises again only tend to be derived from already

⁶⁷ TAN, T. 2011. *The Dynamic Russian Book Market* [Online]. Publishers Weekly. Available: <https://www.publishersweekly.com/pw/by-topic/international/international-book-news/article/46710-the-dynamic-russian-book-market.html> [Accessed 28th may 2018].

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ 2018. *Fanfiction.com Books Section* [Online]. Available: <https://www.fanfiction.net/book/> [Accessed 16/08/2018].

⁷² Ibid.

popular and printable works. Almost all the loss would be from works that are already incredibly popular. Overall it seems unlikely that a laxer system would result in many artists slowly starving to death (or at any rate no more than already do given the generally unucrative nature of being an author for all but a very small minority).

Moral Rights

All of the books discussed can be said to violate moral rights if these rights are taken to be those given to them in the west. But it is not self-evident to just what extent an author should have moral rights over his own work. Parodies are, for example, widely permitted even in the west but they obviously twist and critique the book in ways that the original writer might find offensive. As was demonstrated in the court cases surrounding *Tanya Grotter* whether or not a given work can be regarded as a parody often depends on matters such as its perceived literary quality and whether it not it is humorous in nature. Indeed, among the reasons for rejecting *Tanya Grotter* was the statement that,

“Byblos mentions that Yemets had wanted to tell the story of Harry Potter anew and that the ‘very convincing story about Tanya Grotter’ was unique and authentic. The only conclusion one can draw from these facts is that Byblos ... took [Tanya Grotter] entirely serious[ly], and not as a parody of [Harry Potter].”⁷³

Derivative works them are permitted so long as they are not serious. The moral rights of an author in these matters are strange rights indeed if they are waived by the mere presence of mirth. The situation is certainly highly arbitrary. Indeed, it is more arbitrary even than that since as mentioned earlier the actual court case at least partly depended on the literary quality of the two works. On the utilitarian model of copyright this might actually make some sense as more valuable works should logically be offered more protection (although any sane person would shudder at the literary value of works being decided by court case). On the Moral theory it makes no sense whatsoever. Indeed, it is a strange feature of copyright law in the west that despite copyright being declared a fundamental right even its own defenders seem somewhat uneasy about this and, bot is court cases and public defences continually fall back on more utilitarian arguments in making their defence. This can be seen in both the *Tanya Grotter* case as well as the extensive piece on fanfiction quoted above by GRR Martin.⁷⁴

Parody argument conclusion.

Indeed, the matter of parody is one huge inconsistency in the application of moral rights under the western system. Under almost all western copyright systems a work is permitted to use characters and setting from another work if it is for the purpose of parody (albeit inconsistently and without any entirely clear guidelines around what exactly consists of parody). To use an example of relevance to the previously discussed adaptations, in 1969, *Bored of the Rings*, a parody of *The Lord of the Rings*, was published in the United States.⁷⁵ This work follows the plot of *The Lord of the Rings* much more closely than *The Last Ringbearer* and whilst it changes the names of the characters it does so only slightly and to parodic effect. Samwise Gamgee becomes Spam Gangree and Gimli son of Gloin becomes Gimlet, son of Groin. *Bored of the rings* produces a sometimes obscene and always nonsensical satire of Tolkien’s work and by any rational standard is just as potentially harmful to the

⁷³ STRIPHAS, T. 2009. *The Late Age of Print: Everyday Book Culture from Consumerism to Control*, New York, Columbia University Press. p 166.

⁷⁴ MARTIN, G. R. 2010. Someone is Angry on the Internet. Available: <https://grrm.livejournal.com/151914.html> [Accessed 13/08/2018].

⁷⁵ BEARD, H. & KENNEY, D. C. 2012. *Bored of the Rings: A Parody*, Simon and Schuster.

original as *The Last Ringbearer* and yet because it is considered parody is permitted. It is not clear what rational reason one could derive for finding *Bored of the Rings* more offensive to either the moral or economic rights of the author than *The Last Ringbearer* but such is the rather arbitrary rule. Apparently, a serious critique of Tolkien's work is a violation of his rights whilst a farcical one (even if it is far more offensive or fair) is not. Overall, it is clear that this is entirely an accident of history rather than derived from any serious attempts to fulfil either the aim of encouraging useful arts or upholding an author's rights and honour. This accident of history, however, is in the west put forth on in the most stringent manner as a self-evident moral truth to be adopted by the entire world and those countries which fail to follow exactly its course are condemned in the harshest terms as failing to enforce basic authors rights.

Past cases Looking Backwards and Uncle Tom's Cabin

Some light can be shed on the risks and benefits of the Russian system by looking at the past of the western copyright system. The cases of *Tanya Grotter*, *The Last Ringbearer* and *The Wizard of the Emerald City* have many precedents in the time period before western law adopted its modern form and many of the issues raised were similar. An illuminating case is that of *Uncle Tom's Cabin or Life Among the Lowly*, the enormously popular anti-slavery novel by Harriet Beecher Stowe. This novel presents a critique of slavery and became one of the bestselling novels of the nineteenth century. Predictably, huge amounts of derivative works were written. Some were stage shows (Stowe refused to authorise any of her own due to religious opposition to theatre). Some were books even picture books for children. Whilst these works did not prevent Stowe from making huge sales and huge amounts of money so left her largely unhurt from an economic point of view they did arguably violate what would be today viewed as her moral rights. Some completely flipped the story in order to present slavery in a positive light in which Uncle Tom is presented as being foolish for failing to realise his happiness under slavery and fooled by evil abolitionists.⁷⁶ Others, especially the stage shows, presented many stereotypes and degenerated into racist minstrel shows. To quote the Harriet Beecher Stowe Center,

Known as "Tom Shows," loosely based on Stowe's story and produced in theaters and traveling shows across the country, these performances frame modern understanding of the novel. "Tom Shows" added extravagant special effects and changed the story. With actors in blackface and simplified plots, racial stereotypes were highlighted. Eliza's escape across the ice added bloodhounds for the stage. Topsy, a tragic child in the book, the product of raising children "like pups," was changed to a slapstick figure. Strong, young Tom aged to a submissive, shuffling old man. Discussions of racism, slavery's impact on families, and reparations vanished, and after the Civil War, so did most references to slavery itself. Professional "Tom Shows" toured annually for nearly 90 years, and versions were filmed for movies and cartoons.⁷⁷

All this likely contributed in part to the situation today where "Uncle Tom" is largely an epithet of opprobrium due to repeated distorted depictions of the character. The comparisons with the antisemitic *Children Vs Wizards* are almost too obvious to be stated and whilst it is very unlikely that such a minor work will ever have a similar impact on the reception of Rowling's enormously popular one we cannot be sure that this would always be so.

⁷⁶ SMITH, W. L. G. 1852. *Life at the South; or, "Uncle Tom's Cabin" As It Is:*

Being Narratives, Scenes, and Incidents in the Real "Life of the Lowly," Buffalo, Geo. H. Derby and Co.

⁷⁷ FELIZ, E. 2013. Available: <http://civilwaref.blogspot.com/2013/06/harriet-beecher-stowe-born-june-14-1811.html> [Accessed 16/08/2018].

Not is Stowe the only author to be similarly treated. Writers as diverse as H.G. Wells and Edward Bellamy all had strange unauthorised sequels or responses made of their work. Yet none of this prevented these authors from gaining wealth and great popularity from their works. Moreover, the results were not always to negative. An example would be the work *Looking Backwards* by Bellamy.⁷⁸ This enormously popular utopia described a man being transported to a future socialist society of the year 2000. It engendered a large (if somewhat short lived) social movement and inspired many socialist organisations. Many works were written in response in order to respond to its ideas. Some were continuations in which the utopia was expanded on and aspects of it that Bellamy had not touched were discussed.⁷⁹ Others were deconstructions in which Bellamy's society was portrayed as collapsing due to its economic problems and critiques were made of aspects of it. There were even cases where individuals wrote stories deconstructing Bellamy's work and his defenders wrote secondarily derivative works critiquing the deconstructions.⁸⁰ All these works used Bellamy's characters and future setting (often appropriately altered according to their political leanings). This led to a literary dialogue reminiscent of that attempted by Yeskov but much more extensive. It would of course be impossible under modern law. All this demonstrates that, in the west in the nineteenth century, many of the same issues existed as exist in Russian derivative works today. If a work can be taken without the authors permission it can be twisted into forms the author would find offensive. Whilst sometimes these forms might be desirable to society sometimes they may simply be morally insupportable. Yet they may also sometimes engender a valuable dialogue that may contribute to culture and innovation. The first case cannot be forbidden without also forbidding the second.

Modern Western Cases Discussed

If, however, they are morally insupportable they should remain so. One of the curious facts about the Moral rights of a work is that they should expire at exactly the same point as economic rights. We have discussed that one of the fundamental justifications behind the moral rights model of copyright is the prevention of, "...distortion, modification of, or other derogatory action in relation to the said work, which would be prejudicial to the author's honour or reputation."⁸¹ However, given that this is claimed to be the case it is not entirely clear why an author's right ceases to be relevant after 50 or seventy years. Indeed, the Berne convention explicitly states that moral rights should endure even after economic rights no longer exist.⁸² Under the older or Russian model this is quite clear as with a utilitarian justification the length of time chosen is simply that which maximises artistic production. Practically, it is of course clear why this is the case since the only other option would be perpetual copyright which would be very unpopular. Nonetheless, it is strange that we in the west see no problem in a work abusing the spirit of its original after a certain period of time if indeed these rights are so self-evident.

A particularly high profile and egregious example of this would be the comic *Lost Girls* by the enormously popular comic writer Alan Moore. This was published partially published in 1991 and

⁷⁸ BELLAMY, E. 2003. *Looking Backward: 2000-1887*, Broadview Press.

⁷⁹ MICHAELIS, R. C. 1890. *Looking Further Forward...: An Answer to Looking Backward by Edward Bellamy*, Rand, McNally.

⁸⁰ GEISSLER, L. A. 2017. *LOOKING BEYOND: A Sequel to "looking Backward," by Edward Bellamy, and an Answer to "looking... Further Forward," by Richard Michaelis*, FORGOTTEN BOOKS.

⁸¹ 1971. Berne Convention for the Protection of Literary and Artistic Works (Paris Text 1971). In: ORGANIZATION, W. I. P. (ed.). Paris.

⁸² Ibid.

completed in full by 2006.⁸³ *Lost Girls* is a derivative work including characters from the *Wizard of Oz* like *The Wizard of the Emerald City* as well as other popular children's series such as *Peter Pan* and *Alice's Adventures in Wonderland*. *Lost Girls* is completely pornographic (being described so by its own author), utterly morally bankrupt (involving as it does pornography involving young children) and highly controversial.⁸⁴ It cannot be doubted that it would have been horrifying to the original authors. In sheer offensiveness it can definitely be compared with *Children vs Wizards* and is vastly worse than anything Yeskov or Yemets have produced. When Alan Moore attempted to publish the work in the UK the holder of the copyright on *Peter Pan* sued and its publication was prevented until copyright lapsed at the end of 2007.⁸⁵ Then it was able to be published despite the fact that the Victorian authors of the original would have probably found it unbelievably insulting to their honour. It need hardly be said that it is difficult to say why a work would suddenly cease to be contrary to the honour of an author 50, 60 or 70 years after his or her death. To be sure one could perhaps make a case that after more than half a century an author's reputation and honour are more or less set in stone or, more cynically, that no one cares about the honour of those that are long enough dead; but neither of these arguments have I managed to find actually made by supporters of the present system who generally proceed by simply making a direct analogy between copyright and property rights. If moral rights of this sort were the true theory behind our copyright system it should certainly be perpetual.

To be sure a few proponents of the moral theory of copyright law have been willing to take this to its logical conclusion and have called for perpetual copyright. Indeed, if the idea as copyright being a fundamental right like that of property was truly taken seriously it is hard to see how copyright could be anything but perpetual (at least in capitalist systems where private property is taken seriously). It is interesting, but not surprising, to note that these arguments began to be made in earnest at the end of the nineteenth century, the very period of time where the older utilitarian model of copyright was overthrown by the more recent natural right model. One of its most famous proponents was Mark Twain who in 1906 wrote that,

I understand, I am aware, that copyright must have a term, must have a limit, because that is required by the Constitution of the United States, which sets aside the earlier constitution, which we call the Decalogue. The Decalogue says that you shall not take away from any man his property. I do not like to use the harsher term, "Thou shalt not steal."

But the laws of England and America do take away property from the owner. They select out the people who create the literature of the land. Always talk handsomely about the literature of the land. Always say what a fine, a great monumental thing a great literature is. In the midst of their enthusiasm they turn around and do what they can to crush it, discourage it, and put it out of existence. I know that we must have that limit. But forty-two years is too much of a limit. I do not know why there should be a limit at all. I am quite unable to guess why there should be a limit to the possession of the product of a man's labor. There is no limit to real estate. As Doctor Hale has just suggested, you might just as well, after you had discovered a coal mine and worked it

⁸³ FABER, M. 2008. Released at last: Released at last Alan Moore's *Lost Girls* opens Michael Faber's eyes to Wendy, Alice and Dorothy as they have never been seen before. Available: <https://www.theguardian.com/books/2008/jan/05/comics> [Accessed 11/08/2018].

⁸⁴ Ibid.

⁸⁵ NEAL. 2006. *Lost Girls* Dispute Resolved Amicably. Available: <https://www.adweek.com/galleycat/lost-girls-dispute-resolved-amicably/4132> [Accessed 11/08/2018].

twenty-eight years, have the Government step in and take it away—under what pretext?⁸⁶

This idea, of creating a direct equivalence between copyright and private property was repeated much more recently by several authors in America as congress has repeatedly extended copyright length (there is some talk of them doing so again, potentially by up to 144 years in at least certain cases involving music, as copyrights will once again begin to expire, in 2019, if no further extension is made).⁸⁷ Mark Helprin, a popular novelist, has argued that,

WHAT if, after you had paid the taxes on earnings with which you built a house, sales taxes on the materials, real estate taxes during your life, and inheritance taxes at your death, the government would eventually commandeer it entirely? This does not happen in our society ... to houses. Or to businesses. Were you to have ushered through the many gates of taxation a flour mill, travel agency or newspaper, they would not suffer total confiscation.

Once the state has dipped its enormous beak into the stream of your wealth and possessions they are allowed to flow from one generation to the next. Though they may be divided and diminished by inflation, imperfect investment, a proliferation of descendants and the government taking its share, they are not simply expropriated.

That is, unless you own a copyright.⁸⁸

In the same article he argues that whilst it would be difficult to establish truly perpetual copyright it could (and should) be established in effect by having congress repeatedly extend it. Despite being fairly logical extensions of the ostensible logic behind modern copyright law, however, these ideas have received harsh pushback and it is generally seen as unlikely that congress in America will extend copyright once again.⁸⁹ The fact of this pushback would again seem to indicate that regardless of the ideology implicit in its copyright laws most people even in the west do not fully accept the idea of copyright as simply property. Indeed, it is difficult to argue that ideas can ever be property in the same way as a piece of land or furniture. For one thing an idea can, be used without taking it from the original author. Governments are not really expropriating anything when they terminate copyright they are just failing to prevent the use of similar things by others. One can see this especially on the internet where fanfiction (and even fan films) have gained a truly incredible degree of popularity without nearly the amount of outrage or guilt that might be expected from theft of physical property. When Tolkien placed the ideas of his characters into people's heads he made them, in a real sense, part of them. Just as one cannot forbid someone from acting on a piece of information they are aware of it is difficult to imagine that one can forbid them from developing

⁸⁶ TWAIN, M. 1906. Statement Of Mr. Samuel L. Clemens before the Committee of Patents of the Senate and House, to discuss amending the Copyright Act (1906). Available: <http://www.thepublicdomain.org/2014/07/19/mark-twain-on-the-need-for-perpetual-copyright/> [Accessed 10/08/2018].

⁸⁷ MCCARTHY, K. 2018. US Congress mulls expanding copyright yet again – to 144 years. *The Register* [Online]. Available: https://www.theregister.co.uk/2018/05/18/us_congress_copyright_extension/ [Accessed 16/08/2018].

⁸⁸ HELPRIN, M. 2007. A Great Idea Lives Forever. Shouldn't Its Copyright? *New York Times*.

⁸⁹ LEE, T. 2018. Why Mickey Mouse's 1998 copyright extension probably won't happen again. Available: <https://arstechnica.com/tech-policy/2018/01/hollywood-says-its-not-planning-another-copyright-extension-push/> [Accessed 10/08/2018].

an idea even if that idea be a complex story like *The Wizard of Oz*, *The Lord of the Rings*, or *Harry Potter*.

The Value of Derivative Works

The fact that the moral rights argument has never quite been excepted perhaps accounts for the curious unwillingness of its advocates to rely on it entirely unsupported. Those that argue most passionately for a more modern and absolute copyright system often proceed by criticising the literary value of derivative works. This returns us to the point briefly mentioned earlier in the Tanya Grotter court case. The court ruling on this case contain extensive criticism of the literary qualities of Tanya Grotter.⁹⁰ This is a strange matter indeed for a court to rule on. It is not uncommon, however, in arguments against derivative works, whether the chief argument is economic or moral, a preparatory barrage on the literary quality of the work is often made. This has been commented on by. It is also seen in the GRR Martin essay discussed above in addition to the criticism of fanfiction from an economic angle he also criticises it artistically arguing that it is a lazy form of literature since it does not involve an artist creating his own characters. He insists,

But don't write in my universe, or Tolkien's, or the Marvel universe, or the Star Trek universe, or any other borrowed background. Every writer needs to learn to create his own characters, worlds, and settings. Using someone else's world is the lazy way out. If you don't exercise those 'literary muscles,' you'll never develop them.⁹¹

This pattern is seen not only in the critics of derivative works but also the defenders who often argue passionately in the legitimacy of the works from a literary standpoint. This can be seen in the defence made by Yeskov of his work in which he compared it repeatedly to past works of literature by figures such as Mark Twain. Yet the very fact that this has become a point of dispute betrays the fact that the utilitarian view of copyright still holds sway even in nations where a more natural right view is proclaimed. People are very nervous with the idea that a copyright system should be suppressing worthy works of literature and so all such works must be dismissed as without worth before being dismissed legally. Striphas again comments on this,

The language that pervades both the Grotter decision and the foregoing analysis of Potter fakery in South and East Asia and eastern Europe—imposter, knockoff, pirated edition, fake, unauthorized adaptation—suggests the primacy or originality of Rowling's books over books like *Harry Potter* and *Leopard Walk Up to Dragon*,⁹²

Yet none of this is ever made explicit. GRR Martin dismisses fanfic as literarily inferior and insists that it should not be permitted but he does not give the first fact as a reason for the second. The reason is obvious. If the argument is stated baldly its implications become too clear. Firstly, as stated above too much of the canon of literature revolves around derivative works for them to be truly dismissed as always literarily inferior. Secondly, if this logic is preceded on it would naturally lead to the conclusion that a works copyright protection depends on its literary merit and it is doubtful if anyone wishes for courts to judge in this matter. The argument serves rather as a sort of reassurance and an attempt to heal the schism between the utilitarian and moral view of copyright by assuring us that nothing of

⁹⁰ STRIPHAS, T. 2009. *The Late Age of Print: Everyday Book Culture from Consumerism to Control*, New York, Columbia University Press. pp. 166-167

⁹¹ MARTIN, G. R. FAQ [Online]. Georgermartin.com. Available: <http://www.georgermartin.com/for-fans/faq/> [Accessed 30/08/2018].

⁹² STRIPHAS, T. 2009. *The Late Age of Print: Everyday Book Culture from Consumerism to Control*, New York, Columbia University Press. pp. 166-167

value has been lost and that they both add up to the same results in the end. If this study has demonstrated anything it is that a great deal that is of value is being lost.

Conclusion

What then can we conclude from all of this? Firstly, that the western copyright system is not the only copyright system or the inevitable development of copyright. In recent decades the complete control for enormous lengths of time that copyright grants to everything even remotely derivative of the original has been largely taken for granted in the west. But it is hardly a universal matter. It is instead a very recent development and not one that is (yet) excepted by most of the world in practice. Nor are its effects universally good. Whilst it does offer some protection of rights that less restrictive systems do (particularly moral rights such as the right for an author to exclusively control the presentation of his own works) it is very debatable if it truly encourages the production of useful arts when compared to less restrictive systems. Indeed, looking at the cases we have considered here it also often dramatically restricts and prevents the production of useful arts if, as I feel is beyond doubt, derivative works such as those discussed here have any value at all.

In looking at the use that has been made of western works in a Russian context (this could also be said of other non-western countries) we are not looking at a system that has failed to keep up with the changes made in the western system in the second half of the nineteenth century. Rather we are looking at a system that approaches copyright from fundamentally different priorities than are our own (although in fairness it should be highlighted that it is difficult to say whether the preservation of the Russian system truly derives from any ideological system rather than simple inertia and a distaste in modern Russia towards the west). It is a system that in many ways is more consistently applied than our own. Under the utilitarian model of copyright, it is easy to justify the publication of *The Last Ringbearer*, *Tanya Grotter*, and *The Wizard of the Emerald City*. However, under modern western copyright theory it is difficult to justify permitting parodies, works such as *Lost Girls*, or even any expiry date for copyright itself. It is partly this (as well as constant financial pressure from publishers) that has caused copyright to be continually extended as well as cases that would once have been permitted being prohibited as is clear in the contrast between the fate of *Tanya Grotter* and *Bored of the Rings*. As copyright becomes a topic of increasing controversy and becomes increasingly complicated to enforce with the presence of new technologies such as the internet; and as institutions such as the EU and the USA increasingly seek to impose an international copyright regime it may be of great value to consider these Russian works when looking for a way to go forward with a system of copyright that achieves all that is desired of a copyright system both by respecting rights as well as encouraging intellectual innovation.

This is not to say that the Russian system is or is likely to be if introduced into the west without disadvantages. An author's work can be distorted in ways that may be very disturbing under the old system as was demonstrated in the cases of *Children vs Wizards* and *Uncle Tom's Cabin*. Equally, certain franchises might be hurt by a looser system. Moreover, it is clear that authors often feel a very personal sense of ownership over their work which can be outraged by others using their characters or settings. Certainly, one cannot argue from these case studies that the advantages are entirely on one side. However, the tendency for decades in the west has been for a constant tightening of the copyright system and this, whilst not without any advantages has, as I hope this thesis has demonstrated, had major costs. If we are to continue to encourage intellectual activity we should look at whether these costs were truly well made in the years to come. Some balancing of the two systems, perhaps a way to find out a more moderate path, is called for.

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