

Public Domain works by Charles Darwin are being legally sold online. Is this ethical ?

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GRAHAM STEEL

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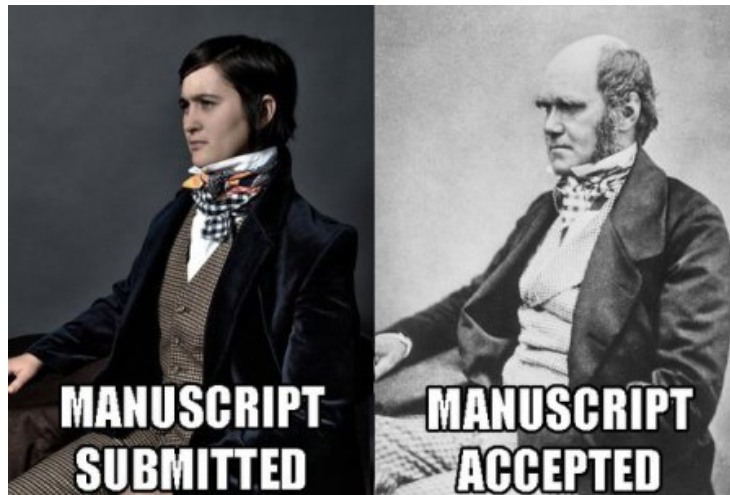
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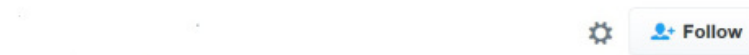
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Early on Sunday morning (21st August 2016), I spotted the following (*anonymized*) [#icanhazpdf](#) request tweet:-



Mildly interesting, journal impact factor is 2.316. Darn, paywalled. #icanhazpdf ? onlinelibrary.wiley.com/doi/10.1111/j. ...



After spotting this, I did indeed find that the publication of this Charles Darwin paper from 1858 is indeed sitting behind a paywall:-



(Thankfully, the person who left the original #icanhazpdf request for the paper



found a link to the free version).

Charles #Darwin paper from 1858 - yup, still behind a paywall... <https://t.co/gE1h1ZpF97> pic.twitter.com/m5cld7dqpS

- @Gr@h@m Steel (@McDawg) August 21, 2016

Here's some of the responses to my tweet:-

@EU_ScienceHub @JunckerEU @EU_Commission This is so against #openaccess policies that EU supports. Plz do something. <https://t.co/wCvEDfni6K>

- ScienceMatters (@SciMts) August 21, 2016

@openscience This is really not acceptable in 2016, we should get #openscience if we we want to make a better world <https://t.co/WhGhUPHA0t>

- Eduardo Pareja (@eduardopareja) August 21, 2016

THANKFULLY, A QUICK ONLINE SEARCH THREW UP A NUMBER OF OPEN ACCESS COPIES OF THIS WORK SUCH AS HERE ON THE DARWIN ONLINE WEBSITE.

So, should works dating back to that era be out of copyright and sitting in the public domain ? YMMV it would seem.

Some tweets from Copyright Librarian Nancy Sims:-

I can see why ppl are mad that a publisher is paywalling a Darwin article for ridiculous prices. But that - is- how the public domain works.

- Nancy Sims (@CopyrightLibn) [August 21, 2016](#)

A work being in the public domain doesn't mean we all have to treat it as open, it means we can all treat it as our own.

- Nancy Sims (@CopyrightLibn) [August 21, 2016](#)

Most cultural orgs agree that our ethics compel free & open distribution of public domain works. But for-profit publishers of course differ.

- Nancy Sims (@CopyrightLibn) [August 21, 2016](#)

Similar parallel: I license some photos CC BY. There are stock sites that sell them, appropriately labeled as CC BY. It irks, but is legal.

- Nancy Sims (@CopyrightLibn) [August 21, 2016](#)

SO, AFTER BEING INITIALLY SURPRISED THAT THIS PUBLIC DOMAIN WORK IS BEING SOLD BY A PUBLISHER (IN THIS CASE WILEY), THEY ARE WITHIN THEIR LEGAL RIGHTS TO DO THIS.

Earlier this year, there was an interesting thread relating to such matters after I posted this tweet:-

This is also linked to this one:-

One person however is of the view that this is **NOT** legal:-

Others disagree with that view:-

Let's see if Copyright expert Charles Oppenheim will comment:-

[@McDawg](#) Selling them is clearly OK. Claiming copyright not at all (*but given there isn't any law repressing copyfraud, it's hard to correct*)

- Alexander Doria (@Dorialexander) [August 21, 2016](#)

[@AndreaWiggins](#) [@HistGeekGirl](#) [@McDawg](#) Shabby. They get away with it because their particular form of access is the added value? Just guessing

- The Invisible A (@the_invisible_a) [August 21, 2016](#)

VIEWS OF SOMEONE ASSOCIATED WITH A PUBLISHER:-

[the_invisible_a](#) [@McDawg](#) [@HistGeekGirl](#) it seems wrong in principle, even if it may technically be legal. Just shows how messed up laws are.

- Andrea Wiggins (@AndreaWiggins) [August 21, 2016](#)

[@McDawg](#) [@phoebe_ayers](#) legally defensible, I mean, but I don't know whether there's precedent to clarify "value add". Not an IP lawyer.

- Andrea Wiggins (@AndreaWiggins) [August 21, 2016](#)

[.@McDawg](#) Yep, Wiley (or anyone else) can sell this. And it's totally legal to download it for free from Sci-Hub <https://t.co/n8Pol0eUPv>

- (((J@n Velterop))) (@Villavelius) [August 21, 2016](#)

(Jan Velterop implies that he is of the view that it's legal to download this from Sci-Hub as the work

itself is Public Domain)

Charles Darwin & Alfred Russel Wallace <https://t.co/O5lqkjiubk> #openscience #oahort @McDawg

- Authorea (@authorea) August 21, 2016