



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

GRAHAM STEEL

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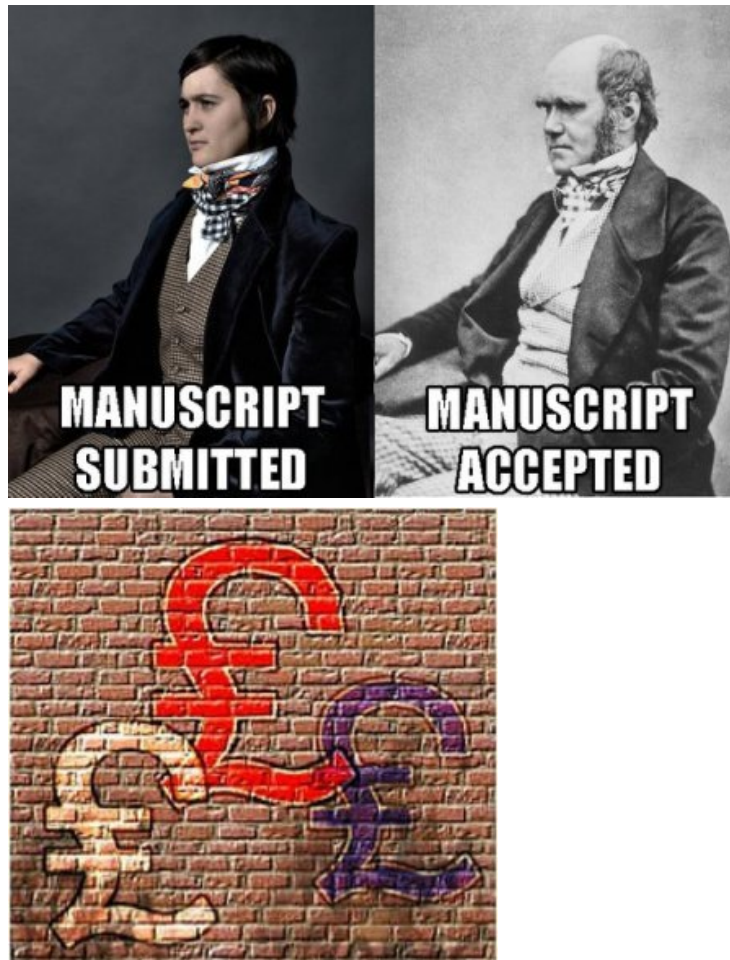
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Early on Sunday morning (21st August 2016), I spotted the following (*anonymized*) [#icanhazpdf](#) request tweet:-



Mildly interesting, journal impact factor is 2.316. Darn, paywalled. #icanhazpdf ?  
[onlinelibrary.wiley.com/doi/10.1111/j. ...](http://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](https://t.co/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 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 #oahigh @McDawg

- Authorea (@authorea) August 21, 2016