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Lee Edwards & Giles Moss

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Evaluating justifications of copyright: an exercise in public engagement

Lee Edwards and Giles Moss

School of Media and Communication, University of Leeds, Leeds, UK

ABSTRACT

Copyright law has a significant impact on public access to and use of creative works and can lead to the imposition of sanctions for infringements. Decisions about copyright law should therefore be justified to the public, but current consultation practices have not included the public voice adequately. This article presents the findings of a deliberative event where members of the UK public were asked to engage in-depth with different aspects of copyright law and its implementation. Participants drew on different justifications in assessing copyright, which we interpret in terms of Boltanski and Thévenot's 'market', 'civic', and 'inspired' orders of worth, and their views shifted over the course of the weekend as a result of the deliberative process. The findings challenge common perceptions that copyright policy is both too dry and too complex for the public to engage in and demonstrate the value of deliberation as a means of involving the public more effectively in this complex policy issue.

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Introduction: the public voice in copyright debates

Reaching agreement on how to manage markets for intellectual property is a process of negotiation, where limitations on public access must be explained and justified to citizens (Hettinger, 1989). However, despite the use of government-initiated consultations, the public voice in negotiations about copyright policy has been limited. At times, the public has made its presence felt in other ways: In 2012, the Stop Online Piracy and Protect Intellectual Property Acts (SOPA/PIPA) generated significant public protests in the United States of America (Lee, 2013; Sell, 2013), while the international Anti-Counterfeiting Trade Agreement also faced public opposition (Baraliuc, Depreeuw, & Gutwirth, 2013; Levine, 2012; Matthews & Žiková, 2013). But beyond rejecting unwelcome forms of regulation, what the public thinks copyright law should be has been difficult to determine.

One problem with including the public voice in policy debates is the lack of public understanding of copyright law and how it works. Another factor is the various purposes copyright serves: it may protect the rights of inspired creators, incentivize creative production, facilitate efficient markets, and/or maximise public access to creative work. Evaluating copyright and its application therefore requires the ability to travel between

different justificatory ‘worlds’, in Boltanski and Thévenot’s (2006 [1991]) terms, reconciling or balancing competing principles and priorities.

Deliberation may help to overcome these barriers (Klein, Moss, & Edwards, 2015). Deliberative processes engage stakeholders in discussing a complex topic, drawing on a range of evidence that allows them to come to an informed opinion. Studies of deliberative events, such as deliberative polls, have demonstrated that participants can become more informed and change their opinions as a result of deliberation (Himmelroos & Christensen, 2013; Luskin, Fishkin, & Jowell, 2002). Deliberation may promote understanding of different perspectives and lead to wider agreement about contested issues (Niemeyer & Dryzek, 2007). Many deliberative processes focus on specific policy issues and choices, rather than participants’ views about the values underpinning policy. To this extent, deliberative initiatives can replicate a shortcoming of government consultations, where the terms of the debate are decided before public input is invited (Freedman, 2008, 2010). This is a particular problem in the context of copyright, where fundamental principles are especially contested (Duff, 2008; Klein et al., 2015).

In this paper, we focus on whether deliberation can help participants to understand and reflect on the values – or justificatory ‘worlds’ – that underpin copyright, rather than on specific policy details or practicalities of implementation. We report on a two-day deliberative exercise about copyright policy, conducted with 88 members of the public in a city in the north of England. We explore the patterns of justification and critique of copyright that participants engaged in, the different justificatory worlds they drew on, and whether their views changed over the course of the event. We used surveys¹ and Q methodology to identify participants’ views about copyright before and after the event and conducted a thematic analysis of their discussions to explore how the latter connected to changes in their views. We note that people need not change their views for deliberation to be beneficial: it can be valuable in helping people to reach a better understanding and appreciation of the views of those they disagree with (Baccaro, Bächtiger, & Deville, 2016; Couldry, 2010; Niemeyer & Dryzek, 2007). However, because the public tend to lack a detailed understanding of copyright, we anticipated that access to more information was likely to change the basis for their opinions, as well as lead to better understanding of others’ perspectives (Sanders, 2012).

We first outline our theoretical framework, focused on deliberative democracy and the sociology of justification. We then describe the deliberative event and the methods we used to capture the views of participants. Finally, we present the analysis of the Q sorts and the discussions, identifying justificatory patterns, continuities and changes in participants’ opinions during the event.

Deliberation and justification

Theories of deliberation vary in the parameters they set for establishing high quality debate about matters of public interest. Habermas’ (1989) early model of deliberation emphasises rationality, equal status among participants, inclusivity and a focus on the common good, as reflected in exercises such as deliberative polls that have been used to gather stakeholder views on difficult policy issues (Fishkin, 2011; Fishkin & Luskin, 2005; Fishkin, Senges, Donahoe, Diamond, & Siu, 2018). More recent theoretical work on deliberation broadens the criteria to better reflect the ways in which political talk unfolds in everyday situations,

accommodating the fact that deliberation takes a variety of forms and emerges in a range of social arenas (Mansbridge et al., 2012). Emotional discourse, rhetoric and persuasion are recognised as valid modes of engagement (Dryzek, 2010; Young, 2000), while self-interest is treated as an important motivation for engaging in deliberation, alongside the common good (Mansbridge et al., 2010). Equal status and inclusivity remain important ideals, but the significant challenges of achieving them in practice are recognised, given the many implicit social markers that signal our identities to others, and the geographical spread of audiences affected by issues of public importance in a digital, globalised age (Fraser, 1990, 2007).

The evolution of deliberative theory offers a helpful way of accommodating contemporary debates about copyright, which cannot always meet Habermasian conditions for deliberation. For example, self-interest motivates many participants in copyright debates, including artists and industry rightsholders; and communication about copyright is often passionate, polemical and based on personal experience, rather than being rational. For an issue such as copyright, with widespread impact, framing deliberation in this inclusive way can overcome the exclusionary effect of privileging rationality and neutrality as 'ideal' deliberative forms (Mouffe, 1999).

We suggest that copyright policy decisions would be better informed and more considered following deliberative processes. Previous deliberative studies provide ample evidence to show how the opinions of participants may change through deliberation (Luskin et al., 2002), and researchers have identified some of the reasons for change, including the quality of deliberation as well as socio-demographic differences among participants (Himmelroos & Christensen, 2013; Suiter, Farrell, & O'Malley, 2016). Opinion change in itself is not necessarily the most significant issue, but whether new or existing opinions are genuinely better informed and considered (Baccaro et al., 2016; Shapiro, 2017). In the context of a complex policy issue such as copyright, having a strong basis for opinion formation is crucial for participants in the debate. Likewise, a convergence of viewpoints need not result from deliberation; indeed, a 'rational consensus' may be viewed as not only impractical, but as failing to respect pluralism and difference (Curato, Dryzek, Ercan, Hendriks, & Niemeyer, 2017). Instead, Niemeyer and Dryzek (2007) emphasise the importance of 'meta-consensus' as a deliberative outcome, where participants come to understand and appreciate the legitimacy of different viewpoints. If a 'rationally motivated consensus' does not follow from deliberation (a genuine possibility in the context of contested issues such as copyright), a 'negotiated agreement' based on compromise that 'balances conflicting interests' might be more realistic (Habermas, 1996, p. 166). Such agreements are more likely where a meta-consensus has been established and participants recognise the legitimacy of others' views.

Following Hettinger (1989), we suggest that deliberative negotiations about copyright will be driven by continual interactions between justifications and critiques of its existence, form and implementation. However, little is known about how different actors invoke normative practices, expectations and moralities, market logic and other sources of justification, as they engage with others and respond to their arguments in copyright debates. In this study, we use Boltanski and Thévenot's (2006 [1991]) theories of justificatory discourse and economies of worth to address this gap (see also Edwards, Klein, Lee, Moss, & Philip, 2015; Yar, 2008).

Boltanski and Thévenot’s (2006 [1991]) argue that societies must reach agreement about societal issues in order to function, and that justification and critique are part of the discursive process of finding common ground. They involve drawing on discursive ‘worlds’, systems of justice governed by different ‘higher common principles’ (see Table 1). Justification and critique emerge when actors draw on different worlds to explain their position, and common principles (or their application) come into conflict. For example, actors grounding their arguments in the market world would suggest individuals who support market processes should be particularly valued, while for those in the inspired world, greater worth should be attributed to creative individuals. Because we constantly move between different worlds and are exposed to alternative principles, justifications are regularly tested either by challenging the use of a certain principle to assess worth, as in the above example, or by challenging the relative worth attributed to different actors using the same principle (e.g., assuming that multinational companies are more important than small independent organisations in the ‘market’ world).

Research has identified a number of different justifications used in copyright debates, including the moral rights of creative producers to control their creations (echoing the principles driving the inspired world), the need to incentivise creative production (market world), or to protect public access to creative work (the civic world). These diverse justifications inevitably prompt critique. Following Boltanski and Thévenot (2006 [1991]), we suggest that the interplay of justification and critique has the potential to lead to changes in the ‘worlds’ that people use to make sense of copyright policy, thereby opening up new avenues for reaching agreement about its form and implementation.

Method

To structure the event, we followed the format of the twenty-first-century town hall meeting in key respects (Lukensmeyer & Lyons, n.d.), recruiting a diverse and representative set of participants, providing information and expertise to participants, and allowing adequate time for discussion.

We used a combination of self-recruitment and quota sampling to find participants. The 88 participants represented a balanced, if not fully representative, sample and included a wider range of people than is typical for government consultations. Participants lived in or around the city where the event took place, and the sample was diverse in relation to gender, age, occupation, ethnicity, and levels of engagement with copyright law and creative work (see Table 2). All participants were paid £100 for their two-day participation.

We wanted to both provide adequate information for participants to engage fully in the discussion, and reflect the full range of discourses and discursive styles used in public debates about copyright, in order to see how our participants responded to them. An

Table 1. The common worlds and their principles.

Common world	Market	Industrial	Civic	Domestic	Inspired	Fame	Green
Higher common principle	Price, cost	Technical efficiency	Collective welfare	Esteem, reputation	Grace, singularity, creativeness	Renown, fame	Environmental friendliness

Adapted from Patriotta et al. (2011, p. 1810).

Table 2. Demographic breakdown of participants^a.

Demographic variable	% of total sample
Gender	
Female	51
Male	46
Non-binary	1
Age	
16–24	17
25–34	22
35–44	18
45–54	20
55–64	14
65+	7
Occupation	
Managerial and professional worker	22
Intermediate occupations	27
Routine and manual	8
Not working/long-term unemployed	6
Not classified (student/retired)	34
Ethnicity	
White	61
Black/Black British (Black/African/Caribbean)	15
Asian/Asian British (includes Indian, Pakistani, Bangladeshi, Chinese, other Asian)	17
Mixed	5
Creative worker	
Yes	23
No	75
Creative hobby	
Yes	58
No	40

^aMissing data means the totals do not always add up to 100%.

activist from the Open Rights Group participated as an advocate and we also approached representatives from the creative industries and creative workers associations: namely, Alliance for Intellectual Property, the Industry Trust, the BPI, Featured Artists Coalition, the Design and Artists Copyright Society. Unfortunately, we were unsuccessful in recruiting the latter. However, industry justifications of copyright are prevalent in the public sphere and rights holders have long invested in public-facing communication campaigns (Edwards et al., 2015; Klein et al., 2015; Lessig, 2004). Therefore, although personal representatives from industry were not present, we assumed participants were aware of industry discourses. We circulated news articles about copyright for participants to read, which represented different perspectives, as well as a summary of relevant aspects of government policy, briefing notes, and links to relevant websites. We started each session with an introduction by an expert, who remained available to answer questions. The result was that participants encountered a range of perspectives on copyright law during the event, as well as different discursive styles in addition to rational debate.

From the perspective of deliberative theory, consultations mistakenly assume that people's views are fixed in advance, sampling them at a single point in time and without incorporating dialogue and reflexivity. We gave participants two full days to discuss copyright law, encouraging them to reflect on each other's perspectives before reaching a judgement. We divided the event into four sessions, focused on copyright duration, exceptions, enforcement and penalties, and the future of copyright. We provided one or two central questions for each session, and participants were divided into nine small

We report on two of the methods used to investigate our participants' views and identify changes over the course of the two days: 1) pre- and post-event Q sorts and 2) a discourse analysis of the small group discussions.

Participants completed a Q sort before and after the event. Q method is a qualitative tool for systematically analysing subjectivity (Brown, 1980), or understanding how individuals decide ‘what is meaningful and significant from their perspective’ about a complex issue (Coogan & Herrington, 2011, p. 24; Watts & Stenner, 2005). It involves asking participants to do a forced sort of statements about an issue, allocating them to different positions on a numerical grid (for example, from -5 (least important) to $+5$ (most important) – see Figure 1). Statements should reflect the universe of perspectives on the topic being considered, reflect the language of existing discussions on the topic, and offer opportunities for participants to agree or disagree (Brown, 1993; Coogan & Herrington, 2011). Each statement may be placed only once on the grid and all spaces on the grid must be filled. We drew on existing academic, industry and policy research as well as industry and activist campaigns to compile a list of statements that reflected a wide range of arguments about copyright, its implementation and enforcement. We ensured they were written in lay terms and they were reviewed for suitability, clarity and comprehensiveness by two other academic colleagues: one copyright expert and one Q methodologist.

Q sorts are often administered individually and include a discussion with participants about their decisions. However, time and resource constraints meant that interviewing each participant was impossible, and so the sorts were conducted by participants

Please read each statement carefully, and then please consider how important each consideration should be when making copyright law. Please note down the statement number in a box on the grid, once you have decided how important it is. You may only allocate one statement to each box.

[illegible]

Figure 1. Q-sort grid.

independently before and after the event, with researchers available to answer questions if required. While we attempted to monitor participants' progress by circulating around the room as they were filling out the sorts, the lack of one-to-one supervision of their sorts affected the valid completion rate. Incomplete or incorrect Q sorts (e.g., with one statement entered twice on the grid and one statement missing) had to be eliminated from the analysis; this left 58 complete pre-event Q-sorts, and 50 complete post-event Q-sorts. 33 were from the same participants, and these were used for the pre- and post-event comparison. Demographic variables were not tracked in the Q sort exercise, and so the results should not be taken as representative of the views of all 88 participants at the event. Nonetheless, because Q methodology is a qualitative tool, the sample size is sufficient for a robust analysis (Coogan and Herrington, 2011) and the results provide a clear indication of how this group of participants changed the ways they made sense of copyright after the event.

The data were entered into an excel spreadsheet, converted into a PQmethod .DAT file and uploaded for analysis through the open source KenQ programme (see: shawnbanasick.github.io/ken-q-analysis/#section1). Q sorts are analysed using a factor analytic method, which reveals how participants' opinions cluster around different patterns of statement rankings. Interpretation draws out themes that characterise each pattern, based in particular on the statements that differentiate one from another (Watts and Stenner, 2005). Our focus was on whether the themes identified would reflect any of Boltanski and Thévenot's (2006 [1991]) worlds, and whether/how the patterns and themes would change.

Discourse analysis

For the discourse analysis, we selected two groups at random and analysed the transcripts of their discussions. Our aim was to identify specific comments and exchanges for more in-depth analysis. These 'indicative moments' show how our participants view copyright and the principles used to justify it, as well as how they draw upon and move between different justificatory 'worlds'.

Our coding scheme was devised deductively using Boltanski and Thévenot's (2006 [1991]) theoretical framework. The codes covered instances when a particular justificatory world was being drawn upon, when there was a test that was internal to this world, and where there was a critique from another world. They also identified when participants drew upon different types of evidence (event materials, experts, news stories, personal experience, and popular culture) and significant dynamics in the discussion (agreement, disagreement, asking a question, demanding/giving a justification, not/changing opinion, becoming more informed). We read through the transcripts and coded the discussions of one group independently in NVivo. We then checked each other's coding to ensure consistency and refined our approach accordingly.

Results

The results showed that participants' views on copyright were grounded in a number of the principles outlined by Boltanski and Thévenot's (2006 [1991]) and that the justification and critique they engaged in during the discussions led to a shift in the principles

they drew on. Below we present the results of the Q sort analysis, which illustrate the shift that took place, before discussing the discourse analysis, which illustrates the justifications, tests and critiques that participants engaged in.

Pre-event Q sort

In the pre-event Q sort, the scree plot showed a clear inversion after three factors, but the explained variance and the fact that all factors had eigenvalues greater than 1 suggested that it would be worth including up to five factors for the rotated matrix. Varimax rotation was applied and after rotation, including a fifth factor explained 8% of the additional variance but accounted for fewer sorts overall. Four factors explained 54% of the variance and improved the clarity between factors, and were selected for the final analysis. Table 3 shows the participant count and explained variance for each factor. Correlations were low to moderate (Table 4), reflecting the fact that modes of justifying copyright are not mutually exclusive (Edwards et al., 2015). Table 5 shows the distinguishing statements for each factor.

Factor 1 was most strongly characterised by what participants did *not* see as important for copyright lawmaking, and reflected a lack of concern with ‘grey’ areas of policy and practice. Participants attached least importance to statements about the potentially positive impact of copying, sharing and infringement, and also viewed normative practices of copying and sharing as less important. Commercial interests were prioritised, with positively rated statements reflecting the need for creative industries to obtain a return on investment, exceptions to be non-commercial and rewards from copyright to be evenly distributed. This factor reflected an opposition between market and civic worlds, in Boltanski and Thévenot’s terms, with the former perceived as more important for making copyright law than the latter.

Factor 2 was also primarily defined by things participants felt were less important for lawmaking. Participants loading onto this factor felt that moral judgements of the (mis)use of copyrighted work were the least important consideration. A return on investment for creative industries and the possibility that infringement might have positive consequences were also less important. Items relating to user and author interests were prioritised, reflecting the prevalence of sharing and copying, entitlement to access, and the need to prioritise authors’ and public rights given that corporations already make money from copyrighted work. This factor reflects an anti-market stance in its rejection of moral judgements and the need for a return on investment, both often found in campaigns against copyright infringement, and a recognition of public and authorial rights, invoking both civic and inspired worlds.

Factor 3 reflects the need to balance authorial rights to recognition with public rights to access and use creative work. The right to recognition is a reference point for the two highest loading statements, which reflect a sense of immorality associated with both using copyrighted work without permission and profiting illegally from it. The three negatively

Table 3. Respondents and explained variance, rotated factors (pre-event).

	Factor 1	Factor 2	Factor 3	Factor 4
Respondents	14	7	5	3
Explained variance (%)	20	16	10	8

Table 4. Correlation matrix, rotated factors (pre-event).

	Factor 1	Factor 2	Factor 3	Factor 4
Factor 1	1	0.3544	0.4256	0.0839
Factor 2	0.3544	1	0.2676	0.3617
Factor 3	0.4256	0.2676	1	0.2155
Factor 4	0.0839	0.3617	0.2155	1

loading statements also reflect a lack of concern with civic priorities: copyright is not more important than other rights, individuals may find it difficult to defend themselves against infringement, and changes in practice can prompt new thinking about copyright. The emphasis on author rights invokes the inspired world; civic rights and grey areas of practice are less important, and the market world is not relevant.

Factor 4 indicates a set of participants harbouring reservations about the need for copyright at all. The highest loading statement states that copyright is not more important than other fundamental rights, and caveats around the type and intent of infringement also rate highly. Correspondingly less important are the statement comparing sharing without paying to stealing, and that permission can be difficult to obtain. At the centre of the scale is the statement that companies have other ways to protect their work. The worlds are harder to detect in this factor, although the civic world is implicit in a questioning approach to infringement and situating copyright in the context of other rights. However, ideas traditionally associated with the civic world, such as the public's right to access or share creative work, do not appear, and reference to the market and inspired worlds is also absent.

The pre-event sorts illustrate how worlds are invoked by a 'lay' audience considering the relative importance of different arguments to copyright lawmaking. The civic world is dominant, appearing in all factors, but it is expressed in different ways and appears at both ends of the importance scale. This arguably reflects the complexity of the copyright debate, where different arguments about its value to public life circulate. Market-based justifications also polarise opinion. In contrast, where the inspired world is invoked it is rated positively, suggesting that the principle of rewarding creative workers for their efforts may be relatively uncontroversial.

Post-event Q sort

The post-event Q sort scree plot showed a clear inversion after two factors. The explained variance and high eigenvalues suggested that it would be worth including up to five factors for the rotated matrix. After rotation a fifth factor explained an additional 5% of the variance, but one factor had only one distinguishing statement, two were highly correlated, and the rotation accounted for fewer sorts overall. Therefore, four factors were chosen for the rotation and final analysis. Table 6 shows the participant count and explained variance for each factor. Correlations were low, except for a moderate correlation between factors 1a and 2a (Table 7), indicating greater clarity between participants' positions than before the event. Table 8 shows the distinguishing statements for each of the factors.

The largest number of participants load onto Factor 1a and distinguishing statements suggest they are undecided about the priorities of copyright lawmaking following deliberation. Only four statements define the factor, two of which reject civic-oriented principles: the right to access creative work without paying, and sharing is part of everyday life. The

Table 5. Pre-event Q-sort results.

Statement	Factor 1		Factor 2		Factor 3		Factor 4	
	Q-Sort location	Z-score ^a	Q-Sort location	Z-score	Q-Sort location	Z-score	Q-Sort location	Z-score
Creative industries want a return on the investment they make in funding and distributing creative work (e.g., films, books, music)	4	1.25*	−2	−0.84				
Exceptions to copyright should be non-commercial	2	0.71						
Financial rewards for individual authors are not always evenly distributed	1	0.38						
People use copyrighted work illegally, for personal purposes	0	−0.11*						
Sharing and copying is the basis for learning and for spreading knowledge	−1	−0.14*					−3	−1.01*
The public have the right to access creative work without always having to pay for it	−1	−0.69*						
Sharing and copying are a normal part of everyday life	−2	−0.93*						
Copyright infringement takes a wide variety of forms	−2	−0.93*					2	0.89
Copyright infringement isn't always intentional	−3	−0.98*					3	1.34*
Copyright infringement doesn't always harm the rights holder	−4	−1.46*						
Copyright is not more important than other fundamental rights	−4	−1.5*	0	−0.05*	−5	−2.28*	5	2.23*
Sometimes, having someone copy or share your work illegally can have positive consequences	−5	−1.68	−2	−0.43*				
The interests of individual authors and the public should be prioritised, given that corporations already make a lot of money			4	1.47*				
The public have the right to access creative work without always having to pay for it			3	1.45				
People want to share copyrighted work that they have bought (e.g., DVDs, books) with whomever they like			2	0.93	1	0.25		
People use copyrighted work illegally, and make money from it			−3	−1.18*	4	1.87*		
Sharing and copying work without permission is like stealing			−4	−1.27*	4	1.21*		
Sharing and copying work without paying is like stealing			−5	−2.2*			−2	−0.94*
Individual authors are entitled to be recognised as the creators of their work					2	0.66*		
Changes in the way that we think about sharing and reusing					−1	−0.23		

(Continued)

Table 5. Continued.

Statement	Factor 1		Factor 2		Factor 3		Factor 4	
	Q-Sort location	Z-score ^a	Q-Sort location	Z-score	Q-Sort location	Z-score	Q-Sort location	Z-score
creative work can prompt new ways of thinking about copyright								
It is hard for individuals to defend themselves against accusations of copyright infringement					-3	-1.15		
Corporations have other ways of protecting their work than enforcing copyright							0	0.22*
It is sometimes difficult or impossible to get permission to use copyrighted work.							-4	-1.63*

^aSig. ($P < .05$); * indicates $P < .01$.

Table 6. Respondents and explained variance, rotated factors (post-event).

	Factor 1a	Factor 2a	Factor 3a	Factor 4a
Respondents	10	7	7	2
Explained variance (%)	19	19	11	9

Table 7. Correlation matrix, rotated factors (post-event).

	Factor 1a	Factor 2a	Factor 3a	Factor 4a
Factor 1a	1	0.4761	0.2473	0.2345
Factor 2a	0.4761	1	0.2571	0.0065
Factor 3a	0.2473	0.2571	1	0.042
Factor 4a	0.2345	0.0065	0.042	1

other statements indicate no clear pattern. The fact that exceptions to copyright can be unclear is rated positively, while making money illegally from copyrighted work is placed mid-scale. Thus, for this group of respondents, deliberation has led to agreement about the relative importance of a few specific ideas, but has not produced a clear position based on the logic of particular worlds.

Participants loading onto factor 2a, in contrast, clearly identify the importance of public and authorial rights to copyright lawmaking. The need to prioritise the interests of authors and the public, the right to access creative work without paying, and the public's desire to share what they have bought, are all rated highly. Negatively rated are moral judgements about sharing and copying, and the obligation to pay. 'Grey' areas of copyright policy and its relation to other fundamental rights are at the centre of the scale. These participants prioritise the civic world and, to a lesser extent, the inspired world, rejecting the market world framing of users as consumers and priority for corporate interests. The pattern of statements is very similar to Factor 2, suggesting that this position, where civic and market interests are clearly opposed, may be less responsive to deliberation than other justificatory patterns.

Factor 3a indicates participants heavily focused on individual rights and actions in relation to copyright. The statements that copyright is no more important than other

Table 8. Post-event Q-sort results.

Statement	Factor 1a		Factor 2a		Factor 3a		Factor 4a	
	Q-Sort location	Z-score ^a	Q-Sort location	Z-score	Q-Sort location	Z-score	Q-Sort location	Z-score
Exceptions to copyright are not always clear and easily understandable	3	0.98*						
People use copyrighted work illegally, and make money from it	0	0.01	−3	−1.05	−1	−0.53	4	1.54*
Sharing and copying are a normal part of everyday life	−3	−1.16*					2	0.9
The public have the right to access creative work without always having to pay for it	4	−1.25*	4	1.25*				
The interests of individual authors and the public should be prioritised, given that corporations already make a lot of money			3	1.07				
People want to share copyrighted work that they have bought (e.g., DVDs, books) with whomever they like			2	0.95			0	0.11
Copyright is not more important than other fundamental rights			0	−0.18	4	1.03*		
Sometimes, having someone copy or share your work illegally can have positive consequences			−1	−0.31*	2	0.54*		
Copyright infringement doesn't always harm the rights holder			−1	−0.35	0	0.25		
Users are morally obliged to pay for the creative work they enjoy			−4	−1.5*			3	1.07*
Sharing and copying work without paying for it is like stealing			−4	−1.52*			−2	−0.5
Sharing and copying work without permission is like stealing			−5	−1.85*				
It is hard for individuals to defend themselves against accusations of copyright infringement					3	1	5	1.87*
Copyright infringement isn't always intentional					3	0.83	0	0
Copyright infringement takes a wide variety of forms					2	0.76	0	0
Non-commercial institutions, such as libraries, schools, churches and universities, want to use creative work easily					0	0.27	−2	−0.57
Changes in the way that we think about sharing and reusing creative work can prompt new ways of thinking about copyright					−1	−0.49		
Copyright law needs to benefit everyone					−2	−0.61*	−5	−1.9
Day-to-day habits of users might challenge how industries and authors think about copyright					−3	−1.21	3	1.51*
					−4	−1.25		

(Continued)

Table 8. Continued.

Statement	Factor 1a		Factor 2a		Factor 3a		Factor 4a	
	Q-Sort location	Z-score ^a	Q-Sort location	Z-score	Q-Sort location	Z-score	Q-Sort location	Z-score
Financial rewards for individual authors are not always evenly distributed								
Sometimes, intermediaries (e.g., Google, YouTube, Internet Service Providers) take down copyrighted material without investigating whether it's necessary					-5	-2.11		
Individual authors are entitled to be recognised as the creators of their work							0	-0.14*

^aSig. ($P < .05$); * indicates $P < .01$.

fundamental rights, and that individual defence against infringement is difficult, are both rated highly and act as reference points for the other highly ranked statements expressing caveats about infringement and its effects. Less important are the imperfections of copyright in practice and the potential for new normative practices to change thinking about copyright. The priority for these participants seems to be to protect individual rights at risk from copyright law. The pattern reflects the civic world insofar as it indicates an understanding of user-as-citizen – but respondents do not engage with the public or societal dimension of the civic world, and nor do they engage with the market or inspired worlds.

Only two participants load onto the final factor, 4a, but indicate a clear preference for a compromise position. The statements at the centre and higher end of the scale reflect a balance between author and user rights, including recognition of the normative practices of sharing, the variability of infringement and the moral obligation to pay for using creative work if it is to be used to make money. Only three statements distinguish the lower end of the scale, with no discernible pattern: the idea that copyright law should benefit everyone, the comparison between stealing and sharing without paying, and the fact that non-commercial organisations want to use creative work easily. Participants seem to feel that copyright lawmaking should be based on a compromise between civic and inspired worlds; like the previous group, they do not reference the market world.

The Q sort results demonstrate how respondents draw on different justifications as they engage with the copyright debate and suggest there were changes in the ways participants understood the priorities associated with copyright lawmaking following deliberation. The civic, inspired and market worlds form the basis of a relatively clear set of preferences in the pre-event Q sorts. Post-event, however, the civic world has most influence on participants' positions; justifications from other worlds appear less frequently. Factor 1a is of particular interest, because it reflects a relatively large number of participants who do not identify with a clear position. As noted above, previous research shows that agreement does not always result from deliberation, and when dealing with a complex and occasionally abstract issue like copyright, an indeterminate outcome may be inevitable even if participants recognise and understand the range of arguments as a result of their deliberation. To provide more insight into the changes we observed, we next turn to the discourse analysis.

Discourse analysis

In the discourse analysis, we identified the justificatory worlds² out of the messiness of discursive exchanges in two of the small discussion groups, rather than from prepared statements. The worlds were evident in how participants sought to understand and evaluate different viewpoints about copyright, assessing them against agreed principles from within the same world ('internal' critiques) or alternative principles from other worlds ('external' critiques). Participants also negotiated conflicting views by proposing ideas that balanced different principles and priorities.

Some participants positioned copyright within the market world. From this perspective, copyright enables the exploitation of creative work through the marketplace and revenue provides an economic incentive for producers and investors. As one participant put it, without copyright 'There wouldn't be that incentive to do it again, because if it's immediately in the public domain why bother?' (Female 3, Table 1, Session 1). Similarly, investors would not support creative producers: 'if they don't see a return they won't invest in the small artists and that won't work for them either' (Female 4, Table 2, Session 4). From this perspective, copyright is justified since it facilitates a market for creative work, determining its value by managing consumer demand. These discussions echo the position of Q sort participants loading onto Factor 1, who prioritised the market world.

Some critiques of this view were internal, insofar as they did not question the market as such, but rather the extent to which fairness is realised by the current system. For example, some participants suggested that large companies might use their legal and political resources to skew the copyright system and hinder competition, giving some market participants an unfair advantage over others. External critiques appeared when participants sought to shift the discussion away from the market and evaluate copyright according to different principles. For example, some drew on the inspired world and its principles of singularity and creativity. In the inspired world, copyright is not required to incentivise creative production because genuine creativity is based on passion and enthusiasm, and happens regardless of economic gain.

M1. [P]eople will always make art, people will always do that, so when we're talking about protecting the interests of large organisations and corporations which are making a killing off the creative efforts of other people then I think they should not be prioritised as much as the individual creating the artwork. (Table 1, Session 4)

The inspired world generated different justifications and critiques of copyright, for example, as a way of protecting the integrity of creative producers and their control over their work:

F3 [...] we're all talking quite freely about financial gain, whether it's in the author's lifetime or the estate gaining. I think there's also a point to be made about the artist having a say over how and where his work is used, not just from a financial gain but from an artistic integrity. (Table 1, Session 2)

This argument helps explain why some Q sorts emphasised the rights to authorial recognition as well as financial reward (e.g., Factor 3). Some participants also recognised that copyright law may restrict creativity based on the reuse of work and 'creative recontextualisation' (Hesmondhalgh, 2013, p. 163), and might therefore operate against the principles of the inspired world. This argument reflects another shift observed in the Q sorts: while

the potentially positive consequences of copyright and sharing work were not highlighted as valuable in the pre-sorts, they were a priority in Factor 3a.

In their discussions participants also critiqued the market and inspired worlds by drawing on principles of community and the common good associated with the civic world. From this perspective, the market and inspired worlds are too individualistic and pay insufficient attention to collective interests. Some participants felt that the public as a whole should have greater access to creative work, reflecting the positions in Q sort Factors 4 and 3a:

M3: I mean who does benefit: authors, publishers, society to a certain extent; but who should benefit? I just think society in general. I guess I take maybe a, a radical view in the sense of I just don't think copyright law is persuasive as a thing in general and I feel like if you are making an artistic work the general idea is not to force or require things. (Table 2, Session 1)

Some participants drew on civic justifications to relate creative work to free speech and education, questioning whether copyright hinders these public values, and discussed the cultural significance of creative work such as music and art, beyond their importance to individual producers. These views added to the variety of invocations of the civic world, a pattern that was also reflected in the Q sort results.

Like the market world, the inspired and civic worlds were critiqued. Drawing on the market world, some participants argued that, in the 'real world', economic incentives are necessary:

F2: So in an ideal world, people should be allowed to enjoy every kind of art, [...] ...

F4: But it's not realistic. At the end of the day an artist or a creator of a work needs to be able to put food on their table, they need to be able to pay their bills so we don't have that ideal world, we have the real world where people need to feed their families and that includes creators of work. (Table 1, Session 3)

Participants also emphasised the point that creative industries provide the necessary infrastructure and processes to bring creative work to the public, and therefore have a legitimate interest in copyright. These market-based arguments indicate that participants understood the principles behind markets for copyrighted work, even if the Q sorts indicated that they were not prioritised over other considerations.

Alongside justification and critique, there were efforts to balance competing priorities associated with copyright. In the light of civic world critiques, for example, some participants proposed modifying the market-based copyright system to make it more amenable to civic priorities. One participant suggested that, after a certain period, revenue generated by copyright should be returned to the community, while another suggested that a 'cap or upper limit' be applied, to prevent the system being exploited unfairly and to enable money to be redistributed:

F4: [I]n terms of finances I just think that there should be a cap, this is the limit, and after that the finances, whatever has been produced it's been distributed to society in some shape or form. I don't know. [...] I don't have answers for that but it's just like – going back to the society in a way that more people can be creative who can't afford to be creative. Supporting them in a shape or form. (Table 2, Session 1)

Another proposal for market reform, to counter the advantages that larger companies have over independent creative producers, was to create a moralised market where

consumers decide to reward people who genuinely warrant it – a ‘moral Spotify’, as this participant put it:

F5: Maybe there needs to be a moral Spotify for independent artists.

[...] Pay as you feel music. It probably would be already there if you look, one where you pay a small fee to listen to music and reward artists. (Table 1, Session 4)

In response to concerns that large companies have more resources to defend copyright, participants suggested introducing an independent professional body that could pursue everyone’s claims fairly:

M2: [T]he good thing about having some kind of a professional body though would be that to a certain extent – or at least in theory, probably not in practice, but it would mean that the resources of the copyright holders wouldn’t be as important. So in the sense of if one individual had a small little business and he was infringed in terms of his copyright, he could go to the same body as a corporation and they would still have the same resources. (Table 2, Session 3)

In these discussions, participants clearly recognise that the market plays a central role in copyright debates, but could be reformed in light of priorities associated with other worlds. This helps to explain the lack of attention to the market world in the post-event Q sorts. Rather than being grounded in a dismissal of the market, the discussions suggest that participants recognised its importance but seemed to feel its interests were already catered for. Therefore, the Q sorts did not reflect a need to prioritise market interests over other considerations.

The justifications, critiques and negotiations revealed through the discourse analysis suggest that during the deliberation, participants drew on principles associated with different worlds, reflected on a wide range of arguments, and developed a deeper understanding of the copyright debate. The fact that their opinions were more informed following the exercise was confirmed by the anonymous, voluntary written feedback collected at the end of the event. Participants’ comments showed how deliberation had enabled them to learn more about copyright, reflect on how it applied to their lives, and to share their views with others:

I have found being involved in public discussion enlightening and valuable. I arrived with no opinion and although I am not an expert now, I feel as though I have gained an opinion. I believe more discussions like this need to take place to ensure the public (youngsters in particular) are educated and more aware of the legalities/of sharing implications.

Some participants experienced an avalanche of new questions, showing how deliberation had opened up a wide range of options for managing copyright in daily life:

Wow ... copyright for car systems: didn’t realize it’s everywhere. How do we control what we do? Is NOT going online a way to protect ourselves? Copyright and money: a deadly combination for creativity? Do we live in a world of ‘exceptions’? Why can’t we define in ‘objective’ terms the way copyright works? Copyright and education: the winning combination? (People who are aware of what they do can do it right!).

Finally, the development of participants’ knowledge and understanding was also reflected in new ideas that emerged about how copyright policy might be structured, implemented and managed. These ranged from the humorous (making copyrighted files emit an intolerable, high-pitched sound that would ‘condition’ users not to break

the law) to the more rational (empowering platforms and intermediaries to enforce copyright because they are closest to infringement; improving education; improving transparency from rights holders; aligning punishments to the scale of the harm committed; adjusting the quality of copyrighted work based on whether the user pays or not).

Conclusion

The aim of this study was to explore how involving the public in a deliberative discussion about copyright might change the ways they understand and reflect on the values that underpin it. Our analysis revealed how, in circumstances that encourage reflexivity and dialogue, participants engage with and critique different justifications of copyright, and potentially make sense of them in new ways. The changes observed across both the Q sorts and discussions support our argument that the content of deliberation makes a difference to the ways people think about copyright. For example, we had an activist representative present for one day of the event, engaging with participants in detailed discussions about civic and public interest issues, and the Q sorts showed that participants developed a strong understanding of civic justifications for copyright. Experts representing industry and creative workers were not present, which meant that their justifications were represented indirectly, through media articles or explained by other experts. While participants' knowledge of the market was clearly evident, the lack of an expert will have inevitably limited the degree to which they could both reflect and be reflexive about this set of priorities. This constrains the possibility of a meta-consensus around market interests, as evidenced by their weak or non-appearance in the post-event Q sorts.

Our study has some limitations. The event was located in one city in England and findings cannot be generalised. The Q sorts should also be understood as indicative and partial, rather than representing the universe of possible opinion, because they represented only a portion of attendees at the event, and did not account for all the variance across participants' views. There is clearly more to be discovered about how the public think about copyright policy and practice. Similarly, our analysis of the discussions incorporated only two of the nine groups, so should be understood as illustrative of the debates that took place, rather than a definitive representation. Finally, as noted above, the absence of industry and artist representatives limited the extent of deliberation about their positions in the copyright debate. Finally, we set a general level of debate, rather than focusing on specific details of policy or practice. Further research could explore how the public might deliberate about other urgent, more specific challenges (e.g., platform responsibilities, or the tensions between privacy and surveillance).

These limitations notwithstanding, the results suggest that deliberation can change the way participants think about the values and justifications that underpin the copyright debate. Participants' overwhelmingly favourable response to the event counters any assertion that copyright law is too complex for the public to understand or that engaging them in debate is too difficult. On the contrary, the results indicate that deliberation is an important tool through which members of the public from all walks of life will engage enthusiastically in discussions about copyright. This is a crucial finding for policymakers. We recognise that the public voice faces stiff competition from vested interests who actively lobby governments; nonetheless, our participants' proposals for implementing and managing copyright suggest there is value in listening to 'bottom-up' policy solutions, and

support the case for structuring public participation in copyright policy making more effectively. Indeed, deliberation could enable public contributions to other fraught areas of digital media policy where agreement about parameters, implementation and enforcement has proven elusive. We argue that deliberative engagement is a normative priority in such contexts. As philosopher Rainer Forst (2014, p. 2) argues, people have a right to demand that laws and policies are justified in a way they can accept – a ‘right to justification’. Better mechanisms must be found to realise this right in relation to copyright and other aspects of digital media policy that permeate our lives.

Notes

1. We do not report on the surveys here, for reasons of space. More information about the survey results can be found in the project report, found here: <https://www.create.ac.uk/publications/living-within-copyright-law-what-is-it-how-does-it-work-how-could-it-change-project-report/>.
2. For reasons of space, our analysis is limited to how participants drew on market, civic, and inspired worlds. The industrial world was also invoked when copyright implementation was discussed, the domestic world appeared in discussions of inherited rights, and the world of fame when discussing the rights of high-profile stars versus individual creators. Only the green world was fully absent from the discussions.

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Notes on contributors

Lee Edwards is Associate Professor at the London School of Economics and Political Science. She teaches and researches strategic communication from a critical perspective, with a focus on how power circulates in and through strategic communications work, including in the field of copyright policy. She is the author of numerous articles, books and book chapters, publishing theoretical interventions and empirical studies in many of the leading journals in the field of communication scholarship.

Giles Moss is an associate professor in the School of Media and Communication at the University of Leeds, UK. His research focuses on different aspects of the relationship between media and politics, covering both political communication and media policy. He has published work in a range of

academic journals and he is co-author of *Understanding Copyright: Intellectual Property in the Digital Age* (SAGE).

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