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**The Issue of Comment Ownership and
Copyright at PubPeer**

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Abstract

The PubPeer Foundation is a non-profit organization based in California that runs and owns PubPeer, a website that claims to be an online journal club, but that specializes in science whistle-blowing while also serving as post-publication peer review site for critique of the published literature. On the footer of the PubPeer top-page, a copyright notice appeared that stated until mid-2017 “Copyright © 2017 PubPeer, LLC” and even until at least April 2018, as “Copyright © 2017 PubPeer Foundation”, only recently updating its copyright statement and clauses. This commentary examines the issue of comment ownership at PubPeer within the realm of copyright. While the structural framework of the site is copyrighted, the majority of the “original” work displayed on that site are signed, anonymous and pseudonymous comments. Does the copyright mark claim copyright to these comments as well given that commentators do not transfer copyright to the PubPeer Foundation? If commentators, even those that are anonymous, hold copyright to their comments, as appears to be the case, but if PubPeer moderates and modifies the content of comments, is this a form of comment manipulation? This issue is relevant to the use of information, comments and otherwise, on the PubPeer website for post-publication peer review. As for fair-use of any copyrighted material, the use of any content from the PubPeer website, including comments, provided it is used in moderation and for non-commercial academic purposes, is within the bounds of fair-use, resembling use under a generic creative commons license. Curiously, a comment about this issue left at the website of another science watchdog, Retraction Watch, which shares a mutual source of funding with PubPeer, the Laura and John Arnold Foundation, was not published.

Keywords: *Opacity versus transparency, Philanthropy and charity, Post-publication peer review, PubPeer Foundation, Science watchdogs, Whistle-blowing*

Why is There a Copyright Mark on the Footer of PubPeer Pages?

Websites across the globe, including in the US, that add a copyright mark to the footer of their website do so to indicate to readers that the content of their website is copyrighted, but usually not user-generated content. Copyright exists to prevent the unlawful abuse and free distribution of content. This usually has greater merit in a discussion when the copyrighted material is protecting

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commercially valuable material, but can also refer to intellectually valuable material of no commercial value. The discussion of copyright is currently very central to library and information science as the battle rages on between pirate or black open access (OA), such as sites such as Sci-Hub, and the oligopolistic for-profit publishing industry.¹ If the original owner of a “work” is not its copyright owner, then copyright is transferred to the entity that then claims and owns that copyright. In publishing, for example, an author of a work would transfer copyright to a publisher which would then exploit it for distribution and sales purposes (Finlay, 2015). If a copyright contract is cancelled, for whatever reason, then copyright is transferred back to the original copyright owner. This does not apply to OA licenses with a creative commons attribution.

This paper focuses on the issue of copyright and comment ownership by and at a science critique and whistle-blower website, PubPeer (PubPeer, 2017a). The PubPeer website stated a 2017 copyright at the footer of its website, as “Copyright © 2017 PubPeer, LLC” (Figure 1A, center), or as “Copyright © 2017 PubPeer Foundation” up until about April 2018 (Figure 1A, bottom). The copyright notice, and other aspects of the site appear to have been updated sometime between May and June 2018, although the precise date is unclear because PubPeer does not date its documents or changes to its website content. However, to serve as an important historical document of what existed prior to the current content, this paper presents facts as they were versus facts as they currently are for readers to appreciate the dynamic state of change at this post-publication peer review (PPPR), whistle-blowing online journal club website. This has important implications because the status of commentators’ comments prior to April 2018 as opposed to the current copyright status may very well be different.

What Does PubPeer Hold Copyright to?

The PubPeer website is owned by the PubPeer Foundation, a California-based 501(c)(3) nonprofit “public benefit corporation” (PubPeer, 2017b). This copyright notice was presumably added to prevent the copying of the site’s content, for example by website hijackers or hackers. And, indeed, text on several of the pages, a vast minority of pages, as indicated next, appears to have been written by one or more PubPeer Foundation-related individuals. It is unclear how much of this text may have been written by the President of the PubPeer Foundation, Brandon Stell, or its Treasurer, Boris Barbour, who hold positions in French research institutes, Paris Descartes University and in IBENS-ENS (CNRS), respectively, or by the third co-founder, Gabor Brasnjo, who is a patent attorney

¹ <http://www.sciencemag.org/news/2017/07/sci-hub-s-cache-pirated-papers-so-big-subscription-journals-are-doomed-data-analyst>

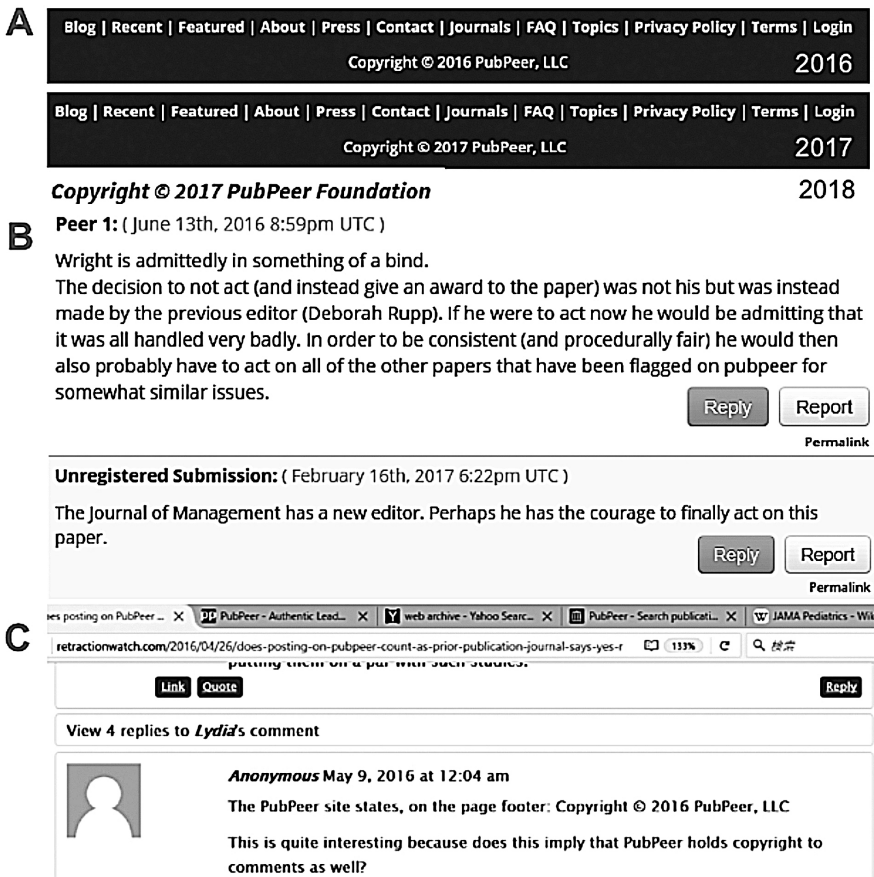


Figure 1 Screenshots Related to PubPeer Copyright and Comment Policies

Sources: (A) Top: by PubPeer, 2016 (<http://web.archive.org/web/20160506080138/https://pubpeer.com/>). In the public domain; Center and bottom: by PubPeer, 2017a (<https://www.pubpeer.com/>). In the public domain. (B) Top: “Re: Authentic Leadership: Development and Validation of a Theory-Based Measure†” [Article comment] by Peer 1, June 13, 2016 (<https://www.pubpeer.com/publications/1E79BA4AA94EB722491B14AE871B0F#fb52723>). In the public domain; Bottom: “Re: Authentic Leadership: Development and Validation of a Theory-Based Measure†” [Article comment] by Unregistered Submission, February 16, 2017 (<https://www.pubpeer.com/publications/1E79BA4AA94EB722491B14AE871B0F#fb117249>). In the public domain. (C) “Re: Does Posting on PubPeer Count as Prior Publication? Journal Says Yes, Rejects Letter Rebutting Campus Sexual Assault Data” [Article comment] by Anonymous, May 9, 2016 (<http://retractionwatch.com/2016/04/26/does-posting-on-pubpeer-count-as-prior-publication-journal-says-yes-rejects-letter-rebutting-campus-sexual-assault-study/#comment-1024479>). In the public domain.

Note: (A) The PubPeer Foundation LLC, based in California, USA, claims copyright (2016, 2017 and until April/May 2018 evidence). Is that copyright claim for comments made by commentators — signed, anonymous or pseudonymous — who have not transferred copyright to the PubPeer Foundation? (B) Examples of comments by anonymous (the author) and registered commentators; in the latter, even though a commentator registers to comment at PubPeer, their identity remains anonymous, identified simply as “Peer X” (before PubPeer changed to PubPeer 2.0), or now, in 2018, using the Latin names of plant species. (C) A query made on May 9, 2016 about this topic on Retraction Watch, was not approved for publication (see critique on this in Teixeira da Silva, 2018d). All older screenshots, taken on February 20, 2017, as well as updated information on April 12, 2018, have been used under the fair-use agreement for post-publication peer review (<https://www.copyright.gov/title17/92chap1.html#107>; Teixeira da Silva 2015). Even though the screenshot of (A) bottom was taken in April of 2018, the copyright notice still indicates a 2017 date. The date was updated to 2018 sometimes in late April or May of 2018.

but who serves as the PubPeer Foundation's secretary (Couzin-Frankel, 2015), because authorship of text on PubPeer pages is not indicated. When observing the menu at the footer of the PubPeer website, it is reasonable to conclude that the content of the listed pages ("Blog | Recent | Featured | About | Press | Contact | Journals | FAQ | Topics | Privacy Policy | Terms | Login" in 2017 and "Blog | Journals | About | Press | FAQ | Privacy Policy | Terms | Bug report | Contact us | Donate" in 2018, after PubPeer converted to PubPeer 2.0 in about June of 2017; PubPeer, 2017c) was written by members of the PubPeer Foundation. So, the copyright claim to this content (i.e., the structural framework and this content) appears to be accurate, and would then be subject to fair-use.

However, it is fair to argue that the PubPeer website primarily exists because of its users, who are registered, anonymous, or pseudonymous, as well as their engagement. These comments are the fundamental backbone of PubPeer. Their comments appear at PubPeer, primarily on the following pages, "Recent | Featured | Journals | Topics", until PubPeer 2.0 evolved, but now share one single top-page for all entries. Having been a registered user and an anonymous commentator at PubPeer, the author of this paper has never transferred copyright of any of his comments to PubPeer, nor has PubPeer ever requested the transfer of comment copyright to the PubPeer Foundation. Until about April 2018, there was never any explicit statement suggesting that PubPeer owns commentators' comments. In addition, there was no mention of copyright transfer on the instructions page (PubPeer, 2017d), or of comment ownership or comment-related copyright on any PubPeer page (accurate on April 12, 2018).

This status has now changed, and was edited and updated sometime in April or May of 2018, although the precise date of these changes is unclear. The terms of service (TOS) page now states (PubPeer, 2018): "By submitting Content to PubPeer for inclusion on the Website, you grant PubPeer a world-wide, royalty-free, and non-exclusive license to reproduce, modify, adapt and publish the Content solely for the purpose of displaying, distributing and promoting your Content." This suggests that commentators are the copyright holders of their own comments, but that they provide PubPeer with a non-exclusive license to use or modify those comments, not unlike a creative commons license, possibly resembling the generic (CC BY 2.0) license.² Very importantly, the TOS states that "Your use of the Website grants you no right or license to reproduce or otherwise use any PubPeer or third-party trademarks", but does not explicitly limit these rights to comments, suggesting that the use of comments on PubPeer are subject to a creative commons license.

For what content precisely does the copyright claim on the footer of every

² <https://creativecommons.org/licenses/by/2.0/>

PubPeer page, even on pages where signed, anonymous or pseudonymous commentators have commented on a published paper, represent? The United States Copyright Office (2016) describes “anonymous work” in the latest (December 2016) version of the US Copyright Law (§101, p. 2) as “a work ... of which no natural person is identified as author”. The same Copyright Law states the following regarding the duration of copyright for anonymous and pseudonymous works (§302, p. 133): “In the case of an anonymous work, a pseudonymous work, or a work made for hire, the copyright endures for a term of 95 years from the year of its first publication, or a term of 120 years from the year of its creation, whichever expires first.”

An email request to explain the meaning and scope of this copyright notice was sent to PubPeer’s official contact, as well as to Stell and Barbour on February 9, 2017 (Appendix). No response was received. The lack of an explanation, especially regarding the copyright or ownership of commentators’ comments, reflects poorly on PubPeer’s interaction with the public and/or academia since the TOS was only updated sometime in April or May 2018. Even so, comment ownership, especially since PubPeer can modify, moderate or use comments without permission, remains elliptic.

Why is the PubPeer Copyright Claim and Comment Ownership Important?

The issue of anonymity is of central importance to the functionality of PubPeer as an “online journal club” and PPPR and whistle-blower site, since many commentators – most likely the vast majority – who critique papers in the published literature as part of PPPR, do not wish to reveal their identity, for fear of possible reprisals (Teixeira da Silva & Blatt, 2016; Teixeira da Silva & Dobránszki, 2015). One current case, which also reflects a problem with comment moderation at PubPeer, involves a dispute between Hans-Peter Müller and a science watchdog, Leonid Schneider.³ Even registered users who used to comment at PubPeer prior to the evolution of PubPeer 2.0 appeared anonymously, as Peer 1, 2, etc. whereas anonymous commentators appeared as “Unregistered Submission” (Figure 1B). In contrast, after PubPeer 2.0 was implemented in June of 2017, registered users now comment using their real or pseudonymous names (in both cases, these are registered accounts) whereas truly anonymous commentators are assigned a random botanical Latin name of a plant.

However, independent of the copyright notice on the PubPeer website footer, the copyright of all comments appears to remain in the hands of the

³ <https://www.pubpeer.com/publications/1884D4A7A929C87B9AFF53C9E8BD85#76>; <https://pubpeer.com/publications/pubpeer2#110>

commentators, whether these be signed, anonymous, or pseudonymous. This possibility was previously suggested on the “Press” page (PubPeer, 2017e), where the slogan was “Media Responses to your PubPeer Comments”, with emphasis on **your**, i.e., ownership of the commentators. When a comment was (pre-PubPeer 2.0) or is (post-PubPeer 2.0) submitted to PubPeer, there is no transfer of copyright to PubPeer, nor did/does the PubPeer Foundation request those making or posting comments to transfer copyright (PubPeer, 2017d). In several PubPeer entries, comments are automatically imported from PubMed Commons (one example⁴), so does PubPeer claim copyright of these comments, or who owns those comments, especially given the fact that PubMed Commons was shuttered in mid-February of 2018 (Teixeira da Silva, 2018a). The issue of comment ownership thus remains somewhat in limbo, even as PubPeer has become the current **de facto** leading website (volume and popularity) in PPPR commenting and whistle-blowing. Papers from OA journals published with a Creative Commons Attribution License, such as those published in *PLOS ONE*⁵, would be exempt from copyright claim. Therefore, it is important to know the scope of the 2016-2017 “Copyright © 2017 PubPeer, LLC” and 2017-2018 “Copyright © 2017 PubPeer Foundation” notices. As PubPeer assumes a central role and position in the fight against erroneous science in the published literature, the issue of copyright and comment ownership will become increasingly important as the number of users who comment, and who wish to use those comments, for legal or academic purposes, increases (Teixeira da Silva, Dobránszki, & Al-Khatib, 2017).

What Policies do ResearchGate, Academia.edu and Twitter have in Place?

Social media sites have become an integral part of the publishing and PPPR landscapes. As academics use researcher-based social networking sites such as ResearchGate or Academia.edu to showcase their published work and other scholarly achievements, a sleuthing and critical base of academics may use such sites to glean information about the published literature and expose issues on PubPeer and drive discussion – or raise doubts – on Twitter. Thus, clarity about copyright policy on these social media sites is important to understand if there is consistency between policies on these sites and on PubPeer. Whereas comments in response to questions projects or published papers are allowed on ResearchGate, there is no such functionality on Academia.edu, so the issue of comment ownership and/or copyright affects ResearchGate, Twitter and PubPeer, but not Academia.edu. There are likely many other minor PPPR sites and blogs,

⁴ <https://pubpeer.com/publications/20877712>

⁵ <https://pubpeer.com/publications/24009765>; <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0074033>

but for the purpose of this paper, focus is placed on these three high-profile sites.

ResearchGate, a highly popular social networking platform for academics, including scientists and researchers, states in its website footer “© 2008-2018 ResearchGate GmbH. All rights reserved”.⁶ However, a separate page dedicated exclusively to intellectual property⁷ states clearly “As a member, when you post full-text articles or supplementary materials on ResearchGate, you do not transfer or assign copyright to us”, although ResearchGate, similar to PubPeer, does not specifically address the issue of comment-related copyright or ownership, only liability. The recent upgrade to the PubPeer TOS crudely follows the ResearchGate model by offering more detailed and useful information, but lacks simplicity and clarity – given the large amount of legal jargon and legalese that the vast majority of academics might not understand – about comment-related copyright or ownership.

Twitter also allows pseudonymous commenting and even allows multiple accounts for the same identity (“You can also create and manage multiple Twitter accounts, for example to express different parts of your identity”).⁸ Although the term “copyright” is not indicated on this Twitter page, except for the copyright notice for the site’s content (“© 2018 Twitter, Inc.”), it is abundantly clear that the user who creates a Twitter account owns that content and is responsible for it. This is not clear on PubPeer, especially for unregistered anonymous comments that are posted without any ability to edit them. The Twitter TOS page, on the other hand, offers more clarity about comment ownership than PubPeer, indicating that “All Content is the sole responsibility of the person who originated such Content” and “You retain your rights to any Content you submit, post or display on or through the Services. What’s yours is yours — you own your Content (and your incorporated audio, photos and videos are considered part of the Content). By submitting, posting or displaying Content on or through the Services, you grant us a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute such Content in any and all media or distribution methods (now known or later developed). This license authorizes us to make your Content available to the rest of the world and to let others do the same.”⁹ This is lacking at PubPeer.

Practical importance of the issue of comments at PubPeer

The importance of this topic became very real in early 2016, when a letter by Jim Hopper at Harvard Medical School was rejected by a journal published by

⁶ <https://www.researchgate.net/>

⁷ <https://www.researchgate.net/application.IntellectualPropertyPolicy.html>

⁸ <https://twitter.com/en/privacy>

⁹ <https://twitter.com/en/tos>

the American Medical Association, *JAMA Pediatrics*, because the letter had been previously posted to PubPeer, thus annulling the originality of that letter (Chawla, 2016). Curiously, several *JAMA Pediatrics* papers have been profiled at and by PubPeer¹⁰. A query made by the author of this paper on Retraction Watch on May 9, 2016, but signed anonymously, regarding the PubPeer copyright notice, was not approved by Retraction Watch (Figure 1C). Retraction Watch and the PubPeer Foundation have a common financial philanthropic sponsor, The Laura and John Arnold Foundation (Teixeira da Silva, 2016a). Previous ties between PubPeer and Retraction Watch had been hidden by PubPeer on its “Media” page prior to its conversion to PubPeer 2.0 (Teixeira da Silva, 2017).

Conclusions

The central function of the PubPeer website is currently to offer commentary and critique, either signed by name or pseudonymously or anonymously, on the published literature. The site was originally developed with the objective of an online journal club, with balanced critical analysis of published papers, but it is more often associated with a centralized site where whistle-blowers release their evidence of errors, or possible misconduct in the published literature. Forest (2018) has even suggested PubPeer as a place to battle “fake news”. Given the closure of PubMed Commons in early 2018, PubPeer has emerged as the premier PPPR site. The science watchdogs (Teixeira da Silva, 2016b), including PubPeer and Retraction Watch, must be carefully examined. This is because their opinions and/or websites may have an irreversible impact on science, scientists, editors, publishers and the published literature. The freedom of speech of those who critique others using anonymous or pseudonymous identities on PubPeer are protected by the US Constitution, as was observed in the PubPeer (representing Joe Doe) vs. Fazlul Sarkar case (Teixeira da Silva, 2018b). This means that the issue of comment ownership, and the meaning of the 2016-2017 “Copyright © 2017 PubPeer, LLC” and 2017-2018 “Copyright © 2017/2018 PubPeer Foundation” notices at PubPeer are important issues to resolve, with clarity. The issues of opacity and comment suppression by the PubPeer Foundation has already been recorded (Teixeira da Silva, 2018c, 2018d). As PubPeer seeks to monetize access to the comments made on each journal via the PubPeer Journal Dashboards¹¹, as can be seen by the links above to the *JAMA Pediatrics* PubPeer entry, which once used to be open, and is now subject to a paywall, comment ownership is important, i.e., should PubPeer be selling services to third parties

¹⁰ https://web.archive.org/web/*/https://www.pubpeer.com/journals/JAMA-Pediatr

¹¹ <https://pubpeer.com/journals> (an aspect of opacity: pricing is unspecified; this site still has an outdated copyright notice: “Copyright © 2017 The PubPeer Foundation”).

(presumably journals and publishers) that are based on the monetization of comment-based content? If commentators, whether these be signed, anonymous or pseudonymous, are aware that their comments, or access to them, involves a fee to subscribers of this new PubPeer service, would they be willing to comment as freely as they currently do?

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Conflicts of interest

The author and his work have been profiled by PubPeer and by Retraction Watch. The author has used PubPeer and Retraction Watch, both as a signed, registered commentator, and anonymously. The author declares no other conflicts of interest.

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Appendix

Email sent to PubPeer on February 9, 2017, requesting details about the copyright notice and its application to commentators' comments, signed and anonymous. PubPeer never responded to this request.

To: PubPeer Contact [redacted]; PubPeer Staff [redacted]
Sent: Thursday, February 9, 2017 05:12:24 PM JST
Subject: Query: Copyright © 2017 PubPeer, LLC

Dear PubPeer,

Your web-site has, at its footer, the following phrase "Copyright © 2017 PubPeer, LLC"

Can you kindly explain what precisely is copyright material. For example, is PubPeer claiming copyright to comments?

Can comments be used by the public freely, like an open access public source, or does written permission have to be obtained from PubPeer to use comments made on PubPeer?

Finally, how does this copyright notice pertain to fair-use?

Thank you in advance,

Jaime A. Teixeira da Silva

