

# Copyright on Chess Games

**Edward Winter**

(1987, expanded in 1999 and 2005)

Can there be copyright on a chess game? Could players or organizers place restrictions on, or demand payment for, the publication of game-scores in columns, magazines and books? It is worth examining some of our forefathers' attempts to grapple with these questions.

Rule number 12 at the first international tournament (London, 1851) read as follows:

‘As the managing committee guarantee to every subscriber of a guinea and upwards, a correct copy of the whole games, and as considerable expense must attend the recording of so many games and their subsequent publication, it must be understood that no-one will be allowed, in the first instance, to publish any part of them without the express sanction of the committee.’

Source: page lviii of the tournament book by Staunton.

Although New York, 1857 had an almost identical regulation, it took two years for the tournament book to be published, by which time games had been widely printed in magazines and newspapers.

Similarly, the rules for the Cleveland, 1871 congress specified, ‘All games and problems shall remain the property of the Congress, and shall not be published without its consent’ (page 5 of the tournament book). At Philadelphia, 1876 a complication was added:

‘The games shall be the exclusive property of the association for publication in book form, each player, however, being entitled to the use of three of his games for that purpose.’

Source: tournament book, page viii.

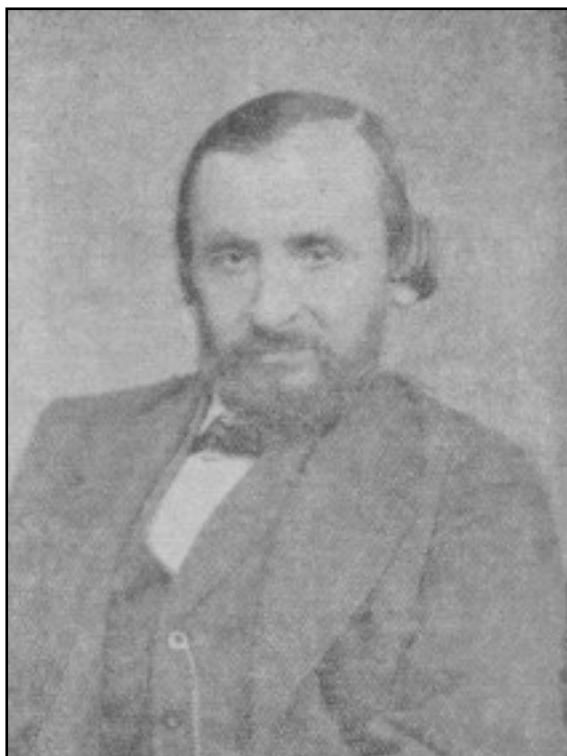
The above cannot, however, be dismissed as just an eccentricity from the nineteenth century. One of the conditions of play at New York, 1927 was the following:

‘The players undertake not to write any annotation or publish any of the games played in book form for a period of one year after publication of the Official Tournament Book.’

Here the trouble was that the ‘Official Tournament Book’, which was supposed to be by Capablanca, was never published. (*American Chess Bulletin*, February 1927, pages 21 and 23.)

Copyright controversies are not uncommon. In 1853 the *Chess Player’s Chronicle* reported on the ‘Chess Meeting at Manchester’, attended by such luminaries as Staunton, Harrwitz, Horwitz, Williams and Löwenthal. Page 189 related:

‘Mr Löwenthal then explained the circumstances of the transaction as to his challenge to Mr Harrwitz, and said that the London Club wished to force on him conditions which no player would accept, viz. – that all the games should be played at the London Chess-club; and that all the games should be the property of that club (Shame! absurd!). He proposed that half the games should be played at the London and the other half at the St George’s Chess-club; but that the games must be public property (applause); but to this they would not agree ...’



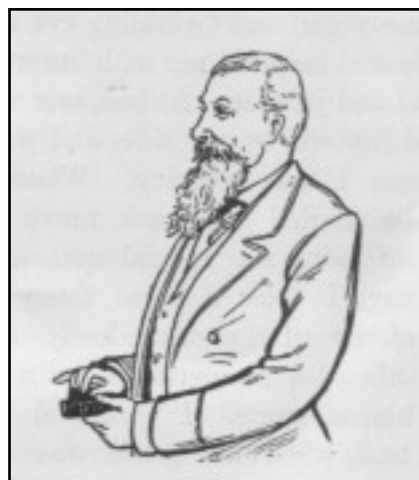
Daniel Harrwitz

On page 438 of the November 1894 *BCM* Charles Tomlinson wrote:

‘When Mr Walker’s book appeared [i.e. George Walker’s 1844 volume *Chess Studies*], Staunton was very indignant at what he called ‘wholesale spoliation’ and he threatened legal proceedings. This opens a curious question as to whether there is any copyright in a game of chess. If there is, does the copyright belong to each player or in consultation games to all the players? In practice, copyright is ignored, as, when Harrwitz won the first two games in his match with Löwenthal, he told me that the games would be printed “many times over”. Of course if the games are edited with notes, the notes would enjoy the privilege of copyright, but I should like to have a competent opinion as to the copyright of the game itself.’

Another copyright controversy had occurred over Wisker and MacDonnell’s 1874 match in London, when the former claimed the exclusive right to publish the game-scores in his chess column in *The Sportsman*. P.T. Duffy of *The Westminster Papers* dissented:

‘The copyright in Mr Wisker’s moves cannot belong to Mr MacDonnell or vice versa ... We have compared a game to a speech. No copyright exists in a speech. As the words are uttered the reporter can take them down and the speaker cannot stop their publication.’



John Wisker and Patrick Thomas Duffy

A fuller account of this controversy, by G.H. Diggle, appeared in the June 1986 *news flash* (page 6), an article which was reproduced on pages 40-41 of Diggle’s *Chess Characters* (Geneva, 1987). See also pages 253-254 of the 31 May 1881 issue of the *Chess Player’s Chronicle*. Duffy’s comparison with a speech would be less appropriate in Britain at a later date because ‘it is well established that it is not

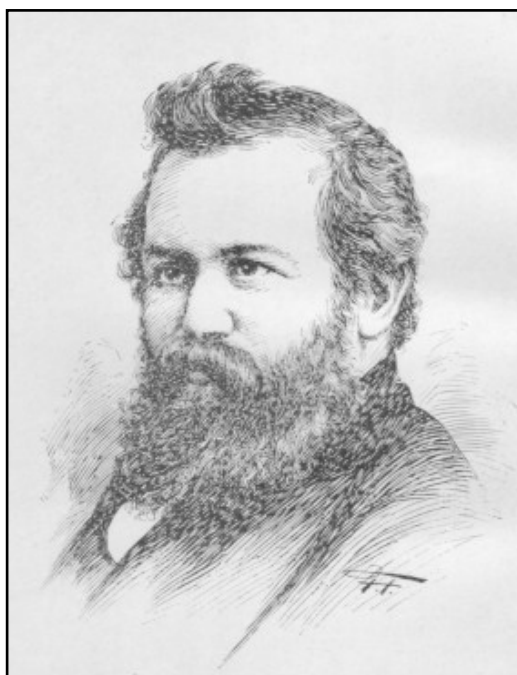
permissible to take a note of a lecture and publish it “for profit” (*Copyright and Performing Rights* by W.J. Leaper, London, 1957, page 18).

Copyright considerations sometimes had further ramifications. From page 97 of the March 1897 *BCM*:

‘We are glad to learn from a paragraph in the *Hereford Times* that there is no truth in the statement, which we quoted from an American source last month, that there had been heavy betting on the players in the St Petersburg Tourney. The rumour, it seems, proceeded from a disappointed journal of that city, whose representative was much upset because he could not have any of the games for publication, they all having been purchased by the *Novoye Vremya*.’

Steinitz deployed his eloquence to the full to demand adequate financial rewards for chess masters. For instance, he wrote on page 336 of the November 1886 *International Chess Magazine*:

‘There is hardly any first-class professional who, on the average, has earned more than the wages of a common laborer and, on the other hand, there are thousands of occupations in which thousands of times more money is made with thousands of times less expenditure of real intellect ... It is gravely preached that men of talent and genius, who happen to be born without a golden spoon in their mouth, should enter the public chess arena in a starving condition merely for the entertainment of thousands of rich people all over the world who only ought to pay their money to incapable critical chess pirates and their publishers.’



Wilhelm Steinitz

Copyright was one of the innumerable issues discussed in the lengthy negotiations which eventually resulted in his 1886 match with Zukertort. In a letter dated 2 August 1885, Zukertort's representative, J.I. Minchin, wrote:

'To avoid the possibility of dispute on a point of some importance, Mr Zukertort suggests that the games in the match shall be the property of the player who has the first move in the game. After publication such sole property will determine, and Mr Zukertort is of course prepared to publish his own games in an American journal, without delay, after which they can be also printed by his opponent.'

Source: *The International Chess Magazine*, September 1885, page 258.

Steinitz's representative, T. Frère, responded on 18 August 1885, in a letter which was printed on pages 259-263 of the same issue:

'On the question of property-right in the games, Mr Steinitz would prefer that each party shall have the separate right of publishing any or all of the games during the match and a collection of the games within three months after the match shall have ended, and that either party may obtain copyright for the games and his own notes, both in America and in England, but that neither party shall have any commercial claim on the opponent's published games or collection thereof. Mr Steinitz, however, is willing to submit this question to the

referee ...’

The contract eventually signed by Steinitz and Zukertort on 29 December 1885 stated:

‘Property right in the record of all games played in the match shall insure [*sic*] to each player, who shall have the separate right of publishing any or all the games during the match, and a collection of the games after the match, and that either player may obtain copyright for the games and his own notes, both in America and in England or elsewhere, but that neither player shall have any commercial claim on his opponent’s published games, or collection thereof.’

Source: *The Chess Monthly*, January 1886, page. 136.

The conditions of the Steinitz v Gunsberg world championship match of 1890-91 contained a similar clause, published on page 326 of *The International Chess Magazine*, November 1890:

‘Property right in the record of all games played in the match shall inure to each player who shall have the separate right of publishing any or all the games during the match, and a collection of the games after the match, and that each, W. Steinitz, I. Gunsberg, player may obtain copyright for the games and his notes both in American and in England or elsewhere, but that neither shall have any commercial claim on his opponent’s published games or collection thereof.’

Steinitz’s penury had a profound effect on his world championship successor. Pages 121-122 of the January 1905 issue of *Lasker’s Chess Magazine* featured a discussion of the ‘pending negotiations for the match between Mr Marshall and Mr Lasker’ and commented:

‘At the conclusion of the contest (the Steinitz v Lasker world championship match) two books were published giving the games in full, one by the British Chess Magazine and the other by the veteran master Bird. But neither newspapers nor the publishers of the two books contributed in any way to the match funds.

... The entire European chess world contributed nothing for the games, and nothing to the backing of the challenger, still, it cannot be doubted that there were many who would gladly have added their quota for the benefit of the players had opportunity been afforded. Considering the

fact that thousands of players derived enjoyment from the games, and that a large amount of money must have been paid for the space which they occupied in newspapers, and for the sale of the books on the match, the recompense to the players themselves was far from a fair proportion of the total amount expended by the chess public at the time.

Property rights in the games of a championship match are as clear as are those of any other form of mental effort, because the product of that effort remains to the world. But it would be a difficult problem to solve to decide just what means would be the best to adopt to retain to the players of a match their full rights in the literature of the contest. Publication of the games in a newspaper is a virtual gift of all rights, as the copyright of a daily newspaper is only for a day, and nothing could prevent reproduction. Whether the chess public would be content to wait till a match was finished, receiving only the daily reports of the results of each game, and then accept the games in book form with all the rights which copyright affords is a very doubtful matter. The whole question is fraught with difficulties, and should be amicably settled by the masters, the press and the organized chess world.'

A practical case arose later that year. 'The November 1905 issue of *Lasker's Chess Magazine* (page 34) reprinted an item from *The Saturday Review*:

'There has been a good deal of complaint on the newspapers because Tarrasch and Marshall are withholding the games in their match from immediate publication. Mr Lawrence calls it "a short-sighted policy, which we trust will not obtain in similar contests in the future, for unless the chess public is enabled to play over games while the interest is still warm, it will be found that not only interest but the necessary material support will be lacking". The implication that chess masters are men of fortune and that by these tactics they will kill their goose is surely unconsidered and inadequate. The mistake these writers make is in considering the score of a game of chess as news which unless immediately transmitted to the world loses all value. Why this should be so is a mystery. For a long time chess enthusiasts have obtained the products of chess masters with their halfpenny or penny paper but these gratuities must not be looked upon as vested interests even though the whole public are the beneficiaries. So far no chess master has had to submit to the indignity of being dubbed a "bloated millionaire" nor is there any likelihood that the immediate future will materially alter his condition. But we know of no reason why he

should not try to get something out of the public for the pleasure, interest and instruction which are derived from playing his games. In a nutshell, judging from the past, if each game appeared in every newspaper in the country within 24 hours after it was concluded the players would not be one penny better off. Not only that, but in consequence the publication in book form afterwards is looked upon as a sort of “reprint” and is generally doomed to failure, while the necessity for paying anything to see the games played is regarded as almost in the nature of charity when they can be had for nothing in the next issue of the local paper.

Chess differs from other things in that the score of a game adequately and absolutely represents everything that transpires over the board, and the youngest reporter on the newspaper staff can be entrusted with writing it correctly. Where is the reporter who could really convey a tittle of what transpires on the football field, the cricket field, the billiard table, the concert room or the theatre? If anybody is really interested in any of these things he must be at the appointed time and place to see the contest of the performance. On the other hand a game of chess produced by the best players in the world can be examined in the library or in the drawing-room a day or a century after [it] is played, and its effect is only modified by the particular capacity of the reader. The score is a complete record for all time. On this very account chess can never prove very remunerative to its professors. Publicity may be necessary for wrestlers, footballers, or prodigies, but it remains to be shown what benefit professional chessplayers have derived from it.’





## Frank James Marshall and Siegbert Tarrasch, match, 1905

Page 310 of *La Stratégie*, 19 October 1905 expressed disappointment that the games of the Tarrasch v Marshall match would not be published until after Tarrasch had brought out a monograph on the encounter:

*‘Le Monde des Echecs sera désappointé d’apprendre que les parties ne sont pas publiées; elles paraîtront seulement après le match dans une brochure en allemand avec les notes de M. Tarrasch.’*

At least the match booklet, *Der Schachwettkampf Marshall-Tarrasch im Herbst 1905*, appeared with great speed; in his *Vorwort* Tarrasch wrote that one week after the end of the contest the manuscript was ready for the printer and that it came out 14 days later. Subsequently the *Deutsche Schachzeitung* took the unusual step of explaining that it was publishing none of the game-scores (even after Tarrasch’s booklet had appeared). From page 32 of the magazine’s January 1906 issue:

*‘Da anderweitige Veröffentlichung der einzelnen Partien vom Verfasser untersagt worden ist, so haben wir unseren Lesern keine Partien des Wettkampfes vorlegen können.’*

Lasker, for his part, continued to argue in favour of copyright protection. For example, page 88 of the April 1910 *American Chess Bulletin* reported his comments at a Manhattan Chess Club dinner on 19 March:

*‘Dr Lasker took the opportunity to broach the subject of copyright in respect of the scores of games played by the masters, which under existing conditions are accessible to the world at large, without compensation to the experts whose joint efforts produce them.’*

He made regular attempts to copyright his games, and even proposed that he alone should be paid. In the *The Evening Post* (New York) of 22 November 1911 he announced the conditions under which he would accept Capablanca’s challenge for a title match. The fourth one read:

*‘The games of the match are the property of Dr Lasker, who is at liberty to charge for the viewing of them and for their publication in any form he may deem to his advantage.’*

Capablanca categorically rejected the demand:

‘A chess game, from its very nature and the manner of its production, must be the joint property of the two persons producing it ... You can charge what you like for the publication of the games in any form you may deem to your advantage. But, unfortunately, that is a common privilege, of which anyone may take advantage.’

In the meantime Lasker explained his reasoning:

‘Dr Lasker’s activity in chess extends over more than 20 years. Hence it is his personality that gives the games their principal interest, and it is only fair that he should have the benefit of his own work. Again, the challenger risks nothing in the way of reputation, whereas he has enormously to gain. Clause 4 is intended to be an offset for the advantage which the challenger reaps in this respect.’

Capablanca’s laconic comment:

‘So Dr Lasker thinks it is *his personality* that gives the games their principal interest.’

Source: *American Chess Bulletin*, February 1912, pages 27-31.





Emanuel Lasker and José Raúl Capablanca

The Lasker-Capablanca negotiations foundered, and the following year (26 August 1913) Lasker concluded an agreement with Rubinstein for a world championship match (*American Chess Bulletin*, September 1913, pages 220-221). Although the *Bulletin* described the conditions as ‘rather more reasonable than those required of José R. Capablanca’, clause 10 stipulated:

‘The right of publishing the games, as well as all rights deriving from the authorship of the players in the games of the match, shall belong solely to Dr Lasker.’

Even when the Lasker v Capablanca match was eventually played in Havana in 1921, the question of copyright still loomed. For example, the Cuban newspaper *Diario de la Marina* (14 April 1921, page 1) reported that the 11th match game was ‘the property of Lasker and Capablanca and cannot be reproduced’. It is one thing to make such a declaration, but quite another to enforce it. Even for the Capablanca v Marshall match of 1909 the players jointly published an agreement stipulating that ‘ownership of the scores of the games shall be vested equally in the two principals’ (*American Chess Bulletin*, April 1909, page 83). There is no evidence that anybody paid attention.

The British writer W.H. Watts discussed the copyright issue on pages 213-214 of *The Chess Budget*, July 1925:

‘... The only way ... is for the publication of the games to be restricted to those papers that are willing to pay for them. A game once played is no longer the property of the Masters who produced it, but becomes the property of the promoters of the Tournament. If I write a book or compose a piece of music for a publishing house or paint a picture for a patron or produce any other thing to a definite order it becomes the absolute property of the purchaser, subject to there being no specific agreement to the contrary and the same with a game of chess.

As now conducted these games are free for the use of any person who copies them out and being free, but few papers want them – if there were a charge for their use as many and possibly more would be published. It would create a demand.

Possibly the innovation would cause some resentment and meet with some opposition at the first, but the great chess playing public should with a little effort soon put this matter right.



William Henry Watts

My choice of newspapers and other periodicals is restricted to those running chess columns except only in cases where there is some

occasional article that I want – but my regular purchases have a column – and a few more doing the same thing would soon produce the desired result.

Newspapers pay fabulous sums for exclusive items, exclusive photographs, etc., and they would soon be induced to pay reasonable small fees for exclusive chess games, from the big tournaments, between masters. Under our existing arrangements a few papers send their reporters and reproduce a game – other papers which do not go to the expense, copy this game from the first newspaper, knowing that is free “copy”. This would be obviated and all columns reproducing the games would be liable for payment according to some fixed scale of charges. Copyright in the game would lapse after a period in exactly the same that copyright in a book lapses eventually.

Again:– The official book of the tournament would have an added value. Some such scheme was adopted in the Lasker v Capablanca match at Havana but there was a serious leakage – and the publishers went too far in price increase when the book was published. There is a limit and this was over-reached in this particular case.

The fact remains that there is an untapped source of revenue and one which if properly and tactfully developed should go far to provide the means towards holding another International Master Tournament in this country. Twenty years is too big a gap between one British International and two or three thousand pounds too big a sum to collect more frequently than this, so that some ingenious person has to devise means of raising the money and this is a suggestion.

Many of the individual subscribers to the last London Tournament got nothing tangible for their money, but if every subscriber of say two guineas were to have a copy of the official Tournament Book, and every subscriber of five guineas were to have a copy autographed by every player, the Tournament would take place within two years from now. Other inducements could be held out in the shape of free passes, etc., and the money would quickly be raised – but it would be necessary to strictly reserve the copyright in all the games.

Pirated music is looked at askance – why not pirated copies of chess games?’

In the 1930s too the idea of a payment system was still alive. An editorial by Arthur

Firth on pages 3-5 of *The Social Chess Quarterly*, October 1935 was entitled ‘The World’s Chess Championship and How to Interest the World in it’ and concluded:

‘The suggestion is to take out a copyright for all games and news, and to supply them to the Press at the best rates obtainable. These would include full daily news reports and copies of all games finished each day (during the three weeks of the meeting) to the daily and weekly columns publishing chess; and news reports only to those papers which would be interested in any important International Contest but would not want actual games, and short interestingly written biographies of the various players, and their past performances.’

B.H. Wood also discussed copyright in an item entitled ‘Royalties on Published Games?’ which was reproduced from his *Illustrated London News* column on page 82 of the January 1952 *CHESS*. An extract follows:

‘Consider the world championship match just concluded. Every chess magazine I know has printed all 24 of the games. As an inveterate collector of the world’s chess magazines, I can well assess their distribution. I should say there are almost exactly 100 in existence, their circulations ranging from a few hundreds to the 30,000 per month of the Russian *Shakhmaty v SSSR*. At the lowest estimate, they must be read by 500,000 people a month.



Baruch Harold Wood

To estimate the number of chess columns in periodicals, and their active clientèle, is not so easy. Their desultory readers must number millions. Their *keen* readers must surely outnumber those of specialized magazines devoted purely to the game; again being very conservative, let us estimate them at 1,000,000. Few columns failed to “splash” the match.

Somebody must therefore have been playing over a game of the match, somewhere in the world, on at least 20,000,000 occasions in the few weeks since it ended. The games will be quoted in the literature of the game for a century and more. Books on the match will sell, in various languages, in tens of thousands.

If each person playing through one of these games were to pay a penny for the privilege, a simple computation shows ... that in the course of a few years Botvinnik and Bronstein would have received royalties worth some £100,000.

But there are no royalties in chess. We use the masters' games free of charge. The writers, not the players, get the plums – and many feel this is not right.

Yet when Emanuel Lasker tried to copyright the games of one of his matches, he was boycotted by the world's Press. [It is unclear which match B.H. Wood had in mind here.]

The subject bristles with difficulties. Players send in games and are delighted to have them published, for the publicity may gain them invitations to attractive tournaments. When I omitted to publish one ambitious player's games, he threatened to shoot me.'

Academics too sometimes debated the copyright issue. In the June 1909 *Wiener Schachzeitung* (pages 169-170) a complex article by Dr Josef Kohler of Berlin University, reprinted from *Gewerblicher Rechtsschutz und Urheberrecht*, concluded that copyright was impossible. A game of chess was like any historical event and could be described by anybody; there could be no question of a patent since the element of business or commerce was missing. An English translation of the article, just as complex, appeared on pages 148-149 of the February 1911 *Chess Amateur*.

A similar conclusion was reached a few years later when, commenting on copyright in the context of speculation about the eventual creation of an International Chess Federation, the February 1916 *American Chess Bulletin* (page 42) quoted from the *London Times*:

'Has our friend realized that there is not, and cannot be, any copyright in the score of a game of chess, wherever and whenever played? True, no-one is obliged to publish the score of a game played, but once it is published, the score is free to anyone to publish. The accompanying

notes, if any, in any newspaper or periodical, are quite another matter, but the score is merely a record that a player has made certain moves, and as he has no copyright in the moves, neither he nor anyone else can assume the possession of a copyright in the record of them.'

*The Chess Amateur* December 1910 (page 85) stated that if copyright existed at all it belonged to the Federation Committee organizing a given event.

'They, however, being practical men, waive their right, knowing quite well that the public must be kept interested by the general publication of selected games. If this publication is to be denied, a denial quite within the rights and power of the committee, public interest and subsequently subscriptions [to tournament funds] would wane.'

In January 1911 (page 116) the magazine continued on the same theme:

'Our advice to Masters is to let well alone. To claim payment for copyright is injudicious. The more often Masters' work can appear before the public, the better for the Masters. The public has a short memory. New men arise, who claim present attention and the giants of former days are easily forgotten. In the meantime Masters may derive some consolation from the fact that each insertion in a magazine or newspaper is an advertisement which may not be regarded as being without value. It is quite open to Masters to test, practically, the value of copyright. The games, in a match between two players of high standing, might be briefly and pithily annotated by each and published at a moderate price. This should be done as soon as possible after the match, before public interest is lost. Both players would thus, possibly, reap more benefit than by asserting and securing copyright of the scores.'

Quite apart from the international legal entanglements, copyright payments would entail formidable practical complications. Could everyone afford the sums involved, whatever they were and whoever calculated them? Would account be taken of a journal's circulation, and of partial publication (e.g. openings only)? Would a bureaucratic clearing house be required, perhaps one costing about as much as what it collected? What about criticisms of elitism, of excessively favouring a small group of top players? (A comparison suggests itself here with the Public Lending Right, whereby authors in some countries receive payment according to how often their books are borrowed from libraries.) Would there be any limit to the duration of copyright? Aren't prizes and playing fees sufficient nowadays? Or, to return to *The Chess Amateur's* argument, isn't there a danger of reducing chess publicity in the



media? Moreover, why should problems and studies be ignored? Since they are generally composed by one individual without the involvement of a federation or organizer, they could be a prime target for copyright restrictions.

It is still possible that, for important matches or tournaments, players or organizers will be tempted to prevent outsiders from 'cashing in' with instant books, perhaps arguing that it is in everybody's interests to await an authoritative account from the protagonists themselves. The likely counter-claims would be about 'the right to information' and the value of an independent view.

There is, however, one anomalous practice that is difficult to defend: anybody can publish a collection of a player's complete games, his life's work. Is there any other cultural or artistic domain which allows the compiler to pocket everything, and the originator nothing?

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