

## Poor Clare

John Clare enthusiasts are up in arms over an American academic's claim to own copyright of the poet's works unpublished in his lifetime. **John Goodridge** reports on the battle over a great literary legacy

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When John Clare died of a stroke on May 20 1864, aged 70, he was almost a forgotten figure. For 23 years he had been confined in the Northampton General Lunatic Asylum, which he called "the purgatorial hell and French bastille of English liberty, where harmless people are trapped and tortured until they die". He is now recognised as the finest and most prolific of all English rural poets, as important as his contemporaries Keats, Shelley and Byron.

But the growing interest in Clare and increasing demand for new editions of his work have exposed a literary imprisonment almost as cruel, certainly as unusual, as the one he suffered in the "bastille" at Northampton. The case has united such high-profile Clare enthusiasts as Seamus Heaney, Tom Paulin and Andrew Motion, the poet laureate, in a campaign to "free" the poet. For, amazingly, 136 years after Clare's death, the copyright to most of his writings is still claimed as private property by a single individual.

Professor Eric Robinson, a historian at the University of Massachusetts, Boston, has for the past 35 years claimed to own the copyright to Clare's unpublished writings. He has enforced this claim, demanding acknowledgement and often payment from anyone who wishes to publish Clare material. In the view of Tim Chilcott, the effect has been "the impoverishment of editorial debate compared with other Romantic writers, the absence of challenging alternative views, the deadening hand of the authorised 'definitive version'."

For 35 years scholars have grumbled, and sometimes tried to resist this singular control of Clare. In recent years, such writers as Zachary Leader and Hugh Haughton have criticised the effects of the copyright claim. But it was not until last July that anyone did anything about it. Then, a young Clare scholar whose PhD I supervised, Simon Kövesi of the University of Dundee, published a selection of Clare's Love Poems, openly refusing to accept the validity of the copyright claim.

Four months later, he and his publisher received letters from Robinson's solicitors, Harbottle and Lewis, claiming a breach of Robinson's "copyright in those works written by John Clare which were not published during his lifetime". The letters also claim, for good measure, that poems in the anthology were taken from Robinson's edited texts, and that Kövesi had defamed Robinson "both on the internet and to journalists". Kövesi and his publisher deny both these accusations.

Robinson, said his lawyers, was "entitled to damages together with an undertaking that you will not infringe, in the future, the copyrights that he holds". Kövesi and his publisher were invited to supply, within 21 days, proposals for "compensating Professor Robinson", with the threat of "immediate legal proceedings" should they fail to supply such proposals.

So how did this extraordinary situation come about?

As an officially patronised "peasant poet", the young John Clare had much of his income tied into trusts, managed on his behalf by two trustees, his London publisher, John Taylor, and his local clergyman, the Reverend Mr Mossop. After the relative popularity of his first two books, *Poems Descriptive Of Rural Life And Scenery* (1820) and *The Village Minstrel* (1821), literary success increasingly evaded Clare, and the two other volumes published in his lifetime, *The Shepherd's Calendar* (1827) and *The Rural Muse* (1835), were subject to delay and heavy editorial cutting. As he became more prone to depression and illness, Clare worried about the legacy of his copyright and the income from his publications, and drafted several wills, though none was probated on his death.

Even as his literary hopes were fading, Clare was writing some of his best poetry, and he would continue to write almost to the end of his life. His two most anthologised poems, "I Am" and "Little Trotty Wagtail", were written in the asylum, as were more than 1,000 others, many of them transcribed by the asylum attendant WF Knight. During the long asylum years, his loyal supporters made several attempts to revive interest in his work and create new editions of it, but nothing came of any of these plans. After his death, however, more determined efforts began to be made, and this is where the story of Clare's copyright really begins.

Under the 1842 Copyright Act which was in force at Clare's death, in the case of published works copyright endured for 42 years after publication or seven years after the author's death, whichever was later. Thus three of Clare's published volumes came out of copyright in 1871, and the fourth in 1877. For unpublished works, however, copyright was a very different matter. Under common law, an author, or after his death his personal representative, retained perpetual control over his work as long as it remained unpublished. This is particularly important in Clare's case, since his four published volumes contained only about 10% of his total output - some 300 poems out of more than 3,000 he wrote in his lifetime.

This common law "perpetual" loophole for unpublished material was written into the Copyright Acts of 1911 and 1956, and finally replaced in the 1988 Act with a finite, 50-year term of protection (made potentially extendable by a further 25 years in a 1996 Act). In Clare's case, this could extend the copyright claim well into the middle of this century, though, as Jonathan Griffiths of Nottingham Law School has argued, such a claim could be open to challenge under the freedom of expression legislation in the Human Rights Act 1998, due to come into force in October.

It is by no means clear whether Clare's personal representative after his death was his widow Patty Clare, or his trustees; nor is it obvious that the enticing legal vision of perpetual power over the work was continuously transmitted through a hundred-year period to the current claim, though a simple provenance can be deduced. The key figure is Joseph Whitaker (1820-95), now remembered for Whitaker's Almanac but known in his time as an astute publisher who was, as the Dictionary of National Biography says, "recognised as an authority upon copyright". Planning his own edition of Clare, he made in May 1864 a "provisional bargain", presumably verbal, with the dying John Taylor, to pay Patty Clare £10 a year in exchange for manuscripts and publication rights. Then, on 8 August, he signed an agreement with Patty and her children for the transfer of their rights to Clare's copyrights. This agreement, discovered in the archive of the Whitaker publishing house in 1932, was destroyed with the rest of the archive by a German bomb eight years later.

Whitaker's edition of Clare never materialised, and although he clearly insisted on his ownership of the unpublished material's copyright in relation to the publication of *JL Cherry's Life And Remains Of John Clare* (1873), there is evidence to suggest that by the time of his death in 1895 he had either relinquished it, or passed it on to the Peterborough Museum Society, along with the bulk of Clare's manuscripts. Certainly none of the many editions of Clare between 1895 and 1965 acknowledged any general copyright holder. Robinson's purchase from Whitaker's, on 9 July 1965, for £1, of "all rights whatsoever possessed by the company in the published and unpublished works of John Clare" initiated the revival of a claim that appears to have been defunct for 70 years.

The revival has helped to ensure that Robinson's many editions of Clare have dominated the field for a generation. The positive side of this has been the bringing into the light of thousands of Clare poems unknown to earlier readers, as well as major prose works. The downside is that it has tended to sideline and sometimes blight the work of other scholars, and to make life harder, for example, for Clare enthusiasts such as folk musicians who wish to compile tapes or CDs of Clare material. It is possible to get permission from Robinson's literary agents, Curtis Brown, to use unpublished Clare material, but it is likely to cost money. And, as I discovered last year as the editor of an edition of Clare's writings of 1841, it is a tiresome process that can involve prevarication and delay. Our edition was set back several months.

Much more serious problems can also arise. In my 15 years of Clare scholarship I have heard many tales of blighted projects. Perhaps the most notable is the case of the late Geoffrey Summerfield, who believed that the copyright claim was used to press him into rewriting an account of how he came to start working on Clare in the 1950s.

The problems created by a single individual controlling the posthumous publications of a major literary figure have been evident in several high-profile modern cases, such as those of James Joyce and Sylvia Plath. With Clare (as with Joyce) there is the vital question of how he is to be edited.

The copyright has helped to ensure the overwhelming predominance of a single editing style: the so-called "textual primitivist" presentation where nothing of the text is corrected or standardised from the manuscript. After the heavy correction of earlier editions, this seemed to create a refreshingly raw "authenticity" in Clare's work, described by John Barrell as being like "discovering the original of a great painting previously known only through engravings". But its dominance has also limited Clare's accessibility, denying him the wider audience that his poetry deserves.

For Clare is, as the Independent's literary editor Boyd Tonkin recently put it, "The People's Poet". He speaks for the common people and for the dispossessed (birds, animals, flowers as well as people). He is important for many who have suffered from mental health problems, for ecologists and for nature-lovers. It is a grotesque anomaly for one person to try to control a poet from the 19th century, particularly one who, as Tim Chilcott notes, "so tellingly damned all manifestations of 'property', 'possession' and 'enclosure'".

But "The People" seem at last to have begun fighting back. Kövesi's decision to publish and be damned began a continuing campaign. Last week a letter supporting Kövesi appeared in the TLS signed by Seamus Heaney, Andrew Motion, Tom Paulin and 25 other Clare scholars. The threatening letter from Harbottle and Lewis received a polite but firm reply from Kövesi's publisher, Mike Gorman of M&C Services, requesting proof that Robinson genuinely

owns the copyright to Clare's unpublished works. This has been met with six months of silence.

Kövesi is now preparing his second "unauthorised" edition, John Clare: Flower Poems, which will be published in October. "Until clear proof is offered that the copyright claim is legitimate," he says, "I will continue to publish Clare in accessible and easily available editions, and I would urge others to do the same. I think the copyright claim has damaged Clare studies, and it is now time that it was laid to rest."