

U.S. Copyright Protection for Our World Chess Champions: A Futile Zugzwang

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I AM STANDING IN THE “ALL-PURPOSE ROOM” of Cragmont Elementary School in Berkeley, California, lecturing beside a vertical chess board displaying the following position from Rueben Fine’s *The World’s Great Chess Games*.¹



Aron Nimzowitsch’s above move (25 . . . h6) is described as “the most

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1. REUBEN FINE, *THE WORLD’S GREAT CHESS GAMES* 129 (Ishi Press 2012) (1951).

remarkable winning move on record.”² Today, this game is known for being “the finest possible example of Zugzwang.”³ Zugzwang is a theoretical concept in chess describing when “a player has the right and obligation to move whether he likes it or finds it most irksome.”⁴ In other words, following 25. . . h6, Sämisch (white) must move, but all of his options are disastrous.⁵

I am using the Socratic method to teach my students the nuances of this position. As I ask guiding questions, I think of how it would please Aron Nimzowitsch and Friederich Sämisch to know that the notoriety of their position has reached as far as Cragmont Elementary School. However, not everyone is interested. An eight-year-old boy in the far corner, no longer able to contain his boredom, abruptly stands on his chair in protest and begins to scream.

I. The Chess Player’s Copyright Zugzwang

A popular way chess players earn a living is not by collecting royalties from the publication of their games in books like *The World’s Great Chess Games*,⁶ but by teaching chess principles to young minds.⁷ This leads to what I call the “Copyright Zugzwang.”

The Copyright Zugzwang is a professional chess player’s unspoken obligation to share his entertaining and educational games with the world in order to maintain his or her visibility in the chess community. Unlike winning players, chess players receive relatively little to no compensation for their coaching.⁸ Thus, chess players might feel compelled to share their games with chess fans through tournaments. Though some, like Nimzowitsch or Sämisch, are talented enough to snag a few cash prizes now and then, most chess players will not win the top prizes and thus, cannot earn a living wage on their winnings alone.⁹

Viewing this as a great wrong, a number of former world chess

2. *Id.*; see Edward Winter, *Zugzwang*, CHESSHISTORY.COM, <http://chesshistory.com/winter/extra/zugzwang.html> (last updated Apr. 1, 2014).

3. See Winter, *supra* note 2.

4. BYRNE J. HORTON, *DICTIONARY OF MODERN CHESS* 223 (Philosophical Library, Inc. 1959).

5. *Id.* (“Zugzwang is the making of a forced moving which ‘is supposed to be an asset and a blessing,’ but actually, it ‘becomes a liability and a curse.’”).

6. FINE, *supra* note 1.

7. Natalia Pogonina, *Making Money in Chess*, CHESS.COM (Sept. 21, 2010), <http://www.chess.com/article/view/making-money-in-chess>.

8. *Id.*

9. *Id.* (noting that World Champions and top winners are the individuals who will win prizes that amount to thousands of dollars).

champions have called for ownership over the copyrights to their chess games,¹⁰ prompting the question: Is copyright protection available for chess moves?¹¹ This question is over a hundred years old.¹² Most notably, Wilhelm Steinitz, the first world chess champion,¹³ insisted on negotiating the copyrights of his games before agreeing to his 1886 match with Johannes Zukertort.¹⁴

Since then, multiple world-class players have demanded the establishment of a new revenue flow, one straight into their pockets through copyright protection of their chess moves.¹⁵ Emmanuel Lasker was perhaps the most persistent crusader in attempting to obtain copyright protection for his games by objecting to the practice of making score sheets accessible to the world at large without compensation.¹⁶ In the 1909 match between Emmanuel Lasker and Frank Marshall, the players jointly published an agreement that “ownership of the [score sheets] of the games shall be vested equally in the two principals.”¹⁷ Following the London Tournament in 1889, the International Chess Congress called the copyright demand “preposterous”¹⁸ and added, “[W]e do not profess to be lawyers, but we have yet to learn that a spectator reproducing a game from memory is guilty of any breach of copyright.”¹⁹

Chess historian Edward Winter aptly noted that “it is one thing to make such a declaration [of copyright ownership], but quite another to enforce it.”²⁰ Similarly, former Women’s World Chess Champion Susan Polgar stated that she “wouldn’t mind getting paid every time [her] moves are used, but [has] a hard time envisioning how it would be enforced.”²¹

10. See Edward Winter, *Copyright on Chess Games*, <http://www.chesshistory.com/winter/extra/copyright.html> (last updated Apr. 19, 2012) (documenting various chess champions’ attempts to find a way to copyright chess moves). See generally Alisa Melekhina & Neal Orkin, *Intellectual Property Issues in Chess Games*, 6 J. INTEL. PROP. L. & PRAC. 723, 723–25 (2011) (examining whether chess games are eligible for copyright protection under the U.S. Copyright Act).

11. Melekhina & Orkin, *supra* note 10, at 725.

12. Winter, *supra* note 10.

13. *Chess Champions*, CHESS CORNER, <http://www.chesscorner.com/worldchamps/steinitz/steinitz.htm> (last visited Oct. 2, 2014).

14. Winter, *supra* note 10.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. Murray Whyte, *Can You Copyright a Chess Move?*, THESTAR.COM (Mar. 15, 2009), http://www.thestar.com/news/insight/2009/03/15/can_you_copyright_a_chess_move.html.

II. Copyrightable Subject Matter

The U.S. Copyright Act of 1976²² (“Copyright Act”) protects original works of authorship fixed in any tangible medium of expression.²³ Therefore, in order for the moves of a chess game to be copyrightable, the chess moves must be (1) original, (2) a work of authorship, and (3) fixed.²⁴

A. Originality

For a work to be original under the Copyright Act, it must be independently created²⁵ and contain a minimal degree of creativity.²⁶

Independent creation requires that the work be the product of the creative energy of the purported author, not copied from another’s work.²⁷ Therefore, two writers who separately come up with the same creative expression may both obtain copyright protection in their identical works.²⁸

However, this concept does not smoothly transition to chess play, in large part due to Bobby Fischer and the manner in which most tournament preparation is conducted today. Fischer was known for his “relentless, even pathological dedication”²⁹ to his training. He would investigate all of his opponents and was known for “studying every top-level game for new ideas and improvements.”³⁰ In other words, Fischer let other players’ ideas and improvements influence his intra-game choices. This preparation technique was highly effective, especially when players today painstakingly scrutinize previous games move by move. In fact, it is possible these days, through extensive study, to play a game “by the book,”³¹ meaning that a player who has learned from prior players’ mistakes can simply repeat a winning game from memory.³² Though this

22. 17 U.S.C. § 102 (2009).

23. *Id.*

24. *Id.* (“Copyright protection subsists, in accordance with this title, in *original works of authorship fixed* in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.”) (emphasis added).

25. *Feist Publ’n v. Rural Tel. Servs.*, 499 U.S. 340, 345 (1991).

26. *Id.*

27. *Id.*

28. *Id.* at 346.

29. Gary Kasparov, *The Bobby Fischer Defense*, N.Y. REVIEW OF BOOKS (Mar. 10, 2011), <http://www.nybooks.com/articles/archives/2011/mar/10/bobby-fischer-defense/?page=3>.

30. *Id.*

31. HORTON, *supra* note 4, at 21 (“[A book-player] is a mechanical player who proceeds without contriving anything original . . . Hence, a bookish chessplayer is one who relies completely on the recorded chessplaying experiences of [themselves and] others.”).

32. *Id.* at 130 (“The [memorization of games is the] profess and ability to retain, recall and

does not happen often, it certainly is more likely to happen with today's technology than it was in Nimzowitch's time.³³

However, most creative thought can be reduced to the accumulation of previous ideas. Indeed, chess players study prior games to not only regurgitate winning positions, but also to be better able to create original positions of their own. But, to meet the originality requirement, the author's contribution must be more than a merely trivial variation of the previous work.³⁴

If a work possesses some "creative spark, no matter how crude, humble or obvious it might be,"³⁵ the work has met the extremely low level of creativity needed to meet the originality requirement for copyright protection.³⁶ Additionally, novelty is not necessary to meet the originality standard.³⁷ Chess moves surely meet this minimum requirement of creativity. There are more variations in chess than atoms in the universe,³⁸ and therefore, it is a chess player's intra-game choices derived from a vast realm of possibilities that drive game play forward. In the prelude to his match against José Raúl Capablanca, Lasker stated that it was "his personality that gives the games their principal interest."³⁹

In chess, tournament organizers frequently award Brilliancy Prizes for games displaying especially original and imaginative combinations.⁴⁰ More than just being original and imaginative, these combinations are typically also winning combinations,⁴¹ and therefore, even highly original games share the same intent to win. It is this competitive nature of chess that may

recognize games of chess and the specific and sequential moves in these games.").

33. Kasparov, *supra* note 29 ("Today, every game of chess ever played, going back centuries, is available at the click of a mouse to any beginner.").

34. Alfred Bell & Co. v. Catalda Fine Arts, 191 F.2d 99, 103 (2d Cir. 1951).

35. Feist Publ'n v. Rural Tel. Servs., 499 U.S. 340, 345 (1991).

36. *Id.*

37. *Id.* at 346.

38. DAVID EDMONDS & JOHN EIDINOW, BOBBY FISCHER GOES TO WAR 71 (2004) ("It is said that there are more possible variations in a game of chess than there are atoms in the universe (roughly 10^{80}) and seconds that have elapsed since the solar system came into existence (roughly 2×10^{17}). As for chess, it is estimated that there are approximately 25×10^{116} ways for a game to go.").

39. Winter, *supra* note 10.

40. HORTON, *supra* note 4, at 22 ("[Brilliance is when] ingenuity, accuracy, economy and sacrifice [are] timed so as to produce a constantly accelerating climax of ecstatic satisfaction"). Brilliancy Prizes are not awarded to both players, but rather only the winner. The world's first Brilliancy Prize was awarded to Henry Bird in 1876 for his win over James Mason in New York. Julio Becerra, *The Brilliancy Prizes*, CHESS.COM (June 3, 2009), <http://www.chess.com/article/view/the-brilliancy-prizes>.

41. *Id.*

disqualify it from copyright protection.

B. Works of Authorship

Even if chess moves meet the originality requirement, they are arguably not a “work of authorship”⁴² under the Copyright Act.

A work of authorship must fall into one of the following eight categories: (1) literary works, (2) musical works, (3) dramatic works, (4) pantomime or choreographic works, (5) pictorial, graphic, and sculptural works, (6) motion pictures, (7) sound recordings, (8) or architectural works.⁴³ Congress carved out the above categories to incentivize creation of new works by granting authors exclusive rights.⁴⁴ However, copyright protection is not afforded to an idea, procedure, process, system, method of operation, concept, principle, or discovery.⁴⁵ The question then follows: Under which category do chess moves fall?

Chess has been called a violent sport,⁴⁶ a beautiful mistress,⁴⁷ and a matter of vanity,⁴⁸ but perhaps David Bronstein’s words are the most apt description: “[T]he essence of chess is thinking about what chess is.”⁴⁹ Regardless of what chess players believe chess to be, legal minds have analyzed chess moves as falling into one of the excluded categories, though they disagree about which category specifically.

William Patry argues that a chess game is an unprotectable event because “chess moves, like sports, essentially constitute a method or procedure for accomplishing a utilitarian, nonaesthetic end.”⁵⁰ In *Intellectual Property Issues in Chess Games*,⁵¹ Women’s International Chess Master Alisa Melekhina and Drexel University Professor of Intellectual Property Law Neal Orkin argue that “chess parameters . . . yield abstract concepts that are discovered rather than created . . . [and] one cannot legally (by chess terms) make or create moves on the board that fall

42. 17 U.S.C. § 102(a) (2009).

43. *Id.*

44. *Sony Corp. v. Universal City Studios, Inc.*, 464 U.S. 417, 429 (1984).

45. 17 U.S.C. § 102(b) (2009).

46. *Chess*, CHESSQUOTES.COM, <http://www.chessquotes.com/topic-chess> (last visited Oct. 2, 2014) (quoting Marcel Duchamp).

47. *Id.* (quoting Bent Larson).

48. *By Alekhine*, CHESSQUOTES.COM, <http://www.chessquotes.com/player-alekhine> (last visited Oct. 2, 2014) (quoting Alexander Alekhine).

49. *By Bronstein*, CHESSQUOTES.COM, <http://www.chessquotes.com/player-bronstein> (last visited Oct. 2, 2014) (quoting David Bronstein).

50. WILLIAM F. PATRY, 2 PATRY ON COPYRIGHT § 4:20 (updated Mar. 2014).

51. Melekhina & Orkin, *supra* note 10, at 723.

outside the confines of those rules.”⁵² Discoveries differ from writings in that discovered facts are not created, but rather exist independently of the player, and therefore do not meet the originality requirement.⁵³ However, given the virtually infinite number of choices available to a chess player during a chess game, the chess players’ character will likely drive the game’s play more so than the ability to find or “discover” the best move. In *Alfred Bell v. Catalda*,⁵⁴ the court held that bad eyesight, differing musculature, or a shock caused by a clap of thunder can cause a more-than-trivial variation from the previous work, thereby meeting the originality standard.⁵⁵ This standard could easily be extended to the variations of chess play on the tournament board.

Furthermore, Bruce Boyden, in his paper *Games and Other Uncopyrightable Systems*,⁵⁶ categorizes chess as a system that is an unprotected category under 17 U.S.C. § 102(b),⁵⁷ given its fairly simple rules,⁵⁸ separate domain or playing space,⁵⁹ goals,⁶⁰ and defined relationship between the players.⁶¹ Boyden argues that a game is merely a maze in which players may take one of many paths.⁶² However, Boyden cites the game of tic-tac-toe, which has only 211,568 possible variations.⁶³ Chess moves vastly outnumber tic-tac-toe moves. Even when taking into account logical moves, the number of possible chess variations is around 10^{43} ,⁶⁴ also known as the *Shannon Number*,⁶⁵ named after the

52. *Id.* at 726.

53. *Feist Publ’n v. Rural Tel. Servs.*, 499 U.S. 340, 347 (1991).

54. *Alfred Bell & Co. v. Catalda Fine Arts*, 191 F.2d 99 (2d Cir. 1951).

55. *Id.* at 105.

56. Bruce E. Boyden, *Games and Other Uncopyrightable Systems*, 18 GEO. MASON L. REV. 439 (2011).

57. 17 U.S.C. § 102(b) (2009) (“In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.”).

58. Boyden, *supra* note 56, at 450.

59. *Id.* at 451.

60. *Id.* at 454.

61. *Id.* at 453.

62. *Id.* at 455.

63. *Id.* at 455 n.85.

64. Claude E. Shannon, *Programming a Computer for Playing Chess*, 41 PHILOSOPHICAL MAGAZINE (Mar. 1950), available at http://archive.computerhistory.org/projects/chess/related_materials/text/2-0%20and%20-1.Programming_a_computer_for_playing_chess.shannon/2-0%20and%20-1.Programming_a_computer_for_playing_chess.shannon.062303002.pdf.

65. *The Number of Shannon*, CHESSDOM (Apr. 15, 2007), <http://mathematics.chessdom.com/shannon-number>.

mathematician Claude Shannon, which was later revised to 10^{50} by Victor Allis,⁶⁶ and is now known as the *game-tree complexity*.⁶⁷ For point of reference, an author attempting to write a fifty-word passage has available to him roughly 7^{18} possible variations. Therefore, because 10^{50} is far greater than 7^{18} , it is unreasonable to argue that an author may obtain copyright protection in the fifty-word passage, but a chess player attempting to play a fifty-move game may not. In other words, a chess player's variety in self-expression in a fifty-move game is greater than what is available to an author writing a fifty-word passage. Therefore, a chess player exercising his choice within the confines of the rules, playing space, goals, and defined relationship of the game enjoy more creative freedom than an author with a pen in his hand and blank piece of paper before him.

Nonetheless, a fifty-word passage is generally protected as a literary work, but a chess game is not.⁶⁸ The Copyright Act defines a work, other than an audiovisual work as that which is "expressed in words, numbers, or other verbal or numerical symbols or indicia."⁶⁹ Given that chess moves are written down in chess notation using symbols, why then are chess moves not considered literary works under the Copyright Act? Most likely, this is due to the fact that the aim of chess is to win, thereby bringing chess into the non-copyrightable realm of sport.

The reigning world chess champion, Magnus Carlson,⁷⁰ has said that chess is a sport because its fundamental objective is to win.⁷¹ Most sports are not afforded copyright protection because they are purely utilitarian, authorless, and not properly fixed.⁷² Though a chess player extensively prepares as is common in most sports,⁷³ such preparation "is as much an expression of hope or faith as a determination of what will actually

66. Victor Allis, *Searching for Solutions in Games and Artificial Intelligence* 165 (1994) (Ph.D. thesis, University of Limburg, Maastricht).

67. *Id.*

68. 17 U.S.C. § 101 (2009).

69. *Id.*

70. *Magnus Won the World Blitz Championship 2014*, WORLD CHESS FED'N (June 20, 2014, 7:05 AM), <http://www.fide.com/component/content/article/1-fide-news/8086-magnus-won-the-world-blitz-championship-2014.html>.

71. Interview by Charlie Rose with Magnus Carlson, *World Chess Champion 2013*, in N.Y.C., N.Y. (Apr. 25, 2013), <http://www.bloomberg.com/video/magnus-carlsen-the-world-s-number-one-chess-player-1zzTEZ-rSVCVxP9TMhltw.html>.

72. PATRY, *supra* note 50, § 4:21. See F. Scott Kieff, Robert G. Kramer & Robert M. Kunstadt, *It's Your Turn, But It's My Move: Intellectual Property Protection for Sports "Moves,"* 25 SANTA CLARA COMPUTER & HIGH TECH. L.J. 765, 776-79 (2009).

73. PATRY, *supra* note 50.

happen.”⁷⁴ Additionally, if sport routines were copyrightable, it would likely impair future athletes from competition.⁷⁵ It is competitively advantageous to have athletes repeat observed moves or routines and subsequently perform better by jumping higher or moving quicker.⁷⁶

However, it can be argued that an exception is warranted for sports with an aesthetic purpose.⁷⁷ Regardless of their description as “sports,”⁷⁸ “[i]f the other elements of originality and fixation are present, there is no bar to their [copyright] protection.”⁷⁹ Because their numerical score is determined by aesthetic performance, synchronized swimming and figure skating are examples of sports that could be considered choreographic works.⁸⁰ In chess, the only relevant numeric scores designate whether a player won, drew, or lost.⁸¹ Since aesthetics do not play a role in chess scoring, it is not likely to fall under this potential “aesthetic exception.”

Choreographic works, however, are not defined in the Copyright Act, nor does the legislative history offer a clear definition. In the House and Senate Reports, choreography is stated to have “a fairly settled meaning” and that the term should refer to “all forms of choreography.”⁸² The *American Heritage Dictionary* defines choreography as the following: “The art of creating and arranging dances or ballets,” “[a] work created by this art,” or “[s]omething, such as a series of planned situations, likened to dance arrangements.”⁸³ Therefore, the definition of choreography hinges on

74. *Id.*

75. *National Basketball Ass’n v. Motorola, Inc.*, 105 F.3d 841, 846 (2d Cir. 1997) (“If the inventor of the T-formation in football had been able to copyright it, the sport might have come to an end instead of prospering. Even where athletic preparation most resembles authorship—figure skating, gymnastics, and, some would uncharitably say, professional wrestling—a performer who conceives and executes a particularly graceful and difficult—or, in the case of wrestling, seemingly painful—acrobatic feat cannot copyright it without impairing the underlying competition in the future. A claim of being the only athlete to perform a feat doesn’t mean much if no one else is allowed to try.”).

76. *Id.*

77. PATRY, *supra* note 50.

78. *Id.*

79. *Id.*

80. *Id.*

81. Edward Scimia, *Scoring Systems in Chess Tournaments*, ABOUT.COM, <http://chess.about.com/od/chesshistory/a/Scoring-Systems-In-Chess-Tournaments.htm> (last visited Oct. 2, 2014) (“In most chess tournaments held since the middle of the 19th century, there has been a very simply scoring system used. Players who scored a win in a game were awarded a point, while those scoring draws were given a half-point. Losing a game, as you might expect, was worth zero points.”).

82. S. REP. NO. 94-473, at 52 (1975); H.R. REP. NO. 94-1476, at 53–54 (1976).

83. *Choreography Definition*, AMERICAN HERITAGE DICTIONARY, <https://www.ahdictionary.com/word/search.html?q=choreography&submit.x=0&submit.y=0> (last

the definition of dance. Martha Traylor defines choreography as “planned movement, set into a time frame, for the benefit and enjoyment of the passive observer.”⁸⁴ The premeditated moving of chess pieces to the rhythm of a ticking chess clock could fit within Traylor’s definition; however, the danger is that such a broad interpretation of what constitutes choreography could sweep all competitive games with a utilitarian purpose into the Choreographic Works category.

C. Fixation of Chess Moves

The Copyright Act protects only works of authorship that are fixed in a tangible medium of expression.⁸⁵ In order to be fixed, a work “must be sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.”⁸⁶ For example, when a poet jots her verses down onto a piece of paper, she has fixed her work.

In tournament settings, each chess player records both her moves and her opponent’s moves on a score pad using a form of chess notation, designating which piece moved to which square.⁸⁷ Below is a portion of the score sheet from the 1921 Wendel v. Nimzowitsch Stockholm match.⁸⁸

Stockholms Kvinnliga Schackklubb			
N:o <i>Ch. Wendel</i> mot <i>Nimzowitsch</i> den <i>24/11</i> 1921			
Spelplan: <i>Wendel</i> mot <i>Nimzowitsch</i>			
Hvit: <i>Wendel</i>		Svart: <i>Nimzowitsch</i>	
Hull	Start	Hull	Start
1	<i>22-04 07-05</i>	21	<i>04-05 06-05</i>
2	<i>09-13 12-14</i>	22	<i>0-0-0 03-06</i>
3	<i>05-08 08-11</i>	23	<i>11-11 07-05</i>
4	<i>05-09 07-06</i>	24	<i>03-04 0-0-0</i>

Arguably, the sequence of moves recorded on the score sheet deserves copyright protection as a literary work because they have been fixed. Though one cannot simply convert or translate a work from one medium to another (which would not be creative),⁸⁹ many chess players could write the chess notation first before moving the chess piece. But, copyright protection should not turn on whether the chess notation was made before

visited Sept. 17, 2014).

84. Martha M. Traylor, *Choreography, Pantomime and the Copyright Revision Act of 1976*, 16 NEW ENG. L. REV. 227, 229 (1981).

85. 17 U.S.C. § 102(a) (2009).

86. 17 U.S.C. § 101 (2009).

87. HORTON, *supra* note 4, at 184 (“[Score pads] are designed for keeping records of the moves in games of chess.”).

88. Edward Winter, *Chess Notes*, CHESSHISTORY.COM, <http://www.chesshistory.com/winter/winter73.html> (last visited Oct. 2, 2014).

89. PATRY, *supra* note 50, § 4:20.

or after the act of moving the chess piece because the notation has as much of a utilitarian purpose as the move choices themselves.

A chess score sheet adequately and absolutely represents everything that transpires over the board.⁹⁰ Accordingly, Patry in his treatise concludes that “transcriptions of chess games involve no protectable authorship, [for] they are mechanical representations of an unprotectable event.”⁹¹ Whichever comes first, the literary work embodied by the real time notation or the choreographic work embodied by the physical moves, the purpose of both is utilitarian.

Regardless of whether a chess score is afforded copyright protection, chess coverage today is not merely through the distribution of a chess score sheet. Times have changed, and chess players have new tools at their disposal to oversee and profit from the exclusive distribution of their games.

III. Fixating Chess Moves in the Digital Age

Today, the score sheet is not the only record of the game.⁹² Chess matches are also video recorded, which may provide an alternative medium that could receive copyright protection.

The 2013 World Championship match between Magnus Carlsen and Vishwanathan Anand in Chennai, India serves as an example. All the events in Chennai were broadcast over the Internet with video coverage, press conferences, and extensive details regarding the players in the tournament.⁹³ Throughout the culminating championship match, contenders Carlsen and Anand recorded their moves onto their respective score sheets, photographers snapped pictures from all sides, and a stationary camera live-streamed footage over the Internet as well as through various media channels.⁹⁴ In short, the game was fixed in multiple mediums.

Though chess moves most likely fall into an unprotected category of the Copyright Act, coverage of such an event through film is certainly

90. HORTON, *supra* note 4, at 184 (“[Score] pads are used by individual chess players and chess clubs as convenient devices for preserving their records of games played or being played.”).

91. PATRY, *supra* note 50, § 4:20.

92. Randy Olson, *A Data-Driven Exploration of the Evolution of Chess: Game Lengths and Outcomes*, RANDAL S. OLSON (May 24, 2014), <http://www.randalolson.com/2014/05/24/a-data-driven-exploration-of-the-evolution-of-chess-match-lengths-and-outcomes/> (utilizing a graph that shows the rapid increase in game recording since the twentieth century).

93. FWCM CHENNAI 2013, <http://chennai2013.fide.com> (last visited Oct. 27, 2014).

94. *Magnus Carlsen is the New World Champion!*, FWCM CHENNAI 2013 (Nov. 22, 2013), <http://chennai2013.fide.com/magnus-carlsen-is-the-new-world-champion/> (Nov. 22, 2013).

protectable.⁹⁵

Perhaps rather than playing the losing end of the Copyright Zugzwang—trying to obtain copyright protection for chess moves as either literary works or choreographic works—players should instead focus their efforts on contract negotiations regarding the ownership and control of media rights of their games, rather than settling for appearance fees that are lump-sum payments for a player’s participation in tournaments.⁹⁶

Leading up to the 2010 World Chess Championship match between Vishnu Anand and Veselin Topalov in Sofia, Bulgaria, the Bulgarian organizers sold the rights to cover the event to media stations like the Bulgarian National TV Channel.⁹⁷ The only cameras allowed in the tournament hall belonged to companies that paid the organizers, with none of the proceeds trickling down to the players.⁹⁸ The organizers also attempted to sell the media rights to transmit the games live on the Internet for 15,000 Euros.⁹⁹ Only ChessBase, the world’s largest online chess portal, was willing to challenge this imposition by the Bulgarian organizers.¹⁰⁰ Against the will of the Bulgarians, ChessBase transmitted the text moves of the match live on their PlayChess server.¹⁰¹ It appears, however, that the Bulgarian organizers have followed through on their threat of prosecution.¹⁰² In short, chess organizers have asserted copyright ownership to the broadcasting of chess moves,¹⁰³ and perhaps it is time that chess players get in the game.

95. PATRY, *supra* note 50, § 4:20 (“Even though athletic events themselves are not protectable, television broadcasts of them are (as audiovisual works, based on the selection of images and commentary).”). *See also* Baltimore Orioles, Inc. v. Major League Baseball Players Ass’n, 805 F.2d 663, 669 (7th Cir. 1986) (“The [sports] telecasts are, therefore, copyrightable works.”).

96. Pogonina, *supra* note 7.

97. Peter Doggers, *Bulgarian Organizers Take ChessBase to Court*, CHESSVIBES (June 2, 2010, 8:00 PM), <http://www.chessvibes.com/?q=columns/bulgarian-organizers-take-chessbase-to-court>.

98. *Id.*

99. *Id.* (“[O]ne of the main figures responsible for the organization of the match, told ChessVibes a few weeks before the match that we needed to pay 15,000 Euros if [they] wanted to transmit the games live.”).

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.* (“Anand-Topalov World Championship match take Chessbase to court for ‘violating copyright rules’. Chessbase transmitted the moves of the match live on their Playchess server, against the will of the Bulgarians.”).

IV. Back to School

The average chess player is not in a position to negotiate the terms of distribution of his or her games' moves with the tournament organizer, for it is to the average player's benefit to participate in a widely covered tournament. However, for purposes of fairness, chess editors, bloggers, and publishers ought to make a good faith effort to notify players that their brilliant tactic or shameful blunder will be circulated worldwide for the amusement of fans, the profit of chess-media entities, and the educational benefit of fellow players and their respective students.

That is not to say that teaching is devoid of its own glorious moments. Back at Cragmont Elementary School, I am doing my best to ignore the screaming child, when he is curtly interrupted by a student coming to my defense. "I can't hear, Miss Iris," she says. Others murmur in disgruntled unison. The protestor quietly sits back down, and the class collectively turns back to my teaching. I'd take that over royalties any day.