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FEATURES

Two reluctant entrepreneurs tackle challenge of copyright duration

BY LORELEI LAIRD ([HTTP://WWW.ABAJOURNAL.COM/AUTHORS/27616/](http://www.abajournal.com/authors/27616/))

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Elizabeth Townsend Gard was researching British literature when it became clear that she would have to learn something about copyrights. It was 1994, and Gard was trying to start her dissertation on the author Vera Brittain, who is best known for her work set during World War I. She didn't know much about copyrights; she wanted to be a history professor. But she needed Brittain's writing to do her work, and it wasn't clear whether she could use it legally.

“I asked my dissertation chair, ‘How do I know if I can use the material or if I can’t?’ and he said, ‘Just write on something else if there’s any chance the literary executor might be difficult,’” says Gard, now a professor at Tulane University Law School (<http://www.law.tulane.edu/tlsfaculty/profiles.aspx?id=2116>). “And I was really feisty, and I didn’t like that answer.”

But finding her own answer proved difficult. Whether a given work is under copyright in the United States is a complicated question. And because Brittain was British and her work is archived in Canada, Gard also had to consider those countries’ laws. To determine the status of the works would likely take a lawyer a few days of research—making legal help too expensive for a graduate student.

And the answers were hard to reproduce. About four months after Gard got the information she needed, another scholar asked her about the copyright status of a particular poem by Brittain.



Illustration by Stephen Webster

“It was so weird that I knew so much about this —both the person she was asking about and the law—but it was too hard to remember,” she says. “I [thought], ‘Well, you know, if we could just code it, then nobody would have to remember it again. They could just look it up.’”

So Gard began learning about copyrights—and started a project that’s defined and changed her career. Twenty-two years after she started asking copyright questions, she’s produced a software tool that answers them. The Durationator takes basic information about a work and determines its copyright status in any country in the world—in a fraction of the time that a human researcher would need.

Along the way, she and her husband, attorney and professor (<http://taylor.tulane.edu/people/ron-gard/>) Ron Gard, surprised themselves by becoming passionate about the law and entrepreneurship. In 2011 they founded a company, Limited Times (<http://www.limitedtimes.com/>), to commercialize the Durationator. They’re now enthusiastic boosters of the burgeoning New Orleans startup scene. And in 2013, they founded the Tulane Law/ Culture/ Innovation initiative (<http://www.lawcultureinnovation.com/>), which is

intended to help Tulane affiliates launch their own businesses.

“I think it’s a story of opening up directions and vistas for us that we wouldn’t have foreseen,” Ron Gard says. “Neither of us set out to be operating in an entrepreneurial sort of business world, but our interests led us there—and it’s created exciting, dynamic things for us.”

COMPLEXITIES EASED

Copyright duration is genuinely complex. In the U.S., the duration of copyright protection can depend on when the work was created; whether and when it was published; whether it’s a sound recording; whether it was renewed; and whether a natural person is the creator and, if so, when the creator died.

In addition, there are statutory exceptions to copyright protections, generally for situations involving the public good, such as use of works by libraries. There are also exceptions created by the fair-use doctrine. Fair use might have covered Gard's PhD work, but its four-factor test leaves a lot up to judges and juries, so that's not a sure thing. And if you're working across borders, you may also have to look at the laws of other countries.

The Durationator aims to deliver quick answers despite those complications. At heart, it's a big database of copyright laws, and using it is simple:

- Plug in basic information about a work. This can be as little as a publication date, although more information is likely to lead to a quicker answer.
- If necessary, the Durationator will ask questions to clarify the status of the work.
- At the end, it returns a report about the work's copyright status in the country specified, including a list of the applicable laws, case law and anything else that might be relevant, such as U.S. Copyright office records.



*Elizabeth Townsend Gard.
Photographs by Kathy Anderson.*

"It's like having an associate in your firm write a memo for you," says Gard. "It delivers the law to you so that you an attorney just have to review it."

It's the culmination of a research project Gard had thought about ever since her graduate school days. She ended up writing the dissertation she wanted, she says—but the experience led her to the law.

"I finished the PhD in '97, officially graduated in '98, and then went to law school that fall to find out more out how to solve the problems I had ... and just fell madly in love with law," she says. "I loved it—I still do."

Law school at the University of Arizona also helped Gard stay busy while her husband started his PhD work cultural studies there. They both ended up staying on, he to get a law degree of his own and she to get an LLM in international trade. In 2003, while they were still in law school, their daughter was born. In the following years, he became a licensed attorney in New York and Gard did a postdoctoral year at the London School of Economics.



Ron Gard

But they never lost their interest in making it easier to determine copyright duration. That was partly because the question stayed relevant.

Both started their PhD research in the 1990s as the Internet was becoming a part of mainstream American society. That was directly related to Ron Gard's PhD work, which examined how economics and the corporation influenced texts in the 20th century. And it had clear implications for copyrights: Lots of people wanted to know if they were free to put copyrighted works online, and they ran into the same barriers Gard had hit.

TOOL TIME

So when Gard was hired at Tulane in 2007, she came with a research agenda: Make a tool that would simplify researching copyright duration. She soon met a student with programming experience who needed a summer job. He assured her that the project would take about three months.

Instead, it took eight years and a small army of law student researchers—more than 80. A large part of that entailed finding and encoding the laws of every country in the world that has copyright laws. The task has taken the Gards to Colombia, Germany, Los Angeles, Oxford in the U.K. and Washington, D.C.

“We needed to track down every law that's ever been on copyright; and there's no one source, so that's taken a really long time,” Gard says. “We had to use all kinds of resources: We've taken trips to the Library of Congress; we've emailed countries directly.”

Thea Crane, a 2015 Tulane Law graduate who worked on the Durationator all through law school, helped track down some of the more difficult-to-find Latin American laws. Crane is fluent in Spanish, so she also translated laws that hadn't already been translated into English.

“That ranged from current laws that for some reason hadn’t been officially translated yet, all the way back to laws from the 1700s that just never had an English translation,” Crane says. “It was very cool to see the development of the laws through time, and it was very cool to see which countries kind of borrowed from one another.”

Another part was learning how to approach the problem. After the first year of working on the Durationator, they realized they’d been encoding the law as if they were trying to find out how to get copyright protection for a work. That was backward, Gard says. So they had to start over.

Ron Gard’s background in cultural studies proved to be important. “What made it solvable was starting to look at the major laws that pertained to this and why they were formed the way they were at the time they were,” he says.

“Sometimes people think that what Ron does is tangential,” says Gard, “but until we started to really dissect what the law was doing and the culture position of that law ... we couldn’t code the law.”

ENTREPRENEURIAL SETTING

The business side took even more time. That’s partly because, originally, there was no business side—the Durationator was intended as a research project. And despite Ron Gard’s research background in business and economics, the Gards have always thought of themselves as academics.

That started to change in 2007 when Gard spoke to John Christie, executive director of Tulane’s Office of Technology Transfer and Intellectual Property Development. (Such offices, a common feature at research universities, help inventions generated at the school make money for it.)

“She had a very firm confidence and faith that there was a need for a product like she envisioned,” Christie recalls. Christie wasn’t so sure at first because he wasn’t familiar with the kinds of copyright problems the Durationator could solve. But shortly after the meeting, he started seeing news stories about lawsuits against Google Books. Google wanted to digitize the full text of books and make them searchable online for free. But authors and publishers objected, saying it infringed on their copyrights. (While the 2nd U.S. Circuit Court of Appeals at New York City ruled in 2015 that the project is fair use, the Authors Guild has petitioned for review by the U.S. Supreme Court. *Editor’s note: On April 18, the Supreme Court denied review to the Authors Guild.*)

“The Google Books problem was that nobody really knew where the copyright laws and the ownership rights began and ended,” Christie says. “And Elizabeth Townsend Gard here at Tulane did know and was able to lay all that out. I got to say: Yup, there you go. It is real and has a real impact on day-to-day life.”

At first, Christie says, Gard wanted to market the project through an outside company, but as the Durationator grew, it started looking more likely that she would have to commercialize it herself.

Luckily, all of this happened during a phase of entrepreneurial growth in New Orleans. The city has experienced a sort of business renaissance in the past decade, driven in part by the need to rebuild after Hurricane Katrina.

“While there was entrepreneurialism here before that,” Ron Gard says, “the need to rebuild the city was so great that that was a large effort that really took off and expanded in those years following Katrina, and has really continued to do so.”

Right after her arrival, Gard was able to secure a \$60,000 grant from Tulane aimed at fostering innovation after Katrina. And when Tulane officials suggested Gard try building the business herself, they were able to introduce her and her student researchers to the Idea Village, a nonprofit incubator for new businesses. Founded in 2000, it has the lofty goal of making New Orleans the destination city in the South for entrepreneurship.

RELUCTANT ENTREPRENEUR

That gave Gard access to resources that she, as a reluctant academic-turned-entrepreneur, truly needed. “Every week they would try to explain to me why we had to do certain things, because it was all business stuff and I would just be freaked out,” she says. “I was like, ‘I don’t want to think about any of that stuff. I just want to do my research.’”

But she was forced to think about it when the Idea Village enrolled her in Ideacorps, a program that brings fledgling businesses together with MBA students acting as consultants. A team from the University of California at Berkeley came to New Orleans for a week to work with Gard and her students on business basics. And by a week, Gard says, she means 24 hours a day for a week.

“[They] helped us figure out what our market would be, and how much it would cost, and we would start with the lawyer market,” she says. “And it was incredible, and it was exhilarating, and it was exciting, and we were well on our way.”

By the end, Gard had much better-formed ideas and materials about target markets, costs and other business matters. She named the firm Limited Times after a phrase in the U.S. Constitution's copyrights clause.

That carried the team to Propeller, a nonprofit that helps launch New Orleans businesses with a social or environmental mission. Though Limited Times didn't work on food security or clean water, the Gards say they always had a social mission: making it possible for everyone to figure out copyright duration at a reasonable cost.

Andrea Chen, executive director of Propeller, says Limited Times came with a strong product, but needed help completing its business model.

"I remember [the Gards] being very excited to be partnered with Propeller," Crane says. "They had investors behind them and [could] get everything off the ground to make them much more independent from the university."

That's around when Ron Gard became an active part of Limited Times. After the Idea Village, Gard says, her student researchers graduated, leaving her "alone and freaking out." Ron stepped in, putting his academic background in corporations and culture to work. Today, he's president and CEO of Limited Times and she is director of research and development. The arrangement suits her.

"I get pretty focused on the law and the detail. He is much, much better at translating what we do," she says. "Once he came on board in 2011, we really started to think like a startup and to make real decisions."

Propeller also helped Limited Times negotiate its deal with Thomson Reuters, which started offering searches of the Durationator in 2015. At that time, users could ask copyright duration questions only for the laws of the U.S., Canada and Mexico. But now the Gards have 120 countries in the database and ready to go. By June, they expect to have finished entering every copyright law in the world—from about 270 nations, according to Gard.

HELPING (NOT HURTING) LAW

One key market for the Durationator is attorneys doing research. But the Gards

emphasize that the Durationator is not intended as a replacement for attorneys. In



Andrea Chen

fact, there's a warning screen for new users that expressly says so. They see the Durationator as a research tool that could make legal services faster and less expensive.

That could be an important change, says David Nimmer, author of the widely used treatise *Nimmer on Copyright*. Nimmer, who teaches at UCLA School of Law and is of counsel at Irell & Manella in Los Angeles, was an occasional consultant to the Durationator team.

"In my experience, only those who are willing to pay top dollar have gone and researched [copyright duration]," says Nimmer, "and those typically involve large book publishers and motion picture studios. But if it opens up the floodgates, it could democratize the inquiry."

"In one sense," Ron Gard says, "it's not as though this work is being done in the legal marketplace, because it's just not affordable to do it. We are bringing to the market something that helps close that market failure and creates more opportunity for lawyers to connect with clients."

The other major market is institutional clients—archives, libraries and museums that deal with a lot of copyrighted works. Limited Times works with several, including Stanford Law School's Center for Internet and Society. Ron Gard says they were doubly fortunate to be in New Orleans at a time when entrepreneurs receive strong support and to have access to the abundant resources offered by academia, including the Tulane technology transfer office, student researchers and more.

Gratitude for that experience led the Gards to join Tulane's social innovation and social entrepreneurship program. He teaches entrepreneurship to undergraduates in the program; she acts as a resource on the law to those students.

And a desire to share what they've learned inspired them to start Law/Culture/Innovation, which seeks to connect Tulane's students and knowledge with startup ventures that have a social mission. Ron Gard also intends to create an online repository of research materials for new businesses.

FILLING IN THE MAP

In March, the Gards were still working out how to balance running a business with their marriage, daughter and day jobs. Limited Times has an office at Tulane, but they do a lot of the work online. There's also a bit of space in their kitchen dedicated to the project—including a map of the world on which they black out each country once they've finished entering its laws into the Durationator. As of press time, the near-complete map was waiting on research or translations for only a few nations.

Crane says it's encouraging to watch that map get filled in. While awaiting her Louisiana bar exam results, she's working part time as Limited Times' director of Latin American affairs and full time at a law firm. Being part of Limited Times has changed Crane's thoughts on a career path.

"I thought that I wanted to work in the arts and potentially be, like, an in-house counsel for some kind of entertainment company," she says. "And then after working here, I realized how much I love research. Now I really enjoy my role with [the Gards] and interacting with people and showing them what we've created."

Gard recalls Saturday mornings in the early days of the project when her daughter, then a kindergartner, would wake up and find her mother on the porch with law students, deep into research discussions. The students would take turns playing video games with her daughter for the next hour or so while they wrapped up their discussions.

"She cannot remember a time when law students were not at the house or on trips with us," Gard says of her daughter, who turns 13 this year. "She's been raised with them. She's very good at holding her own in an argument and vows that she will not go to law school."

The partnership with Thomson Reuters, which handles sales and marketing, has helped the Gards continue working from home. This year, she says, they're planning to start direct sales. They're working on a subscription model that will allow users who frequently work with copyrights to get answers without waiting for a full report.

And in 2017, Gard says, Limited Times hopes to expand the Durationator's audience to the general public, including individuals who have a copyright question like she did in 1994. Nonprofessionals are the hardest to accommodate because they tend to know less about the works, but they were the target audience all along.

"The real goal is for you to put [in] what you know and it looks like TurboTax for copyright," Gard says. "Just simple and easy and fun and you don't need to know very much."

"Our ultimate objective is to extend that to make [the Durationator] available to anybody anywhere," she says. "That's what's driven us from the very beginning, was just: 'There should be a tool that allows you to do that simply.' "

"And so we made it," Gard says.

This article originally appeared in the May 2016 issue of the ABA Journal with this headline: "Tale of the Tool: Two reluctant entrepreneurs turn the challenge of copyright duration into a business."

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