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The Ethics of Open Access to Research

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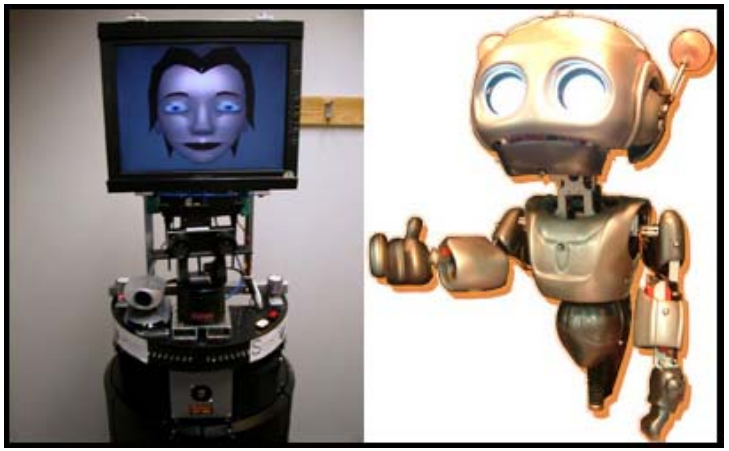
The Ethics of Open Access to Research



Denise Troll Covey

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Library 2.0 Symposium
Yale Law School – April 4, 2009

Epistemic regime

ACADEMY

Cognitive property (CP)

Knowledge that can *not* be owned

Facts & ideas

Gift economy

Monopoly of competence

LAW

Intellectual property (IP)

Knowledge that can be owned

Artifacts

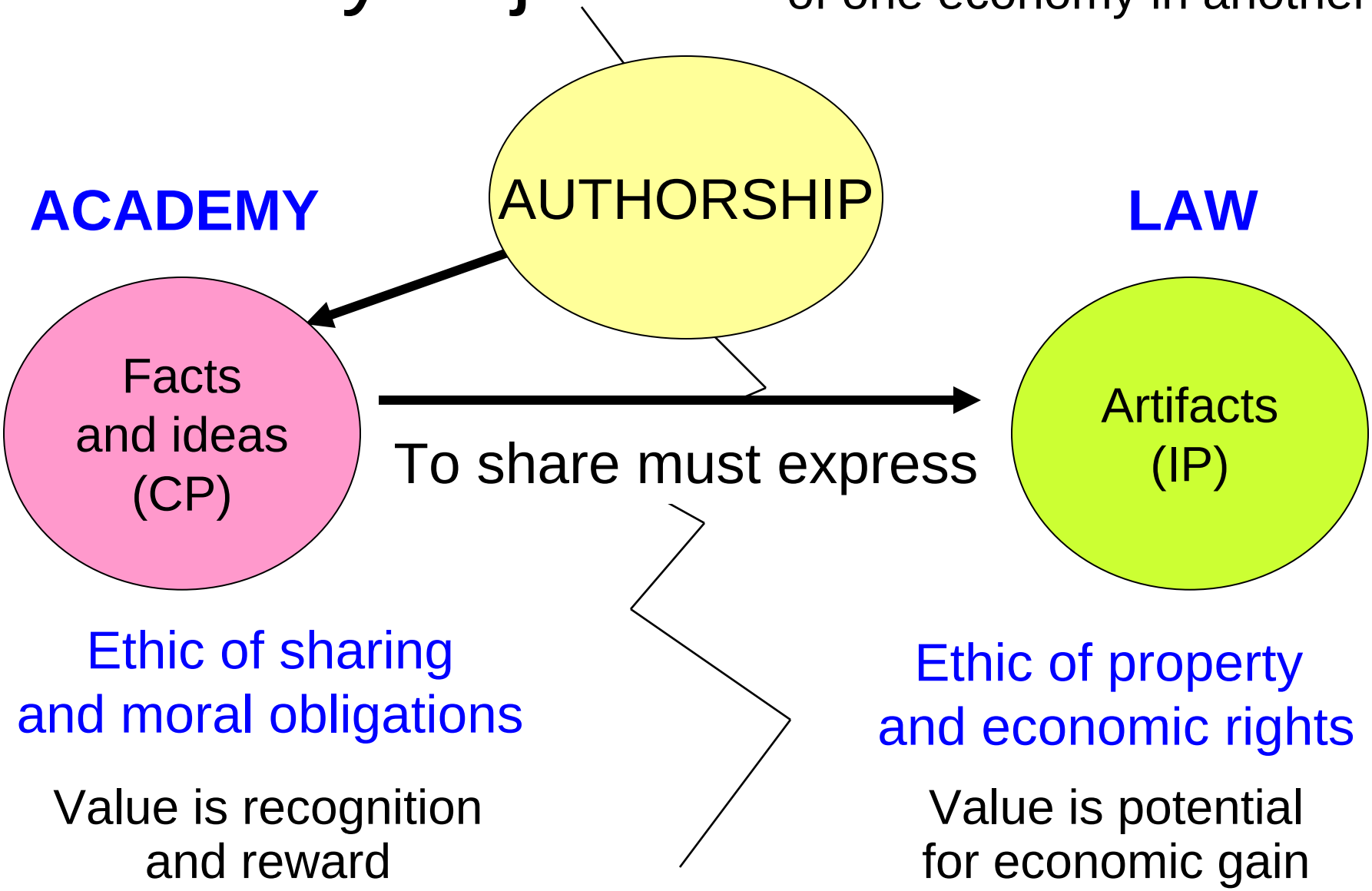
Market economy

Monopoly of copyright

Corynne McSherry, *Who Owns Academic Work?*, 2001

Boundary object

Vehicle to deploy norms
of one economy in another



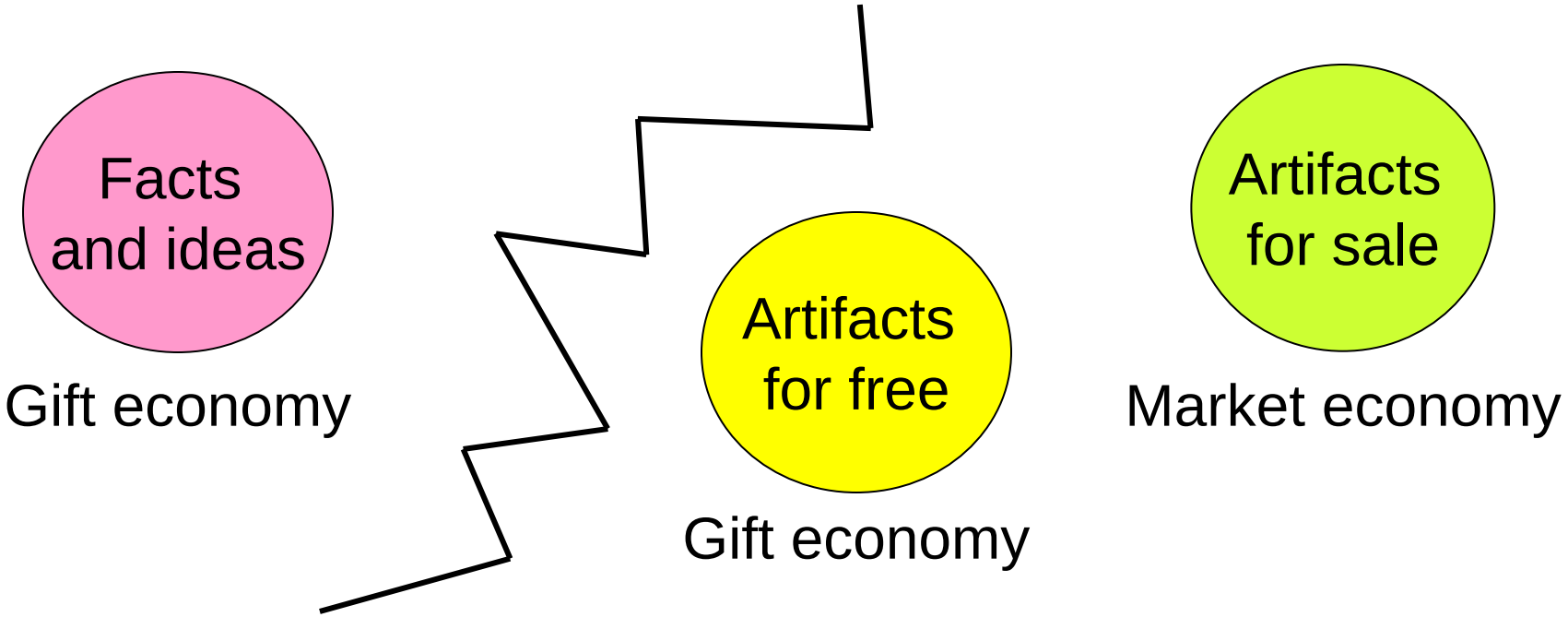
Faculty research hybrid ethic

- Want academic exception and © ownership
  - Honor and propriety (CP / gift economy)
  - Academic freedom and control (IP / market economy)
- Resist loss of honor, propriety, autonomy, control
  - Efforts to help them manage copyright
  - Policies requiring retention or granting of rights
- Transfer copyright to publisher
  - Exercise autonomy, but lose control – *or do they?*
  - Retaining © < important than recognition and reward

Border disputes

Create and address moral communities

- Open access is gift economy in market space
- Subversive, confrontational and competitive
- High priority for libraries, faculty, institutions



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J articles on websites

- Are journal articles being self-archived on websites?

Study conducted 2007-2008

346 faculty self-archived 4,816 articles

College	Articles		Faculty	
	Total	OA	Total	OA
Business & econ	1,415	16%	90	46%
Computer science	2,340	55%	205	67%
Engineering	4,713	24%	179	30%
Fine arts	200	17%	184	3%
Human./ social sci	2,419	40%	148	34%
Policy & mgmt	380	26%	54	17%
Science	3,414	41%	158	31%
TOTAL	14,881	32%	1,018	34%

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alignment of OA articles

- Are the articles self-archived on websites legal?
  - Considered if OA was allowed and policy on pub PDF

1,830 OA articles are *not* aligned with policy

Not shown: 4% where policy is unclear about version

College	Policy unknown	Aligned w policy	Not aligned
Business & econ	13%	67%	18%
Computer science	8%	53%	31%
Engineering	7%	56%	35%
Fine arts	15%	24%	58%
Human./ social sci	8%	21%	63%
Policy & mgmt	19%	29%	45%
Science	5%	65%	29%
TOTAL	8%	50%	**38%**

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how not aligned

- Biggest problem is self-archiving of publisher PDF when prohibited by policy – ***the best gift***

College	OA prohibited	Pub PDF required	Pub PDF prohibited
Business & econ	7%		93%
Computer science	5%	25%	70%
Engineering	25%	14%	61%
Fine arts			100%
Human./ social sci	9%	1%	90%
Policy & mgmt	22%	2%	76%
Science	47%		53%
TOTAL	18%	9%	**73%**

1,830 prohibited pub PDFs

Who cares if infringe their own gift?

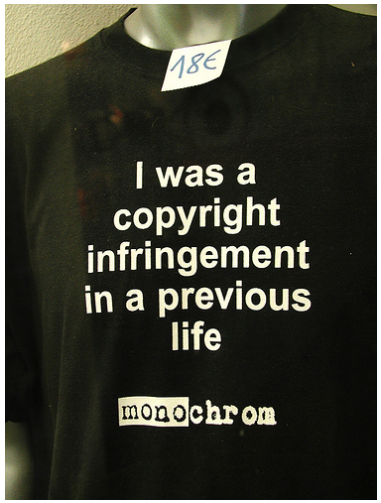
- Public conscience has not been shocked
- Publishers care about impact on market,
  but response has been political, not punitive
- Faculty who knowingly infringe assume no harm
  to institution or to their reputation, recognition, reward
- Academy doesn’t see it as serious breach of standards
  - Efforts to get faculty to retain rights or to license rights to institution, but won’t interfere with faculty autonomy
  - If faculty infringe © the institution is not responsible

What about the library IR?

- If the library infringes © the institution *is* responsible
- Compliance v. alignment with publisher policy
  - Compliance - discourage participation, yield poor ROI, compromise our values
  - Alignment - support and educate the faculty, reduce risks and costs, be true to who we are

Core values of librarianship:
Access, service, public good, social responsibility, democracy, preservation, professionalism

© infringement



- Is © infringement illegal? Yes
- Is © infringement unethical? Yes, but …
  - Infringing one's *own* work given as a *gift* is different from infringing other's work or work produced for $$

- "Gifts must be permitted to circulate; the gift cannot be withdrawn from circulation (transformed into capital) without losing its status as a gift."

McSherry, p. 81

Research is different

- Research is funded, conducted and published for the public good

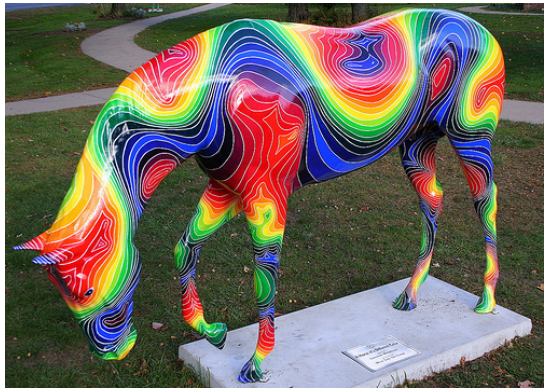
  Stevan Harnad, *Ethics of Open Access to Biomedical Research*, August 2007

- Researchers are not paid by publishers; rewards are not proportional to sales; © is not incentive; publisher interest doesn't serve researcher interest

  Peter Suber, *SOAN,* November 2, 2008

- © is inappropriate and unnecessary for research

  Georgia Harper, *Open Access, Digital Copyright and Marketplace Competition, 2009*



Ethics: What is best for all concerned

- Intentions – must be self- and other-regarding
- Foreseen consequences – may reluctantly accept harmful consequences if cost doesn't exceed benefit
  - Do not sacrifice greater good for lesser good,
    - e.g., intrinsic (public good) for extrinsic (private gain) value
  - Reluctant acceptance is demonstrated in attempts to avoid or minimize harmful consequences
- Unforeseen harmful consequences = adjust course

OA border skirmish

- RESEARCHERS
  - Intention = transfer © for broad distribution
  - Foreseen consequence = recognition and reward
  - (Un)foreseen harmful consequence = publishers holding gift hostage for ransom increasingly few can pay

- PUBLISHERS
  - Intention = acquire © to distribute and earn $$
  - Foreseen consequence = $$ and preserve record
  - (Un)foreseen harmful consequence = authors stipulating terms for © transfer or rescuing hostages without negotiation

Alignment is best for all concerned

- Provides equitable access
- Encourages use and application for public good
  - Facilitates OA impact advantage for faculty
  - Showcases and preserves intellectual assets
- Minimizes harmful foreseen consequences
- Increases ROI in research and IR
- Sends signal to for-profit publishers
- Assists in hostage rescue

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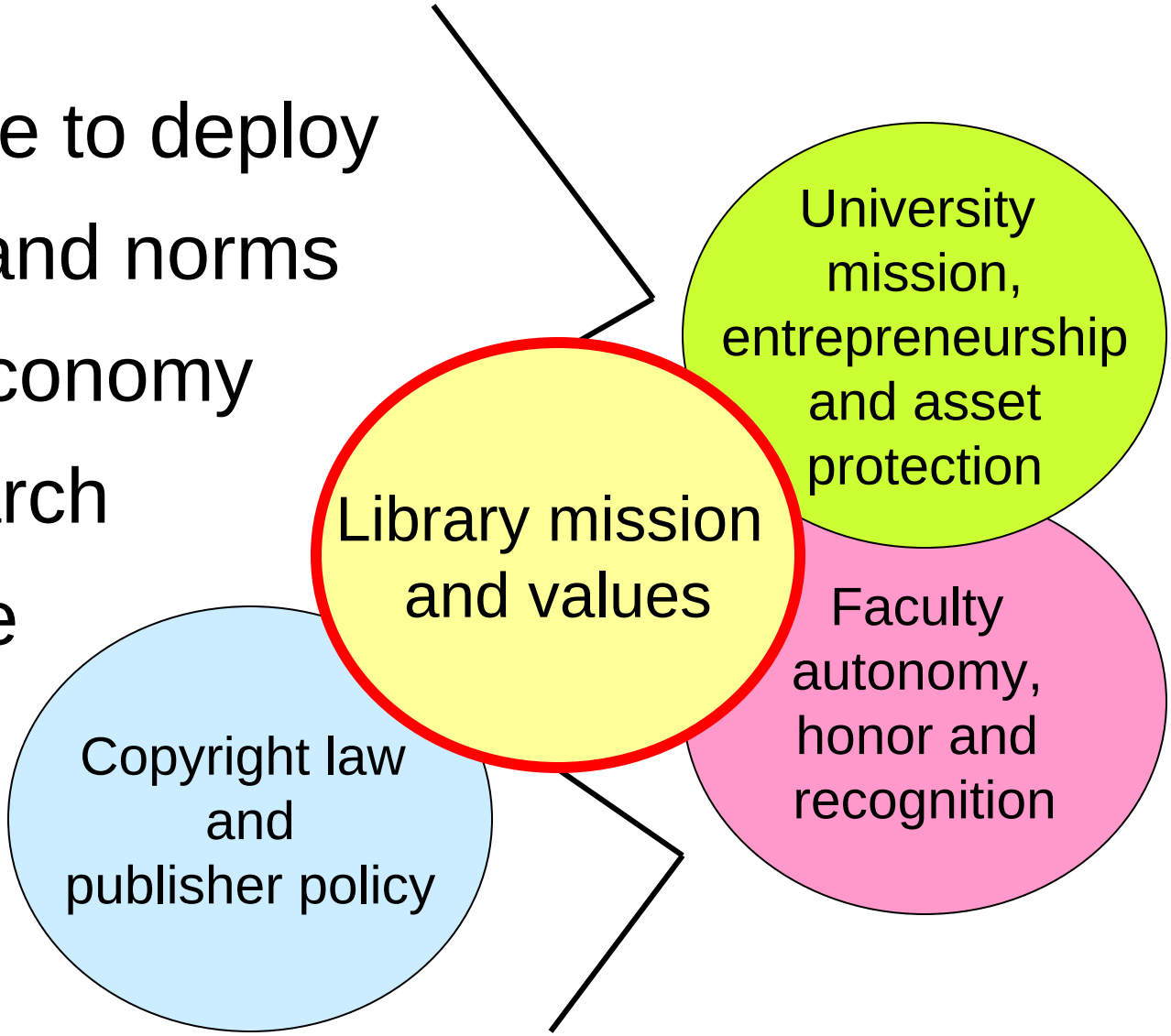
Librarianship as boundary object?

- IR as vehicle to deploy the values and norms of the gift economy in the research marketplace



Exercise and foster

- Civil disobedience
  - In a democracy, when conscience and law clash we are morally justified, if not duty bound, to follow our conscience, not wait for law to change

Henry David Thoreau,
On the Duty of Civil Disobedience, 1849

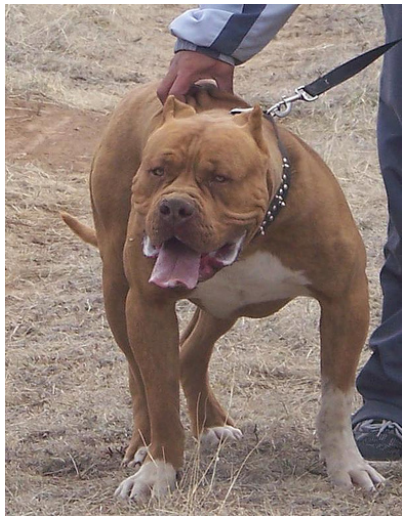
- Moral courage
  - When opposed and when success entails risk, act to preserve values of honesty, fairness, respect, responsibility and compassion

Moral Courage, a White Paper,
R. Kidder and M. Bracy, 2001

Why we need to defend core values

<u>Picayune publisher policy demands and bogus assertions</u>

- Self-archived articles must be managed over time
  - Different versions allowed and descriptive text required pre/post publication, different embargo periods, link to publisher PDF
- Need transfer of all © to publish
- No peer review without publishers
- Provide broad distribution
- Preserve scientific record
- Interlibrary loan of articles is unnecessary
- Permission required for fair use
- There are no orphan works



Publisher arguments against OA, orphan works, Section 108

Thank you!