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Academic Authors and Copyright

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Available at: https://works.bepress.com/laura_quilter/28/
Academic Authors and Copyright

Laura Quilter / UMass Library
2013 March 20
academics and their copyrights

- faculty & researchers are creators & owners of copyrights
- users of others' material in teaching
- users of others' material in research / publications
- librarians manage & access content

- changes in copyright law and publishing have turned academic copyright into an impediment to research and teaching
why do universities care about academics' copyrights?

- pay to create the copyrighted works:
  - (a) costs of supporting the researcher;
  - (b) support the researchers for peer review;
  - (c) page charges
- pay again to access the copyrighted works they paid to create:
  - journal subscriptions
  - licensing: document delivery & e-reserves & permissions for re-use for teaching or replicating
- subsidizing profits for publishers
- plus actual litigation
academic publishers versus the academy

Current Cases:

- **AIME v. UCLA** (videostreaming)
- Georgia State University - sued by Cambridge University Press, Oxford University Press, Sage; CCC
- various international cases: Delhi University - sued by Cambridge University Press, Oxford University Press, Francis & Taylor
“It's one of those life skills now, right? When you graduate from high school or college, you should know how to read a map, you should know how to use GPS, you should know a little bit about copyright. If you are somebody who is going to be in a field where you will encounter copyrighted materials all the time, you should know more. If you're going to be an artist or musician and you're getting a red-hot degree in the performing arts, you should know a lot. And I don't think that's quite the case—I don't think it's been built into curricula.”

you own copyrights.

lots of copyrights.
17 USC 102 - the "subject matter" of (c)

- "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"
- **within** specific categories
- **minus** particular exclusions
what does that mean?

- any "original work of authorship"
  - even a tiny quanta of originality qualifies!

- "fixed in any tangible medium of expression"
"fixed in any tangible medium of expression"

- research articles
- monographs
- papers
- photographs
- unpublished manuscript
- letters
- emails
- slide decks
- scribbled notes on post-its
- doodle
- etc
no registration required!

- any "original work of authorship"
  - even a tiny quanta of originality qualifies!

- "fixed in any tangible medium of expression"

- you don't have to register or print (c) on the document (although it's helpful)
particular categories:

- literary (including software)
- musical works & lyrics
- dramatic works & music
- pantomimes & choreography
- pictorial, graphic, & sculptural (eg, maps)
- motion pictures & AV
- sound recordings
- architectural works
minus

- facts & ideas (the "idea-expression dichotomy")
  - collections of facts can't be copyrighted!
- useful articles (e.g., clothes)
- no ideas, procedures, methods, principles, concepts, etc. (recipes! ideas!)
- US government works (17 USC 105)
minus *work-for-hire*

- they're copyrighted
- but you don't own the copyrights,
- AND, you're not the author
  - no termination rights!
- 17 USC 101
- scope of employment OR specially ordered works
  - faculty works not usually considered "work-for-hire" under policy/employment contract
shared with *joint authors*

- two or more authors
- contributions "merged into inseparable or interdependent parts of a unitary whole"
- each author is wholly an owner--even if contributions unequal
- does not need permission of co-authors
- must account to co-authors for profits
you own copyrights.

what can you do with them?
17 USC 106: the "exclusive rights"

- reproduce ... in copies
- prepare derivative works (translations, adaptations, etc)
- distribute copies ... by sale or other transfer, or by rental, lease, or lending

Special rights:
- perform publicly (literary, etc)
- display publicly (literary, etc)
- digital audio performances
- attribution (visual artists only!)
17 USC 106: the "exclusive rights"

- ... and you have it all until 70 years after your death

- corporations get 95 years from publication or 120 years from creation, whichever is shorter
enforcing your rights

- ask someone to stop, nicely
- ask someone to stop, not-so-nicely
- sue someone to force them to stop and/or compensate you for their gains or your losses

Registration is helpful!

statutory damages =
(a) no need to prove harm
(b) $30K up to $150K
17 USC 106 : the "exclusive rights"

- the right to sell, or authorize ("license"), a third party to do any of the above (17 USC 106, 17 USC 201)
- the right to "terminate" / revert / recapture assignments (17 USC 203; 17 USC 304(c))
you owned copyrights, but you gave them away.

now what?
termination!

- the right to "terminate" / revert / recapture assignments (17 USC 203; 17 USC 304(c))
  - 1978+ terminations beginning at 35 years past assignment or publication (now!)
  - capture window of 5 years
  - 2-10 year notice required
out of print reversions & digital rights

watch out for two key issues with older works, when your publisher comes back asking to reprint it in the digital age:

- out-of-print reversion
- digital rights - "in all media, in perpetuity"
you own copyrights, but your publisher wants them.

now what?
assigning your copyright

- When you assign your copyright to a journal, you no longer own the copyright to your article. You are now a legal stranger to your article* and may have to ask permission from the journal to reprint it, distribute it, or adapt it.
  - make copies of the work for your students?
  - distribute it at a conference?
  - share it with colleagues?
  - post it on your website, or a subject repository?
  - re-print parts in a different publication?

*Technically you have to ASK unless rights reserved.
assigning your copyright

- Does the journal need you to assign your copyright to them in order for them to publish it? **NO.**

* in most circumstances
alternatives to assignment

- You can *license* some rights.
  - Publishers will ask for *exclusive* licenses.
  - Publisher may only need non-exclusive rights
    - First publication; credit; rights to re-print.
  - Open Access ("OA") publications
  - Creative Commons licensing
    - CC-BY guarantees *attribution*
Creative Commons

[Image of Creative Commons license selection tool]

http://creativecommons.org/choose/
alternatives to assignment

- You can assign your copyright but **retain some rights.**
  - SPARC Addendum (attach it to your author agreement!)
  - YOU KEEP -- Rights to re-distribute (classroom use? faculty requests, include in other works), self-archive, archive in your institutional archive, adapt / translate
ADDITION TO PUBLICATION AGREEMENT

1. THIS ADDENDUM hereby modifies and supplements the attached Publication Agreement concerning the following Article:

   (manuscript title)

   (journal name)

2. The parties to the Publication Agreement as modified and supplemented by this Addendum are:

   (corresponding author)

   (Individually or, if one or more author, collectively, Author) (Publisher)

3. This Addendum and the Publication Agreement, taken together, allocate all rights under copyright with respect to all versions of the Article. The parties agree that whoever there is any conflict between this Addendum and the Publication Agreement, the Addendum shall prevail.

http://www.arl.org/sparc/author/
self-archiving

- Increasingly author agreements facilitate self-archiving on author websites or institutional repositories.
- If not, ASK. (SPARC et al)

If we don't solve the problem, then informal back channels will:

- #ICanHazPDF, #PDFtribute (Aaron Swartz)
http://scholarworks.umass.edu/
why support open access?
open access facilitates scholarship!

- greater distribution without journal fees
  - developing nations, less wealthy institutions, students & teachers, practitioners, the public
- improved citation indexes / h-index
  - plus, more tools to measure article-level impact; "altmetrics"
- less hassle -- no permission requests & transactions for routine uses
- helps research & university budgets
  - cost of research... page charges... subscriptions... peer review... other uses
funder mandates: US govt

- NIH Open Access Mandate - new enforcement mechanisms
- NIH Data Management plans

2013

- FASTR Act (Fair Access to Science & Technology Research Act)
- White House Directive on Open Access
- Finch Report in UK now being implemented
White House Directive on OA

- Feb. 22, 2013
- Agencies w/ > $100M research budgets: NSF, Ed, EPA, NASA, USDA, HHS, Commerce, Interior, Defense, Energy, Trans, DHS, Ag, State, Smithsonian; NEH? others?
- 12-month embargo
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- subsidizing profits for publishers
subsidizing (for-profit) publishers

- consolidation of scholarly journals into for-profit publisher's portfolios; consolidation of publishers into larger media corporations
  - e.g., Elsevier, 2010: 37% profit margin
- serials budgets swallowing monograph budgets, leading to decline of University & scholarly presses
crisis in scholarly communication

- “publish or perish” > more jrnls
- “profit or perish” > more $$$
- more users & more uses
- University bottom line: Pay, pay, pay, pay (research, publication, subscription, re-use)
more information

- UMass ScholarWorks, http://scholarworks.umass.edu
- Create Change, http://createchange.org/
- Creative Commons, http://creativecommons.org/
- SPARC, http://arl.org/sparc/
more information

- lquilter @ library.umass.edu