

Responding to the Challenges Facing Scholarly Communication

The Case of Scholars' Management of Their Copyright

(Approved for Systemwide Academic Senate Review by the Academic Council on December 14, 2005)

Discussion Statement

We call upon UC faculty and scholars at other institutions to exercise control of their scholarship, and their institutions to support this behavior, in at least the following ways:

1. UC and other faculty members must manage their intellectual property in ways that ensure the widest dissemination of works in service to education and research. Specifically, and with the understanding that copyright is actually a bundle of rights that can be separately managed, we urge faculty to transfer to publishers only the right of first publication, OR at a minimum, retain rights that allow postprint archiving and subsequent non-profit use.¹
2. As part of copyright management, faculty shall routinely grant to The Regents of the University of California a limited, irrevocable, perpetual, worldwide, non-exclusive license to place the faculty member's scholarly work in a non-commercial open-access repository for purposes of online dissemination and preservation on behalf of the author and the public.²
3. The University must explore and develop support services to assist faculty to manage their copyright and disseminate their scholarship.
4. University stakeholders must continue to partner, explore, and create a set of information management services including, but not limited to, alternative modes of publishing and disseminating information that allow broadest access at the lowest sustainable cost to the scholar, students and the public.

The management of copyright assigned to scholarly work is a crucial component of scholarly communication. The dysfunctions of scholarly communication – dysfunctions that already decrease the University of California community's access to scholarly materials and limit the dissemination and impact of UC's scholarship – can be addressed, in part, by scholars' active and explicit management of their intellectual property via copyright provisions in publication agreements. Copyright management, which can allow wider and timelier dissemination of research results and therefore increases the potential for impact on subsequent scholarship and societal progress, is largely within the purview of the individual scholar as author, but can be facilitated by the author's institution to support both individual and collective copyright management. The Academic Senate calls upon its members to actively manage their copyrights, and on the University to: a) provide assistance in scholars' retention of rights; and b) to establish and promote alternative modes of scholarly publishing that enable broad access at affordable costs. The Academic Senate also feels this call for action is appropriate for other scholars and institutions in the United States and abroad.

Background

The University of California faculty, along with academic colleagues throughout the world, are increasingly concerned about lost control and impact of its published scholarship. A significant part of the story is economic. For decades the cost of scholarly materials has escalated at rates far exceeding the consumer price index rate of inflation. This continuing inflation not only severely handicaps the UC libraries' ability to maintain world-class collections, but also, when coupled with

¹ See Appendix I for a list of actions to take.

² See *Proposal for UC Faculty - Scholarly Work Copyright Rights Policy*, a companion piece to this whitepaper, for a discussion of one possible implementation strategy for this recommendation <http://www.universityofcalifornia.edu/senate/committees/scsc/proposed.copyright.policy.scsc.12.05.pdf>.

the rapidly expanding volume of scholarship, results in UC scholars and students having access to a diminishing proportion of research relevant to their work.

The current economic dysfunctions simultaneously limit the audience for and impact of the scholarship produced by UC's faculty. When fewer institutions can afford the publications that carry the results of UC research, it will be read and used by fewer members of the research community. These factors combine to make this a critical issue for the University.

Having UC scholarship reach its potential impact is not limited to addressing economic dysfunctions. Scholarly communication systems must evolve to take advantage of new computer and communications technologies and must adapt their traditional functions to the expanding forms of scholarly material and an expanding audience reachable through global networks.

How faculty choose to manage their copyright is another essential contributing factor that determines whether scholarship reaches its potential impact.

The Role of Copyright

Among the primary goals and aspirations of the academy and its scholars are the creation and wide dissemination of new knowledge for the benefit of society.

U.S. copyright law was designed to "promote the Progress of Science and useful Arts" (U.S. Constitution, Article 1, Section 8, Clause 8). It is meant to encourage the work of inventors and authors through the granting of limited monopolies in inventions and original works of authorship, with the resulting possibility of commercial reward. In copyright law a balance was intended in which the prospect of commercial reward would be an incentive to produce new works, while time limits and other facets of copyright, such as fair use, would ensure that the societal benefit would reach its full potential despite the limited monopoly enjoyed by the creator/author.

However, historically, the relationship between scholarship and copyright can be characterized differently:

- Commercial reward has rarely been a direct incentive for scholars. Rather, scholars desire that their work be widely disseminated and that it have an impact on society and subsequent scholarship. Scholars are evaluated and rewarded primarily based on that impact rather than the direct economic value of their work. Indeed, scholarship has been called a "gift exchange society" where scholarly products, and also the labor of reviewing and filtering them for quality, are given away.³
- Historically the interests of the disseminators, i.e. publishers, have been closely aligned with the authors. Indeed, early scholarly publishers were largely non-profit societies, i.e. the scholars themselves aligned within discipline-based cohorts. Non-profit and society publishers comprise a significant but shrinking proportion of current scholarly publishers.
- There were real "first-copy" costs (for soliciting, reviewing, and editing) and distribution costs that needed to be met for distributing scholarship in the form of print materials.

The relationship between copyright and scholarship has changed, for reasons that include the following:

- Digital and network technologies create efficiencies and modest reductions in first copy costs; for works that can be effectively used in electronic format – becoming the norm for scholarly journals and under active experimentation for monographs - they lower the marginal cost of distribution to very low amounts.

³ *Policy Perspectives: To Publish and Perish*, The Association of Research Libraries, the Association of American Universities, and the Pew Higher Education Roundtable, Special Issue March 1998, Volume 7, Number 4. <http://www.arl.org/scomm/pew/pewrept.html> .

- Commercial enterprises have entered the scholarly publishing arena. By nature their interests are driven in large part by the need to generate profit and meet shareholder's expectations. The well-documented and dramatic four decade trend of rising journal prices, a related "merger effect" as large commercial publishers seek growth and higher profitability, and a subsequent decrease in access to and impact of scholarship is the result.⁴

This new relationship therefore is characterized by the economic use of copyright and by the monopoly on distribution and use of material that copyright provides to its owner, who now usually is the publisher and not the scholar. However, technological advances can allow other disseminators and even individuals to have these benefits. Further, publishers who possess copyright ownership enjoy economic advantage such as charges to users of the material, and publishers can exercise great control over additional use of the material. The control and economic advantage to the publisher are especially strong when all copyrights are transferred from the author to the publisher.

In publication agreements scholars are often asked or required to transfer their copyrights. Seeking to maximize profits, and when they possess the monopoly that full copyright gives them for any piece of scholarship (for which there are not competing alternatives as would be the case in a "normal" consumer market), many publishers can and do select the highest price that the market will bear. Further, when creators give away copyright, they themselves no longer necessarily have the right to use nor permit the use of the work in a variety of ways that advance the research and education goals of the scholar and the academy. Barred uses may include classroom use, posting on class websites, electronic reserve, deposit in an online repository such as UC's *eScholarship Repository*, or even deposit in long term preservation archives. Explicitly barred use, or lost potential use because of high access fees (subscription or purchase charges), decreases the utility and impact of scholarship and delays, decreases, or hides the scholar's contributions to the progress of knowledge.

However, copyright is a bundle of rights, and it is possible to achieve a balance between the goals of the publisher and the goals of sharing the material for the progress of scholarship and societal benefit. For example, faculty authors can transfer only the right of first publication to the publisher and to retain or share other rights, including the right for classroom use, for non-profit distribution following first publication, for preservation by a university entity, or the right to create derivative works, among others. Evidence suggests that the retention of these rights need not seriously reduce publishers' economic and other incentives for first publication.⁵ Many academic organizations promote the importance of faculty management of their copyright and the ensuing potential for a balance of stakeholder interests.⁶

⁴ These and other economic trends are presented in summary form at http://osc.universityofcalifornia.edu/facts/econ_of_publishing.html , and other places. In-depth analyses are readily available, for example *An Economic Analysis of Scientific Research Publishing*, October 2003 by the Wellcome Trust, <http://www.wellcome.ac.uk/assets/wtd003182.pdf>

⁵ Consider, for example, publishers who ask only for first publication rights, e.g. http://www.alpsp.org/http_grantli.htm ; <http://www.firstmonday.org/guidelines.html#copy> ; and <http://www.plos.org/journals/license.html> ; <http://www.biomedcentral.com/info/authors/license> , or the estimated 71 percent of publishers who permit deposit of some form of the scholarship in an open access repository (as tracked by the UK's Romeo/SHERPA project, (<http://www.sherpa.ac.uk/romeo.php?stats=yes>)

⁶ See Appendix III for examples from AAAS and others.

The Faculty Position on the Role of Copyright in Balancing Stakeholders Interests

Scholarly tradition and current University policy assert that copyright belongs to the faculty author in most cases.⁷ At present, it is primarily the individual faculty member who, through publication agreements and individual negotiations with publishers, is in a direct position to manage their copyright in ways that address their own and the academy's interests. The individual author's retention of key rights, or the transfer of only those rights necessary for first publication by a publisher, is therefore an influential individual action.

However, working with their Senate and the University, the faculty can also wield their influence and manage their rights collectively, granting, by default, a limited and non-exclusive set of rights to the Academic Senate; and thus the faculty will guarantee and ease non-commercial use and widest possible access to research results.⁸

Meanwhile, the University is in a position to assist individual action and leverage them collectively, for example, by building supporting tools and infrastructure to manage for the long term the products of UC's scholarship, developing new forms of publishing and online access, and providing digital preservation, among others. Indeed several tools, such as the *eScholarship Repository*, are already available for use. The University of California is poised, through the Office of Scholarly Communication, the California Digital Library, the campus libraries, and others, to extend and add to these information management services thereby enabling new forms of publication, long-term archiving, classroom use, innovative impact analysis and the like. The ultimate benefits, and in some cases the viability of such services, will be enhanced if a set of appropriate and non-exclusive rights are granted from authors to the University.

For these reasons, the University of California Academic Senate strongly urges its members and scholars throughout the world to begin improving accessibility of scholarly works to a wider public by retaining greater control of copyrights to their material.

Appendix I. Management of Copyright¹. Retain Rights

- Keep basic copyright while transferring limited rights to the publisher: Techniques and sample publishing agreements to transfer limited rights to the publisher are available at http://osc.universityofcalifornia.edu/manage/keep_copyrights.html.

Or

- Transfer copyrights but reserve some rights: Techniques and language to modify the language of the publishing contract to transfer non-exclusive rights to the publisher are available at http://osc.universityofcalifornia.edu/manage/transfer_copyrights.html.

Or

- Submit work to publishers with enlightened copyright policies: Many publishers are liberalizing their policies to help achieve a balance between their interests and those of their authors.⁹

⁷ See Appendix II for a summary of UC policy.

⁸ See *Proposal for UC Faculty - Scholarly Work Copyright Rights Policy*, a companion piece to this whitepaper, for a discussion of one possible implementation strategy for this recommendation <http://www.universityofcalifornia.edu/senate/committees/scsc/proposed.copyright.policy.scsc.12.05.pdf> .

⁹ Exemplary policies from the Association for Computing Machinery (http://www.acm.org/pubs/copyright_policy/), the Association of Learned and Professional Society Publishers (<http://www.alpssp.org/lplicense.pdf>), and others are available at <http://www.earlham.edu/~peters/fos/lists.htm#statements> . A directory of publisher policies regarding preprints and postprints is available at <http://romeo.eprints.org/> .

2. Leverage Retained Rights

- Deposit a preprint or postprint of your work in an open access repository, such as UC's eScholarship Repository (<http://repositories.cdlib.org/escholarship/>)

And

- Grant non-exclusive rights to others to use your work: for example by attaching a creative commons "attribution license" to your work (see <http://creativecommons.org/about/licenses/>).

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Appendix II. Current UC Copyright Policy

Ownership of copyrighted works created at the University is determined by the 1992 Policy on Copyright Ownership:

"This Policy is intended to embody the spirit of academic tradition, which provides copyright ownership to faculty for their scholarly and aesthetic copyrighted works, and is otherwise consistent with the United States Copyright Law, which provides the university ownership of its employment-related works. Pursuant to Regents' Standing Order 100.4, the President has responsibility for all matters relating to intellectual property, including copyrights in which the University is involved." -- *Preamble from the [University of California Policy on Copyright Ownership, 1992](#).*

Within UC, the Provost's Standing Committee on Copyright "Monitors the copyright environment and makes recommendations to the University on how to align University copyright policy and management with the goals of the academic mission in the context of continuous and rapid change" (<http://www.ucop.edu/copyright/> , accessed 9/28/04).

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Appendix III. Samples of Principles for Copyright Management in Higher Education

The Tempe Principles¹⁰:

"The academic community embraces the concepts of copyright and fair use and seeks a balance in the interests of owners and users in the digital environment. Universities, colleges, and especially their faculties should manage copyright and its limitations and exceptions in a manner that assures the faculty access to and use of their own published works in their research and teaching."

The AAAS¹¹:

"...scientists, as authors, should strive to use the leverage of their ownership of the bundle of copyright rights, whether or not they transfer copyright, to secure licensing terms that promote as much as possible ready access to and use of their published work."

Zwolle Principles¹²:

Balancing stakeholder interests in scholarship friendly copyright practices.

Objective

To assist stakeholders—including authors, publishers, librarians, universities and the public—to achieve maximum access to scholarship without compromising quality or academic freedom and without denying aspects of costs and rewards involved.

Principles

1. Achievement of this objective requires the optimal management of copyright in scholarly works to secure clear allocation of rights that balance the interests of all stakeholders.
2. Optimal management may be achieved through thoughtful development and implementation of policies, contracts, and other tools, as well as processes and educational programs, (collectively "Copyright Management") that articulate the allocation of rights and responsibilities with respect to scholarly works.
3. Appropriate Copyright Management and the interests of various stakeholders will vary according to numerous factors, including the nature of the work; for example, computer programs, journal articles, databases and multimedia instructional works may require different treatment.
4. In the development of Copyright Management, the primary focus should be on the allocation to various stakeholders of specific rights.
5. Copyright Management should strive to respect the interests of all stakeholders involved in the use and management of scholarly works; those interests may at times diverge, but will in many cases coincide.
6. All stakeholders in the management of the copyright in scholarly works have an interest in attaining the highest standards of quality, maximizing current and future access, and ensuring

¹⁰ The result of a meeting held in Tempe, Arizona, on March 2-4, 2000. Sponsored by the Association of American Universities, the Association of Research Libraries, and the Merrill Advanced Studies Center of the University of Kansas. <http://www.arl.org/scomm/tempe.html> .

¹¹ *Seizing the Moment - Scientists' Authorship Rights in the Digital Age*, The American Association for the Advancement of Science, 2002.
<http://www.aaas.org/spp/sfrl/projects/epub/finalrept.html>

¹² Endorsed by attendees during a December 2002 conference in Zwolle, the Netherlands, hosted by the Dutch SURF Foundation and by the UK's Joint Information Systems Committee (JISC).
<http://www.surf.nl/copyright/keyissues/scholarlycommunication/principles.php> .

preservation; stakeholders should work together on an international basis to best achieve these common goals and to develop a mutually supportive community of interest.

7. All stakeholders should actively promote an understanding of the important implications of copyright management of scholarly work and encourage engagement with the development and implementation of Copyright Management tools to achieve the overarching objective.

Cornell (2005)

The Senate strongly urges all faculty to negotiate with the journals in which they publish either to retain copyright rights and transfer only the right of first print and electronic publication, or to retain at a minimum the right of postprint archiving.¹³

CSU, SUNY, CUNY (1997)

"...through creative reallocations of rights, members of the university community can use copyright protection to better serve the wide range of dynamic interests associated with the growth and sharing of knowledge, which are the core of a university's mission -- all in direct furtherance of the Constitution's provision that copyright should promote the Progress of Science and the useful Arts."¹⁴

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¹³ Cornell Faculty Senate Resolution on Scholarly Publishing, passed 11 May 2005.

<http://www.library.cornell.edu/scholarlycomm/resolution.html> .

¹⁴ Ownership of New Works at the University: Unbundling of Rights and the Pursuit of Higher Learning (CSU, SUNY, CUNY, 1997).