

Opportunities for UC Response to the Challenges Facing Scholarly Communication

The Case of Scholars' Management of Their Copyright

Discussion Statement

The management of copyright assigned to scholarly work is a crucial component of scholarly communication. The scholarly communication crisis – a crisis that threatens to decrease access to and impact of scholarship – can be addressed, in part, by scholars' explicit management of copyright. Copyright management, which can allow wider and more timely 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. However, the university can assist scholars by encouraging them to manage their copyright, by providing assistance in their retention of rights for the benefit of education and research, and by establishing alternative modes of dissemination that enable broad access.

Background

The University of California, along with its sister institutions throughout the world, is growing increasingly concerned about the unsustainable economics of scholarly publishing. For decades the costs of scholarly materials have escalated at rates far exceeding the consumer price index rate of inflation. The continuing hyper-inflation not only severely handicaps the UC libraries' ability to maintain world-class collections, but, when coupled with the rapidly expanding volume of scholarship, also 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 mission-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 its traditional functions to the expanding forms of scholarly material and the expansive audience reachable through global networks. There are opportunities to seize as well as problems to address.

They include continuing to leverage the university libraries' considerable buying power to force more acceptable pricing onto scholarly publishers; augmenting experimentation at the UC Press, the CDL and other venues within the University with alternative models for disseminating UC scholarship rapidly and at the lowest possible cost; assisting scholars in managing their intellectual property and disseminating their scholarship through channels that maintain rigorous peer review but dispense with unsustainably high access costs; and reviewing current practices for faculty promotion and tenure with an eye to their impacts on the scholarly communication process.

How faculty choose to manage their copyright will determine in large measure the success of any of these initiatives.

The Role of Copyright

Science and scholarship are created primarily for the advancement and enrichment of society and humankind. 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.

Historically, the relationship between scholarship and copyright can be characterized by the following:

- Commercial reward has not been a direct incentive for scholars. Rather they are primarily motivated by the desire for their work to be disseminated and for it to have an impact on subsequent scholarship and society. Scholars are evaluated and remunerated primarily based on that impact rather than the direct economic value of their work. Indeed, scholarship has been called a "gift culture" where scholarly products, and also the labor of reviewing and filtering them for quality, is given away.
- 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 as disciplinary cohorts. Non-profit and society publishers comprise a significant but shrinking proportion of current scholarly publishers.
- There were significant "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 near zero.
- Commercial interests 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.¹

¹ 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 *Discussion Paper*
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This new relationship therefore is characterized by the economic use of copyright, and the monopoly on distribution and use of material that it provides to the copyright owner. In the possession of copyrights for scholarly work, publishers can provide benefits to the scholar and the academy, for example cost-efficient protection from misuse of materials. However, technological advances allow other disseminators and even individuals to have these benefits. Further, publishers who possess copyright ownership enjoy economic advantage and may exercise great control over additional use of the material. The economic advantage and control are especially strong when full copyright is 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 in possession of a 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 no longer necessarily have the right to use, or 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 eScholarship, 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, because copyright is a bundle of rights, 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, it is possible for faculty authors to transfer only the right of first publication to the publisher and to retain other rights, for example, the right for classroom use, for non-profit distribution following first publication, or for the right to create derivative works, among others.

The Need for a University Position on the Role of Copyright in Balancing Stakeholders Interests

Scholarly tradition and University policy assert that in most cases copyright belongs to the faculty author.² It is the faculty member who is in the only direct position to manage their copyright in ways that address their own and the academy’s interests. Many academic organizations promote the importance of faculty management of their copyright and the ensuing potential for a balance of stakeholder interests (see Appendix II for examples from AAAS and others).

Opportunities for UC faculty to manage their copyright vary by discipline and by publisher and faculty members must make decisions based on a variety of factors. However, the University can support opportunities for UC faculty to manage their copyright in at least the following ways:

- Construct and promulgate an institutional statement of commitment that it is in the interest of the university, and the academy of which it is a part, to

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>)

² See Appendix.I for a summary of UC policy.

influence and strengthen scholarly communication processes to greater effectiveness and efficiency, enhancing the dissemination of knowledge to society.

- Construct and promulgate an institutional statement that encourages faculty to manage their intellectual property in ways that allow retention of critical aspects of copyright, in order to ensure the widest dissemination of works in service to education and research.
- Through partnerships among the relevant university stakeholders, explore and utilize alternative modes of and support services for faculty management of their copyright.
- Through partnerships among the relevant university stakeholders, continue the exploration and use of alternative modes of publishing and disseminating information that allow broad access, e.g. through the eScholarship program and its partnership with the UC Press.

We call on the university, through the appropriate processes and principals, to discuss and implement these and other actions that support the management of copyright as a means of improving scholarly communication to the benefit of the scholar, the academy, and the progress of knowledge.

Appendix I. 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 9/28/2004). <http://www.universityofcalifornia.edu/copyright/>

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

The Tempe Principles³:

"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 AAAS⁴:

"...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 Principles⁵:

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.

³ 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>

⁴ Seizing the Moment - Scientists' Authorship Rights in the Digital Age. The American Association for the Advancement of Science. 2002. <http://www.aaas.org/spp/sfrr/projects/epub/finalrept.html>

⁵ 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>

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, maximising current and future access, and ensuring 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.

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.'"⁶

⁶ Ownership of New Works at the University: Unbundling of Rights and the Pursuit of Higher Learning (CSU, SUNY, CUNY, 1997)

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