Ownership, publication and authors’ rights

Managing Scholarly Communications
Kevin L. Smith, Duke University
Open Access Week, 2009
What is scholarly communications?

- A web of relationships, legal rules and business practices by which scholarship is
  - Created
  - Evaluated
  - Disseminated
  - Rewarded
  - Preserved
We are not where we used to be

Eventually, Steve looked up. His mother was nowhere in sight and this was certainly no longer the toy department.

Gary Larson
Why worry?

“Intelligence is not the measure of how much we know how to do, but of how we behave when we don’t know what to do.”

- John Holt, “Teach Your Own”

- Attention to the changing scholarly communications system is preparation for acting in an uncertain situation.
Scholarly Publishing

old thinking

Publisher

Editor

Peer Reviewers

Academic Library

Serials Crisis

Formulation

Registration and Certification

Dissemination and Archiving
Scholarly Communications System

Publisher

copyrights

new business models

open access

Serials Crisis

open science, blogs, disciplinary repositories

Peer Reviewers

editor

Academic Library

cost

cost

budget

new business models

open access

Serials Crisis

open science, blogs, disciplinary repositories
What’s changed?

- Journal prices
  - Massive cost increases → cancellations.
  - Bundling makes selective collection decisions difficult.
    - Money not spent efficiently
  - Can no longer assume that traditional publication will put your work in the hands of all who need to see it.
What's changed?

- Digital technology
  - Scholarship happens faster
    - Traditional outlets cannot keep up
    - Scholars usually begin research online
  - More opportunities
    - Informal scholarship (blogs, pre-print servers)
    - More eyeballs
    - Open access opportunities
What’s changed?

- Copyright law
  - Automatic protection
    - Authors own copyright immediately; not dependent on publication
    - The shrinking public domain
    - More control for scholars
  - Failure to keep pace w/ technology
    - “Photocopier law” in age of YouTube
What’s changed?

- Emphasis on internationalization and interdisciplinary work.
  - New modes of access needed
  - Discovery & collaboration

- Research funders beginning to mandate open access
  - NIH Public Access Policy, HHMI
  - FRPAA (not FERPA!)
Amidst all these changes,

Where do you fit in?
It is good to be the owner!

- Author = Owner

- Who is an author?

- Owner can
  - Exclude or Allow.
  - Transfer.
  - License.
Copyright protection showers down on a creator as she creates.
Ownership wrinkles

- Work for hire
  - Most institutions do not claim © ownership under work for hire rules.
  - Need to know local policy

- Joint authorship
  - Each author must contribute original content with intent to combine into unified whole
  - Each joint author entitled to exercise copyrights.
Curious impact on academics

- Likely own many rights of which they are unaware.
- Financial incentive of monopoly pricing matters little.
- Real “benefit” of © monopoly is control!
Exercise control, manage ©

- Law encourages thoughtful decisions
  - Transfers and exclusive licenses must be in writing.
  - Transfers & exclusive licenses can be terminated after 35 years.
  - Many books contracts allow for reclaiming rights
    - Google Books issue
Publication agreements are negotiable

- Read the agreement – look for rights retained
- Consider what you would like to do with your work in the future.
- Ask for any additional rights you need to retain.
Possible rights to retain

- Republication in later works / derivatives.
- Use with students – course packs, e-reserves, course management sites.
- Distribution to colleagues.
- Open access on person, institutional, disciplinary web site.
  - Version issues.
Author addenda

- NIH suggests specific language for funded research articles.
- SPARC and Science Commons have addenda
  - Some faculties have adopted their own
- An addendum is useful
  - For authors to think about needs
  - When the offered agreement does not cover all those needs
    - Seldom a substitute for direct negotiations
Feb. 08 – Voted to give non-exclusive license to university.

- Archiving of faculty work in digital repository prior to any submission to publisher.
  - Waiver provision
OA Licensing policies are becoming common

- Adopted at MIT, Stanford, Boston University, University of Kansas.
- Introduced to faculty Senate at U. Va.
- Under consideration at Duke, Emory.
- Rejected at U. of Maryland
- Most are licenses to the institution
  - Waiver and embargo provisions
  - Controversy over recommendations to publish in OA journals
A quick survey of 8 publisher policies on OA self-archiving

- 7 CTAs, 1 exclusive license to publish (NPG).
- 1 requires 6 month embargo (Nature).
- 2 require 12 month embargoes (ASA, Academic Medicine).
- 1 does not permit OA self-archiving (John Wiley).
OA comes in many flavors

- Open Access journals
- Open Access option with traditional publishers.
- Participate in "flipping" subscription models
- Deposit pre-print in a disciplinary repository (i.e. ArXive)
- Self-archive in an institutional repository or personal web page
Benefits of open access

- Showcase institutional research / accountably for public institutes
- More access → more impact for individual scholars
- Possibilities for collaboration, data mining and new discoveries.
- Promotes academic values.
Three good choices:

• Open access journal like PLoS Biology or Duke Law Journal.

• Author-fee OA w/ traditional publisher (i.e. Wiley, Sage).

• Self-archiving after traditional publication.
  **Must retain rights**
Creative Commons

- Leverages copyright to protect attribution & reputation

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