Breakout session: Managing Copyright and Intellectual Property  
11:30 session

Facilitator: John Ober, Office of Scholarly Publishing

Session description: One of the easiest and quickest ways for scholars to take back control of their scholarly output is to actively manage their copyright. Hear how you can amend a publisher's contract, or easier yet, what "boilerplate" agreements you can offer to publishers as alternatives.

➢ The following are informal notes taken during the breakout session. They are not intended to serve as a verbatim transcript of the proceedings.

- Ober briefly described UC Office of Scholarly Communication, and some of its services.
- It is important to understand and stress that copyright is a bundle of rights, not one single thing; treating it as a single all or nothing right limits the kinds of changes and the amount of flexibility in managing intellectual property. The separate rights within the bundle can be managed separately -- e.g., in publication agreements -- to great effect.
- Ober asked: How would you manage your intellectual property or copyright?
- N.B. Andy Gass from PLoS served effectively as a contributor and knowledge source on discussion topics.

Comments & Questions

♦ OSC is now creating and encourages faculty to use an addendum to copyright agreements that any faculty member can attach, providing for classroom use, dissemination for non-commercial purposes, etc.

♦ Through libraries on each campus, OSC is trying to promote a “tool kit”, e.g., what to change in publishers’ copyright agreements, how to apply Creative Commons agreement, etc.
  - Research is a collaborative effort - how would the addendum work when authors from other institutions are involved?
  - Will this agreement put UCB author at disadvantage if there is more than one copyright holder, or does the addendum cover all authors? (joint ownership of copyright means everyone has equal ownership?)
  - What happens when an author sends the addendum to Elsevier? Can an acceptance be revoked? (The questioner had sent a modified copyright agreement to E. which was not approved. Author was told that lawyers would have to be consulted. Gass said that if you push hard enough, E. will give up.) Having a UC or faculty policy in place would help; author can say “This is our policy.”
  - If addendum to copyright agreement works, it would be a great start because faculty want to be legal.

♦ OSC should provide information to the community describing pitfalls (e.g., Nature agreement)
  - Ober said OSC is considering researching policies & “tricks” of publishers, and making that information publicly available.

♦ Works of the U.S. federal government can’t be copyrighted and journals make exceptions for NIH and accept that policy, so presumably a UC policy requiring researchers to keep certain rights could be a similar situation. It would drag up the starting point, not down. Why can’t UC do the same thing? A grantee is not the same as an employee. The grantee can hold copyright & transfer it to the public. It works for the feds because government employees produce something that belongs in the public domain, the same is not true for UC employees, largely by virtue of UC policy (and academic freedom conventions) that intellectual property belongs to the researcher in the case of research publications. If some rights were to be given to the University, it becomes a slippery slope.

♦ Is OSC aware of anyone being prosecuted for using his or her own works when a publisher owns the copyright? Ober said not to his knowledge, because they need the authors if they are to generate further revenue. Elsevier has asked authors to remove PDFs from their websites. Intermediaries (libraries, copy
centers) have been prosecuted for not paying royalties, however, with lawsuits chipping away at fair use. A $500 course pack limits access to knowledge.

♦ Individual scholars will not make change; they don’t have time, resources, lawyers. Changes have to come out of collective actions. It was proposed that UCB could negotiate with publishers for a standard agreement. Ober clarified that the University, as an organization, can only give advice & encourage, can’t act as representative for author. This is why changes must come from faculty themselves.

♦ Re documents posted on personal web sites, post- or pre-print servers - there are problems with having 2 separate versions of documents. Perhaps UC should have mechanisms for creating better (easier to read) documents, up to standards of published documents. How does one control the different versions, how does one know what the differences may be.

♦ The University should not necessarily be trusted to have the best interests of authors in mind. There should be an archive, but authors should retain rights as well. There was discussion about all the problems associated with this - can an author take her/his work when s/he leaves the University. Copyright could remain with the author. No institution should have exclusive rights.

♦ Societies (with regard to their copyright policies and the economic advantage of the publisher holding the rights). Members of societies should ask their societies what activities are supported by profits and are these activities essential to the activities of the society? It is up to members and community of contributors to push back. Ask societies about economics of publishing policies. “We are they.” Faculty have great influence on academic societies. Is it inappropriate for societies to fund other activities through scholarly publishing? Societies are good at peer review, but turn over publishing to companies better at it. Now societies could get back into publishing, or use lower-cost publishers. Societies have the membership list, but commercial publishers provide the important aspect of marketing.

♦ If no one makes money from publishing, why should we publish?

♦ Publishers are trying to get away from print, but the dysfunctions of the print world are carried over into e-publishing.

♦ What would support peer review, but not huge profits to shareholders?

♦ Journals v. books - the two must be separated.

♦ How can scholars spread the word? What will be the output of this event? The organizers hoped that by inviting deans, senior faculty, information would be disseminated and invitees could begin to educate faculty as to issues and problems.

♦ Faculty don’t consider the cost when choosing a journal to publish in, even if pricing is arbitrary. Prestige factor is primary to authors. Senior faculty might be able to consider other factors beside impact, including economics and copyright policy, when selecting publishing venue. If there is a choice, faculty should be discerning. Once a library cancels a journal, the commercial publishers will take note. “I don’t cite journals our library doesn’t get.”

♦ This session should provide fuel for higher-ups in administration to create a policy, a “multi-headed beast”.

♦ There is a problematic trickle-down effect. The demands we put on our students drive the proliferation of journals. We have to look at our own practices that create problems. The rise in the number of journals is related to this. We’re implicated.

♦ This sanctified view of scholarly life and the evil of commercial publishers is not quite accurate.

Potential conclusions and recommendations (there seemed to be informal consensus of these):

♦ The libraries and OSC are encouraged to continue work on an addendum (or set of addenda) for faculty to use with publication agreements.

♦ A policy strongly encouraging, if not requiring, faculty management of their own copyrights would be useful; it would serve as key support in individual rights negotiations with publishers; it is understood that it would most effectively and appropriately originate within the faculty themselves.

♦ A copyright environment and associated policies must accommodate the differences in journal and monograph publishing.

notes by Bette Anton
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