Breakout session:  Managing Copyright and Intellectual Property
3:25 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.

Introduction:

John Ober is co-director of the newly formed Office of Scholarly Communication. One goal of the Office is to build a “Copyright Toolkit” of structured online services and information for faculty to use when working and negotiating with publishers. The toolkit would include copyright addendums and forms.

Starting points for discussion:

Crucial distinction between copyright and copyright management. Copyright is not a single thing or right, it is a bundle of various rights, any of which can be negotiated or transferred separately.

How to control these rights, and who controls them?

Nefarious nature of some publishers. They say they don’t ask for “the” copyright to your work, but they ask to control who can make copies of you work, and when, how and if your work can be reprinted, where it can or can not be posted electronically, etc. They manage your copyright, you don’t and can’t.

An alternative to traditional publication in journals is to deposit your work into a digital academic repository – which you can only do if you retain your copyright. Academic repositories, like the eScholarship Repository, are part of an evolving system of scholarly communication.

Discussion, Comments, Questions:

There are positive aspects to authors for giving their copyrights to publishers. Publishers can prevent fraudulent uses of your published work.

Elsevier likes to tell authors this.

How is this of benefit to the author? Copyright has nothing to do with fraudulent uses of your work. There are fraud statutes to prevent this. Publishers want copyright so no one else can publish your work.

If an author retains copyright for his/her work s/he can still give the publisher certain rights to publish for certain purposes, such as for course packs. But the publisher must get the author’s permission to republish.

Reed Elsevier has a number of standard agreements. If an author doesn’t like one, or objects to the terms of one of these agreements, they will simply pull out another one. Authors can go through these agreements, and can negotiate their terms.
Question about “limited exclusive right” – an agreement that gives a publisher the right to exclusively publish a work for a limited time. How common is this time negotiated right? How has it been negotiated?

J. Ober: Publishers are finding many ways to accommodate digital changes. They often allow authors to publish electronic preprints, to deposit them in open access repositories, as long as it is not the final version that is being deposited. Publishers also realize economic gain by reserving the right to publish for a specific time period, sometimes they embargo electronic publication of the most recent issue(s) for a period of time. Example- Highwire Press has approximately 800 journals operating under an embargo.

But – “access delayed is access denied”.

Is this a trend, are just a small number of publishers doing it, or is it snowballing?

It seems to be getting more common.

Also it is purely at the discretion of the publisher. They can change their minds at any time, if authors don’t have an agreement in writing to make access to their work freely available after the embargo period.

Embargos create a two tier system.

The University should expect faculty to have openly archived their work before it goes to a publisher.

This won’t work in the humanities and social sciences – the publishers won’t agree to it.

OK – let’s start in the fields it will work in.

But – who owns faculty work – do the faculty authors or does the university?
Written works are not the same as patents, where ownership of research is a big issue.
It is a huge academic freedom issue for authors.

What should be put in a Copyright Toolkit? It should include discipline specific sections, since publication varies so much by discipline. Discipline specific differences are critical, conventions are so very different in different fields.
In some fields, the humanities and social sciences, an author won’t get published if even a preprint of his/her work is published on the author’s website or on a university repository. It will never get published in a refereed publication after that.

Then authors must change venues.

They can’t always do that, there are so few in some fields.

Refereed publications in the humanities include print and electronic journals, and books, in print only.

There is an acute need to change academic culture

What Elsevier offers is one good thing - being published in a refereed publication - in a “bundle of poison” that includes signing away all rights to a work.

Field of medicine – whole other set of issues. Can not publish preprints in this field.

Word disciplines – Generally able to make publications freely available online after they’re published in print. Depends on how contract with publisher is negotiated.

UC Policy – great idea to have a policy requiring faculty to post publications electronically and retain copyright. Is this being developed? Who’s the university? Who should develop such a policy? It should probably be the faculty.
The Office of University Counsel is very nervous about even considering such a policy.

J. Ober: If copyright is the main economic value to a publisher, is there another way besides upfront copyright transfer that would provide publishers with economic value?
The Academic Senate should make some vanilla statement about the need for faculty to retain ownership of their works. In response to such a policy statement the proposed toolkit should provide step-by-step information on what faculty must do to retain their copyright. The toolkit should also link to the policy statement.

This emphasis on retaining copyright is a huge distraction. Instead we should focus on requiring faculty work to be openly archived at CDL or an equivalent library quality digital depository, rather than a faculty or departmental website. This type of requirement is completely missing from the current Senate statement. All of this talk about copyright is misplaced.

J. Ober: The Office of Scholarly Communication is facilitating and encouraging this.

There was some disagreement about the desirability of posting work in a university depository – some faculty don’t want to give the university this right. The current convention is to give away copyright to publishers.

Preoccupation with copyright versus open access.

Word disciplines – access to peer reviewed venues disappears if you put up a preprint. Once that is done, the work is considered published, so a peer reviewed venue won’t publish it. Faculty depend on publication in these venues for status, reputation and advancement. Not true for the sciences, or, at least, not always true.

OK – so don’t post preprints, post work after it’s been published in a peer reviewed venue.

But UC’s position should be no copyright transfer that precludes posting work on an open access depository or repository.

Aspects of your copyright that you want to control – Ability to make free use of your own material. What kind of free use? One such use is the ability to rewrite. Rewrite ability is not an important use for the humanities.

Creative Commons provides tools on their website that already allow you to do this. A Creative Commons license allows you to retain certain rights. It would be so helpful if UC, as a whole or individual departments, would not allow faculty to transfer certain rights. It would give faculty leverage to negotiate with publishers.

More difficult problem: Humanities faculty can usually get rights to one time use of their published work for free or for very little, but they can’t make it available to colleagues to republish. How do you get the right to republish written into a contract with a publisher?

This can be done – and it would be much easier for faculty if they were coming from a position of strength, which an official UC policy requiring faculty to retain right to post work on an open access depository would give them. A statement like this should be included in the toolkit.

UC Policy Statement:

Who at UC can craft this statement?
It can’t be a policy statement – it conflicts with academic freedom.
It should be something that’s encouraged, rather than something that’s required.
If it’s not policy, and just encouraged – it’s worthless.
That’s why individual faculty must retain copyright.
A policy would be a hard sell for the faculty. Must start with a permissive statement of encouragement, not a policy.

A permissive statement is the first step towards the repository model.
This is not something that can be forced on the faculty.
Varies by discipline as well, each evolves at a different pace.
A study of the communication and research patterns of individual disciplines should be done. The policy statement must fit the different disciplines.
UC Press:

Will they provide open access to works they publish?  
After a time probably.  
We don’t know yet if making work freely available on the web hurts or helps the publisher’s bottom line.

Will a digital copy generate enough interest for print copy?  
Bulk of UC Press sales are to libraries.

Electronic books have not been popular.  UC owns about 33,000 electronic books, they aren’t used much.

UC looking at getting revenue from micro payments for access and/or downloads.

Embargo Period:  Must vary by discipline.

Generally books now going out of print in 3 years.

Long term – developing an electronic library of searchable books.  This would supplement the print.

University’s draft Statement of Principles does not, or only vaguely, addresses open access.  University should insist on a standard of publication – it has the right to say what publication means.  It has the right to insist that faculty work be posted on a digital repository/depository.

Such a policy won’t work.

This should be taken up with the state wide committee – formulate a statement of principles.  This should be something all campus’s academic senates can agree on.

This is an international problem:

There are international declarations used by institutions in other countries, the Max Planck Institute for instance.  
The “Berlin Declaration” formulated at the Conference on Open Access to Knowledge in the Sciences and Humanities in Berlin in 2003 and the subsequent February 2005 Southampton Conference contain 2 clauses, 1 providing for open access and the second requiring material be deposited in a digital depository, have been widely implemented in Europe.

UC should sign off on the Berlin Declaration.  State wide committee could use these clauses, they are broad conceptual declarations.

The subsequent Southampton Conference provides specific steps institutions can follow to implement the 2 clauses developed in the Berlin Declaration.  
(Information and materials from these 2 conferences can easily be found on the web by simply googling “Berlin Declaration”.)

These clauses won’t work at UC.

Brings up the whole debate of open access versus academic freedom.

notes by Marlene Harmon  
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