ILL and the Electronic Environment

We’re Living in Interesting Times
Session Coverage

- Change
  - Technology
  - Resources
- Copyright
  - Law
  - Fair Use
  - Licenses
- Author Rights
- Open Access
- Future Challenges
The Times are Changing …
Book Digitization

- Google Book Search
  - [http://books.google.com/](http://books.google.com/)
- Internet Archive
- Open Library
  - [http://demo.openlibrary.org/](http://demo.openlibrary.org/)
- Universal Digital Library (Million Books Project)
  - [http://www.ulib.org/](http://www.ulib.org/)
- Library Thing
- OCLC Worldcat
  - [http://www.oclc.org/worldcat/](http://www.oclc.org/worldcat/)
What Do You Think is the Most Important Result of Book Digitization to the Reader?

A. No need to go to a library
B. Ability to determine if book is needed
C. Better citation ability
D. Ability to distinguish among editions
Mass Digitization and Libraries

- **Value**
  - Increased access
  - Identification of physical location
  - ...

- **Concerns**
  - Quality of digitization
  - Incomplete access
  - ...

17th Annual MINITEX ILL Conference
May 5, 2008
New Forms of Publishing

Ask Dr. Wiki: http://www.askdrwiki.com/
D-lib Magazine: http://www.dlib.org/
Geometry and Topology: http://www.msp.warwick.ac.uk/gt/about/journal/about.html
Gutenberg-E: http://www.gutenberg-e.org/index.html
Nature blogs: http://www.nature.com/blogs/index.html
Perseus Project: http://www.perseus.tufts.edu/
PubMed Central: http://www.pubmedcentral.nih.gov/

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New Forms of Publishing (cont.)

RePEc – Research Papers in Economics  http://repec.org/
Savage Minds  http://savageminds.org/
Theoretical Economics  http://econtheory.org/
US National Virtual Observatory  http://www.us-vo.org/
Valley of the Shadow  http://valley.vcdh.virginia.edu/
Transition to E-Journals

ARE JOURNAL PUBLISHERS TRAPPED IN THE DUAL-MEDIA TRANSITION ZONE?

by Richard K. Johnson, Senior Advisor, ARL, and Judy Luther, President, Informed Strategies

Editor's Note: ARL recently published “The E-only Tipping Point for Journals: What’s Ahead in the Print-to-Electronic Transition Zone,” a report on the outlook for electronic-only journal publishing, as viewed from both research library and publisher perspectives discerned in a series of interviews. The article presented here is largely drawn from that paper and focuses on how journal publishers see the future unfolding. The full paper is available at http://www.arl.org/bm-doc/Electronic_Transition.pdf.

Most observers have long predicted the will no longer be published. Publishers are reluctant to turn their backs on existing revenue streams from print subscriptions, even if they are declining. And library subscriptions are not the only piece of the puzzle for many journals, such as those that largely rely on print advertising revenue. For society publishers, membership-related factors further complicate the situation.

Why Libraries Care
As long as dual-format journals persist, publishers remain saddled with the operational costs of maintaining two systems. However, given the
How familiar are you with copyright law?

A. Not at all (have heard the word)
B. Somewhat (know we have a notice about it somewhere)
C. Very (have gone to workshops)
D. Expert (I’m the go-to person in my library)
Disclaimer

• Not a lawyer
• Specific questions need to be answered by institutional legal counsel
Article I Section 8

Purpose of Copyright:
To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries
Copyright Timeline

- Constitution invests Congress with the power to provide protection for the exclusive rights of authors
- 1790 - First Federal Copyright Statute
- 1909 - Major revision
- 1976 - 2nd major overhaul, effective January 1, 1978
Core of 1976 Copyright Law

- Original work fixed in a tangible medium
- No copying, distributing or derivative works
  - Moral rights
- Important Exceptions
  - Fair Use
    - Character
    - Nature
    - Amount
    - Market Effect
  - First Sale Doctrine (libraries)
- Compulsory licenses
Copyright Timeline (cont.)

- 1980 - Computer programs added by amendment
- March 1, 1989 - U.S. joins Berne Convention
  - Copyright notice no longer needed
- 1998 - Digital Millennium Copyright Act and Copyright Term Extension
Digital Millennium Copyright Act (1998)

- Amended 1976 Copyright Act by including “digital” material
  - Process
    - Section 512 Notice and Take Down
      - Conduit theory
      - Safe Harbor for Higher Education
        - Register with Library of Congress
        - No knowledge
        - Terminate Account of Repeat Offenders
  - Substance
    - Anti-circumvention provisions
      - Disallow tampering with encryption systems designed to prevent copying
      - No reverse engineering
      - Research provision very narrow
Copyrightable Materials

- Literary works
- Musical works, both score and lyrics
- Pictorial/graphic works, art, sculpture, photographs
- Audiovisual works, motion pictures, videos, video games
- Computer software
Not Copyrightable

- Ideas or concepts
- Lists (showing no originality)
- Factual information
- Titles, short phrases, slogans, logos
- Type styles (computer programs for fonts are)
- Public domain information
  - Out of copyright - term expired
  - Not copyrighted - published without notice before 1989
  - Works of federal government employees
Creator Rights

- To publish and distribute a work in print or other media
- To reproduce it (e.g., through photocopying)
- To prepare translations or other derivative works
- To perform or display the work publicly
- To authorize others to exercise any of these rights
These rights may be both segmented and transferred to others. Copyright creators may therefore transfer some or all of these rights to a publisher. The copyright creator may also retain ownership but grant licenses to other parties to exercise one or more of these rights. Copyright licenses may be exclusive or non-exclusive; for a specified period of time or for the full term of the copyright; royalty-free or royalty-bearing; for one medium or many; or defined or restricted in various other ways.
Copyright Term Extension

• Prior to the 1976 Copyright Act, Congress enacted a series of nine interim extensions for works whose copyright protection began between September 19, 1906, and December 31, 1918, if they were in their renewal terms. Without these interim extensions, copyrights commencing during that time period would have otherwise expired after 56 years, at the end of their renewal terms, between September 19, 1962, and December 31, 1976.

• 1998 -Sonny Bono Act
# Copyright Term

## Copyright Term and the Public Domain in the United States

1 January 2008

### Never Published, Never Registered Works

<table>
<thead>
<tr>
<th>Type of Work</th>
<th>Copyright Term</th>
<th>What was in the public domain in the U.S. as of 1 January 2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unpublished works</td>
<td>Life of the author + 70 years</td>
<td>Works from authors who died before 1938</td>
</tr>
<tr>
<td>Unpublished anonymous and pseudonymous works, and works made for hire (corporate authorship)</td>
<td>120 years from date of creation</td>
<td>Works created before 1986</td>
</tr>
<tr>
<td>Unpublished works created before 1978 that were published after 1977 but before 2003</td>
<td>Life of the author + 70 years or 31 December 2007, whichever is greater</td>
<td>Nothing. The soonest the works can enter the public domain is 1 January 2048</td>
</tr>
<tr>
<td>Unpublished works created before 1978 that were published after 2002</td>
<td>Life of the author + 70 years</td>
<td>Works of authors who died before 1938</td>
</tr>
<tr>
<td>Unpublished works when the death date of the author is not known</td>
<td>120 years from date of creation</td>
<td>Works created before 1986</td>
</tr>
</tbody>
</table>

### Works Published in the U.S.

(For works published both inside and outside the U.S. by foreign authors, see the next section)

<table>
<thead>
<tr>
<th>Date of Publication</th>
<th>Conditions</th>
<th>Copyright Term</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before 1923</td>
<td>None</td>
<td>In the public domain</td>
</tr>
<tr>
<td>1923 through 1977</td>
<td>Published without a copyright notice</td>
<td>In the public domain</td>
</tr>
<tr>
<td>1978 to 1 March 1990</td>
<td>Published without notice, and without subsequent registration within 5 years</td>
<td>In the public domain</td>
</tr>
<tr>
<td>1978 to 1 March 1980</td>
<td>Published without notice, but with subsequent registration within 5 years</td>
<td>70 years after the death of author, or 40 years from publication</td>
</tr>
</tbody>
</table>
Designed by Michael Brewer, OITP Copyright Advisory Committee member, and published by the Office for Information Technology Policy (OITP), ALA

http://www.wo.ala.org/districtdispatch/?p=421
Subsection 108 (g) of the bill deals with, among other things, limits on interlibrary arrangements for photocopying. It prohibits systematic photocopying of copyrighted materials but permits interlibrary arrangements "that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work."
Fair Use (section 107)

Four Factors in Determination:

• Purpose and Character of Use
• Nature of the Copyrighted Work
• Amount and Substantiality of the Portion Taken
• Effect of Use on the Potential Market
Who has control of copyright?

- Author
- Publisher
- Institution for which author works
- Government
- Combination
License

- Official permission to do something
- Document issued as proof of permission
- Describes rights granted by a person who owns or has control over (is in rightful possession of) a particular property
License

- **Not** a Sale of Property
  - … it does not transfer ownership of either the information product (e.g., journal) or the information embodied in the product (content) to the purchaser.

- Agreement between one party who **owns** or **controls** property and another party who wants rights to use the property
Licenses Governed By …

- Law of contracts
- U.S. Copyright Law
- Treaties (NAFTA, GATT, WIPO)
- Law of Trade Secrets
Basic Elements of Contract Law

- Offer
- Acceptance
- Consideration
- Mutuality ("meeting of the minds")
- Enforceability
Publisher License

- A print copy can be made from the electronic (or print) version of a journal article or book chapter and then that copy can be mailed, faxed or scanned into Ariel (or a similar system) as means of delivery to the borrowing library.
  - What is not permitted is to download the electronic version and send it without printing.
  - Policy information can be found at: http://www.elsevier.com/wps/find/librariansinfo.librarians/libr_policies

Daviess Menefee, Library Relations, Elsevier
liblicense-l@lists.yale.edu February 28, 2008
User Rights via Copyright or License

- **Print/Copyright**
  - Right to use (anyone)
  - Right to make copies (by permission or Fair Use or ILL)
  - Distribution (by ILL, Fair Use, First Sale)
  - Performance/display (Fair Use, Home Use, Face to Face teaching)
  - Character of use (no restrictions)

- **Electronic/License**
  - Only user or group as defined in license; no loans
  - Copy by permission only; no fair use or ILL if license either fixes # of copies as none or defines user group
  - No copies distributed outside library
  - Access only by authorized users
  - Academic use only or pay higher fee

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The Universal Customer Problem ... refers to a situation where a single digital copy of a document, sold to a single customer (the Universal Customer), is then copied and recopied and made available to other users, eliminating the requirement that anyone but the first, the Universal, customer pays for the document. Thus a publisher faces the prospect that ILL or any other means of file-sharing will result in a marketplace that consists of precisely one customer and no more.

For this reason, ILL for digital products will eventually disappear, replaced by open access, restricted access (no ILL rights), [licensed document delivery, pay-per-view], or consortial access.

ILL, in other words, is an artifact of the print era and has no place in digital publishing.

Joe Esposito
Focus on Open Access

- Immediate free electronic availability of research that scholars produce without expectation of payment
- A *vision* of scholarly communication in the networked digital environment where:
  - User tolls barriers to research access are eliminated
  - Potential usage is maximized
  - Value of research is more fully realized
  - Dysfunctions in the legacy system are addressed
- An *access* model, not a business model
“Open Access” Strategies

Two main approaches:

1. **Open-access journals** – require alternative business models to replace subscription-based models

2. **Open-access archives** – publicly available digital repositories, may exist alongside traditional publishing
Share, Remix, Reuse — Legally
Creative Commons provides free tools that let authors, scientists, artists, and educators easily mark their creative work with the freedoms they want it to carry. You can use CC to change your copyright terms from “All Rights Reserved” to “Some Rights Reserved.”

We’re a nonprofit organization. Everything we do — including the software we create — is free.

CC News
Magnumtune does good via the Amarok media player
Mike Linksvayer, April 29th, 2008
Last July we mentioned that Magnumtune, a record label known for pioneering open business models, had hired a developer to work on Amarok, a free software media player.

Today Magnumtune founder John Buckman announced $11,570 in sales via Amarok, of which 10% is donated to support Amarok. This number could get much bigger as Amarok goes cross-platform, notes the Amarok blog:

With the greatly improved Magnumtune integration in the upcoming Amarok 2, and the eventual release of Amarok 2 on Windows and Mac, it will be really interesting to see how far we can take this in the future. For now, I hope that the Amarok users will

Jurisdiction News
CC Catalonia: Sant Jordi i CC
April 30th, 2008
El Departament de Cultura i Mitjans de Comunicació de la Generalitat de Catalunya a través de les Biblioteques Públiques de Catalunya afiixar el conte “El Pacte” de Francesc Serrés en català i aranès per celebrar la diada de Sant Jordi: I a més ens ofereix amb una llicència de Creative ...

[Read More]
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Science Commons

Scholar’s Copyright Project

Open Access Data Protocol

The Science Commons Open Access Data Protocol is a method for ensuring that scientific databases can be legally integrated with one another. The protocol is not a license or legal tool, but instead a methodology and best practices document for creating such legal tools in the future, and marking data in the public domain for machine-assisted discovery.

For more information about the Protocol and our stance on Databases, visit our FAQ page, where you can read our new FAQ on the Database Protocol. Also, click here to read the official announcement of the Protocol, issued in concordance with the 5th anniversary of Creative Commons’ licenses.

freedom to archive and reuse scholarly works on the Internet

Applying traditional copyright metaphors to digital scientific communication restricts the number of opportunities afforded by the networked world. Translations of language and file format are banned. Intrepid scientists can’t aggregate a set of interesting articles into a PDF file for distribution to their colleagues. And new technologies like text mining can’t help scientists understand the 16,000,000 articles currently indexed for biomedical science.

Increased Open Access to peer-reviewed scholarly literature is essential. The network culture opens up enormous possibilities for discovery and research – more knowledge, distributed across the world at the speed of fiber; stored in digital formats accessible to machines for indexing, search, and innovative research such as our Neurocommons project. The benefits of Open Access are many, and have been well documented. The question that remains, though, is how.

There are two ways to go OA – publishing in an Open Access journal or self-archiving. Science Commons provides resources in support of both.
Have you talked with any authors or creators about their rights?

A. Yes

B. No

http://blip.tv/file/743274/
Author Rights

QuickTime™ and a TIFF (Uncompressed) decompressor are needed to see this picture.

Be openly accessible or be obscure

How to select an Author Addendum?
June 21, 2007 at 5:28 pm  Filed under open access  Tagged Green OA

Many non-OA publishers still require authors to transfer copyright upon acceptance of an article for publication. Some permit authors to retain the right to self-archive their articles in an OA repository (Green OA), and some

AUTHOR’S RIGHTS
Using the SPARC Author Addendum to secure your rights as the author of a journal article

17th Annual MINITEX ILL Conference
May 5, 2008
Use this site to find a summary of permissions that are normally given as part of each publisher’s copyright transfer agreement.

Search

- Journal titles
- Publisher names

for

find
- contains
- starts with
- Exact phrase only

Browse

- All publishers
- Green publishers
- Blue publishers
- Yellow publishers
- White publishers

What the colours mean.

This service is maintained by SHERPA, with support from JISC and the Wellcome Trust. It is a development of the original publishers’ listings produced by the RoMEO Project. Journal information is kindly provided by the British Library’s Zetoc service hosted by Mimas. The information held here is available for use by third-parties under conditions for re-use and a Creative Commons licence. An API is being developed for m2m access; for example, to be integrated into a repository’s deposit process. Statistics are available for RoMEO colours allocated to the publishers in this list. Contact us for further information. See a list of sites that are already using RoMEO data.

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Open Access Repositories
Licence to Publish

Authors

Introduction

Underlying the process of publishing a journal article is a publishing agreement. A publishing agreement is an important step in achieving a balance of rights in the process of scholarly communication. It determines the rights which are important to the stakeholders involved in this process.

It is in the interest of the author to understand the implications of the agreement, and this toolbox has been compiled to enable the author and the publisher to provide a publishing agreement and to identify the issues that should be considered when a scholarly work is submitted to a journal.

The toolbox has three entries. The first one is a licence to publish enabling the author to retain copyright but giving the publisher the rights to publish his/her work. The second one gives sample wording for various options in case an author or a publisher would like to amend a publishing agreement in certain circumstances.

The last entry refers to initiatives from other organisations or academic institutes have undertaken to maximise access to scholarly publications.

Both licence and sample wording are based on The set of key needs for authors and publishers when publishing a journal article.

The licence and the sample wording are offered in the spirit of the Zealot Principles as achieving a reasonable balance of rights between author and publisher.
Open Access Journals and ILL

- Identification
  - Library catalogs
  - DOAJ
  - Internet searching

- Versions

- Article delivery
  - Full article
  - Link only
In what way do you see your work changing in the future?

- Paying more attention to copyright
- Educating myself about licenses
- Talking with authors about their rights
- Learning about new kinds of publishing
Library Roles

- Responsibility
- Opportunity
- Leadership
- Education
- Satisfaction
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