# Guest Opinions

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**The Case for Scholars' Management of Author Rights\***

(This document will be permanently housed at: http://www.ucop.edu/lauc/opinions/author_rights.html)

I work with faculty at UCI who are interested in experimenting with new forms of scholarly communication. These faculty members want to preserve the best of the current system in any new venture such as the opportunities presented by the UC eScholarship initiatives.   My discussions indicate they   perceive that "the best" of the current system primarily includes three things:   personal impact for their work, social impact for their work, and future impact through the unfettered re-use of their own intellectual property.   I have come to the conclusion that these three types of impact are best served by scholars managing the rights to their own intellectual output so they are free to contribute to new collections and re-use their own work in a variety of ways.

There are a few "big picture" points that I'd like to make as the context within which I have come to this conclusion.

First, the current system of scholarly communication is intended to promote international, open communication. The very nature of the academy depends upon open communication.   Teaching and research are symbiotic processes that require the sharing of newly discovered information and feeding it back into an open communication loop for others to build upon.   An American Academy for the Advancement of Science report expresses it (Frankel, 2002) in this way: "one of the features of scientific information is that it increases in value as more people have access to it and add new insights into its interpretation.

Second, the nature of the public investment in scientific and scholarly communication argues for the widest possible access to scholarly information.   Public coffers provide grants, offices and laboratory facilities, graduate student stipends, and salaries as faculty spend time writing, editing, and peer-reviewing articles for publication. The public is entitled to some return on that investment in the form of wide dissemination of the information created.

And third, the nature of information itself mitigates against it being contained within barriers.   Harlan Cleveland, president emeritus of the World Academy of Art and Science, once stated that information tends to leak, it is diffusive [and] the more it leaks the more we have – it expands as it is used.   (Cleveland, 1985)

However, proprietary interests have entered the scholarly communication process and created price and permission barriers that are over-reaching the foundations of openness that are so essential to the health of the scholarly communication process.   We as librarians are very familiar with the price barriers that are growing every

year.   The Association of Research Libraries (ARL) asserts that the ultimate impact of historic price trends is that there are actually fewer readers who can now afford subscriptions.   On the topic of permission barriers, one research university librarian recently stated that publishers now want to use copyrights as permission barriers to preside over the life...or death…of information.   And the merger effect among scientific publishers has consolidated these permission barriers in the hands of the few, as has the scholarly societies' outsourcing of publication to commercial publishers.   ARL has called this a "silent crisis" that has been forty years in the making.   (Association of Research Libraries, 2005)     Overreaching price and permission barriers that inhibit a reasonably open flow of information are in direct contradiction to the mission of the academy, public investment in that mission, and the nature of information itself. The best option for breaking down these barriers is for faculty to retain rights and ensure that their works are accessible as broadly as possible.

**Personal Impact**

Within the contentious landscape of proprietary and public interests, individual scholars are still looking for personal impact for their publications. The measurement of success is not just having an article accepted in a traditionally prestigious title; success also includes being cited by others.   Formerly, being published in the "right" journal was the only sure way to a both a wide readership and multiple citations, but now there is good news on this front for scholars who are willing to venture outside traditional publishing boundaries.   A recent study by Antelman indicates that open access increased citation rates from 45-91% in science/social science articles. (Antelman, 2004)   Steve Lawrence did a similar study of 120,000 computer science articles and discovered similar evidence. (Lawrence, 2001)   However, scholars need to retain the right to contribute to open access collections if they are to realize this increased personal impact.

**Social Impact**

Scholars care about social impact as well as personal success.   The public investment in research, which was mentioned above, is an added incentive to the natural urge to share findings that can expand useful knowledge and enhance society.   As scholars work together in professional societies, they have often made statements that reflect their social commitments - statements like the recent one by the Association of Independent Research Institutes (AIRI):   "Making research results freely available through NIH's PubMed Central (PMC), six months after the study's publication,   necessarily enhances the efficiency and effectiveness of the biomedical research enterprise and provides the public with access to credible and timely information.  (AIRI, 2004)   Institutional repositories, discipline-based repositories, and scholarly websites are new types of publication that serve multiple scholarly communication purposes outside the traditional scholarly communication system.   Even the simple act of sending one's own article as an attachment to a colleague at another institution can be prohibited by a restrictive publication rights agreement.   Again, scholars need to retain the right to contribute their works to repositories and other collections if they are to realize increased social impact

**Future Impact**

Individual scholars need to allow for unpremeditated and constructive re-purposing of content the need for which may be unforeseen at the time the content is created.   Electronic reserves, course websites, personal websites, and inclusion in a future publication are all uses of content that might be prohibited if a scholar signs over all rights unilaterally to the publisher.   Educational institutions cannot afford to allow permission boundaries imposed by commercial publishers to inhibit use of scholarly content throughout the academy.   A recent study by the Educause Center for Applied Research indicated that 93% of students are positive about electronic course websites and 25% of them value the ability to do online reading most of all.  (Caruso, 2004)   Tenopir in her Council on Library and Information Resources (CLIR) study indicated that, because personal subscriptions are declining, faculty increasingly depend upon library copies (which are declining due to price barriers) and the websites of their colleagues for information.  (Tenopir, 2003)   Many new types of uses and new venues for content, which may or may not be easily foreseen, increase visibility and impact of a faculty member's work. Copyright agreements have to take these needs into consideration.

**Conclusion**

The SHERPA website (Securing a Hybrid Environment for Research Preservation and Access) is hosted at the University of Nottingham (http://www.sherpa.ac.uk/).   As part of its investigation of issues in the future of scholarly communication and publishing, the SHERPA website has developed an extensive listing of publishers' terms of copyright.   The list indicates that some publishers are becoming more flexible in allowing faculty to retain some rights.    Indeed, the recent Association of Learned and Professional Societies Publishers (ALPSP) report paints a very rosy picture of the generosity and good will of the more enlightened scholarly publishers – the not-for-proft publishers anyway.   (ALPSP, 2004)

However, relying on publishers to allow pre-determined faculty uses may not be adequate for the future in some key areas.   For instance, most licensing agreements that I have seen are silent on the topic of preservation of the digital copy.   A study by JSTOR in the Tenopir review article (Tenopir, 2003) mentioned above indicated that faculty are very concerned about archiving/preservation.   If we in the library community can not arrive a satisfactory agreement with publishers to preserve published information, we may need to contact individual faculty members to ask for inclusion of articles in secure repositories operated by us.   Will such a contribution be allowed under a publisher's agreement or will it be disallowed as competition to the publisher's own digital archive?

It seems to me that the best answer for the long-term health of scholarly communication is that scholars retain rights to their own work.   Copyright is after all a bundle of rights each of which can be separated from the others.   It is entirely possible for a faculty author to retain all rights and cede only nonexclusive publication rights to a particular publisher.   An author can keep all rights for commercial exploitation and grant the entire global educational community the right to reproduce the material freely for non-profit purposes.

We need to spread the word among the faculty that the economic use of copyright solely for market share and profit does not adequately serve the needs of the academy for personal impact, social impact, or future impact. We have to create a new system that works globally, not just through ad hoc license negotiations at individual campuses or within consortia.   Ultimately we have to stop managing copyright as a "just in case" resource under publishers' control and manage it as a "just in time" resource for the faculty who study, publish, teach, and re-purpose information continuously to the benefit of all.

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