

**Sign-on-the-Dotted-Line or Negotiate:
A Copyright Primer for Scholars**

A Changing World

The culture of academe changes slowly, but the Internet whirlwind has blown away a great deal of the received wisdom about the practical tasks related to academic publishing, such as submission, copyright ownership and management, and publishing options. Most of what we learned about publishing in graduate school is, or will soon become, obsolete. Many of the forms and outlets of traditional publishing are unchanged. University presses, trade publishers, learned journals published by societies and commercial presses still seek to publish high quality scholarly work and offer to edit, improve, and make visible these works to a wider learned audiences. Most offer some form of peer review screening so what they publish receives attention. And one can still get a stack of offprints to share with colleagues and family – even if needing to print them oneself from the publisher's website.

Today, virtually all publication is electronic. At least the production, and increasingly the distribution, of books and articles depends heavily on electronic media, and it is more often a choice, not a necessity, that leads to the production and distribution of print artifacts. Few scholarly journals of merit are now produced only on paper, and the next few years will undoubtedly see large-scale cancellation of print subscriptions by many libraries, with the consequent discontinuation of print distribution of many journals. Printed books are for many reasons more likely to continue to be produced, cherished, and studied attentively – but e-forms of books are already abundantly available, though technical standards remain to be settled.¹

This transformation will make – *is* making – a difference to academic authors in many ways. Through the increasing ubiquitousness of computers as authoring tools and the network or web as distribution outlet, many scholars are already discovering that their work can reach wider audiences than was ever possible in the days of printed form. The speed with which

¹ One recent development: Amazon.com can now tell you which of the books you have bought from them are available in electronic form and will sell access, for several dollars, to the e-text of books you have already bought in paper form.

articles can reach the reading public grows continually and rapidly. And the possibilities for publication outside the traditional spheres of presses and publishers are many and tantalizing: for example, subject web sites, university institutional repositories, personal web pages, and blog sites can be vehicles for reaching broad scholarly and lay audiences more quickly and easily than ever.² At the same time, a book contract with a major publisher or an acceptance from a flagship journal remains a critical milestone in a scholarly career.

This short guide is meant to help academic authors become more aware of their copyright options and find better ways to publish their work, gain recognition for it, and assure that it is made available to relevant audiences effectively. The path to such control lies through an understanding of copyright.

Whose Work is it, Anyway?

The simplest thing to say about a scholarly book or article is that the author/creator owns it, and that ownership is protected by copyright, which "inheres" from the moment of creation. If an author produces one copy of an article and places it on his or her workspace, the right to prevent others from copying and disseminating that work without permission is already assured by the Copyright Act of the U.S., without having to do anything else. (One *may* register copyright and in many cases that can be highly desirable or at least convenient, but it is not absolutely necessary for academic work.³)

Nonetheless, until that copy leaves the author's work area, either as a physical artifact or in electronic form sent through the Internet, no one else is likely to read it. This guide assumes that if a Yale author is comfortable with self-publication or other publisher-free distribution, he or she will find an appropriate way to an audience. But what if one still wants and needs a publisher's assistance (editing, peer review management, imprint, and so on)? Some

² Juan Cole of the University of Michigan (<www.juancole.com>, already an established senior scholar) and Joshua Landis of the University of Oklahoma (<www.joshualandis.com>, to publish his first book in 2007) have become widely read and influential commentators on current middle eastern affairs through their blogs, publicized by word of mouth through the blogosphere without benefit of traditional publishing media.

³ There are also some rare exceptions to the principle of ownership, chiefly when one has done work "for hire" under a contract that gives control to the funder. Universities rarely demand such ownership from their faculty, but a granting agency (e.g., an NGO or think tank) may well insist that work it pays for remain in its control, and the Copyright Act's provisions on "work for hire" support such contracts.

document outlining who has what rights will be negotiated and signed. The author's ability to use this work, if copyright is transferred, can be at times quite broad (including classroom, course pack, scholarly sharing with one's peer group, posting on one's web site). At other times, it can seem very limited. How to assure the best outcome from the point of view of both author and publisher?

The Form that You Sign

If an author approaches a reputable publisher with a promising manuscript, seeking a high-quality publication outlet, and if the editor/publisher decides that the work is worthy and worth taking on, the author will in all likelihood be presented with a contract to sign. Most of the time, it will not quite resemble the standard-issue lease that landlords hand to tenants. Such lease forms are in good lawyerly language, handsomely printed, and confer all the rights on the landlord and all the obligations on the tenant. Publishers' contracts are seldom that extreme, but the drafting party rarely puts itself at any risk or disadvantage and seeks maximally to protect its own interests. Some authors get angry when they receive a demand to sign such a document from publishers. Others, especially younger authors, worry whether raising questions about the copyright form may result in the hard-won acceptance of their work in a prestigious journal being reversed, with serious consequences for their career. Both fear and danger are unnecessary.

One particular feature of the journal publishing environment of the recent three or so decades is that contracts have usually been written to transfer all rights to the publisher – even, that is, rights that neither publisher nor author now imagines to exist but which could exist in future. There are still unresolved issues surrounding the web-republishing of articles published over many past years in print form – did the print contract language signed in, say, 1980, include a sufficiently general grants of rights to authorize web-redistribution without further royalties to authors? It is easy to imagine the issues raised by asking such questions, and recent litigation has taken these up in cases such as *Tasini et al. v. The New York Times et al.*

Increasingly, authors are opting for: (1) return of greater rights to them by publishers, or (2) retention of certain rights by themselves, or (3) a license to publish, while retaining their copyright. And in return, publishers are becoming more and more flexible and accommodating with authors who desire such elbow room and demand it instead of signing the standard copyright form mailed by the publisher.

Every author ought to read the copyright transfer or contract presented by the publisher. Generally these are short and straightforward. If the language is acceptable and the author can retain rights of value to his or her (or students') teaching, research, and writing, and professional reputation, all is well and the form can be signed and returned. But if not, the author ought not to sign that first document without identifying desired modifications and pursuing them with the publisher. There may be cases where *any* deviation at all would cause the desired publisher to withdraw interest in the work, but those cases are rare, and rarer still the case when a publisher will respond to an inquiry about the contract in a peremptory way. Far more often, publishers recognize that there is negotiating room, as they seek to enhance their own imprints and add value. One should begin such exchanges by assuming that both parties are rational, responsible people, each with legitimate interests and an ability to recognize each other's needs.

Bear in mind that as author, you might wish to do things with your work that a publisher would have no interest in supporting. For example, a growing number of authors want to post the work on their own Internet sites, or their department's, or on an "institutional repository" where faculty work is gathered and preserved. They might want to use the work or parts of it in a blog or other publicly-available website. A faculty member would likely want to use his or her work in teaching – making copies freely available to students – and very possibly to allow colleagues at one's own institution, or at many institutions, or worldwide to have free access. A mass-market best seller or a standard textbook could not be made freely available without affecting the sales prospects of the book, but a scholarly article or a technical monograph may very well only be published and distributed in a limited number of copies, thereby making it impossible to keep it in the hands of students: hence an interest in redistribution. An author should negotiate such rights with the publisher.

Finally, an author might want to make a "derivative work" of said work – e.g., reworking an article as a chapter of a later book. If the author has handed over all rights in such a work – i.e., made a complete, blanket transfer of copyright – to a publisher, then the publisher would have to be approached again to get permission each time an additional use is desired.

As a first principle, then, authors will consider giving rights that publishers need in order to publish and retain for themselves the remaining rights that can be retained, without harming the publisher relationship needed to have an article accepted and produced. As you set out to make the best arrangement, it is particularly important to know your own mind, think through the issues that are important and will make you happy with the publishing arrangement.

But, how will you know what is a fair arrangement or type of agreement? Obviously, there is no absolute rule on this point, because works are different, and no two cases are necessarily identical.

With that in mind, here are several possible strategies:

1. **Selective deletion.** Read carefully the copyright transfer document sent by the publisher and strike out (initialing the margins or deleting altogether from an e-document and reprinting) the sections that you do not agree to. Present the result to the publisher and continue the conversation or negotiation from there.
2. **Your own language.** Provide to the publisher's form an alternative document or addendum that lays out specific issues and concerns. There are several model documents of this nature in circulation. For example, a very simple form was developed for use in the Yale Library.⁴ The form developed by MIT Library/SPARC (the Scholarly Publishing and Academic Resources Coalition founded by the Association of Research Libraries) retains nearly all legal rights for the author (including a right to re-sell the work elsewhere), though this particular version is regarded as extreme by many publishers. In a detailed comparison of such documents and their strengths and weaknesses, Peter Hirtle of Cornell University

⁴ See "License to Publisher" at: <<http://www.library.yale.edu/~llicense/sample.html>>.

has written an instructive article, "Author's addenda: An Examination of Five Alternatives," *Dlib* November 2006.⁵

3. **Ask the publisher for alternative language.** Large, established publishers such as Elsevier Science have an alternative author licensing form that is quite reasonable (Appendix A). The American Physical Society and ACM retain copyright but allow authors to retain numerous rights that will facilitate their own work and interests (Appendix B).
4. **Creative Commons.** Draw up a Creative Commons license⁶ and present it to the publisher for comment and discussion. Recognize that doing so is one of the more venturesome and author-assertive forms of contract document, and the more commercial the publisher or the more concerned the publisher is with controlling dissemination, the more negotiation will be required.

Then negotiate. There are not many academic or learned publishers left who have not had some form of the conversation that you are about to undertake, most of them many times already. They will not have advertised where their hard and fast positions are, but they will have a good idea already, and they will know what they expect and need of an author's work in order for their decision to publish it to be successful and worthwhile for them. There is no point in being peremptory or obstreperous about discussions with publishers. The author needs to enter a conversation in good faith, making clear that there is good will and interest in reaching a mutually agreed solution, without being hustled. Authors can inform themselves further about their rights, explore issues of particular kinds of uses that are important to them, and sign an agreement only when convinced that it is the best one can get for oneself, one's readers, and one's institution.

Ann Okerson, Yale Library
Shyam Sunder, Yale School of Management
March 2007

⁵ See Hirtle's article at: <<http://www.dlib.org/dlib/november06/hirtle/11hirtle.html>>.

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