

John Ober

Facilitating open access

Developing support for author control of copyright

When I was first contemplating this column, and a similar set of comments I made at the ACRL/SPARC Forum at the 2006 ALA Mid-winter Meeting in San Antonio, I was tempted to use an extended *Lord of the Rings* metaphor. In this metaphor, copyright is the Tolkien trilogy's ring of inestimable value and bestowing great power on its possessor. Lawrence Lessig, of the Creative Commons, is Frodo, with the hopes of many riding on his efforts as he carries the ring to a place where it will be, well, not destroyed, but transformed. Take your pick of any number of avaricious publishers to be Gollum, the conflicted character whose spirit has become well-blackened, wily, severe, and tailored to do nothing but covet the precious ring.

Conveniently, for our metaphor, Gollum has two warring selves, the one driven by pure greed, and the one who wants to do right by the fellowship made up of faculty (hobbits and men), scholarly societies (elves), nonprofit publishers (dwarves), and librarians (wizards), i.e., the ones who want a healthy scholarly communication environment for its own sake. But there is that pesky profit-motivated Gollum, too. And the fellowship simply wants the power, including the economic power that comes with the copyright ring, to be balanced in a way that allows knowledge to progress and be made available to future knowledge producers in a sustainable way. The fellowship wants a balance so that the pastoral shire of teaching, learning, research, and societal progress flourishes, unburdened by constraints on how research is noncommercially shared and used, or by crippling prices that deny access to the research results for many in the first place.

But, in addition to my limitations as a deconstructionist of mid-20th-century fiction,

and despite the possible entertainment value, no metaphor can be extended far enough to fairly characterize the motivations and contributions of various stakeholders, or to do justice to the complexity of even the small corner of copyright that relates to scholarly publishing.

Case for copyright management

To take up the question of how scholars as creators and authors can and should actively manage their intellectual property when they disseminate their work is no easy task. Nor is it easy for librarians to declare a role and devise services that support that behavior, even supposing that they are confident about both what is permissible and what copyright behavior best serves their own interests and those of scholars, disciplines, and the progress of knowledge generally.

The complexity, the call for reform, and the opportunity to help are all due largely, of course, to the fact that software and the Internet now remove, reduce, or realign the costs to produce and distribute scholarship, although no one is completely sure how much or to what affect. But the argument is made that copyright rights, which seek to balance the rewards/incentives of creative effort with the potential social benefit of that effort, need to be managed and distributed differently. The intellectual property rights that are vested in specific scholarly works do, in fact, need to be actively managed, first by the authors of and institutions that support

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that scholarship, and ideally in partnership with the value-adding second or third parties—the publishers.

Advancing the creation, dissemination, and preservation of knowledge is the nominally shared philosophy of all the stakeholders in scholarly communication systems, publishers included. Indeed it is the stated life's work or mission of some, especially of scholarly societies. But increasing shareholder value, or, for many societies, supporting all of their good works on the backs of publishing revenues, too often trumps the philosophy. So the question becomes this: Through what logic and what mechanisms, if any, can copyright be managed to truly support that underlying philosophy?

Incentives

The need for global balance between monetary incentives to publish and the ensuing societal benefits is not much on the minds of scholars when they consider the terms of a publication agreement. But when scholars are, in fact, tempted to consider managing their copyright,

what prompts them is the rationale that retaining copyright can increase the amount of and the forms of dissemination of my scholarship, which leads to its greater use, impact, and resulting rewards.

Libraries should be clear and honest about the logic of our advocacy, too, which seems to be: Faculty copyright retention is a necessary precondition for developing new forms of dissemination that (possibly) allow restructuring of some of the economic patterns to be more sustainable. Or, more bluntly, copyright retention and subsequent grants of use (might) reduce/remove (some) economic barriers to acquiring content for research/teaching. I think it is important to correct the assumption, of many who first hear a version of this library logic, that libraries desire to remove profit from the system or do away with for-profit publishing. Libraries and librarians know that value-adding activities such as peer-review, copyediting, and packaging are crucial to scholarly communication and must be paid for. They also know that for-profit enterprises can bring focus and economies of scope and scale to those processes.

Enough rights to satisfy everyone?

In the background of the economic chain of logic, what libraries and librarians are asking, with only partial response so far, is whether publishers really need to own the content outright and control all aspects of it. The economic power that ownership provides is sometimes wielded abusively, generating not just adequate revenue for and from the crucial services that publishers do provide, but also enormous profits. The question, put another way is, Are there enough rights, when well managed and distributed, to produce some revenue from peer review and first publication, and support unrestricted teaching and research use, and maximize social and research impact from (perhaps slightly delayed) open access to the public? Open access publishing, like PLoS, BioMedCentral, Hindawi Press and others, and author and institutional self-archiving of research results are two strategies that require well-structured rights sharing and that begin to answer that question to the affirmative.

Focus on 50+

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The new(ish) role for libraries

There is a second chain of logic that also usefully connects libraries with scholars:

Faculty copyright retention is a necessary precondition for libraries to help disseminate (and manage and preserve) their institution's scholarly output.

This represents a reformulation of library roles in which significant resources are devoted to distributing and preserving the scholarship of their own institution, in addition to the resources spent on gathering externally produced scholarship for local use—and one that explains the best motivations behind institutional repositories, library-university press partnerships, and the formal assignment of some responsibility for scholarly communication within libraries. My own institution, the University of California, has ten library-based scholarly communication offices, one at each of the ten campuses, and two more at the closely affiliated systemwide Office of Scholarly Communication.

Addenda and other ways to support copyright management

The tool currently at the heart of scholars' copyright management is the publication agreement/contract they sign with the publisher. It makes sense to encourage and guide authors to amend or replace the copyright language in those contracts or, perhaps even more effectively, to replace the entire contract with one designed around clear rights statements.¹ Through their licenses, the Creative Commons has given us mechanisms to declare and attach rights to material. SPARC and the Science Commons are now extending that work by providing a model publishing contract addendum that leverages the directness and simplicity of the Creative Commons terms.²

But it's a tough slog to get these addenda and alternative publication agreements used. One response is to surround the model addenda with other copyright management infrastructure. Components of that infrastructure include, at the minimum:

1. Extending our understanding of current faculty attitudes and behavior toward copyright;

2. A proactive campaign to educate and reach out to scholars, particularly one focused on their own self-interest in copyright management; and

3. Crucially, an explicit place to exercise the retained rights and provide unfettered access to scholarship, i.e., an institutional repository (IR) (or, failing that, assistance in depositing work in disciplinary repositories, such as PubMed Central, arXiv, CogPrints, and the like).

The delivery of the (IR) services in number three above is key. For one thing reader and author visits to IR create a point-of-use opportunity, and usually a specific need, to educate scholars about copyright management, and ensure that they do, in fact, have the right to deposit their work. And while IRs can be promoted as a way to serve the scholar and library interests mentioned above, to be used IRs have to strive for unusually good related services. These would include things like:

- a minimal keystroke deposit environment;

- automated and invisible rights checking; metadata, identifiers, and data provision that enables harvesting in the service of multiple discovery routes to IR content;

- usage reports to authors and good, if not best-of-class, reader alert services.

It could also include related community activities such as:

- negotiations with publishers to adopt liberal copyright policies, perhaps as a condition before agreeing to acquire content from a publisher;

- helping publishers to experiment with adding revenue-producing value to content without owning the content outright;

- conventions for naming and relating versions of an article and discovering and using appropriate versions for the situation or need at hand.

Large tasks on the road ahead

So building infrastructure to complement enlightened publication agreements is one part of the work ahead. But there are at least two other large tasks.

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possible. Access collections containing materials needed for immediate use and for magnetic media usually have a functional lifetime of approximately ten years.

2. Chapter 14: Standards and Guidelines.

("Facilitating open..." cont. from page 221)

The first is to do what we can to help our institutions and scholars take explicit ownership of the opportunity to manage copyright for their own and the academy's and the public's benefit. One form this ownership takes is as a scholar-led mandate to manage copyright. In some non-U.S. institutions this mandate comes indirectly in the form of a mandate to deposit one's research in an institutional repository. At the University of California the faculty are currently discussing a different approach. At this writing there is an active proposal from one corner of the university's faculty governance that the faculty place a mandate on themselves, which would require, by default and as a condition of being a faculty member, transferring a nonexclusive, limited right to the university to place the faculty member's scholarship in a noncommercial, open access repository.³

The second task is a high order, long-term one dealing with copyright in its broad institutional context. Management of copyright, with regard to scholars' publications, enables more flexible approaches to dissemination, educational use and preservation, and may influence economics to lower access barriers. But copyright pops up everywhere in institutional planning: in contracts and grants of licenses, in technology transfer and patent of licenses, in instructional technology

Association of College and Research Libraries, American Library Association. 2005. <http://www.ala.org/ala/acrl/aboutacrl/resources-for-work/guidetopolicies/chapter14standards.htm> (Accessed 20 November 2005).

services and course management, in nearly all aspects of library services, and in a fair number of IT discussions. Yet it is the central focus in very few places. Combine that lack of focus with the growing number of environmental factors to consider—the ways in which copyright is playing out (and therefore affecting scholars' perceptions) in digital consumer services, such as music, mass digitization, DRM, and you begin to see the problem.

So the task is to begin a broadly based and sustained discussion regarding the operation and implications of copyright law, policy, and technology, writ large, for the effective dissemination, use, and stewardship of the information resources needed to support the academy's mission. That task must certainly be undertaken institution by institution as well as collectively. And building an overall copyright environment need not prevent real progress on the narrower question of how to build tools and services for managing copyright in publications, the issue closest at hand. The fellowship of the copyright ring would do well to look toward that piece of middle earth too, *zz*

Notes

1. ACRL's toolkit is replete with suggestions and resources along these lines (www.ala.org/ala/acrl/acrlissues/scholarlycomm/scholarlycommunicationtoolkit/toolkit.htm) as are other websites (see, for example osc.universityofcalifornia.edu/manage/).

2. See www.arl.org/sparc/announce/011706.html for an announcement of this work, due to be released in early Spring [2006].

3. See www.universityofcalifornia.edu/senate/committees/scsc/reports.html *zz*