

“Managing Your Intellectual Property: What Faculty Need to Know to Publish and Teach in the Digital Age”

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UCLA Faculty Center

Notes from Breakout Session on Managing Your Copyright As Authors

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Basics of Copyright:

It gives creators and authors exclusive rights to reproduce, display, perform, distribute, etc., their works.

Sometimes copyright law vests copyright in institutions.

For the most part, our creative efforts are our own copyright.

You can lose copyrights by signing them away to others.

Some publishers ask that you assign copyright over to them.

Some publishers ask that you assign some, but not all, of your exclusive rights over to them.

Some publishers are more author friendly than others; a more author-friendly publishing agreement could be non-exclusive or exclusive only for a period of time, or it could provide various educational-use rights such as author self-archiving, posting on course Web pages, and use in derivative works.

As an author, you should carefully read the author’s publishing agreement and try to negotiate by marking up the license or by adding an addendum to the agreement. Some helpful information and examples are available [online](#).

Questions and General Discussion:

Have you as faculty members encountered problems retaining your rights?

Have you had problems with negotiations?

How can institutions provide help to you to have more negotiating power?

One attendee published his first book in the 1970s, the law has since changed. He asked what he would have to do to protect his copyright.

Consult the [UC Copyright](#) and [US Copyright](#) Web sites.

Does someone who retains copyright have advantages?

It depends on what rights have been signed over; keeping copyright is no guarantee on its own if you have signed other rights away.

Is there a standard contract? Is there a user-friendly one?

The university could provide a service to faculty by having someone on staff to aid in these agreements. Faculty members have difficulty understanding these contracts. How much of a financial remuneration is reasonable?

One author discovered his/her works published in other countries. They “just appeared.” Does s/he have any rights? If a scale was printed in this journal article, what rights does s/he have to allow other authors to use that scale?

This gets to issues of what is protectable and not protectable. The owners of the copyright might not have the rights to the data that makes up the scale; the underlying data is more factual than creative and is not copyrightable, so the publisher has no rights to that scale. The author can share it, as others can without the author’s permission.

Is something like a “scale” copyrightable?

Copyright law’s trigger is creativity, not necessarily effort or amount of data. You might protect your rights by using a strategy of secrecy (e.g., not publishing it in its entirety).

What are current practices regarding negotiating author’s agreements for faculty? What is the range of possibility?

Institutions must think about encouraging faculty to publish in more author-friendly publications.

If I want to take someone else’s underlying ideas and add to them, does this have any consequences?

It depends on how you use the original work. For example, did you copy the expression, or just the underlying idea? Building on ideas, for the most part, is fine. But something such as using someone else’s creative work as is requires attribution and may implicate the original creator’s copyright rights.

When you sign a contract, the publisher often asks you to sign over electronic rights as well. When you ask not to, and the publisher refuses, what do you do?

We can try to promote publishing with publishers that are more author friendly. It is important to make sure that the rights you do sign over are not exclusive.

Is there a distinction between research that is funded by an institution or by a government-based grant?

As a condition of funding, an institution may specify how the copyright might be held. It is important to understand what your options are. Some government-funded grants require publication in open-access environments.

A participant commented that in the medical field you basically sign away everything in order to get into high-impact-factor journals. But in the past few years, the majority of medical research has been funded by NIH, and medical associations have revised their copyright requirements to require authors to submit a copy for publication in open-access depositories. It presents a new set of challenges, among them should we promote the Creative Commons* idea, or should we work with the publishers? Open access is great, but your promotions are based on publication in prestigious journals.

Have researchers organized to say “we will not give up our rights” to these restrictive publishers?

We could give non-exclusive rights to our institutions. This might prevent giving up all our rights. [Dan Greenstein mentioned in his remarks a draft proposal to have UC faculty authors assign non-exclusive to the Academic Senate.]

One faculty member wants to put all publications on a personal Web site. What sort of liability is he opening himself up for?

If the work you are putting up is covered under copyright, and you have not obtained permission from the copyright holder, there is potential liability if the action does not fall within one of the exceptions to the exclusive rights of the copyright owner. Whether something is found to be copyright infringement or fair use ultimately depends on a ruling from a court. Putting copyrighted articles up on non-secure Web sites for unlimited periods of time is a concern for copyright owners. This might be copyright infringement, which could involve thousands of dollars per work. There is a separate question: Is this likely to happen? It may be that institutions that retain repositories might hear from publishers regarding some sort of infringement rather than someone putting up articles on a personal site. But that is not certain.

Can I point to other sites where others have posted my work?

Linking with attribution to copyrighted material is generally better than copying (reproducing) and publicly posting (public display and performance). In general, you're less likely to be held for infringement by providing a link to the copyright owner's site rather than recopying and redistributing the work.

Derivative works: if I re-publish some works within another work, or a derivative of something I've written before, when would it be considered a new work?

A new work can be creative in its own right but could still infringe copyright on the old work. The options are not just “don't reuse the figure” or we'll sue. You could ask for permission to reprint something and receive it. A work may be mainly factual but may include a thin layer of creativity; if you rerun the data, it probably won't infringe upon that layer of creativity.

The nature of copyright is changing. I have a book that was published without permission in China, but they do not look at this as “piracy.” Am I wrong to be upset about this?

You might want to disseminate your works for things other than economic gain. This could be more in line with the original goals of copyright. An author who has signed restrictive agreements might not be able to disseminate the work as much as they’d like to.

* The nonprofit organization [Creative Commons](#) encourages authors to share and helps them get the rights they need to do so. It also supplies metadata that goes with the licensing terms and makes it easier to recognize and find certain terms from a search engine such as Google. Creative Commons provides license templates for creators that you use for your own works. If your agreement says “you may authorize others to make copies of your work,” you can use Creative Commons agreements that support this, which also provide a symbol that is carried with the work to represent what users can and can’t do with the work without asking permission.