Introduction to Copyright and Scholarly Communications for Student Journals

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What I’m Going to Talk About

• Copyright in Approximately 10 Minutes
• Practical Stuff for Journals
  – Plagiarism vs. Copyright Infringement
  – Author Rights Management
  – Open Licensing
• The Big Picture (Scholarly Communications and Open Access: Some Helpful Definitions)
Ignorantia juris non excusat
Where Does Copyright Come From?

- Meaning/origin not in “the right to copy” but in the copying of a name in a registry
- Similar to “copyhold,” a form of medieval land tenure
Intellectual Property: Public Goods?

• Non-rivalrous: if used once, doesn’t stop other uses
Intellectual Property: Public Goods?

- Non-rivalrous: if used once, doesn’t stop other uses
- Non-excludable: Hard to prevent use once it's out there
Utilitarian Underpinnings of Copyright Law

Article I, Section 8, Clause 8 of the US Constitution:

“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”
What Does Copyright Do?

• Copyright protects the *expression* of ideas, not the underlying ideas, facts, systems, procedures, principles or discoveries, themselves.
Copyright

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Copyright

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Copyright in Canada

Recent Changes
- Copyright Modernization Act (2012)
- Supreme Court “Copyright Pentalogy” (2012)
Copyright in Canada

“The Copyright Act is usually presented as a balance between promoting the public interest in the encouragement and dissemination of works of the arts and intellect and obtaining a just reward for the creator.

The proper balance among these and other public policy objectives lies not only in recognizing the creator’s rights but in giving due weight to their limited nature.”

Copyright in Canada

• 3 (1) For the purposes of this Act, *copyright*, in relation to a work, means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform the work or any substantial part thereof in public or, if the work is unpublished, to publish the work or any substantial part thereof, and includes the sole right

• (a-j) to produce, reproduce, perform or publish any translation of the work......

• and to authorize any such acts.
Limitations on Copyright in Canada

• Time: 50 Years+ the Life of the Author (Public Domain)
• Fair Dealing: a User’s Right
• Educational Exceptions
• Interactions with contracts
Fair Dealing

• Before C-11 (2012), the stature had one these purposes: research, private study, criticism, review, and news reporting.

• After Bill C- 11, education, parody, satire were added to this list.

• Has become a “user’s right,” and “must not be interpreted restrictively.” (SOCAN v. Bell Canada, 2012 SCC 36)
Practical Stuff

- Plagiarism vs. Infringement
- Author’s Rights
- Assignment vs. License
- Open Licensing
Journal FAQ 1: What’s the Difference Between Plagiarism and Infringement?

- Ethical norms v Legal constraints
- Misrepresentation v Reproduction
- Appropriation of Intellectual/Reputational Rewards v Economic Rewards
Journal FAQ 2: How Do I Manage Author Rights? Should I?

Created by Joe Aimonetti from Noun Project
FAQ 3: License or Copyright Agreement?

• An assignment of copyright is a transfer of a right such that the assignee is the owner of the legal interest in that right and the assignor is left without any control over the right transferred.
FAQ Continued: License or Copyright Agreement?

• A license is a permission to do certain acts which might otherwise constitute infringement of the licensor’s right and does not involve any change of ownership in the copyright.
• Hybrid Option: SPARC Author’s Addendum
FAQ Continued: Both have Advantages and Disadvantages

• An assignment conveys ownership
  – can be transferred, sold or re-assigned at a later date
  – Has a set term

• A license permits use
  – Author keeps ownership
  – Limited to the rights expressly permitted
  – Can be non-exclusive
  – Term can be unclear: termination usually depends on notification
FAQ Continued: Recordkeeping Concerns

• Assignment must be in writing
• License doesn’t have to be*
• Best Evidence Rule: “Born Digital” documents increasingly acceptable
  – Depends on the “integrity of the electronic system” in which they are stored
FAQ 4: Open Licensing

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Creative Commons
“Mine” does not mean “for sale”; Sharing does not mean erasing the self

A robust system of social exchange independent of market exchange; Building our own commons

An ethic of reciprocity

NOT collectivism; insistence on choice and self-authorship

Creativity, freedom of speech and thought, depend on a robust public domain

Yochai Benkler, CC Global Summit 2015, October 15 2015
Creative Commons: Curry v Audax

• Former MTV VJ sued a Dutch tabloid for publishing photos from his Flickr account
• Ruling: CC licenses enforceable even if breaching party not aware of license conditions
• Meta-Result: CC a powerful tool for managing your rights, with minimal administrative overhead
The Big Picture
Open Access

• “Open-access literature is digital, online, free of charge, and free of most copyright and licensing restrictions. What makes it possible is the internet and the consent of the author or copyright-holder.”

Peter Suber, A Very Brief Introduction to Open Access
Open Access v Open Access

• 1994: Steven Harnad’s “Subversive Proposal”
• Concept of “esoteric” authorship
• Speed, Discoverability and Measurability
Open Access v Open Access

• Some aspects of Scholarly Communications
  – Trust
  – Peer Review
  – Suber: “Impact rather than money.”
  – Impact as Currency
Open Access v Open Access

Scholarly Communications Cycle

Authors

Users

Publishers

Libraries
## 20 Years Later?

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<th>operating profit</th>
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<th>industry</th>
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<tr>
<td>7%</td>
<td>Woolworths</td>
<td>supermarkets, pokies</td>
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<tr>
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<tr>
<td>40%</td>
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Alex Holcombe, 2013
Thank You! Questions?

• Credits and Resources
  – SPARC Canadian Author’s Addendum
  – G. Westcott, Digital Challenges and Copyright in the Changing World of Learned Journals
  – P. Suber, *A Very Brief Introduction to Open Access*