Copyright: Author’s Rights / Blackboard and Fair Use
Joe Sharpe
Jon McGlone
September 9, 2010
Overview

Help you interact with faculty on issues of copyright, both personal and professional

- Copyright, briefly defined
- Protect Your Copyright: Author’s Rights Initiative and Materials
- Library Services & Blackboard Copyright Best Practices
What is copyright?

• A set of laws designed to give creators a package of rights over their original works of authorship
  – Create a derivative work or translations
  – Reproduce the work in copies
  – Distribute copies
  – Perform or display publically and digitally
  – Authorize others to exercise any of these rights
What does copyright do?

- Protects and balances the rights of author and public
- Provides a legal framework that associates creative works as unique, intellectual property with commercial value
  - Affects one’s ability to capitalize on the product of one’s own intellect
  - Provides a legal framework to recuperate damages in cases of infringement
  - Provides an outline of acceptable methods of using protected works for many purposes
“The key to copyright is the right of authors to profit from their work. Yet journal publishers have not made their editors or authors financial partners in the publishing economy they have created…Authors turn their work over to publishers in exchange for having the work reviewed and published. Though they may not have come to recognize it yet, those authors who choose to publish their work in journals that do not offer some form of open-access, and do so without also submitting the article to an e-print archive, may be working against their own best interests. I mean best interests in three senses: a professional sense (as they wish to contribute to the greater public good), a vanity sense (in the search for recognition), and a financial sense (give the recognition-based academic incentive system in which they work). In failing to take advantage of the journal or archive routes to open access, not only are these authors reducing public access to knowledge, they are undermining the level of career-enhancing recognition that they might otherwise receive for their work.”
Author’s Rights, the Big Picture

- Starting point for scholarly communication discussions
- Related to other WSU SC initiatives:
  - Campus Outreach / Education
  - Digital Commons
  - Public Access Policy Compliance
- Education help’s strike a balance between creator and publisher interests
Author’s Publication Scenario

- Author(s) wrote article – upon creation, own’s copyright
- Article accepted to be published
- Wants widest Possible Distribution & Impact
- Wants to:
  - Place a copy in Digital Commons or personal webpage
  - Post to Blackboard Course
  - E-mail to Colleagues
  - Re-use section in a new article
Author’s Transfer of Copyright

- Now Publisher (new copyright holder) controls:
  - Use of the work
  - Distribution/Access
  - Pricing
  - Use Restrictions
- Some publishers allow authors to strike out items in agreement if they wish to retain certain rights
- Some publishers do specify rights retained by authors
“So that you as Author and we as Publishers may be protected from the consequences of unauthorized use of its contents, as a condition of publication it is essential that you grant us the copyright to your contribution. **To this end we ask you to grant us all rights, including subsidiary rights, to your article. However, as specified below, you retain the right to use your article without charge in any book of which you are the sole author or editor after it has appeared in an ASA journal.**

“The Author transfers and assigns to the ASA for the full term of copyright as may now or hereafter exist, all rights, title and interest, including copyright, including but not limited to the sole and exclusive right to print, publish, license and otherwise sell your work in whole or in part in all media in all languages and all editions throughout the world and the exclusive rights to license or exercise throughout the world all subsidiary rights, including electronic formats, whether now in existence or hereafter invented.”

“The American Sociological Association, in turn, grants to Authors the right of republication in any print edition of which they are the sole author or editor, subject only to their giving proper credit in the book to the original publication of the article by the ASA.”

“Moreover, the Author may provide the final accepted manuscript **post-print to an online university or other institutional repository** (including that required by a supporting grant). **However, public availability must be delayed until 12 months after its print publication by ASA.**

I. COPYRIGHT TRANSFER AGREEMENT

Section A

1. The authors hereby transfer all copyrights in and to the manuscript named above (called the Work hereafter) in all forms and media, now or hereafter known, to the American Society of Hematology (ASH) effective if and when the Work is accepted for publication in Blood, Journal of The American Society of Hematology.

2. The authors retain the following non-exclusive copyrights, to be exercised only after the Work has been published in final format in the print version of Blood.
   (a) Reprint the Work in print collections of the author’s own writing.
   (b) Present the Work orally in its entirety.
   (c) Use the work in theses and/or dissertations.
   (d) Reproduce the Work for use in courses the author is teaching. (If the author is employed by an academic institution, that institution may also reproduce the Work for course teaching.)
   (e) Distribute photocopies of the Work to colleagues, but only for non-commercial purposes.
   (f) Reuse figures and tables created by the author in future works the author writes.
   (g) Post a copy of the Work on the author’s personal website, departmental website, and/or the university’s intranet, provided a hyperlink to the Work on the Blood website is included.

PDF Available at:
http://bloodjournal.hematologylibrary.org/forms/copyright_transfer.dtl
Generating an Addendum

• Creator can unbundle these rights and transfer only some to them to publishers
  – Delayed Access
  – Access/Re-use
  – Immediate Access

• http://www.lib.wayne.edu/services/research
Addendum Examples: Delayed

• Delayed
  – Freely accessible versions
    • Author Version posted immediately
    • Publisher Version posted 6 months after publication
Addendum Examples: Immediate

- Immediate
  - Publisher version freely accessible upon publication

- MIT uses this for Faculty Open Access Mandate compliance
Addendum Examples: Access/Reuse

• Access/Re-Use
  – Publisher version freely accessible upon publication
  – Gives work a Creative Commons license, sharing your distribution rights. Public can also re-use/post so long as you are:
    • Given credit as author
    • Reader’s use is non-commercial
How to Use Addendum

- Complete addendum
- Print a copy, sign and date, attach it to your publication agreement
- Sign and date publisher agreement, under signature add “Subject to attached addendum.”
- Note in a cover letter to publisher you have added an addendum
- Make copies
- Mail originals to publisher
What if a Publisher Rejects Addendum?

- Explain to publisher why it is important
- Ask the publisher to articulate
- Evaluate the adequacy of publisher’s response
- Revise agreements or Consider publishing with an organization that will facilitate widest dissemination
Materials to Help You

- Preparing to Discuss Author’s Rights Guide
- Faculty/Department Cover Letter
- “Think You Can…” Handout
- Author’s Rights Page & Addendum Generator
  - [http://www.lib.wayne.edu/services/research](http://www.lib.wayne.edu/services/research)
Other Resources

• SPARC Resources for Authors
  – http://www.arl.org/sparc/author/

• ACRL Scholarly Communication ToolKit
  – http://www.acrl.ala.org/scholcomm/node/8
Library Services & Copyright Best Practices
Library Service Provision

- University Libraries Content Delivery provides services that support user initiated requests for digital delivery of articles and book excerpts.

- Long-term course management services such as the former Electronic Reserves is no longer provided.
What happened to ERes?

• Library staff have been working in a capacity to:
  – Assist *former* Electronic Reserves customers transition into self-managed Blackboard document posting
  – Assist faculty with copyright understanding
But...

Long term course management support for all faculty cannot be continually supported by the University Libraries
- We cannot accept new customers
What do faculty do now?

- We recommend that new faculty or those unfamiliar with Blackboard:
  - Attend scheduled OTL Blackboard training sessions
  - Work with instruction liaisons as needed
  - Follow copyright guidelines for Blackboard posting
  - Contact Joseph Sharpe or Nardina Mein for copyright assistance when needed
What should Librarians do?

- All librarians should:
  - Help instruct faculty in the use of Blackboard as requested
  - Familiarize themselves with Copyright Law related to Library Services and class instruction
  - Share Copyright knowledge to faculty and students
  - Forward “gray area” questions to Joseph Sharpe or Nardina Mein
What should Librarians do?

- And, encourage faculty to:
  - Discover and locate instructional materials to use for coursework through full-text resources owned by the library system and link to them from Blackboard or a digital syllabus
  - Always reconsider the need to digitize an already discovered print resource and find a licensed full-text alternative to emphasize the instructional topic
What will the libraries do to help?

• University Libraries will provide copyright instruction and assistance with Fair Use analysis

• University Libraries will assist obtaining content, if a request for a digital copy is placed by the patron (document delivery only)
  
  – Use Interlibrary Loan for book chapter requests
  
  – Use ArticleReach for journal article requests
What is Fair Use?

- Fair Use is a statute within copyright law that allows certain uses of protected materials without seeking permission from the rights-holder.
  - Uses such as commentary, criticism, news reporting, teaching, research, etc.

- Fair Use is not a right, it is a defense made in court against a charge of infringement.

- Each use should be analyzed case-by-case.
Fair Use Factors Courts will Use

- **Purpose and character of proposed use**
  - Was the use *transformative*?
- **Nature of the protected work**
  - Creative vs. factual content. Consumable?
- **Amount and substantiality of the portion used**
  - Entire work or excerpt. Heart of the work?
- **Effect of the use on the real or potential market**
  - Did it deprive the rights holder?
Some will say: “All this is too much!”

- Traditional reserves is still available, but generally, the same factors of Fair Use apply.
- Don’t give up, just follow the rules – it gets easier.
When do you not need to be concerned with Copyright?

- Documents are no longer copyright protected, and therefore can be freely used, if:
  - Published prior to 1923
  - Published between 1923 and 1963 without a copyright notice
  - Published between 1923 and 1963 with copyright notice on work and not renewed with the U.S. Copyright Office
- Note: The lack of online documentation with the U.S. Copyright Office does not mean the copyright was not renewed
When do you not need to be concerned with Copyright?

• Content is offered freely under a Creative Commons license

• And linking does not violate copyright!
If Faculty WANT to use something from a print resource and it is in copyright…

- If a print resource *needs* to be copied:
  *Find a licensed full-text alternative to emphasize the instructional topic and link to it instead!*

Otherwise,
- They should perform a fair use analysis, see: [http://librarycopyright.net/fairuse/](http://librarycopyright.net/fairuse/) before requesting, scanning or posting the digital copy
- If deemed fair use, a digital scan of a reasonable portion of the original and retain record of the Fair Use Analysis for a legal defense
- Ensure a copyright notice is on the digital copy
P.S. It can be Fair Use…

- Fair Use provisions and the Teach Act (2002) enables certain educational uses such as Blackboard posting
  - See [www.copyright.gov](http://www.copyright.gov) for circulars and more information
  - A copyright resource page will soon be available on the University Libraries website
Fair Use Rules

- Use of copies not directly captured from the licensed original are not useable (must be owned by WSU or the faculty member)
  - If faculty owns the copy, but the library doesn’t, encourage them to place a note in the “note” field of the request saying they will drop off the book to ILL
    » Drop off’s are accepted in 133 Purdy from 8am-5pm, Mon-Fri.
Fair Use Rules

– Limited portions of the work are made available *at any one time*
  
  • Faculty must use LIMITED portions, such as the “no more than one chapter or 10% rule”, but isn’t the “heart” of the work
Fair Use Rules

– Use must be part of mediated instructional activities
  • Use must reflect the point made during instruction
Fair Use Rules

– Use must be limited to students enrolled in the course
  • Do not share work or distribute via email
  • Ensure the Blackboard site is password protected, no open content on the web!
Fair Use Rules

– Document availability only during a period of time relevant to the context and duration of a typical class session
  • Faculty must set visibility dates of the content in Blackboard that is relevant to the instruction, e.g. week’s reading = two week duration
  – WSU General Counsel (2009)
Fair Use Rules

- No item can be posted if it were required reading in their course from within the last three years
  - Instructors cannot reuse the same content over and over without seeking permission
P.S. We need to inform them when it is NOT Fair Use!

– No posting of materials typically purchased or acquired by students is allowed or considered fair use
  • This rule is fundamental and its violation would easily invalidate any claim of Fair Use

– No posting of protected materials developed specifically for online use
Not Fair Use?

• All works not considered fair use require copyright permission. Obtaining copyright permission is the responsibility of the instructor posting on Blackboard.
  – Get permission from the rights-holder
    • www.copyright.com is the interface to seek and obtain copyright permission
    • University Libraries has templates to use for permission requests by email or regular mail