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## ON COPYRIGHT

# Copyright in the networked world: author's rights

Michael Seadle

*Systems and Digital Services, Michigan State University, East Lansing,  
Michigan, USA*

### Abstract

**Purpose** – This column looks at which rights matter, how to retain them, and which journal publishers already cooperate.

**Design/methodology/approach** – It uses the requirements of the Berlin Declaration on Open Access, and examines the Creative Commons licences, the SPARC addendum, the project RoMEO list publishers' copyright policies, and the Emerald Journal Article Record form.

**Findings** – If retaining rights to works in order to provide open access is a key part of the solution to the crisis in scholarly publishing, then significant progress has taken place.

**Practical implications** – It remains to be seen whether having authors retain the right to provide open access will, over time, bring down journal costs. Enough publishers have cooperated that an opportunity now exists for repositories to begin to show what they can (or cannot) accomplish.

**Originality/value** – It remains to be seen whether having authors retain the right to provide open access will, over time, bring down journal costs.

**Keywords** Copyright law, Publishing, Internet

**Paper type** Research paper

### Why retain rights?

Recently I attended two forums that discussed open access and the crisis in scholarly publishing. The provosts of the 13 members of the committee on Institutional Cooperation (the academic arm of the Big 10 athletic conference) organized the first, which took place on 28-29 October 2004 in Chicago. The Association of Research Libraries' Scholarly Publishing and Academic Resources Coalition (SPARC) and SPARC Europe organized the second, which focused more on institutional repositories and took place on 18-19 November 2004 in Washington DC.

Librarians and scholars at both meetings generally agreed that the current crisis in scholarly publishing relates to increases in journal subscription costs that far outstrip both inflation and library budgets. The financial crisis is especially acute in the areas of science, technology, and medicine, and it has repercussions for resource allocation within scholarly communities. Proposed solutions for this crisis embrace a variety of new publishing models, including institutional repositories, discipline-specific repositories, and alternative journals. Those attending these meetings also generally agreed that authors ought to retain more rights to their works so that they can choose to put them into an open access venue such as a repository, where they and others could use them for teaching.



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The “Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities” (Conference on Open Access... to Knowledge in the Sciences and Humanities, 2003) states the requirements for open access plainly:

Open access contributions must satisfy two conditions:

- (1) The author(s) and right holder(s) of such contributions grant(s) to all users a free, irrevocable, worldwide, right of access to, and a license to copy, use, distribute, transmit and display the work publicly and to make and distribute derivative works, in any digital medium for any responsible purpose, subject to proper attribution of authorship (community standards, will continue to provide the mechanism for enforcement of proper attribution and responsible use of the published work, as they do now), as well as the right to make small numbers of printed copies for their personal use.
- (2) A complete version of the work and all supplemental materials, including a copy of the permission as stated above, in an appropriate standard electronic format is deposited (and thus published) in at least one online repository using suitable technical standards (such as the Open Archive definitions) that is supported and maintained by an academic institution, scholarly society, government agency, or other well established organization that seeks to enable open access, unrestricted distribution, inter-operability, and long-term archiving.

People sometimes refer to retaining rights as “retaining copyright” and characterize the issue as a split between commercial and non-commercial publishers. These simple dichotomies can mislead authors. For example, one faculty member showed me a publication agreement with a publisher that would have allowed her to retain the copyright in a purely formal sense, but in fact stripped away every right to make decisions about use, copying, or derivatives. The publisher was a university press, not a commercial firm.

This column looks at which rights matter, how to retain them, and which journal publishers already cooperate.

### **Creative Commons license**

The Creative Commons was founded in 2001 to offer authors a balance between the extremes of “all rights reserved” style total control, and unfettered “public domain” style open exploitation. Its first goal was to create a set of legally reliable licenses that would allow authors to reserve some rights, while also informing consumers about what they could do with a work without the long and expensive process of finding a rights owner and negotiating a permission (Creative Commons, 2004b).

A Creative Commons license grants “a worldwide, royalty-free, non-exclusive, perpetual (for the duration of the applicable copyright) license to exercise the rights in the work as stated below...” (Creative Commons, 2004a). These rights include reproducing the work, creating derivative works, and distributing copies. Among the restrictions are that “[y]ou may not exercise any of the rights granted to You in Section 3 above in any manner that is primarily intended for or directed toward commercial advantage or private monetary compensation”. The Creative Commons license also explicitly protects fair use rights: “Nothing in this license is intended to reduce, limit, or

restrict any rights arising from fair use, first sale or other limitations on the exclusive rights of the copyright owner under copyright law or other applicable laws”.

The intent of the Creative Commons license is to provide standard legal language to authors whose intention is to make their works openly accessible. Those who merely put their materials up in HTML without a clear license make it difficult for copyright-conscious institutions or colleagues who want to print them for classes or make a translation or redistribute them in some other medium such as, CD-ROM. The Creative Commons web site will even generate HTML commands that let authors build the license into the source code itself.

Not all forms of the Creative Commons license ban commercial exploitation. Some versions drop the paragraph banning commercial exploitation and thus implicitly allow it. There are also different versions for different countries. The Canadian version, for example, talks about “fair dealing” rather than “fair use”, the German version refers to “Schranken des Urheberrechts”, and the French to “Exceptions aux droits exclusives” (Creative Commons, 2004a). For authors who want to publish their own works on web sites or in some form of repository, rather than in journals, these licenses are ideal. The Creative Commons licenses do not, however, cover all of the subjects on which a publisher in the contemporary world needs explicit language, particularly on financial issues which may include potential royalties (or lack of royalties), or what authors may have to pay to cover review costs and page charges.

### **SPARC model addendum**

The SPARC model addendum helps to address the problem of how to blend the extra detail that publishers need with the rights that authors may want to reserve. One advantage of the addendum is that it does not require rewriting the standard publisher agreements, which would be daunting if not impossible for most authors. Its language merely ensures that the addendum takes precedence:

The parties agree that wherever there is any conflict between this Addendum and the Publication Agreement, the provisions of this Addendum are paramount and the Publication Agreement shall be construed accordingly.

ACCORDINGLY, Notwithstanding any provisions of the Publication Agreement to the contrary, AUTHOR and PUBLISHER agrees as follows... – (Association of Research Libraries (ARL), 2004).

SPARC offers two model addenda. One includes the Creative Commons public license, and the other does not. The one with the Creative Commons licenses imbeds the URL:

Author’s Retention of Rights Under Copyright. In addition to any rights under copyright retained by Author in the Publication Agreement, Author retains and reserves all rights under copyright necessary to grant a public license under a Creative Commons Attribution-Non-Commercial 1.0 License, available at <http://creativecommons.org/licenses/by-nc/1.0/legalcode> and hereby grants the public a license under the terms of the Creative Commons Non-Commercial 1.0 License – (ARL, 2004).

Since this reference to a potentially malleable online document could be troubling for legal counsel at some publishers, SPARC also offers a version that does not refer explicitly to the Creative Commons license:

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Author's retention of rights. In addition to any rights under copyright retained by Author in the Publication Agreement, Author retains: (i) the rights to reproduce, distribute, publicly perform, and publicly display the article in any medium for non-commercial purposes; (ii) the right to prepare derivative works from the Article; and (iii) the right to authorize others to make any noncommercial use of the article so long as author receives credit as author and the journal in which the article has been published is cited as the source of first publication of the article. For example, author may make and distribute copies in the course of teaching and research and may post the article on personal or institutional web sites and in other open-access digital repositories – (ARL, 2004).

This version of the addendum sacrifices some of the Creative Commons language about fair use and its more detailed explanations about restrictions, but it includes the core rights to make copies for non-commercial purposes, to authorize others to do the same as long as the original publication is acknowledged, and to make derivative works (such as translations). These are the chief rights that open access proponents feel authors need to retain, and the SPARC addendum offers an easy way to secure them when publishing in journals that do not already have author-friendly publishing agreements.

Under “publisher’s additional commitments”, the SPARC addendum adds a useful requirement:

Publisher agrees to provide to Author within 14 days of first publication and at no charge an electronic copy of the published Article in Adobe Acrobat Portable Document Format (.pdf). The Security Settings for such copy shall be set to “No Security” – (ARL, 2004).

This guarantees that authors will have an accurate final version of their work that complies with all of a publisher’s branding requirements for later dissemination, and that they receive it in a timely manner at no extra charge.

### **Project RoMEO journals**

The SPARC addendum is not necessary for all journals. One way for authors to tell which journals allow authors to put their works into repositories or on course web sites is via Project RoMEO (Rights METadata for Open archiving). This project started in 2002 at Loughborough University under the direction of Charles Oppenheim. Its mission is: “to investigate the rights issues surrounding the ‘self-archiving’ of research in the UK academic community under the Open Archive Initiative’s Protocol for Metadata Harvesting” (Project RoMEO, 2004). Initial funding came from the UK Joint Information Systems Committee (JISC), and the board has a mix of academic and publisher representatives, including Kathryn Toledano from Emerald (publisher of *Library Hi Tech*).

Project RoMEO conducts stakeholder surveys, and also prepares a list of publishers’ copyright policies, which is available online at the University of Nottingham (SHERPA, 2004). RoMEO separates publishers into four color-coded categories depending on how friendly their copyright transfer agreements are to authors who want to archive a local copy of their work:

- *Green*: those that allow authors to archive both pre-print and post-print copies;
- *Blue*: those that allow post-print or at least post-review archiving;

- *Yellow*: those that allow archiving of pre-review copies; and
- *White*: those that allow no author archiving.

At present 46 percent of the 107 publishers listed fall into the archiving-friendly green category, and only 34 percent into the white category whose policies do not “formally” support archiving.

Publishers in the green list include Blackwell’s, Cambridge University Press, Elsevier, Emerald, Haworth, Wiley, Johns Hopkins University Press, Kluwer, Sage, and Springer. Elsevier has a green category listing even though they have some restrictions, such as an exclusion for articles from the Cell Press and disallowing use of the publisher’s PDF version.

Publishers in the white list include the American Chemical Society, the American Medical Association, the American Sociological Association, Lippincott, the Royal Society of Chemistry, the Royal Society of Medicine, and the University of Chicago Press. All of these publishers explicitly disallow any author archiving. For some RoMEO white journals the archiving policies are more ambiguous. For example, the Association for the Advancement of Computing in Education disallows post-print copies, but apparently does not address preprints.

These Project RoMEO lists suggest that a significant number of commercial publishers, including Elsevier, already allow much of the open access enshrined in the Creative Commons licenses and the SPARC addenda. The lists also show how many academic and society presses, including the American Chemical Society and the University of Chicago Press, disallow those same author rights. Those who believe that academic and scholarly society publishers are friendly to open access, and that commercial publishers are the enemy, may find these results surprising.

### **Emerald copyright**

While no two publishers have identical copyright assignment forms, the Emerald journal article record (JAR) form offers an example of a RoMEO green publisher’s form that explicitly allows authors to archive and use their own works. The language in Emerald’s JAR form is fairly explicit:

This assignment of copyright to Emerald Group Publishing Limited is done so on the understanding that permission from Emerald Group Publishing Limited is not required for me/us to reproduce or distribute copies of the Work in whole or in part, for non-commercial purposes. I/We will ensure that all such copies carry a notice of copyright ownership and reference to the original journal publication (Emerald, 2004b).

The JAR form also links to the Emerald Author’s Charter, which adds specific examples:

Assigning copyright of your work to Emerald . . . does NOT, in any way, restrict your right to:

- Republish your article in another journal or as a book chapter;
- Reproduce your article by photocopying for course notes or promotional literature; and
- Reproduce your article by electronic means or on the internet (subject to acknowledgement of first publication details) – (Emerald, 2004a).

Immediately following is a commitment in bold not to charge authors for re-use:

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Emerald never charges its authors for re-use of any of their own published works. Authors are requested to cite the original publication source of their work – but are not required to seek Emerald’s permission with regard to the personal re-use of their work (Emerald, 2004a).

The Author’s charter also explains why Emerald requires copyright assignment:

- Develop our electronic publications and their delivery to meet customer needs and create maximum dissemination of authors work.
- Protect authors moral rights and their work from plagiarism, unlawful copying and any other infringement of copyright.
- Recoup copyright fees from Reproduction Rights Organisations to reinvest in new initiatives and author/user services. Emerald will provide a research grant/award of 25% of copyright fee revenue upto £ 25,000 per annum to its author community.
- Provide an efficient service for permissions.

Emerald’s JAR form does not go as far as the SPARC addendum in limiting non-commercial use, or in explicitly reserving the right to prepare derivative works, but it also offers potential benefits not mentioned in the SPARC addendum, such as protecting moral rights and providing a permissions service.

The overwhelming majority of *Library Hi Tech* authors, including many who are committed to the principles of open access, find Emerald’s JAR form acceptable and are willing to sign.

## Conclusion

If retaining rights to works in order to provide open access is a key part of the solution to the crisis in scholarly publishing, then significant progress has taken place. Many major commercial publishers, including those with major scientific journals, now allow authors to make their works freely available for non-commercial purposes, even though a surprising number of academic and scholarly society publishers do not. Perhaps members of the latter societies need to speak up. It may be interesting to see how, for example, the American Chemical Society responds when members begin to insist on the SPARC addendum as part of their copyright transfer agreement.

It remains to be seen whether having authors retain the right to provide open access will, over time, bring down journal costs. Enough publishers have cooperated that an opportunity now exists for repositories to begin to show what they can (or cannot) accomplish.

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