Copyright for Creators 3.0

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University Counsel
Virginia Commonwealth University
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Topics

- Reuse of images in scholarly publications
- Publishing and media agreements
- Protecting author's rights and open access
But First, a Word From

"Whenever a copyright law is to be made or altered, then the idiots assemble."

Mark Twain Notebook, 1902-1903
Using Other People’s
Or even your own stuff if you’ve signed it away…
Traditional Publishers Require Permissions

- Publishing contracts require that you obtain rights to all third party content used in a book or article.
- My opinion – use of images of art or other content in scholarly journals and books for the purpose of scholarly criticism and commentary, is a fair use.
- But, most publishers are afraid of fair use.
- Permissions requirements are typical even if the underlying work is in the public domain, for example, an image of a 17th century painting in a museum collection.
All art images are not copyright “equals”
Art and Rights

- The underlying work of art: artist, unless assigned
- The photographer who took a picture of the work of art:
  - not necessarily a valid copyright under US law if art is 2-D painting;
  - valid for images of 3-D objects or people or landscapes, etc.
- The owner of the physical work of art has no copyright interest unless assigned by the artist, but may exert control.
Web-based publishers

- Web-based publication feels less formal but actually implicates owner/author/creator rights more.
- Image size and format are important (thumbnails)
- Is your use letting all the cows out of the barn and ruining future sales?
- Getting both print and digital rights can be very expensive. ($150/$1500 or more)
Resources (or therapy)

- Permissions, a Survival Guide (Susan Bielstein)
- COPYRIGHT WEB RESOURCES
  - VRA’s Copyright Resources and Image Calculator: [http://www.vraweb.org/resources/ipr/copyright.html](http://www.vraweb.org/resources/ipr/copyright.html) [http://www.vraweb.org/resources/ipr/dirc/index.html](http://www.vraweb.org/resources/ipr/dirc/index.html)

Publication
Agreements
What Do Publishers Require?

“The undersigned warrants that the work contains no libelous or unlawful statements and does not infringe on the rights of others and warrants that if excerpts (text or artwork) from copyrighted works are included, written permission has been secured by the authors and proper credit is given in the work. The Author will indemnify the Publisher for, and hold the Publisher harmless from any loss, expense or damage occasioned by any claim or suit by a third party for copyright infringement or arising out of any breach of the foregoing warranties as a result of publication of the Article. The Article shall be delivered to the Publisher free of copyright charges. The undersigned further certifies that all co-authors know of and concur with the publication of this work and agree to the stipulations in this document....”
Copyright

- Given faculty ownership of scholarly works under VCU policy, faculty can and typically do give away all their right, title and interest in scholarly works, usually without reading the contract...
- Beware “pre” contracts that bind you in advance.
- Beware agreeing to jurisdiction abroad and norms inconsistent with U.S. values and policies.
The Concept of Copyrights

- People tend to think of copyright as a monolithic construct, but copyright is actually a bundle of rights.
- You can license or assign some, but not all; you can term-limit your assignment.
- Warning: you can have the copyright registered in your name, but give away all the actual rights associated with copyright ownership! (Books are common examples.)
“The undersigned author or authors (‘Author’) of the above article (‘Article’) transfers and assigns exclusively to ___________________ (‘Publisher’) all Author’s right, title and interest in the Article including, without limitation, the copyright therein for the full term of copyright and any extensions or renewals of that term, including but not limited to the exclusive right to publish, republish, transmit, sell, distribute and otherwise use the Contribution and the material contained therein in electronic and print editions of the Journal and in derivative works throughout the world, in all languages and in all media of expression now known or later developed, and to license or permit others to do so.”
Such a Copyright Agreement Prohibits

- Making the Work as a whole available on a public website or for students or colleagues through E-reserves
- Posting the Work in an institutional, society, or governmental digital repository.
- Incorporating the Work in other scholarly editions.
- Creating and publishing revisions, corrections, or updates of the Work.
- Republishing the work yourself or with another publisher if it goes out of print.

**Remember:** You can give away rights protected under the Copyright Act when you sign a contract.
Once you transfer all those Copyrights...

- Case Study 2012: Professor X = 45 year old associate professor
- U.S. term of copyright is now 70 years + life of the author
- Has been authoring papers since age 30.
- We hope Professor X lives to be 85
- (RIP 2052)
Assuming Professor X signed typical publication agreements

- Her papers and books published starting in 1997 will be free from copyright control in...
Professor X’s copyrights free, free at last in

- 2027
- 2042
- 2092
- 2122
That is, unless Congress extends copyright even further.

Eldred v Ashcroft and Golan v Holder

\[ = 0 \quad = 2 \]
What do faculty copyright transfers
Collectively end up meaning for the academy?
Rich and Poor

Total Serials Titles

<table>
<thead>
<tr>
<th>Institution</th>
<th>Titles</th>
</tr>
</thead>
<tbody>
<tr>
<td>HOWARD</td>
<td>24,263</td>
</tr>
<tr>
<td>BOSTON COLL</td>
<td>34,866</td>
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<tr>
<td>KENT STATE</td>
<td>76,459</td>
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<tr>
<td>UNC</td>
<td>87,639</td>
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<tr>
<td>UT-Austin</td>
<td>100,006</td>
</tr>
<tr>
<td>UVA</td>
<td>146,007</td>
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<tr>
<td>HARVARD</td>
<td>157,854</td>
</tr>
<tr>
<td>COLUMBIA</td>
<td>168,812</td>
</tr>
</tbody>
</table>
ARL Stats 2010

Serials as Percent of Total Expenditures

<table>
<thead>
<tr>
<th>Institution</th>
<th>Percent</th>
<th>Expenditure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Howard</td>
<td>35%</td>
<td>$X</td>
</tr>
<tr>
<td>Kent State</td>
<td>30%</td>
<td>$X</td>
</tr>
<tr>
<td>Boston College</td>
<td>27%</td>
<td>$X</td>
</tr>
<tr>
<td>UVA</td>
<td>24%</td>
<td>$X</td>
</tr>
<tr>
<td>UNC</td>
<td>24%</td>
<td>$X</td>
</tr>
<tr>
<td>UT-Austin</td>
<td>23%</td>
<td>$X</td>
</tr>
<tr>
<td>Columbia</td>
<td>24%</td>
<td>$X</td>
</tr>
<tr>
<td>Harvard</td>
<td>14%</td>
<td>$X</td>
</tr>
</tbody>
</table>
2006 and 2010 compared

Serials as Percent of Total Expenditures

- HOWARD
- KENT STATE
- UNC
- UVa
- UT-Austin
- HARVARD
Virginia Consortium

Virginia Elsevier Consortium Price Evolution, 2009-2021

Year


Total contract cost

$5,000,000 $6,000,000 $7,000,000 $8,000,000 $9,000,000 $10,000,000

$6,136,188 $6,457,818 $6,772,110 $7,197,457 $7,629,689 $7,782,466 $8,093,764 $8,417,515 $8,585,865 $8,929,300 $9,286,472 $9,657,931 $10,044,248
<table>
<thead>
<tr>
<th>Material Type</th>
<th>Percentage</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monographs</td>
<td>16%</td>
<td>$1.7m</td>
</tr>
<tr>
<td>Journals and databases</td>
<td>79%</td>
<td>$8.5m</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>5%</td>
<td>$0.5m</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$10.8m</strong></td>
</tr>
</tbody>
</table>

**Collection Expenditures by Material Type, 14-15**

- **Monographs** 16%, $1.7m
- **Journals and databases** 79%, $8.5m
- **Miscellaneous** 5%, $0.5m
Paradigm: Scholarly Works

- Are produced in the academy at great expense
- Are given to publishers for free (publishing in a digital age is a lot cheaper than print)
- Who sell it back to the academy at great expense.
Intervention options
Successful Contract Negotiations - Key Issues for Articles

- **First, Read the Contract**
- NIH/NSF or other posting rights/compliance – covered?
- Any other sponsor requirement?
- Permission to post author’s version on personal website?
- Deposit rights to VCU’s Institutional Repository?
- Use of article for teaching or “academic, research, or other non-commercial purpose with attribution”?
- **Hold on to Image/Graph Rights!!!**
- Don’t give away data ownership!!!
Successful Contract Negotiations
- Key Issues for Books

- **FIRST, READ THE CONTRACT**
- Copyright in your name
- Clear control over subsequent editions
- (For compilations) clarification that chapter submittal will not be viewed as preventing subsequent full-length book
- Return of rights if book goes out of print
- Right to publish your next book wherever you want – No RoFR
- Use rights for personal teaching & research
Hold on to key rights, or hold on to all rights... New avenues of scholarly communication

- Publish in OA journals
- License via Creative Commons
- Place in Repositories or scholarly societies
- Provide an exclusive license only for a term of years?
- If the institution has a clear partial ownership policy, publisher an only get what the author owns. (Harvard OA policy)
Your Questions