The New Copyright Policy:
What Department Heads & Chairs Need to Know

Wendy Lougee, University Librarian
Greg Brown, Associate General Counsel
Overview

• Copyright basics
• Overview of new policy
• Contemporary trends, issues
  – New rights models
  – Authors’ rights
• Support
What Is Protected by Copyright?

- Copyright protects original works of authorship that are fixed in a tangible medium of expression.
- “Original” = (1) the work was independently created by the author, and that (2) it possesses at least some minimal degree of creativity.
- A work is considered “fixed in a tangible medium of expression” when its embodiment in a copy… is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.
What Rights Do Copyright Owners Have?

The owner of copyright has the exclusive rights to do and to authorize any of the following:

- to **reproduce** the copyrighted work in copies;
- to **prepare derivative works** based upon the copyrighted work;
- to **distribute** copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- to **perform** the copyrighted work publicly;
- to **display** the copyrighted work publicly
Works Made for Hire & Teacher’s Exception

• Copyright Act defines a “work made for hire” as:
  1) a work prepared by an employee within the scope of his or his/her employment; or
  2) work specially ordered or commissioned

• most U.S. universities accept the spirit of the “teacher exception” to the “work made for hire” doctrine by retaining creator ownership of traditional scholarly and artistic works as well as of non-commissioned instructional materials produced by faculty without “substantial” use of university resources.

• no special provision for teacher’s exception in the 1976 Copyright Act.
Copyright Policy Development

• 2007: Divide Regents Intellectual property policy:
  – Patentable assets (technology transfer)
    • NOTE: Software covered by Tech Transfer policy; owned by University.
  – Copyrightable assets (“academic work”)

• 2008: Copyright Administrative Policy
University Policy (1)

• Core principles:
  – Upholds “teacher’s exception” that gives ownership/copyright of academic works to faculty & faculty-like appointments.
  – Upholds student ownership of works (except in employment context)
  – Encourages management of copyright interests in manner that provides greatest possible scholarly and public access.

• Clarifies “work for hire” as applicable to non-faculty (or non-faculty-like).
University Policy (2)

• Defines a “directed work”: a work agreed upon between the University and faculty creator(s), the creation of which is based on a specific request by the University and which requires substantial University resources. The University owns “directed works.” Must be in writing.

• Provides that faculty and University can opt out & sign agreement for use, licensing, etc.
Administrative Policy

- Clarifies faculty/faculty-like
- Clarifies graduate student employment work
- Clarifies University ownership of “transmissions” of academic works (e.g., video capture)
- Conflict resolution (in process)
SECTION III. GUIDING PRINCIPLES.

(a) The University’s mission articulates a commitment to sharing knowledge through education for a diverse community and application of that knowledge to benefit the people of the state, the nation, and the world. In this spirit, the University encourages faculty and students to exercise their interests in ownership and use of their copyrighted works in a manner that provides the greatest possible scholarly and public access to their work.

(b) The University shall maintain the strong academic tradition that vests copyright ownership of academic works in the faculty.

(c) The University recognizes the importance of intellectual freedom and autonomy in the creation, use, and dissemination of scholarly works.
Scholarly Publishing: A Circle of Gifts
Copyright Owner Rights

- Exclusive rights to:
  - to **reproduce** the copyrighted work
  - to **prepare derivative works** based upon the copyrighted work;
  - to **distribute copies** to the public by sale or other transfer of ownership
  - in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to **perform or display the copyrighted work publicly**

RIGHTS CAN BE UNBUNDLED; AUTHORS CAN RETAIN ALL OR SOME RIGHTS
Managing Rights

• Consider retaining rights to...
  – Post to your website, and institutional & disciplinary repositories (UMN = Digital Conservancy conservancy.umn.edu/)
  – Deposit to comply with federal (NIH) policy
  – Distribute copies to students/classroom use
  – Use your work in future articles, books, etc
  – Grant permission to use in courses at own institution
  – Grant permission to distribute to colleagues elsewhere for non-commercial purposes
Rights: Multiple Interests

• Author’s interests in exercising rights
• Institutional interests – e.g., reuse of content
• Academy’s interests – access to scholarship
• Strategic issues – individual/institutional visibility
Can distribute or transmit to no more than 50 colleagues; titles-only on website

The right to reuse selected figures, tables, and text (up to 250 words but should not include the abstract) for the author's own teaching purposes...
CIC Authors’ Addendum

ADDENDUM TO PUBLICATION AGREEMENTS FOR CIC AUTHORS

This ADDENDUM hereby modifies and supplements the attached Publication Agreement between:

Corresponding Author

Additional Authors (if any)

AND

Publisher

Related to Manuscript titled

To appear in Journal, Anthology, or Collection titled

PUBLISHER AND AUTHOR AGREE THAT WHERE THERE ARE CONFLICTING TERMS BETWEEN THE PUBLICATION AGREEMENT AND THIS ADDENDUM, THE PROVISIONS OF THIS ADDENDUM WILL BE PARAMOUNT. IN ADDITION TO THE RIGHTS GRANTED THE AUTHOR IN THE PUBLICATION AGREEMENT AND BY LAW, THE PARTIES AGREE THAT THE AUTHOR SHALL ALSO RETAIN THE FOLLOWING SPECIFIED RIGHTS:

1. The Author shall, without limitation, have the non-exclusive right to use, reproduce, distribute, and create derivative works including update, perform, and display publicly, the Article in electronic, digital or print form in connection with the Author’s teaching, conference presentations, lectures, other scholarly works, and for all of Author’s academic and professional activities.

2. After a period of six(6) months from the date of publication of the article, the Author shall also have all the non-exclusive rights necessary to make, or to authorize others to make, the final published version of the Article available in digital form over the Internet, including but not limited to a website under the control of the Author or the Author’s employer or through digital repositories including, but not limited to, those maintained by CIC institutions, scholarly societies or funding agencies.
NIH Policy (2007)

The Director of the National Institutes of Health shall require that all investigators funded by the NIH submit or have submitted for them to the National Library of Medicine’s PubMed Central an electronic version of their final, peer-reviewed manuscripts upon acceptance for publication, to be made publicly available no later than 12 months after the official date of publication: Provided, That the NIH shall implement the public access policy in a manner consistent with copyright law.

Institutions and investigators are responsible for ensuring that any publishing or copyright agreements concerning submitted articles fully comply with this Policy.
Institutional Strategy: Visibility, Impact

“...a renewed commitment to publishing in its broadest sense can enable universities to more fully realize the potential global impact of their academic programs, enhance reputations, maintain a strong voice in determining what constitutes important scholarship... and in some cases reduce costs.”

*University Publishing in a Digital Age, 2007*
Open access accelerates scientific advancement: evidence mounts

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Campus Resolutions

Faculty Senate Resolution in Support of Accessible Scholarly and Scientific Publication Submitted by the University Library Committee University of Wisconsin-Madison Libraries

Whereas, the campus budget continues to cut the research enterprise

Whereas, as journalists, students, and Wisconsin citizens rely on our resources, and

Whereas, as the university, we are accountable to the people of Wisconsin

Univ of Iowa Faculty Senate Passes Resolution on Scholarly Publishing

The UI Faculty Senate on scholarly journal costs for faculty, especially

The resolution encourages the university to privilege their

“We’re the people who keep them, said Faculty Senate Chair, Albert Lichtman.

The clinical professor of medicine at the University of California, San Francisco, stated: ‘In universities around the country, we are dealing with uncertain future costs for journal articles.’

Faculty Senate Resolution

Cornell University Faculty Senate Endorses Resolution on Open Access and Scholarly Communication

(Ithaca, NY, May 17, 2005) The Cornell University Faculty Senate endorsed a resolution concerning scholarly publishing at its meeting on May 11, 2005.

The resolution, introduced by the University Faculty Library Board, responds to the challenges facing scholarly communications and the tenure of scholarship.

In a move to disseminate faculty research and scholarship more broadly, the Faculty of Arts and Sciences (FAS) voted Tuesday (Feb. 12) to give the University a worldwide license to make each faculty member’s scholarly articles available and to exercise the copyright in the articles, provided that the articles are not sold for a profit.
Summary

• UMN provides options
  – Faculty ownership
  – Directed Works
  – Support for new models (Counsel on publisher agreements, Digital Conservancy)
Summary II: Policy, Principles, Norms

- Discipline culture
- Anticipate institutional needs
  - Directed work agreements
  - Special agreements
- Support
  - Copyright/Publishing Center (http://www.lib.umn.edu/copyright/)
  - Office of General Counsel
For more information…

• Resources:
  – http://www.academic.umn.edu/provost/reports/copyright2007.html policy site
  – http://www.lib.umn.edu/copyright/ Copyright resources
  – http://www.lib.umn.edu/scholcom/ Publishing resources