Introduction to Copyright and Open Access for Student Journals

Student Journal Forum, October 22 2015, University of Toronto Libraries

Graeme Slaght, Copyright Outreach Librarian
Scholarly Communications and Copyright Office
graeme.slaght@utoronto.ca
What I’m Going to Talk About

• Copyright in Approximately 10 Minutes
• Author Rights Management
• Creative Commons Licensing Options for Journals
• Scholarly Communications and Open Access: Some Helpful Definitions
Ignorantia juris non excusat
Copyright

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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.
Journal FAQ: What’s the Difference Between Plagiarism and Infringement?

- Ethical norms v Legal constraints
- Misrepresentation v Reproduction
- Appropriation of Intellectual/Reputational Rewards v Economic Rewards
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.”

Limitations on Copyright in Canada

- Time: 50 Years+ the Life of the Author
- Fair Dealing: a User’s Right?
- Educational Exceptions
- Accessibility Exception
Fair Dealing

• Before C-11 (2012), had to for one of these purposes: research, private study, criticism, review, or 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)
The CCH Factors:

• The purpose of the dealing
• The character of the dealing
• The amount of the dealing
• The nature of the work
• Available alternatives to the dealing
• The effect of the dealing on the work
Journal FAQ: How Do I Manage Author Rights?

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FAQ Continued: 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
Creative Commons

[Diagram of Creative Commons licenses: BY, BY-NC-SA, BY-SA, BY-NC, BY-NC-ND, BY-SA-NC, BY-SA-ND]
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
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
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*