



Journal of Copyright in Education and Librarianship

JCEL is published by Clemson University Press
ISSN 2473-8336 | jcel-pub.org

Volume 2, Issue 1

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Pavy, Jeanne. (2018). Breakout Session: Copyright for Authors: Ideas, Activities, and Discussion Points. Presented by Sara Benson, Copyright Librarian for the University of Illinois Library. *Journal of Copy-right in Education and Librarianship*, 2(1), 1-4.



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by Sara Benson, Copyright Librarian for the
University of Illinois Library.**

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Copyright for Authors: Ideas, Activities, and Discussion Points

Sara Benson, Copyright Librarian for the University of Illinois Library, provided a dynamic, interactive train-the-trainers session. The presentation was based on a chapter she wrote for a forthcoming book to be published by the Association of College and Research Libraries. The chapter, which will include full lessons plans, will be openly available on her website after a brief publisher embargo.

Benson began by noting that whether one is a lawyer (as she is) or not, it is advisable to begin with a disclaimer that a presentation is not legal advice. She typically asks if anyone in the audience is a copyright owner and finds that students and even faculty are not always aware that they are. In this presentation, she described what is required to secure a copyright, what is protected, and what is not. For example, most fan fiction infringes copyright by creating derivative works. She also observed that her own slideshow presentation is an example of the right of public display.

Benson elaborated on the divisibility of copyrights, noting that authors can keep certain rights and then license some to third parties, emphasizing that the author owns the copyright until it is given away. She noted that faculty members (even law professors!) are notorious for failing to read their author agreements.

Joint authorship, while common in academia, is not always well understood by authors. Each joint author has an equal, undivided interest in the work, and any of the joint authors can legally (though perhaps not ethically) practice any of the rights without consulting their coauthors, including signing away rights to a third party. However, any money earned from licensing or the sale of rights must be shared among all authors. Given the potential for conflict, coauthors should agree ahead of time about the disposition of copyright. An audience member noted that in many scientific fields, it is common to have 10 or more coauthors, and authors have begun a movement to assign credit for specific contributions to scientific papers to make assessments for promotion and tenure more meaningful.

Another complex issue may arise when a copyrightable work is created in the course of employment, where the work is considered work-for-hire and the employer owns the copyright. In higher education contexts, institutions might technically own faculty copyrights, but they typically grant the copyright in traditional scholarly works (books, articles, etc.) back to the author. However, in cases where research products may be patentable or exploitable for profit, the authors are referred to the Office of Technology Transfer (or equivalent).

Whether the goal is to strictly control a work and protect it from infringement or to make it as easy to access as possible, authors must pay attention to the contracts they sign. The copyright symbol is not required, but does convey your intention to assert your rights, and formal registration is required if you intend to sue for damages. Alternatively, attaching a Creative Commons symbol indicates that you are encouraging specific kinds of reuse. Authors who have signed away all copyrights will not even be able to use their own work under the fair use exception because contracts trump copyright.

A specific example was discussed wherein an author signed an agreement giving up the right to post an article in a campus institutional repository for one year. That one-on-one personal agreement was primary for the author. One member of the audience suggested that more institutions should consider inserting language from the model library license in subscription contracts specifying rights that faculty retain in exchange for publication. Benson noted that this approach can work for journals, but probably not for books. This kind of maneuver reflects the trend toward having collections (including acquisitions and licensing) under the general umbrella of Scholarly Communication.

Next, Benson presented the group with sample author agreements and asked for comments on the advisability of signing them. In one example, all the copyrights were transferred to the publisher. It was agreed that this was not a “good deal” for the author. Benson noted that in some cases, the

contract will omit the word “copyright” and just mention “exclusive rights,” perhaps to avoid raising any red flags. The next example was identified as more advantageous in that it granted most rights back to the author, as long as non-commercial uses were made. The final example was a typical contract for depositing work into an institutional repository, in which no copyrights are transferred but a non-exclusive license to publish is granted.

Barriers and disincentives to retaining rights were discussed. Many journal submission procedures are structured around a simple all-or-nothing click-through agreement that makes attaching addenda or negotiate terms difficult. Also, untenured faculty members in particular are pressured to publish in prestigious journals, and they may not be as interested in pursuing OA publishing or modified author agreements. However, institutional mandates and public access directives are beginning to influence the decision-making process for authors. Another audience member pointed out that the economics of publishing are starting to become apparent to faculty members who soon realize that they are putting their work into journals that few will have access to (including, in many cases, the author).

Next, the audience was put into pairs to role-play the negotiation of an author agreement. Each person was given a script with goals for the negotiation and was directed to work toward a mutually acceptable contract. Benson noted that this exercise, which gives everyone a chance to practice asserting one’s own interests and to understand what the other side wants, seems to work well with both experienced and less savvy participants. When asked about her success rate in helping authors negotiate agreements Benson asserted that it varies. Many major commercial publishers have rigid embargo terms, but law journals, for instance, are usually inclined to openness because they are run by students who are not working in a commercial environment. Many authors can get favorable terms simply by using a standard author addendum.

Another participant wondered if younger faculty were more open to OA publishing than older faculty. Benson replied that we all encounter faculty and others with seemingly intractable views, and she recommended that faculty members refer back to the university’s mission to share scholarship and promote access to knowledge. Audience members chimed in that public mandates are helping make this mission visible and that faculty care about impact on a personal level even if they are not particularly concerned with lofty goals related to the public good.

Alternative metrics were also discussed. They differ widely by format and discipline, but are important for authors beyond tenure and promotion. Benson shared the example of a doctoral student who made her work openly available and, after generating a large number of downloads, successfully

submitted it for publication. She then embargoed the work after the fact to comply with the publisher request.

Benson has several short videos about copyright issues on her site, and she is hoping to create a new video soon based on the workshop content. She enthusiastically thanked the audience and asserted that she herself had learned a lot from the session.