



Copyright for Scholars— Informing our Academic Publishing Practices

Sara R. Benson

Copyright Librarian & Assistant Professor
University of Illinois

ACRL Information Literacy Frame: Information Has Value

Discipline: Social Sciences

Subject: Copyright

Pedagogy: Metaliteracy

Special Populations: Faculty; Graduate Students; Professional Students

When providing almost any kind of copyright workshop on campus, I begin with a simple question: Does anyone in this room own a copyright? Often, no one in the room full of students and faculty raises their hand. Now, this may be due to the reluctance to call attention to oneself in a crowd, or more likely, due to the fact that many people have a fundamental misunderstanding of copyright law: they think that one must do something fancy, like submit a registration to the United States Copyright Office in order to obtain copyright protection. Using this as a pre-assessment, I can gauge the awareness of the workshop participant's basic knowledge of copyright rules. The reality is, as I immediately point out to the individuals attending the training, everyone in the room likely owns a copyright as everyone in the room is an academic and has written some form of scholarly work (from an academic paper for a class to a dissertation to a scholarly publica-

tion). I explain that today copyright attaches to any work fixed (or written/recorded) that meets a low standard of creativity (originality).¹ After this first lightbulb moment, when I have captured the attention of my audience, I begin to really explain the background of copyright law.

Faculty and students alike, in all disciplines, must navigate complicated copyright issues in order to promote their work through academic publications, making this workshop both scalable and portable. However, many do not understand the rights they own or how to negotiate with publishers to manage those rights. This lesson was developed at the University of Illinois at Urbana-Champaign to educate both faculty and students alike about those important copyright issues. This lesson fits into the ACRL framework Information Has Value because scholarly writing, like other forms of academic discourse, has value as demonstrated through publishing agreements, copyright laws, and open access initiatives.² Additionally, it is crucial for scholars to identify what copyright rights are valuable to them in order to effectively negotiate individual publishing agreements.

The lesson begins with a summary describing how copyright property rights are formed and protected in modern society. It then moves into a discussion of what kinds of rights a scholar might wish to retain and how publishing agreements could affect those rights. Various forms of publishing agreements are discussed and, finally, open access initiatives and institutional repositories will help ground the discussion in scholarly communication practices. Importantly, the lesson incorporates discussion to engage the audience with essential questions underlying scholarly publishing and copyright. The activities and exercises incorporated in the lesson encourage metaliteracy by empowering the learners to immerse themselves in the negotiation process and think through a mock publishing agreement negotiation. It is critical that participants take away these critical perspective skills in order to apply the lessons they learn in this workshop to their own publishing agreements.

The Metaliteracy of Copyright in Academic Scholarship

The ACRL Framework was adopted in 2016 utilizing the theory of metaliteracy to provide further flexibility to the many different facets of information literacy outreach librarians engage in today. With the rapid flow of information over the web and with a proliferation of open access journal publications, copyright literacy among researchers and scholars is more

important than ever. The framework *Information Has Value* acknowledges that scholars have a valuable interest in understanding their rights as authors and acknowledges that the metaliteracy of copyright law is an important aspect of information fluency.

Pedagogy: Metaliteracy

Metaliteracy is the learning pedagogy concept built into the ACRL Framework³ that “empowers learners to participate in interactive information environments, equipped with the ability to continuously reflect, change, and contribute as critical thinkers.”⁴ Metaliteracy is designed to address new and emergent technologies that face all academics in the current digital environment. Metaliteracy is related to questions of informational literacy involving emerging technologies, but this new digital environment also includes copyright. For instance, academic students should understand their rights as authors to the work they plan to publish on the internet or through online repositories. Ideally, scholars will, as noted in the seven elements of metaliteracy introduced by Jacobson and Mackey, “understand ... intellectual property issues” even while they are sharing their work “in participatory environments” and “multiple media formats.”⁵ The activities and exercises incorporated into the lesson will encourage copyright metaliteracy by empowering the learners to immerse themselves into the negotiation process and “think through” a mock publishing agreement negotiation for a print journal. This exercise will also require participants to consider the concerns the publisher may have if the author also wishes to post the article in an online format.

ACRL Information Literacy Frame: Information Has Value

The *Information Has Value* frame provides that “[i]nformation possesses several dimensions of value, including as a commodity, as a means of education, as a means to influence, and as a means of negotiating and understanding the world.”⁶ It begins by pointing out that the novice learner “may struggle to understand the diverse values of information in an environment where ...the concept of intellectual property is first encountered through ...warnings about ...copyright law.”⁷ But the framework authors

challenge us to grow as users of information and, eventually, become experts who “understand their rights and responsibilities when participating in a community of scholarship.”⁸ A proficient understanding of the rights and obligations of authors under copyright laws is part and parcel of engagement within a “community of scholarship.”⁹

Background: A Brief Primer on Copyright Law

In order to deeply discuss the issue of an author’s control over their own scholarship, a basic discussion of copyright law is required. Of course, copyright law is complex, so it is important to note that the discussion will not cover every nuance of the law nor can it take the place of professional legal advice or representation. However, a basic understanding can be met with a few background explanations of the law, including how a copyright interest is formed, the author’s bundle of rights, how long an author’s copyright interest generally lasts, basic exceptions to copyright, and the interaction between copyright law and contract law.

The first step is to understand what kinds of work copyright law addresses that might be relevant to scholars. The list is fairly straightforward and includes: “literary works; musical works, including any accompanying words; dramatic works, including any accompanying music... pictorial, graphic, and sculptural works ...and architectural works.”¹⁰ Copyright does not protect ideas or facts, however.¹¹ As noted above, copyright protection begins when the work is fixed (written down or recorded) with the minimal level of originality (or creativity).¹² Today, an author need not include a copyright symbol, file a notice of registration with the Copyright Office, or take any further steps to have a copyright interest in a given work. However, it is important to note that an author may need to register the work with the United States Copyright Office in order to sue another individual for copyright infringement.¹³ Another important caveat to note is that it is still useful to include a copyright symbol on works authors wish to protect from infringement because the inclusion of the symbol puts others on notice of the protected nature of the work.¹⁴

Once the work is written or recorded, the author owns the right to “reproduce” the work, “prepare derivative works based upon the copyrighted work[,]” and “distribute... the work to the public...”¹⁵ In other words, the author owns the right to make copies of the work, publish

the work, promote the work, publicly display portions of the work, and send copies of the work to colleagues, post the work online or in an institutional repository, and the like. Importantly, if the author contracts with a publisher to transfer any or all of the author's copyright interests in the work to the publisher, the author loses those transferred rights to the work. Stated a different way, an author can contract away her rights to use her own work.

Lightbulb Moment: Author Scholarship Needs

After providing workshop participants with an overview of copyright law, the genuine discussion can begin by asking the group, "How do you generally intend to use your scholarship, such as published articles?" Generally, participants may espouse that they utilize their scholarship in a number of ways, ranging from teaching (by assigning the article to the class as required reading) to presenting the work at conferences to sharing the article with colleagues (perhaps through posting the work in an institutional repository).

The next question to ask is whether their copyright agreements permit them to utilize their published work in this manner. Most likely, many of the workshop participants will shrug their shoulders in response, noting that they are unfamiliar with the terms of any particular publishing agreement they have signed. And this is the point in the workshop where, ideally, a lightbulb will go off in the participants' minds: perhaps their publishing agreements do not permit them to use their own work in these customary ways. Perhaps in the past participants have inadvertently violated signed copyright publishing agreements. This lightbulb moment will prompt participants to engage deeper with the language of publishing agreements, which is exactly where the presenter will direct the discussion.

Activities: Engaging with Essential Questions

Now that the participants understand why it is important that they engage with the more pressing and essential question:¹⁶ What kind of language in a publishing agreement will adequately protect the rights, if any, that they wish to maintain in their work? When guiding participants through the following activities, the instructor can assess understanding by calling for discussion and participation.

First, Typical Copyright Language

In the first portion of the participation component, the instructor displays or disseminates in hard copy some typical copyright publishing language. After each set of language is displayed, the instructor queries, “What kinds of things can you, the author, do with your work after signing this agreement?”

The first set of contractual language is the most restrictive, leaving no rights to the author, and the audience should recognize this fact.¹⁷ One common misunderstanding to correct at this point may be that fair use always counteracts the effects of a strict agreement with a publisher. In reality, even the author’s fair use right can be contracted away, and this misunderstanding should be corrected.¹⁸

The next example of contractual language should be more lenient and allow the author to engage in many of the typical scholarly activities he or she would wish to employ.¹⁹ This would be an excellent opportunity to display the copyright language from a local source, like the institutional repository, especially if it is very author-friendly. This will assuage any concerns authors may have in depositing works with the institutional repository.

Second, Publishing Negotiation Exercise

In the next portion of the participation component, the instructor will ask participants to form pairs of two. One participant will be designated the “author” and the other will be assigned the role of “publisher.”

The participants will be provided with a document outlining their unique concerns in the publishing negotiation context.²⁰ It is important to instruct participants not to allow their partner to see their sheet until after the negotiation exercise is complete. Instruct participants that it is helpful to swap information sheets with their partner after they have completed the negotiation exercise. Explain that they will engage in a mock negotiation with a scholarly publisher for an article they wish to publish. The publisher and the author have different goals and needs, so remind participants to bear that in mind as they negotiate a copyright agreement.

Provide the pairs with ten to fifteen minutes to engage in the exercise and note that you will provide them with a two-minute warning when they should wrap up the exercise. Provide a disclaimer that you understand that in many instances you will not have the opportunity to meet with a pub-

lisher in a face-to-face meeting, but note that this exercise is much more engaging with a personal interaction, rather than an electronic one.

After the teams have engaged in the exercise, ask them to share their results. How many pairs were able to come to a satisfactory agreement? How many were not? Why? Allow the teams (time permitting) to share their individual experiences and thoughts about how this might relate to their future copyright negotiations with publishers. Perhaps ask whether this changed the perspective of any of the participants who represented the publisher in the exercise. Did this exercise prompt them to think more about publishing from a different viewpoint?

At the conclusion of the exercise, let participants know that there is welcome news—they will not have to reinvent the wheel of creating a publication addendum to protect their own rights. Indeed, the SPARC Author’s Addendum is available freely online.²¹

Lesson Plan

Learner Analysis

- The typical student in this workshop is any scholar who might need to negotiate copyright rights with a publisher, including graduate students, professional students, and professors.
- This lesson works well for the groups defined above because they may not normally think that a “click-through” or standard copyright agreement will impact their work in any way. However, through the lightbulb moment in the workshop (described in more detail below when participants realize the many rights they value and wish to protect in copyright), hopefully that perception will change. This is particularly helpful for graduate students writing a dissertation who wish to pre-publish part of their work.

Orienting Context and Prerequisites:

- There are no prerequisites for this session.

Instructional Context:

- The optimal teaching environment is a small classroom where group work is possible (if chairs can move into small groups).

- The classroom should have an instructor computer and projector.
- A moderator should read and understand the short lecture and discussion points prior to the workshop and, if necessary, read additional background reading materials. (This chapter ends with additional recommended reading.)

Learning Outcomes and Learning Activities

Learning Outcomes

As a result of this session, students attending the workshop will be able to:

1. describe the different kinds of copyright “rights” an author has in his/her work;
2. understand different kinds of licenses available for publication of an author’s work;
3. explain the kinds of uses an author might wish to make of his/her work (i.e., why to retain copyright);
4. understand the role of the institutional repository and when to deposit materials into the repository;
5. negotiate copyright agreements with publishers; and
6. understand how “open” a particular publishing agreement is and how to engage with a publisher to change copyright language in a given agreement.

Learning Activities

1. Lecture (*LO1, 10 minutes, essential*)
 - Students listen to a brief lecture about basic copyright principles
2. Guided Discussion (*LO3, 5 minutes, optional*)
 - Discussion about how academics wish to use their research (teaching, additional scholarship, conference presentations, etc.).
3. Discussion on Publishing Agreements (*LO2, 10 minutes, essential*)
 - Display two very different publishing agreements (one very restrictive and one very open license) and discuss it as a group to show the lightbulb moment—a restrictive contract prevents authors from using their own work for teaching/presenting to colleagues.
4. Group exercise (*LO5–6, 10 minutes, essential*)

- One person represents the publisher, the other person represents the author (each with a provided list of things they wish to see in the publishing contract regarding copyright): negotiate a license to retain important rights.
5. Discussion of Group Exercise (*LO6, 10 minutes, essential*)
 - Discuss the group exercise and provide participants with a sample “open” copyright provision they can utilize as an addendum in future negotiations with publishers.
 6. Summary of Lesson (*LO4 and 6, 5 minutes, optional*)
 - Summarize lessons learned and encourage participants to apply lessons in the next negotiation with the publisher and to deposit work in the institutional repository, where available.

Assessment

Assessment Goal

- Students will be able to understand their own copyright rights and will be able to negotiate their rights with publishers.

Formative Assessment Tool

- Group exercise and discussion. Through this discussion, the moderator will be able to tell whether students understand what rights are important to them and how to negotiate to protect them.

Summative Assessment Tool

- This quick tool, similar to the “one-minute paper”²² serves as both a reminder of the “aha” moment as well as a way to get the participant to think about how he or she can apply the concepts discussed to future work. Learners provide a written response to the following questions:
 1. Which rights do you, as a scholar, wish to retain?
 2. How will you use the information you learned in this workshop?

Summative Assessment Tool

- Send an email to all participants two months after workshop asking:
 1. Have you had a chance to negotiate with a publisher?

2. Were you able to apply the skills from the workshop? Why or why not?

Recommended Reading:

Copyright Basics. Circular 1. United States Government Printing Office, 2012. Available online at <https://www.copyright.gov/circs/circ01.pdf>.
Smith, Kevin L. *Owning and Using Scholarship: An IP Handbook for Teachers and Researchers*. Chicago: Association of College and Research Libraries, 2014. Available online at http://www.ala.org/acrl/sites/ala.org.acrl/files/content/publications/booksanddigitalresources/digital/9780838987483_copyright_OA.pdf. (See chapter 5.)

Appendix 12A

Restrictive Copyright Language Example

Copyright Transfer. In consideration of the action of the Publisher in reviewing and editing this submission (manuscript, tables, and figures), I hereby transfer, assign, or otherwise convey all copyright ownership, including any and all rights incidental thereto, exclusively to the Publisher, in the event that such work is published by the Publisher.

Appendix 12B

Lenient Copyright Language Example

Author's Retention of Rights. Notwithstanding any terms in the Publication Agreement to the contrary,... Author retains: (i) the rights to reproduce, to distribute, to publicly perform, and to 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 non-commercial 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.

Appendix 12C

Partner Publishing Exercise

For the purposes of this exercise, you are the Publisher.

Your goal with this academic journal article is to make money through subscription purchases. Thus, you wish to keep the article closed access and limited only to those who subscribe to the paper journal.

If the article is posted online, you estimate that you will lose at least \$500 in journal purchases, as this author is high profile and many individuals purchase the journal to read his/her work.

However, you are willing to permit the author to put the journal in the institutional repository with a six-month embargo (i.e., waiting six months to make it public). Additionally, you are willing to allow the author to use the article in scholarly presentations and academic courses. You really do not want to lose this author, so you are willing to compromise a bit.

For the purposes of this exercise, you are the Author.

Your goal with this academic journal article is to make it as widely read as possible, so you want it to be an open access publication.

However, you are in your last year of tenure review, so you are willing to compromise a bit. You definitely want to put the journal into your institutional repository so that you can share it with other academics. You also want to retain the right to attend conference and present this paper at those conferences. You also want to be able to use the paper for academic purposes in your classes.

You really do not want to miss out on publishing with this prestigious journal, so you are willing to compromise a bit.

Notes

1. Copyright Act of 1976, 17 U.S.C. § 102(a) (2012).
2. American Library Association, *Framework for Information Literacy for Higher Education*, ACRL, January 11, 2016: 6, accessed October 20, 2016, <http://www.ala.org/acrl/standards/ilframework>.
3. *Ibid.*, 2.
4. Trudi E. Jacobson and Thomas P. Mackey, “Proposing a Metaliteracy Model to Redefine Information Literacy,” *Information Literacy* 7, no. 2 (2013): 84.
5. *Ibid.*, 87.
6. ACRL, 6.
7. *Ibid.*
8. *Ibid.*
9. *Ibid.*
10. 17 U.S.C. § 102(a).
11. *Ibid.* § 102(b).
12. *Ibid.* § 102(a).
13. *Ibid.* § 412(2).
14. *Ibid.* § 401(d).
15. *Ibid.* § 106.
16. Grant Wiggins and Jay McTigue, *Understanding by Design* (Alexandria, VA: Association for Supervision and Curriculum Development, 2005), 105.
17. Appendix 12A.
18. Elizabeth M. N. Morris, “Will Shrinkwrap Suffocate Fair Use?” *Santa Clara Computer & High Tech. L.J.* 23 (June 2007): 261.
19. Appendix 12B.
20. Appendix 12C.
21. “Author Rights and the SPARC Author Addendum,” SPARC 2007, accessed Nov. 4, 2016, <http://sparcopen.org/our-work/author-rights/sparc-author-addendum-text/>.
22. Melissa Bowles-Terry and Cassandra Kvenild, *Classroom Assessment Techniques for Librarians* (Chicago: Association of College and Research Libraries, 2015), 13.

Bibliography

- Bowles-Terry, Melissa, and Cassandra Kvenild. *Classroom Assessment Techniques for Librarians*. Chicago: Association of College and Research Libraries, 2015.
- Copyright Act of 1976, U.S. Code 17 (2012), §§ 101 et seq.
- Framework for Information Literacy for Higher Education*. ACRL Jan. 11, 2016. Accessed October 20, 2016. <http://www.ala.org/acrl/standards/ilframework>.
- Jacobson, Trudi E., and Thomas P. Mackey. “Proposing a Metaliteracy Model to Redefine Information Literacy,” *Information Literacy* 7, no. 2 (2013): 84.
- Morris, Elizabeth M. N. “Will Shrinkwrap Suffocate Fair Use?” *Santa Clara Computer & High Tech. L.J.* 23 (June 2007): 237.
- SPARC. Author Rights and the SPARC Author Addendum. 2007. Accessed Nov. 4, 2016. <http://sparcopen.org/our-work/author-rights/sparc-author-addendum-text/>.
- Wiggins, Grant, and Jay McTigue. *Understanding by Design*. Alexandria, VA: Association for Supervision and Curriculum Development, 2005.