

Author-Rights Language in Library Content Licenses

Ellen Duranceau, Scholarly Publishing and Licensing Consultant, MIT Libraries, and Ivy Anderson, Director of Collections, California Digital Library

Note: The varied arrangements regarding authors' rights to their manuscripts result in limitations on sharing information across repositories. An emerging strategy for addressing author-rights language is to incorporate it into publisher contracts for licensing content. In this article, representatives from MIT Libraries and the California Digital Library provide background on the utility of this approach and describe their recent experiences in negotiating their Springer contracts.

—Julia Blixrud, Assistant Executive Director, Scholarly Communication, ARL

Introduction and Background

The idea of including author-rights language in content licenses has recently been gaining ground, particularly in light of the contracts negotiated by the Max Planck Society and the University of California (UC) with the scientific publisher Springer.¹ These attempts to leverage content licenses to secure author rights reflect the fact that it is unrealistic to expect the rights environment to change solely through individual authors' contract discussions with publishers. Faculty promotion and tenure processes depend on publishing in particular journals, and authors therefore often do not feel empowered to push back on standard publisher policies; nor is debating points of copyright a natural fit for many authors. Anecdotal reports as well as surveys² confirm that authors do not routinely negotiate the terms of their publisher copyright agreements and do not retain copies of them. For the most part, this means that universities and research funders face significant barriers to storing and sharing copies of research output that they have either paid to develop and/or whose dissemination is essential to their missions.

At a gathering hosted by ARL in January 2009, a small group of experts from ARL member libraries and National Library of Medicine staff discussed how to

address the barriers to sharing content between repositories.³ Developing standard author-rights language that libraries could use in negotiating content licenses emerged from the discussions as a significant action item. The group felt that this would be an important step to reduce the barriers created by the fragmented landscape of author-rights arrangements that can result from leaving all negotiation up to individual authors. This approach also complements strategies to develop institutionally based policies like the one recently adopted by the Massachusetts Institute of Technology (MIT) faculty.⁴

Including author-rights language in university-wide site licenses for content can remove the burden from individual authors, and clarify and simplify the rights environment, making research as openly accessible as technology now allows in order to speed science and exchange of ideas.

Library content license negotiations offer a pre-existing tool to serve this purpose. While individual author agreements can amount to thousands of

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individual transactions each year at a single institution, library-publisher agreements are annual or multi-year arrangements with a broader compass, covering many journals in a single transaction. These library content licenses describe policies for use of content by a given institution's users, making it a logical extension to expand these licenses to

cover author and university rights to the work included in content that is authored at that institution. This method balances all three legs of the scholarly publishing stool—authors, universities, and publishers—in a single agreement, addressing one of the discontinuities of the existing scholarly publishing system, in which universities buy back content released by their authors in separate transactions with the same publishers. Simply put, there is both elegance and economy in linking access to a publisher's electronic journals with rights for the authors who have supplied articles contained in those journals.

As a practical matter, author-rights language could be negotiated as a separate agreement. But this option undermines both the efficiency to be gained by a combined negotiation and the leverage inherent in the desire to finalize the license agreement, a document that is already negotiated between the university and the publisher and which is of vital importance to both parties since key journal access hangs in the balance.

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While the Northeast Research Libraries consortium (NERL) has considered including author-rights language in its standard license, and Harvard University experimented with the use of similar language in its publisher licenses several

years ago, the first major public example of putting this approach into action was the Max Planck Society's agreement with Springer announced in February 2008. In this agreement, Max Planck authors' works

at all 78 Max Planck Institutes and research facilities across Germany are included automatically in Springer's Open Choice program (which makes individual articles openly accessible normally with payment of an extra fee).

The Max Planck-Springer arrangement was described in the press release as "a 2-year experiment to investigate whether this construct is a more sustainable business model for scholarly publication." Two recent agreements with Springer negotiated in the US—by the University of California and MIT—can provide further detail on the kinds of license terms that should be considered.

University of California Agreement with Springer

The University of California system followed the Max Planck model, incorporating an open-access publishing agreement into the three-year journals license negotiated with Springer by the California Digital Library (CDL) on behalf of the 10 UC campus libraries in 2008. Key characteristics of the UC arrangement are: automatic inclusion of UC-authored articles in Springer's Open Choice program, which offers full and immediate access (in this instance, without requiring separate author fees); author retention of copyright with rights transferred to Springer under a license compatible with the Creative Commons Attribution-Noncommercial license; and automatic deposit of the final published articles in the eScholarship institutional repository managed by the CDL's eScholarship publishing program.

Like the Max Planck agreement, UC and Springer have framed this as a two-year pilot and have agreed to cooperate in evaluation and analysis and to report publicly on their findings. The agreement was developed in consultation with the university's faculty committee on the libraries and scholarly communication, which endorsed the initiative and has asked the CDL to explore similar open-access arrangements with other publishers.

Massachusetts Institute of Technology Agreement with Springer

Following license discussions that began in the summer of 2008, MIT has signed a three-year agreement with Springer that includes language that gives MIT authors rights to flexibly reuse and post their work. MIT-authored articles published in a Springer journal that MIT subscribes to can be posted anywhere on the Web, including institutional, disciplinary, and other open-access repositories as well as on the author's Web page. The version of the article expected to be targeted is the author's final version, after peer review, which is also the focus of the MIT Faculty Open-Access Policy.

The language is written not as a direct extension of rights to authors, but in such a way that MIT retains certain rights, including the right to extend those rights to the authors of the articles. MIT considered a number of options in developing wording for the agreement, including the third-party beneficiary issue, which would allow MIT authors to benefit by a contract between MIT and a publisher. MIT decided it was cleaner to have the rights go directly to MIT because the authors are not direct parties to the agreement.

The aim was to begin with a set of terms that would allow MIT-authored work to be widely shared, without the need for individuals to negotiate such rights for each paper. The agreement was developed in a spirit of joint exploration and innovative partnership with Springer.

Conclusion

MIT's and University of California's efforts represent different approaches to including author-rights language in content licenses, highlighting the potential for universities and publishers to benefit from the availability of standard language that could be used in carving out agreements. Certain common principles are suggested by these case studies, and offer a framework for universities seeking to work with publishers on new models. Several institutions represented at the ARL meeting in January have begun discussions aimed at addressing these concerns.

Defining the principles underlying such agreements is a useful first step in creating standard language. For example, assuring that the language allows for making articles available under Creative Commons licensing clearly offers a substantial benefit to scholars, opening up the possibility of using new data-mining and filtering tools, a desirable—even necessary—step forward in

managing and sharing research to speed science and understanding. Securing the right to deposit articles in institutional or discipline-based repositories may facilitate the development of new and more sustainable modes of access and research dissemination.

Springer has led the way with innovative and open-minded agreements, taking a bold step into a new publishing landscape and demonstrating a willingness to partner with universities. The old subscription model is no longer the only model for journal publishing, and its sustainability is in question. The opportunity exists for all three legs of the stool—universities, publishers, and authors—to work on a newly balanced model that serves to benefit us all. Whether to share ideas for managing climate change or an AIDS vaccine, this is a time for fostering partnerships to support the evolution of scholarly publishing toward a more open environment, built on a sustainable foundation.

¹ See “Max Planck Society and Springer Reach Agreement,” Max Planck Society press release, February 4, 2008, <http://www.mpg.de/english/illustrationsDocumentation/documentation/pressReleases/2008/pressRelease20080204/>. Earlier agreements, though less well known in the US, were signed by the Dutch University Consortium and the University of Gottingen with Springer in June 2007 and October 2007, respectively. Details about the UC agreement, including an FAQ for faculty, are available on the university’s Reshaping Scholarly Communication Web site at <http://osc.universityofcalifornia.edu/alternatives/springer.html>.

² University of California Office of Scholarly Communication and the California Digital Library eScholarship Program in association with Greenhouse Associates Inc., “Faculty Attitudes and Behaviors Regarding Scholarly Communication: Survey Findings from the University of California,” August 2007: 61, <http://osc.universityofcalifornia.edu/responses/materials/O5C-survey-full-20070828.pdf>; Denise Troll Covey, “Faculty Rights and Other Scholarly Communication Practices,” faculty survey performed at Carnegie Mellon University, presented at Digital Library Federation Fall Forum, Boston, November 8, 2006.

³ For an overview of the January 2009 meeting, see Karla Hahn, “Achieving the Full Potential of Repository Deposit Policies” in this issue of *RLI*.

⁴ See “MIT Faculty Open-Access Policy,” Scholarly Publication—MIT Libraries, <http://info-libraries.mit.edu/scholarly/faculty-and-researchers/mit-faculty-open-access-policy/>.

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