

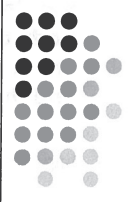
## Presentations for Faculty

**"Don't I Own My Own Work?"  
Negotiating to Keep Your  
Copyright**

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**Intellectual Property in the Digital Age: The  
Rights Stuff for Publishing and Teaching**  
December 6, 2006


Amy Blum, Campus Counsel  
Sharon E. Farb, UCLA Library



Intellectual Property in the Digital Age Series

**Outline**

1. Introductions
2. UC Policy on Copyright Ownership for Faculty
3. Exclusive Rights of Copyright Owners
4. Joint Ownership
5. Authors Rights
6. Negotiations with Publishers
7. Resources and Tools for Faculty Authors
8. Questions and discussion



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## It all starts with the mission...



### UC Policy on Copyright Ownership

- Section I.
- Preamble

- **"The creation of copyrighted works is one of the ways the University fulfills its mission of contributing to the body of knowledge for the public good. The University encourages the creation of original works of authorship and the free expression and exchange of ideas."**

- <http://www.universityofcalifornia.edu/copyright/systemwide/pcoi.html>

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- **Under copyright law, the creator of the original expression in a work is its author. The author is also the owner of copyright unless there is a written agreement by which the author assigns the copyright to another person or organization, such as a publisher.**

- See UC Policy on Copyright Ownership, section IV

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### What exclusive rights does a copyright owner have?



- Make copies of the work
- Make derivative works based on the original work
- Distribute the work
- Perform the work publicly
- Display the work in a commercial setting

In the case of visual works, the author also has the right to:

- Claim authorship of the work (attribution)
- Prevent others from attributing distorted works to original author (integrity) The owner of a copyright may license these rights to others

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### The 1992 Policy Framework



- "Copyright ownership resides with the originator of the work if it is:
  - **Scholarly/Aesthetic Work**, done by Faculty and designated academic employees.
  - **Personal Work**, which is a work developed by a University employee outside the scope of their University employment and without University resources.
  - **Student Work**"
- Copyrighted Works Created at the University of California
- <http://www.ucop.edu/ott/crworks.html#who>

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## Joint Authors



- "Absent an agreement to the contrary, authors own the work jointly and equally. Each joint author, therefore, has the right to exercise any or all of the exclusive rights inherent in the joint work."

<http://www.universityofcalifornia.edu/copyright/ownership/html#b>

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- Copyrights can be bought, sold, willed to others, or given away. A transfer of the copyright or an exclusive grant or license to use the work is a transaction that must be conveyed in writing.



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- "A complete transfer of copyright to a publisher restricts a faculty member's right to use the work in future teaching and research. UC faculty members facing this situation should not hesitate to try to negotiate new terms."
- UC Policy on Copyright Ownership <http://www.universityofcalifornia.edu/copyright/ownership.html#b>

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### Did You Know...

- If you sign over your copyright you could be required to ask permission to use your own work:
- To post on your website
- To contribute to your university's institutional repository
- To digitally archive your own work
- To share with others
- To allow others to use your work

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## Digital *is* Different



- Copyright controls "copying" and "copies" of creative expression
- **Every use** in digital environment creates a "copy"
- **Every use** potentially implicated or controlled by copyright
- Libraries throughout time—mission provides long-term access and use of collections and dissemination of knowledge
- Faculty need to know their rights in order to manage and use their own intellectual property

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- 2003 ALPSP survey *What Authors Want* found that "61% of respondents thought that copyright should remain with the author, rather than being signed over to the publisher."



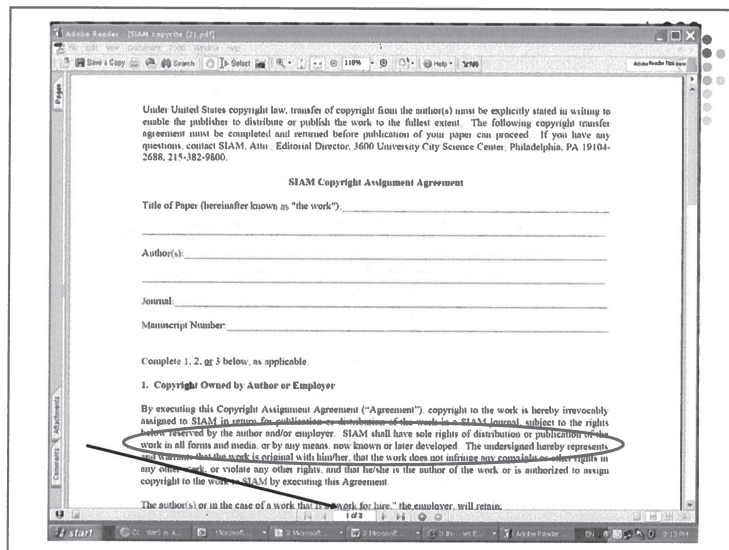
Association of Learned and Professional Society Publishers.  
ALPSP Survey. *What Authors Want*. (2003)

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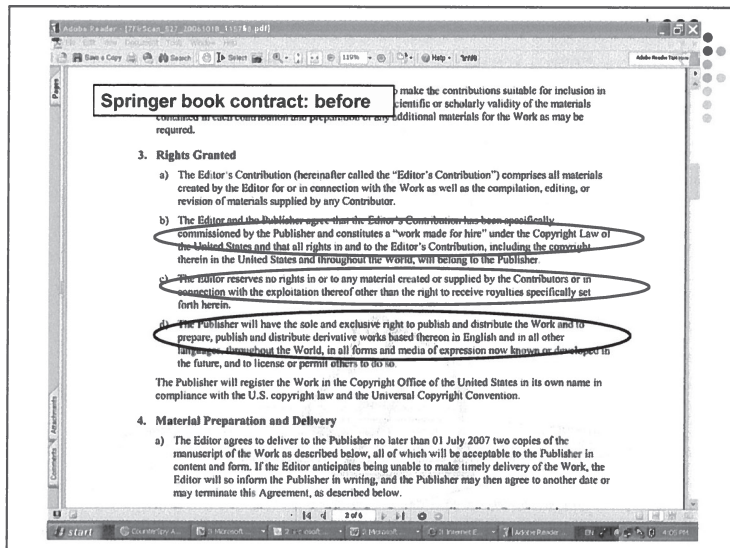
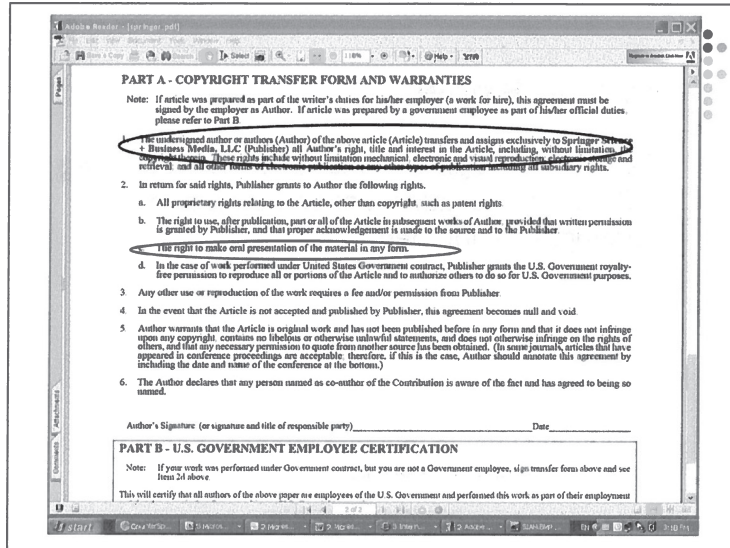
## Did You Know...

- 72 of the 80 agreements (90%) representing 94% of journal titles, asked authors for copyright assignment.
- Gadd, E., Oppenheim, C., Proberts, S. (2003). *An Analysis of Publishers' Copyright Agreements*.

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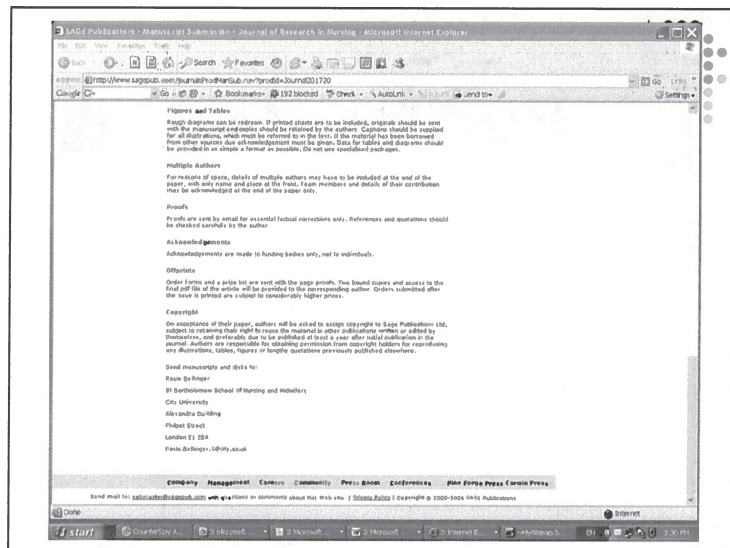


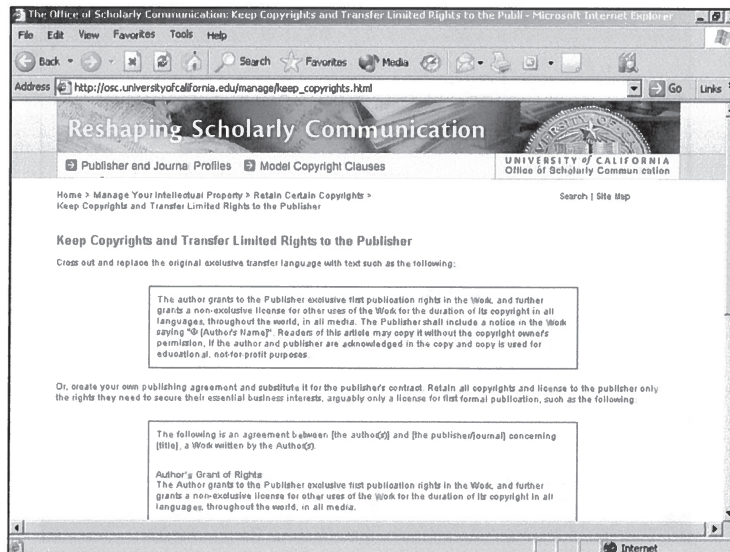
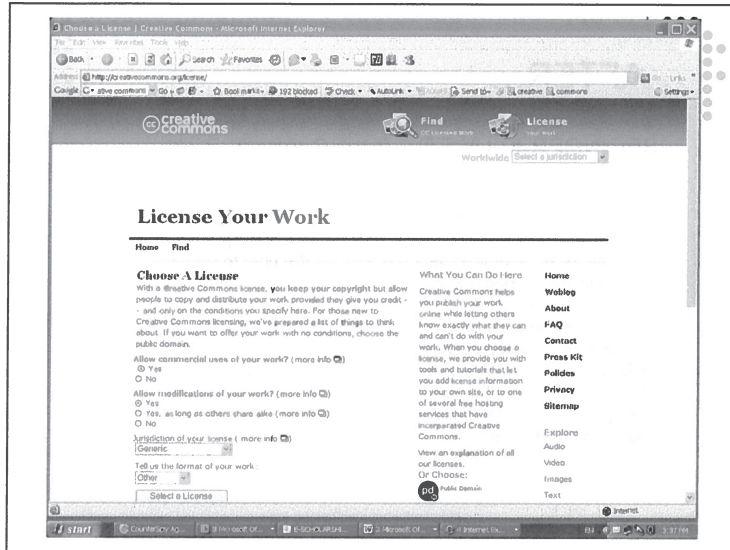
## AFTER...

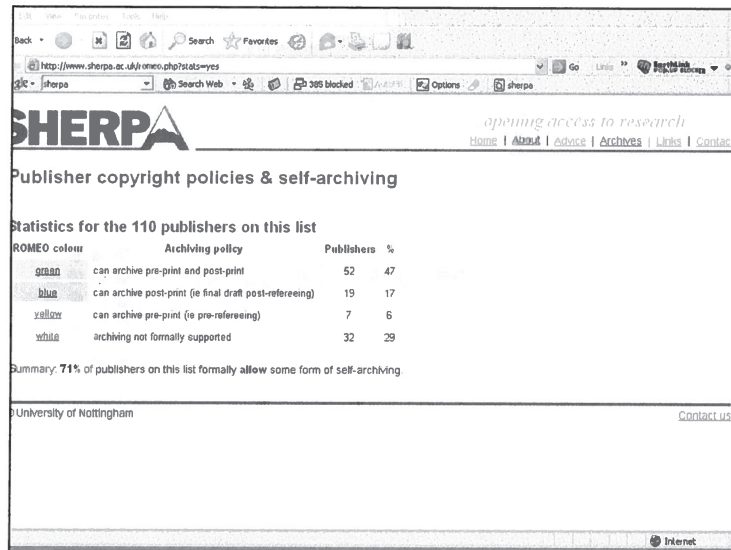
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"Author retains: (i) the rights to reproduce, distribute, perform, and display the Content in any University-related or personal medium for non-commercial purposes; (ii) the right to prepare derivative works from the Content; and (iii) the right to authorize others to make any non-commercial use of the Article so long as Author receives credit as author and the Publisher in which the Content has been published is cited as the source of first publication of the Content. For example, Author may make and distribute copies in the course of teaching and research and may post the Content following publication on personal or institutional Web sites."

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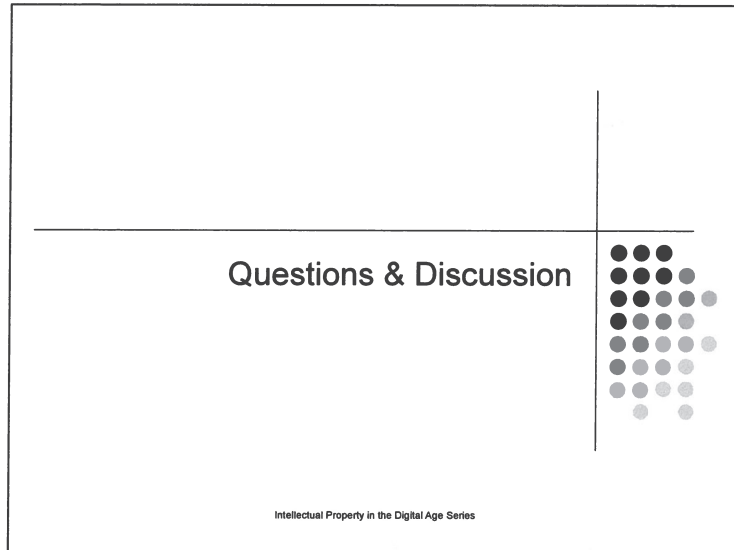




## What You can Do

- Retain Your Copyright
- Discuss Authors Rights with your colleagues
- Negotiate with Publishers to retain control over scholarly communication.
- Contribute to the your university's institutional repository
- Support Open Access Journals

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5/21/09

**Making the Most of Your  
Publications**

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READING AND NEGOTIATING A COPYRIGHT TRANSFER  
AGREEMENT WITH  
WILEY & SONS AND THE  
AMERICAN CHEMICAL SOCIETY

MARIANN BURRIGHT  
BOB MICHAELSON  
NORTHWESTERN UNIVERSITY  
TUESDAY, FEBRUARY 17, 2009

**Copyright Foundations**

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- Copyright Law (Title 17 U.S.C.) is based on Article 1, Section 8 of the U.S. Constitution:

“The Congress shall have Power... 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.”

Thursday, May 21, 2009

5/21/09

### Before Signing a copyright transfer agreement

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- **Anticipate future uses of your published work, will you want to:**
  - Link to the full-text from your department website (freely accessible to the world)
  - Upload to Blackboard for students to download and read
  - Deposit in a digital repository or archive ("self-archive")
  - Send copies to colleagues
  - Distribute at conferences
  - If your research is funded by NIH, deposit in PubMedCentral (mandated by law)
  - Translate it into another language for publication, republish in other formats, use it as basis to create other works

Thursday, May 21, 2009

### Before Signing a copyright transfer agreement

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- **Your exclusive rights as author are (17 U.S.C. 106):**
  - Reproduce
  - Distribute
  - Create derivative works
  - Display work publicly
  - Perform work publicly
  - Prevent circumvention of technological protections on digital works ("anti-circumvention", DMCA)

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## Before Signing a Copyright Transfer Agreement

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- Few points about copyright ownership
  - For works first published in the U.S., copyright protection lasts for life of the author + 70 years (for works created Jan 1, 1978 or after)
  - Work must be fixed in a tangible format to be protected by copyright law (it also has to be minimally creative and original)
  - Creator has exclusive rights to the work upon fixing it in tangible format
  - Rights to the work can be 'unbundled' upon transfer or assignment
  - For multi-authored works, joint authorship constitutes contribution of original expression and equal share to the copyright in a work as *tenants in common* (each person has equal right to possess whole work; each can grant a non-exclusive license to work, but must agree for full transfer of rights)
  - *Works for hire* apply to federal employees working in their scope of their employment whereby employer is copyright owner outright. *Works for hire* is not limited to government employees

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## When Reading a copyright transfer agreement

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- Your options:
  - Assign all rights to publisher by exclusive license:
    - ✦ You no longer have any control over your work
    - ✦ Least to your benefit and most to publisher's benefit
    - ✦ Requires no negotiation
  - Transfer some rights to publisher, retain others:
    - ✦ You retain control over some of your rights
    - ✦ Somewhat beneficial to you and to the scholarly community
    - ✦ Requires some negotiation
  - License your rights to the publisher:
    - ✦ You grant right of first publication to publisher, but retain all rights thereafter
    - ✦ Most beneficial to you and to the scholarly community
    - ✦ Requires most negotiation

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### When Reading a copyright transfer agreement

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- Consult publisher copyright policies:
- Sherpa/ Romeo site:  
<http://www.sherpa.ac.uk/romeo/>
- Journal website for latest version of copyright transfer agreement form
- Directory of Open Access Journals for other options  
<http://www.doaj.org/>

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### Reading a copyright transfer agreement

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- Wiley & Sons:  
<http://www3.interscience.wiley.com/homepages/central/cta/UKscta.pdf>

Assuming you sign this agreement unamended, does it allow you to do the following?

- Post the full-text of your published article on your department website?
- Republish your article in a book?
- Upload your article to Blackboard?

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## Reading a copyright transfer agreement

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- **The American Chemical Society:**

[http://pubs.acs.org/userimages/ContentEditor/1218205118705/interactive\\_copyright.pdf](http://pubs.acs.org/userimages/ContentEditor/1218205118705/interactive_copyright.pdf)

Assuming you sign this agreement unamended, does it allow you to do the following?

- Send a copy to your colleagues?
- Post a version of the article on your web site?
- Republish your article in a book?

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## When and how to negotiate?

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- **When:**

- You anticipate future uses of your published work that are not provided in the agreement
- Your anticipated future uses of your published work may exceed a fair use defense against copyright infringement (systematic use)
- You simply want to retain full or most of your rights (the law is on your side!)

- **How:**

- Use an author addendum form
- Sign and date publisher agreement and include "Subject to Attached Addendum" on the publisher agreement form and your cover letter
- Send publisher signed originals and retain copies for your files

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## Author Negotiation Tools

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- **CIC Author Addendum:**

<http://www.northwestern.edu/provost/announce/cic.htm>

**Key features:**

- Grants author non-exclusive rights to his/her work without limitations
- After six months from date of first publication, author has non-exclusive rights to work
- Author has non-exclusive rights to grant to Author's employing institution rights of reproduction, distribution, display, performance

**Other addenda:**

- Scholarly Publishing & Academic Resources Coalition (SPARC):  
[http://www.arl.org/sparc/bm~doc/Access-Reuse\\_Addendum.pdf](http://www.arl.org/sparc/bm~doc/Access-Reuse_Addendum.pdf)
- SPARC/ Science Commons Scholar's Copyright Addendum Engine  
<http://scholars.sciencecommons.org/>

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