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# As I See It! -- Authors' Rights: A Lesson In Misunderstanding In Scholarly Publishing

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# As I See It! — Authors' Rights: A Lesson In Misunderstanding In Scholarly Publishing



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A recent report from the **Publishing Research Consortium (PRC)** exposed a misunderstanding among authors of journal papers, which extends to the library community: that publishers unduly restrict the ability of an author to provide copies to colleagues, incorporate the work in future writing, or post the article to a personal Website or repository. This report (**Morris S.**, *Journal Authors' Rights: perception and reality*, **Publishers Research Consortium**, 2009, [www.publishingresearch.net/documents/JournalAuthorsRights.pdf](http://www.publishingresearch.net/documents/JournalAuthorsRights.pdf)) is based on a survey that **Laura Cox** and I undertook for the **Association of Learned and Professional Publishers (ALPSP)** in 2008 (**Cox J. & Cox L.**, *Scholarly Publishing Practice: Third Survey, ALPSP 2008*, [www.alpsp.org](http://www.alpsp.org)).

The **ALPSP Report** was an analysis of a questionnaire-based survey in 2008 of 400 journal publishers, consisting of **ALPSP, SSP, AAUP, STM** and **AAP-PSP** members and others known to be active in the scholarly journal market, including virtually all major journal publishers. The survey produced a response rate of 65 percent. It covered authors' rights, among a range of publishing practices.

In the print environment, authors typically transferred copyright in their papers to the publisher upon acceptance. This was not a carefully constructed plot by publishers to obtain ownership and control by subterfuge, but a simple way to arrange for publication that was well established and problem-free long before the Internet, or even the photocopier, had been invented.

Of course, this has changed as journals now are typically submitted, edited and published in an entirely digital process. As recently as 2003, 83 percent of publishers required copyright transfer; in 2008 this had dropped to 53 percent. In parallel, a license to publish has become increasingly acceptable, especially to commercial publishers.

Arguments about where copyright should reside is beside the point. They are characterized by misunderstanding of the law. Who owns the copyright is much less important than what the author can do with his or her own work. Regardless of whether the author transfers copyright, or licenses the publisher, the practical issue revolves around what authors can do with the article once it has been submitted for publication.

There is clearly a growing consensus among publishers on what authors can and cannot do with their papers after submission. This falls into two broad categories: posting articles online, and the re-use by authors of article content in subsequent work by them. Publishers' policies on posting articles depends on the stage the author's article has reached in the publishing and review process, so it is useful

to divide posting policies into three categories: articles submitted but not yet reviewed, articles accepted for publication but not yet processed for publication, and the publisher's version as published in the journal — the final version that is treated as the authoritative version.

There has been a general trend, particularly among smaller publishers, to allow authors to post articles that have been submitted to a journal, but not yet accepted — i.e., pre-prints, while larger publishers appear to be more cautious. Personal Webpages and institutional repositories are clearly preferable to subject-based repositories, although that may change in future years in the life sciences, as the effect of **Wellcome Trust** and **NIH** policies work their way through the system. Publishers are clearly more concerned about article postings in more organized discipline-based silos than in those in individual institutions. Moreover, a trend has emerged to embargo postings until a specified period after publication, intended to protect journal subscriptions.

Once an article has been accepted for publication, similar trends are at work. However, the timing of the posting has become more of an issue. While most publishers appear to be relaxed about posting, some larger publishers have begun to prohibit posting until after publication. The use of embargo periods has increased.

When the article has been published, the proportion of publishers allowing posting of published articles in any sort of repository has fallen. This is especially true of the larger publishers, concerned about unregulated and unremunerated access to published articles online. For them, posting the author's final post-review version is allowed, but the article as published in the journal is seen as the domain of the publisher. Large publishers are increasingly reluctant to allow posting in subject repositories, while smaller publishers have become more permissive. The proportion of publishers allowing posting on publication stands at 58 percent, while 33 percent allow it only after publication.

More publishers have woken up to the importance of links from the posted version to the published article. The authenticity, integrity and value of the authoritative published version lies at the heart of the scholarly record. 60 percent of them require such links; nearly 40 percent of them provide links to the full text toll free, without a subscription being required.

Publishers have become much more relaxed in allowing authors to re-use their own material in their own teaching and in other work for publication. Most publishers allow this, although there is a significant group of medium-sized publishers that require separate permission for such uses, although why they want to assume the administrative burden of

processing permissions for very little return is beyond this author's understanding.

We can draw a number of tentative conclusions from these policy trends:

- There is a distinct trend away from a blanket insistence on the transfer of copyright when an article is published. Many more publishers are now prepared to accept a licence to publish in which the author retains copyright, albeit with restrictions on what the author can do with the work.
- The development of institutional and subject based repositories has caused some publishers to reconsider the rights that authors retain to post their articles on the Web. Large publishers have clearly become increasingly concerned about the unremunerated availability of articles in repositories, and have become more specific in their policies, notably in relaxing prohibitions on posting pre-prints, but imposing embargoes on posting the final accepted version.

The **ALPSP Report** analyzed trends at the publisher level. Using the same data, the **PRC Report** re-analysed the data at the article level. Its analysis covered around 75 percent of all articles published. Because it was exploring author perceptions, it commissioned a market research survey of 1,163 journal authors, asking them about their knowledge or perception of their rights as authors in re-using their article content. The results are revealing.

Fewer authors believe that they can post their articles to a personal Website or to an institutional or subject-based repository than are entitled to do that under their publisher's standard Author Agreement. Publishers are exceeding their authors' expectations. The majority of such agreements allow authors to provide copies to colleagues, incorporate the article into their subsequent work, or use the article in course packs. Moreover, there is confusion over the version of the article that can be posted. Over 50 percent of authors think that they can post a PDF of the final published version, whereas only a small proportion of publishers actually permit this, because of concerns over the impact on subscriptions. The permitted version is generally the submitted or accepted version.

The discrepancy between perception and reality is perplexing. Even in the physical sciences, where the **arXiv** repository is an established and widely used feature of the infrastructure, the **PRC Report** points out that only 34-52 percent — the variation depends on the version of the article — of authors believe that they are permitted to post an article in a subject-based repository. Perhaps we should

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## Is the Library Collection Too Risky?

by **Rick Anderson** (Associate Director for Scholarly Resources & Collections, Marriott Library, University of Utah; Phone: 801-721-1687) <rick.anderson@utah.edu>



Like many (maybe even most) of my colleagues, I've been thinking a lot lately about how to allocate a suddenly diminished materials budget. Only a year ago our biggest worry was how to deal with serials inflation in an environment that offered insufficient budget increases. Those were apparently the good old days. Now we're dealing with double-digit budget cuts and the promise of more to come, and this means (or had better mean) a more fundamental reassessment of our collecting strategies.

At the same time that library budgets are tightening, a seemingly unrelated development has been quietly emerging in the publishing industry: the phrase "out of print" is finally beginning to disappear from the corporate vocabulary. The **Google Books** project has made millions of out-of-print books available to search and, in many cases, to actually read on people's computers and (much more significantly) phones; **Amazon's Kindle** eBook reader, while not a runaway success like the **iPhone**, has proved popular enough to justify a new version and an additional model, with potentially significant implications for the future of reading; the **Espresso Book Machine** has finally made real-time print-on-demand services a possibility in both libraries and bookstores, and is being adopted slowly but steadily and widely, and with increasing speed. Each of these would be a significant development in itself. Taken together, they are changing the fundamental character of both reading and publishing.

But what do they have to do with tightening library book budgets? In fact, all of these factors come together to change the way we should be thinking about risk factors in collection development.

Let's step back and think for a minute about why it is that we build library collections — why we stockpile books and journals and other documents, whatever the format. It's easy to think that building collections is our reason for being; that the purpose of the library as an organization is to create and care for a collection that meets the research needs of our users. Much of our everyday language about librarianship reflects this belief.

But this mindset confuses means with ends. The real reason we build collections, I think, is so that we will already be prepared to meet our patrons' needs in the moment that our patrons realize they have them. We buy printed books so that when our patrons walk into the library the right books are waiting for them to check out; we subscribe to online journals so that when our patrons go looking for available articles on a particular topic, the ones they want will already be accessible and ready to download. Of course, there's a fundamental problem with this approach: we don't always guess correctly what our patrons are going to need. In fact, we guess incorrectly with distressing frequency. But guessing has always been our only reasonable option, for two main reasons: first, we were dealing mainly with print (which was hard to find, expensive to move, and slow to deliver); and second, scholarly books went out of print very quickly — if we didn't buy a copy from the first print run, which often consisted of only a few hundred copies, there was a strong likelihood that we wouldn't be able to get one later.

Here's a simpler way of putting it: in the print era, budget dollars were relatively abundant and documents were relatively scarce. This meant that the risk of mispending a dollar on the wrong book was counterbalanced by the risk of failing to buy the right book — and therefore, it made sense to throw more money after documents on a speculative basis. Yes, you were running the risk of buying the wrong thing, but for many libraries it made sense to spend more money on a very large and inclusive collection that was more likely to meet all patron needs rather than try to save money by building a very tight and selective (and therefore limited) collection that ran a greater risk of failing to meet those needs.

But everything's different now. Budget money that was once relatively plentiful is now drastically scarcer, while older books that were once difficult or impossible to find are now often both easy to locate and cheap to buy through online sources like **Amazon** and **Bookfinder.com**. And there is no longer any need for a book to go out of print. Millions of books that were until recently lost to the

public's view are now freely available online, thanks to **Google**; current books that are still in copyright but can't be distributed normally in an economically sustainable fashion can be sold one at a time through print-on-demand utilities like the **Espresso Book Machine** (not all publishers make their books available in this way, of course, but the option to do so now exists where before it did not). And ebooks don't have to be purchased in advance of demonstrated patron need at all — services like **Electronic Book Library** and **MyiLibrary** will provide libraries with catalog records for some or all of their offerings, and then charge the library only for those that patrons actually use. These factors combine to constitute a radically different book-buying environment from the one that existed just two years ago.

In other words, the risk inherent in buying the wrong book has increased (because each budget dollar is now scarcer than it once was), while the risk inherent in failing to buy the right book has decreased (because it's increasingly possible to buy only what is needed when it's needed, and it's much easier to quickly and cheaply correct any failure to buy the right book). Both of these developments support the same conclusion: that most research libraries should seriously reconsider their traditional strategy of meeting patrons' needs by building large, inclusive, speculative collections that attempt to anticipate them.

Several years ago, in this column, I offered a crazy idea — that maybe it was time for libraries to start moving beyond the idea of a permanent collection at all! At the time, the idea sounded crazy even to me and I saw it mainly as a stick with which to stir up some new ideas about collection strategies. Three years later, I'm becoming increasingly convinced that the near future of most research libraries really does lie less in brokering access to an artificially small subset of the huge universe of available documents, and more in showing our patrons everything that's available and buying only what they say they need, in the very moment they realize that they need it. For online content, that reality is already here. The combination of **Google's** massive library of scanned print books and a service like the **Espresso Book Machine** (which can print and bind a 300-page book in a few minutes) has suddenly made such a service possible for printed materials as well. In light of these new developments, with materials budgets being cut everywhere, and with circulation rates falling, why would we ever again buy a book that we aren't sure anyone wants? 🌱

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not be surprised. In 2005, **CIBER** found that less than ten per cent of authors knew "a lot" about institutional repositories; 58 percent acknowledged that they knew nothing about them (**Rowlands I. & Nicholas D.**, *New journal publishing models* — an international survey of senior researchers, **CIBER**, London, 2005, [www.slais.ucl.ac.uk/papers/dni-20050925.pdf](http://www.slais.ucl.ac.uk/papers/dni-20050925.pdf)). Nothing much appears to have changed in the intervening years.

There are lessons in this for all of us. Publishers have been negligent in making clear to their authors how their copyright policies operate in practise. That they increasingly will ac-

cept a license to publish with the copyright being retained by the author, and that they generally permit posting to Websites and repositories and reuse in teaching and in further research, need to be publicized and better understood.

Those who want to see the disappearance of journals and journal publishers — including many academic librarians and their professional associations — must stop wilfully misleading the community about authors' rights. In a changing scholarly environment, arguments about the best way to serve the information requirements of scholars and scientists need to be based on evidence rather than prejudice. To do otherwise puts at risk a scholarly information structure that has, with all its imperfections, served the interests of scholars and researchers for 350 years. 🌱

### Endnotes

1. **Anderson, Rick**. "Crazy Idea #274: Just Stop Collecting." *Against the Grain* v.18# 4, Sept. 2006, pp. 50-52.