Copyright Issues: the legal landscape for moving research from bench to bedside

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Copyright Issues: the legal landscape for moving research from bench to bedside

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Three major areas to discuss

- Who owns the copyright? In what?
- Publication agreements.
- Moving to the Web.
  - As an example, discuss “open notebook science” at each stage.
    - Keep us focused on whole process, not just formal publication
    - http://biolab.isis.rl.ac.uk/camerons_labblog
I. Scope & ownership of copyright

- Copyright protection is automatic
  - “Follows the pen”
- Default owner of © is “the author.”
  - When work is made for hire, author is employer.
  - Issue of joint authorship
    - First look at Open Notebook Science - who are authors?
What does copyright protect?

- **Original expression**
  - Standard of originality is low
  - Does not protect ideas *per se*
  - Raw data not protected, but an original selection and arrangement may be.

  - No database protection in US, apart from originality

  - EG -- Chronological record of experimental results likely not protected, but informal notes are.
Does the University own my research?

- Under work for hire doctrine, they could.
  - Many universities waive WFH in faculty policies.
  - Sometimes claim work in designated categories or when “substantial use” of institutional resources is involved.
    - Know your institution’s policies!!
- Patent policies usually very different.
  - Universities claim an interest, assist with application ($$$).
University Open Access policies

- Some schools adopt policies to support open access to published research (journal articles).
  - Apply where work for hire is waived.
  - Often a non-exclusive license to institution for digital access & archiving.
    - Harvard A&S faculty and others
    - UNM gets license for NIH deposit in Conflict of Interest declaration.
  - Sometimes encourage publication in OA journals and/or provide funding.
II. Publication agreements

- © in research articles usually given away in exchange for publication
- Possible to negotiate; even retain ©
  - Most journals (70+%) allow some form of open access archiving.
    - Pre-print, post-print, published version
  - Author addenda assist in knowing what to ask for.
NIH Public Access policy

- Deposit accepted, peer-reviewed articles in PubMed Central
  - Public access required w/in 12 months
  - Many journal publishers now deposit directly. ASK!
  - PMC numbers required.
- Authorship issues – PI, Lead author, joint authors.
  - Who approves final XML version?
  - Who must report PMC numbers?
Other public access proposals

- Federal Research Public Access Act
  - Would extend public access mandate to most federal agencies that fund research
  - 6 month embargo; deposit in a trusted repository

- White House Office of Science & Technology Policy sought comments about an executive initiative.
  - Comments from Harvard, Duke, etc.
Other open access options

- Some journals are published entirely in open access.
  - PLoS Biology, BMC Genomics
- Traditional publishers may offer open access for a publication-side fee.
  - Granters or institution may pay cost
- Author can retain rights and self-archive
  - Institutional or disciplinary archives
III. Moving to the Web

❖ Advantages of online science
  – Accessible to patents & clinicians, as well as other researchers.
  – The “junk” science is already on the Web.

❖ Caveats
  – Patents and data protection concerns.
  – Will an “open notebook” cause confusion?
    ❖ Balance this fear with value of seeing mistakes & false starts.
    ❖ WHO IS YOUR AUDIENCE?
Putting other peoples’ work on the Web

- Fair use
  - Transformative uses (inclusion in research, i.e.) favor fair use.
  - Small amounts, no profit motive.

- DMCA
  - Take down notices provide ISP w/ mechanism to avoid liability.
  - Mist give user an opportunity to assert fair use.
Using GoogleDocs, Flickr, etc.

- End User License Agreements (EULAs)
  - Often give host/vendor a license in the works hosted.
  - Remember that users of these sites may be confused about what they can or cannot do with what they find.
Licensing users

- Copyright holder can employ license to guide users:
  - Creative Commons offers suite
    - Attribution
    - Commercial v. non-commercial
    - Derivative works?
  - Open source software licenses similar, for code.
  - Must hold © to license it.
My summary questions.

- What do I want to share?
  - Published research or open notebook?
- With whom?
  - Greatest impact, greatest good.
- How can I best share it?
  - What do I own?
  - What have I transferred / retained?
  - What can others do with my work?
THANK YOU!

🔹 What about your questions?

🔹 Contact me at kevin.l.smith@duke.edu