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

Kevin Smith

Follow this and additional works at: http://digitalrepository.unm.edu/ebscc

Recommended Citation
Smith, Kevin. "Copyright Issues: the legal landscape for moving research from bench to bedside." (2010). http://digitalrepository.unm.edu/ebscc/10

This Presentation is brought to you for free and open access by the HSLIC Events at UNM Digital Repository. It has been accepted for inclusion in Evidence Based Scholarly Communications Conference by an authorized administrator of UNM Digital Repository. For more information, please contact amywinter@unm.edu.
Copyright Issues: the legal landscape for moving research from bench to bedside

Kevin L. Smith, MLS, JD
Scholarly Communications Officer
Duke University

This work is licensed under a Creative Commons Attribution-Noncommercial-Share Alike 3.0 United States License.
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](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