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

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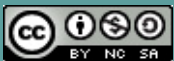
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Copyright Issues: the legal landscape for moving research from bench to bedside

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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
- ◆ Access problem – inhibits opportunities for translation.
- ◆ 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
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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.
- Must 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?
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THANK YOU!

- ◆ What about your questions?
 - ◆ Contact me at
kevin.l.smith@duke.edu
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