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The Ethics of Open Access to Research

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The Ethics of Open Access to Research

Denise Troll Covey
Principal Librarian for Special Projects, Carnegie Mellon

Library 2.0 Symposium
Yale Law School – April 4, 2009
Epistemic regime

ACADEMY

Cognitive property (CP)

Knowledge that can *not* be owned
Facts & ideas

Gift economy
Monopoly of competence

LAW

Intellectual property (IP)

Knowledge that can be owned
Artifacts

Market economy
Monopoly of copyright

Boundary object

Vehicle to deploy norms of one economy in another

ACADEMY

AUTHORSHIP

LAW

Facts and ideas (CP)

To share must express

Artifacts (IP)

Ethic of sharing and moral obligations

Ethic of property and economic rights

Value is recognition and reward

Value is potential for economic gain
Faculty research hybrid ethic

- Want academic exception and © ownership
  - Honor and propriety (CP / gift economy)
  - Academic freedom and control (IP / market economy)
- Resist loss of honor, propriety, autonomy, control
  - Efforts to help them manage copyright
  - Policies requiring retention or granting of rights
- Transfer copyright to publisher
  - Exercise autonomy, but lose control – *or do they?*
  - Retaining © < important than recognition and reward
Border disputes

- **Open access** is gift economy in market space
- Subversive, confrontational and competitive
- High priority for libraries, faculty, institutions

Create and address moral communities

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**Facts and ideas**

- Gift economy

**Artifacts for sale**

- Market economy

**Artifacts for free**

- Gift economy
J articles on websites

- Are journal articles being self-archived on websites?

<table>
<thead>
<tr>
<th>College</th>
<th>Articles</th>
<th>Faculty</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td>OA</td>
</tr>
<tr>
<td>Business &amp; econ</td>
<td>1,415</td>
<td>16%</td>
</tr>
<tr>
<td>Computer science</td>
<td>2,340</td>
<td>55%</td>
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<tr>
<td>Engineering</td>
<td>4,713</td>
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<tr>
<td>Fine arts</td>
<td>200</td>
<td>17%</td>
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<tr>
<td>Human./ social sci</td>
<td>2,419</td>
<td>40%</td>
</tr>
<tr>
<td>Policy &amp; mgmt</td>
<td>380</td>
<td>26%</td>
</tr>
<tr>
<td>Science</td>
<td>3,414</td>
<td>41%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>14,881</td>
<td>32%</td>
</tr>
</tbody>
</table>

Study conducted 2007-2008

346 faculty self-archived
4,816 articles
alignment of OA articles

- Are the articles self-archived on websites legal?
  - Considered if OA was allowed and policy on pub PDF

<table>
<thead>
<tr>
<th>College</th>
<th>Policy unknown</th>
<th>Aligned w policy</th>
<th>Not aligned</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business &amp; econ</td>
<td>13%</td>
<td>67%</td>
<td>18%</td>
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<tr>
<td>Computer science</td>
<td>8%</td>
<td>53%</td>
<td>31%</td>
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<tr>
<td>Engineering</td>
<td>7%</td>
<td>56%</td>
<td>35%</td>
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<tr>
<td>Fine arts</td>
<td>15%</td>
<td>24%</td>
<td>58%</td>
</tr>
<tr>
<td>Human./ social sci</td>
<td>8%</td>
<td>21%</td>
<td>63%</td>
</tr>
<tr>
<td>Policy &amp; mgmt</td>
<td>19%</td>
<td>29%</td>
<td>45%</td>
</tr>
<tr>
<td>Science</td>
<td>5%</td>
<td>65%</td>
<td>29%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>8%</td>
<td>50%</td>
<td>38%</td>
</tr>
</tbody>
</table>

1,830 OA articles are *not* aligned with policy

Not shown: 4% where policy is unclear about version

Not shown: 4% where policy is unclear about version
how not aligned

- Biggest problem is self-archiving of publisher PDF when prohibited by policy – *the best gift*

<table>
<thead>
<tr>
<th>College</th>
<th>OA prohibited</th>
<th>Pub PDF required</th>
<th>Pub PDF prohibited</th>
</tr>
</thead>
<tbody>
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<td>7%</td>
<td></td>
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<tr>
<td>Computer science</td>
<td>5%</td>
<td>25%</td>
<td>70%</td>
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<tr>
<td>Engineering</td>
<td>25%</td>
<td>14%</td>
<td>61%</td>
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<tr>
<td>Fine arts</td>
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<td></td>
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<tr>
<td>Human./ social sci</td>
<td>9%</td>
<td>1%</td>
<td>90%</td>
</tr>
<tr>
<td>Policy &amp; mgmt</td>
<td>22%</td>
<td>2%</td>
<td>76%</td>
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<tr>
<td>Science</td>
<td>47%</td>
<td></td>
<td>53%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>18%</td>
<td>9%</td>
<td>73%</td>
</tr>
</tbody>
</table>

1,830 prohibited pub PDFs
Who cares if infringe their own gift?

- Public conscience has not been shocked
- Publishers care about impact on market, but response has been political, not punitive
- Faculty who knowingly infringe assume no harm to institution or to their reputation, recognition, reward
- Academy doesn’t see it as serious breach of standards
  - Efforts to get faculty to retain rights or to license rights to institution, but won’t interfere with faculty autonomy
  - If faculty infringe © the institution is not responsible
What about the library IR?

- If the library infringes © the institution is responsible
- Compliance v. alignment with publisher policy
  - Compliance - discourage participation, yield poor ROI, compromise our values
  - Alignment - support and educate the faculty, reduce risks and costs, be true to who we are

Core values of librarianship:
Access, service, public good, social responsibility, democracy, preservation, professionalism
© infringement

• Is © infringement illegal? Yes

• Is © infringement unethical? Yes, but …
  – Infringing one’s own work given as a gift is different from infringing other’s work or work produced for $$

• “Gifts must be permitted to circulate; the gift cannot be withdrawn from circulation (transformed into capital) without losing its status as a gift.”
  
  McSherry, p. 81
Research is different

• Research is funded, conducted and published for the public good

• Researchers are not paid by publishers; rewards are not proportional to sales; © is not incentive; publisher interest doesn’t serve researcher interest
  Peter Suber, SOAN, November 2, 2008

• © is inappropriate and unnecessary for research
Ethics: What is best for all concerned

- **Intentions** – must be self- and other-regarding

- **Foreseen consequences** – may reluctantly accept harmful consequences if cost doesn’t exceed benefit
  - Do not sacrifice greater good for lesser good,
    - e.g., intrinsic (public good) for extrinsic (private gain) value
  - Reluctant acceptance is demonstrated in attempts to avoid or minimize harmful consequences

- **Unforeseen harmful consequences** = adjust course
OA border skirmish

**• RESEARCHERS**
- **Intention** = transfer © for broad distribution
- **Foreseen consequence** = recognition and reward
- **(Un)foreseen harmful consequence** = publishers holding gift hostage for ransom increasingly few can pay

**• PUBLISHERS**
- **Intention** = acquire © to distribute and earn $$
- **Foreseen consequence** = $$ and preserve record
- **(Un)foreseen harmful consequence** = authors stipulating terms for © transfer or rescuing hostages without negotiation
Alignment is best for all concerned

• Provides equitable access
• Encourages use and application for public good
  – Facilitates OA impact advantage for faculty
  – Showcases and preserves intellectual assets
• Minimizes harmful foreseen consequences
• Increases ROI in research and IR
• Sends signal to for-profit publishers
• Assists in hostage rescue
Librarianship as boundary object?

- IR as vehicle to deploy the values and norms of the gift economy in the research marketplace

- Library mission and values
  - Copyright law and publisher policy
  - University mission, entrepreneurship and asset protection
  - Faculty autonomy, honor and recognition
Exercise and foster

- Civil disobedience
  - In a democracy, when conscience and law clash we are morally justified, if not duty bound, to follow our conscience, not wait for law to change


- Moral courage
  - When opposed and when success entails risk, act to preserve values of honesty, fairness, respect, responsibility and compassion

Moral Courage, a White Paper, R. Kidder and M. Bracy, 2001
Why we need to defend core values

Picayune publisher policy demands and bogus assertions

• Self-archived articles must be managed over time
  – Different versions allowed and descriptive text required pre/post publication, different embargo periods, link to publisher PDF

• Need transfer of all © to publish

• No peer review without publishers

• Provide broad distribution

• Preserve scientific record

• Interlibrary loan of articles is unnecessary

• Permission required for fair use

• There are no orphan works

Publisher arguments against OA, orphan works, Section 108
Thank you!