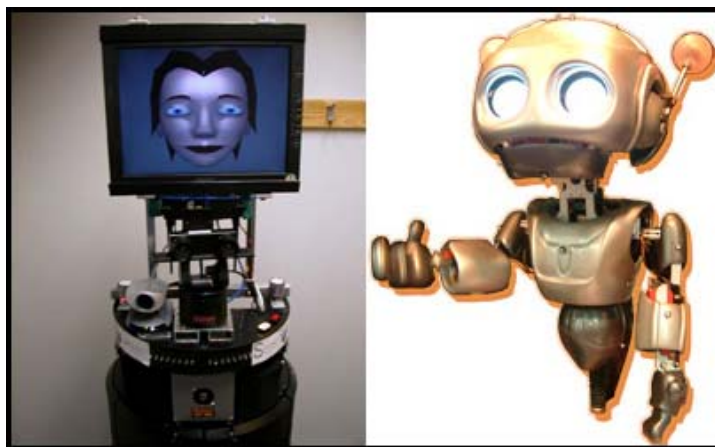


# The Ethics of Open Access to Research



Denise Troll Covey

Principal Librarian for Special Projects, Carnegie Mellon

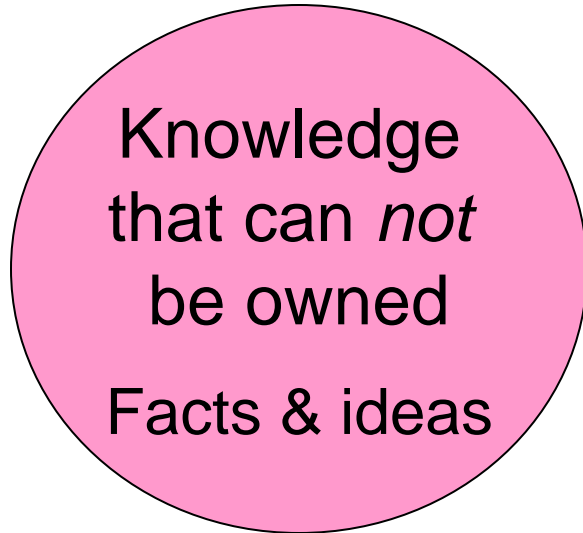
Library 2.0 Symposium  
Yale Law School – April 4, 2009



# Epistemic regime

## ACADEMY

Cognitive property (CP)

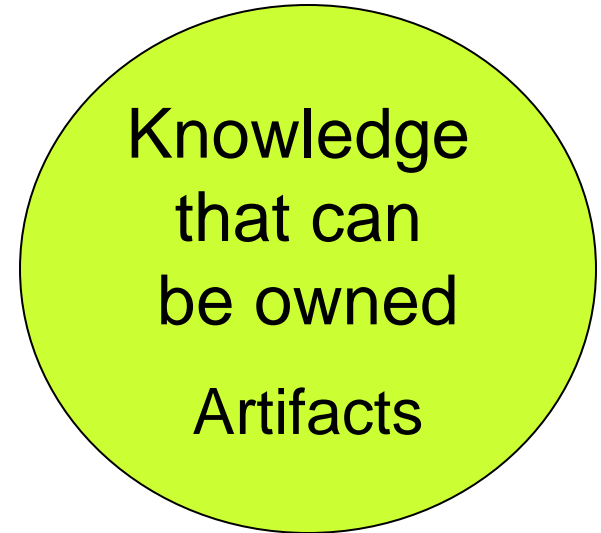


Gift economy

Monopoly of competence

## LAW

Intellectual property (IP)



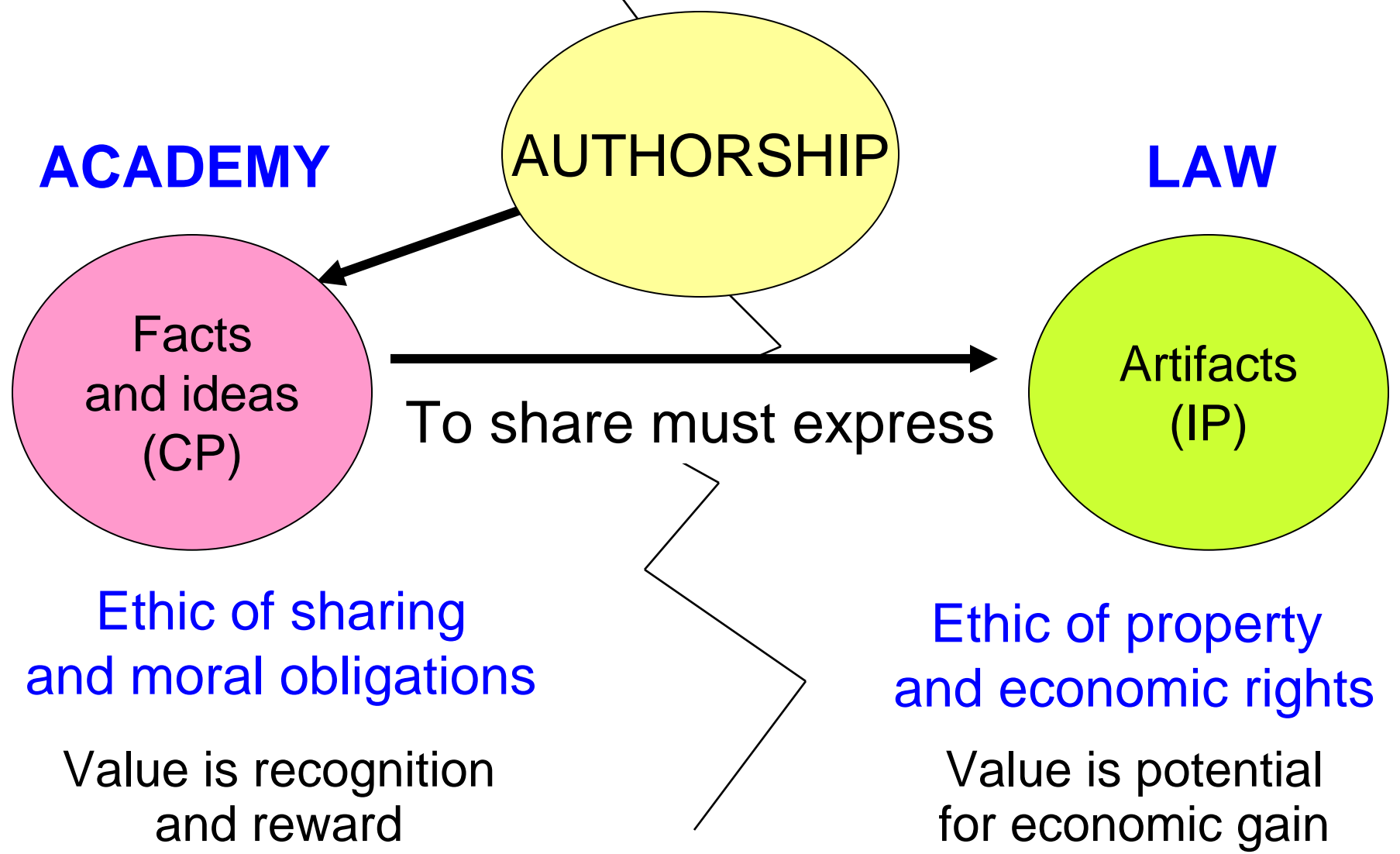
Market economy

Monopoly of copyright



# Boundary object

Vehicle to deploy norms of one economy in another





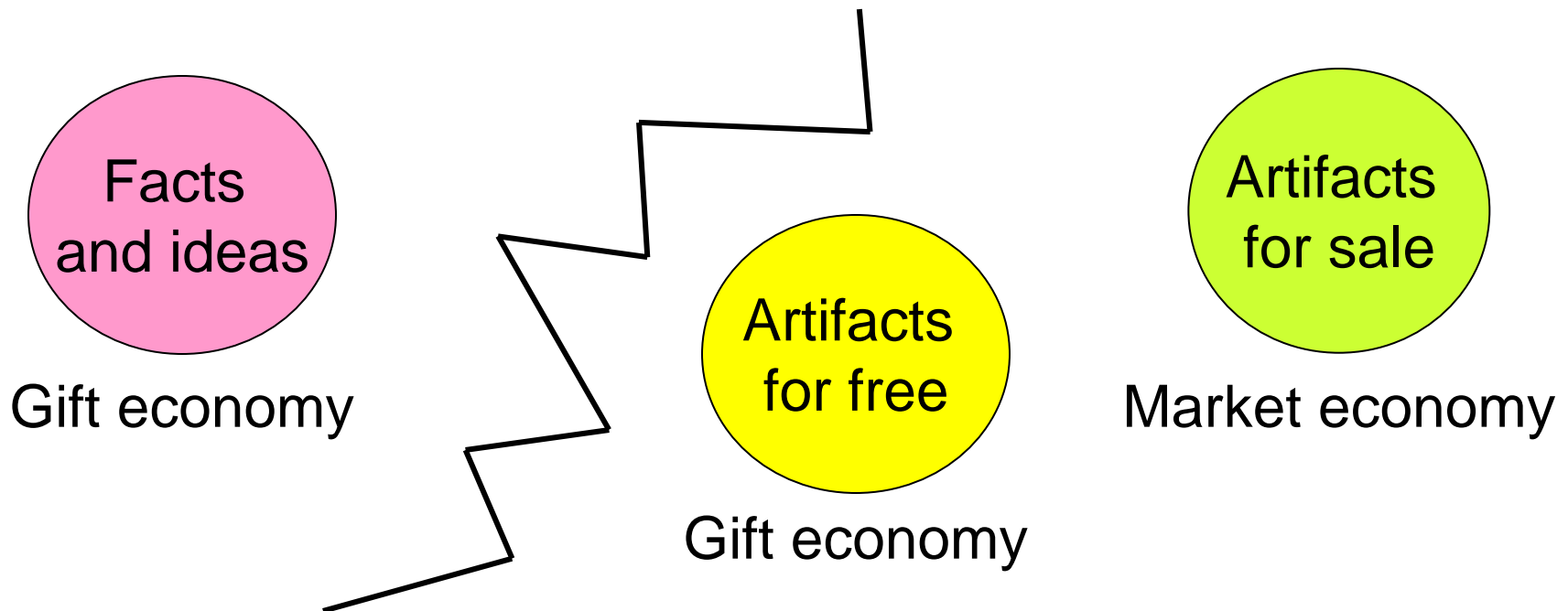
# Faculty research hybrid ethic

- 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

Create and address  
moral communities

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





# J articles on websites

- Are journal articles being self-archived on websites?

College	Articles		Faculty	
	Total	OA	Total	OA
Business & econ	1,415	16%	90	46%
Computer science	2,340	55%	205	67%
Engineering	4,713	24%	179	30%
Fine arts	200	17%	184	3%
Human./ social sci	2,419	40%	148	34%
Policy & mgmt	380	26%	54	17%
Science	3,414	41%	158	31%
<b>TOTAL</b>	<b>14,881</b>	<b>32%</b>	<b>1,018</b>	<b>34%</b>

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

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

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

**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*

College	OA prohibited	Pub PDF required	Pub PDF prohibited
Business & econ	7%		93%
Computer science	5%	25%	70%
Engineering	25%	14%	61%
Fine arts			100%
Human./ social sci	9%	1%	90%
Policy & mgmt	22%	2%	76%
Science	47%		53%
TOTAL	18%	9%	<b>73%</b>

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?

Carnegie Mellon

Research Showcase

[Home](#) [About](#) [FAQ](#) [My Account](#)

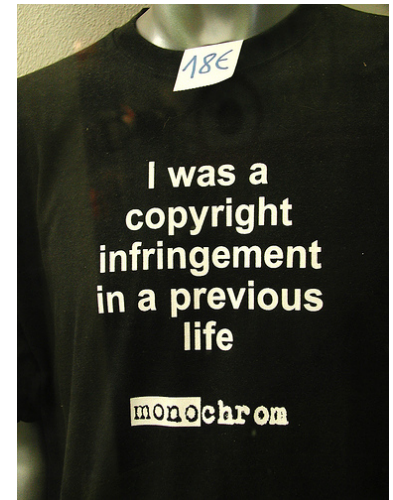
- If the library infringes © the institution *is* responsible
- Compliance v. alignment with publisher policy
  - Compliance - discourage participation, yield poor ROI, compromise our values
  - Alignment - support and educate the faculty, reduce risks and costs, be true to who we are

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 Stevan Harnad, *Ethics of Open Access to Biomedical Research*, August 2007
- 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 Georgia Harper, *Open Access, Digital Copyright and Marketplace Competition*, 2009





# 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

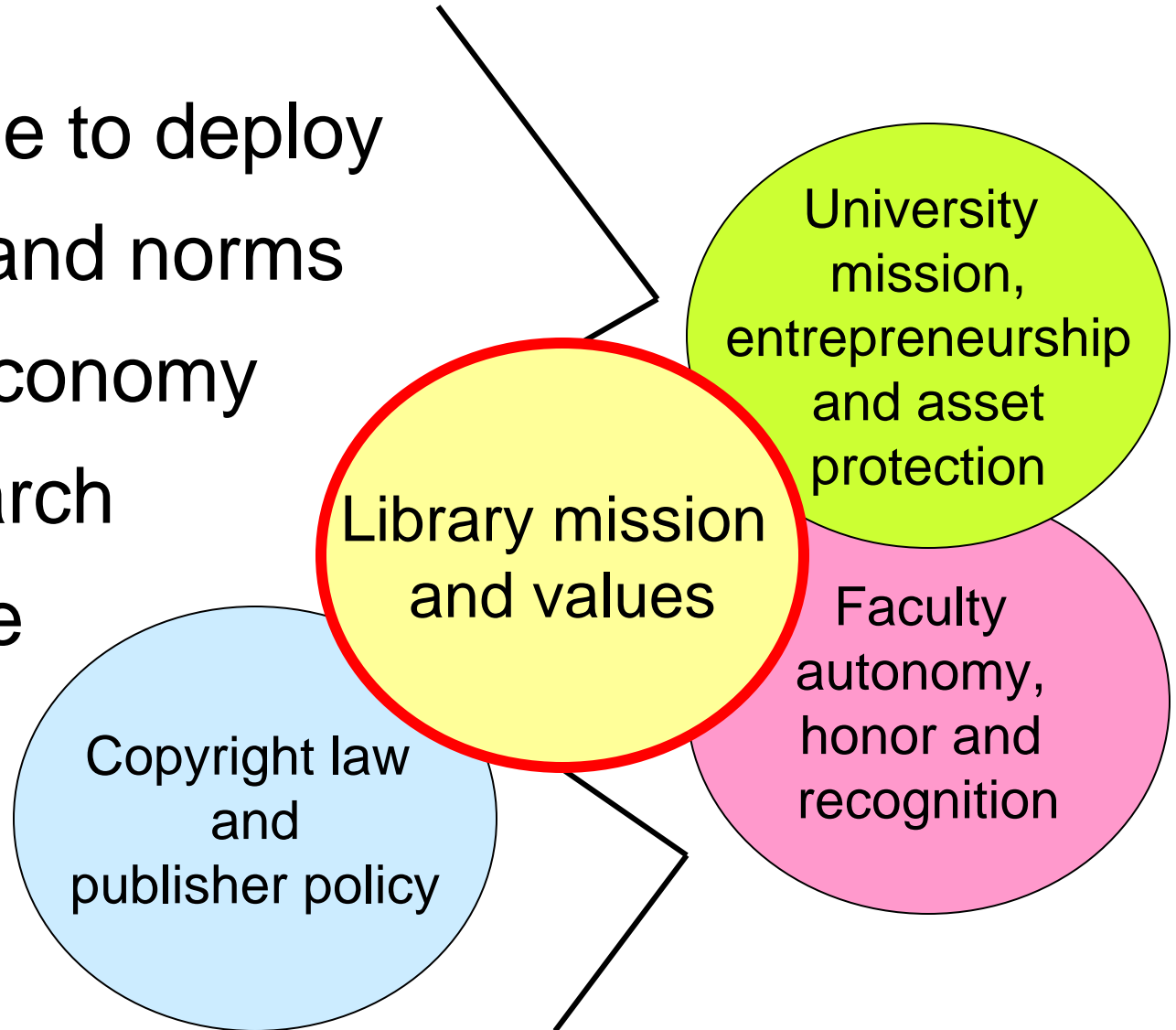
- Provides equitable access
- Encourages use and application for public good
  - Facilitates OA impact advantage for faculty
  - Showcases and preserves intellectual assets
- Minimizes harmful foreseen consequences
- Increases ROI in research and IR
- Sends signal to for-profit publishers
- Assists in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





# Librarianship as boundary object?

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







# 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

Henry David Thoreau,  
*On the Duty of Civil Disobedience*, 1849

- Moral courage

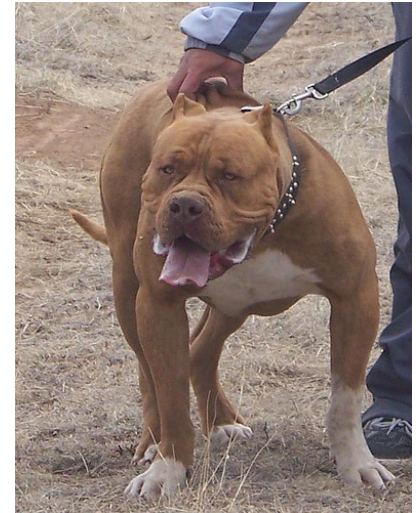
- When opposed and when success entails risk, act to preserve values of **honesty, fairness, respect, responsibility and compassion**

*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!

