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The Ethics of Open Access to Research: A Call for Civil Disobedience and Moral Courage

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The Ethics of Open Access to Research: A Call for Civil Disobedience and Moral Courage

This article explores the ideological context, official rhetoric and rank-and-file behavior of authors and publishers in the movement to provide free online (open) access to scholarly journal articles. Analysis reveals transparency among authors and obfuscation among publishers. The core values and ethical principles of librarianship require librarians to stand with authors and to exercise and foster civil disobedience and moral courage in support of open access.

The Context

For the purposes of this article, open access (OA) means the free online availability of journal articles with the permission of the author. Authors may make their articles OA in websites or repositories or in journals. OA advocates refer to self-archiving articles in websites or repositories as “green OA” and publishing in OA journals as “gold OA.” Hybrid journals provide open access only to articles for which a fee has been paid on behalf of the author (Suber, “Open Access Overview”).

Despite the growth and momentum of the OA movement (Morrison), staunch supporters and staunch detractors continue to argue the costs and benefits of OA. The seeds of the dispute lay in what Corynne McSherry calls the epistemic regime. See table 1. The regime is comprised of two social worlds: a world where knowledge cannot be owned and a world where knowledge can be owned. The academy produces the knowledge that cannot be owned, facts and ideas conceived as cognitive property. It monopolizes competence in a gift economy. Researchers have a moral obligation to generate facts and ideas and to give them to their peers and the public as gifts. The ethic is sharing. The value of a gift to its creator is the recognition it brings. But to give the gift, researchers must express their facts and ideas in fixed form. They must turn them into artifacts. Creating an artifact moves the work into the realm of law and knowledge that can be owned. Copyright law polices artifacts perceived as intellectual property. It monopolizes intellectual commodities in a market economy. The ethic here is economic rights. The value of the artifact is its potential for economic gain (McSherry 6-7, 17-18, 27-28, 40, 68, 76, 108).

Table 1. The epistemic regime.

	Epistemic regime	
Social world	Academy	Law
Property	Cognitive facts and ideas	Intellectual artifacts
Monopoly	Competence	Copyright
Knowledge	Cannot be owned	Can be owned
Economy	Gift (public good)	Market (private interest)
Ethic	Sharing and moral obligations	Property and economic rights
Incentive	Potential for recognition	Potential for economic gain

The gift and market economies of knowledge are polarized, interwoven and mutually constitutive (McSherry 99). Border disputes arise because the boundary between the two worlds is fuzzy and unstable. Open access to journal articles – artifacts for free – is a border dispute with profound implications. The OA dispute is possible because authorship is a boundary object, a vehicle capable of disrupting the regime by deploying the norms of one economy in another (McSherry 4, 15, 68, 59). The OA movement is the gift economy operating in market space, a subversive, confrontational and competitive phenomenon. The rhetoric of the dispute creates and addresses moral communities (McSherry 12).

The Rhetoric

Both proponents and opponents of OA use crisis rhetoric to state their case. Theodore Windt has identified three key components of successful crisis rhetoric (128). First, a situation must be identified as dangerous and the danger grounded in facts. Second, the situation must be tied to an ongoing battle between incompatible ideologies that has escalated to a crisis of values. Third, acceptance of the new policy proposed to resolve the crisis must be seen as the moral choice. According to Paul R. Wolpe, crisis rhetoric is essential for substantive social change (1138-1140). The values and assumptions underlying an established practice must be challenged and the problems unveiled carefully elevated to crisis proportions – without breaking all bonds with established practice – for substantial change to occur. Breaking all bonds with established practice risks having the challenge dismissed as fanatical.

To advocates of the OA movement, the fact-based crisis is twofold: an economic crisis of journal prices spiraling out of control, and a social crisis of commodifying knowledge that cannot be owned, thereby enclosing the commons, impeding innovation and hampering the public good. The movement issues two challenges to the status quo. First, by requiring authors to legally retain certain rights to their work it challenges the tradition of full copyright transfer to the publisher. Wolpe calls this type of challenge rebellion (1139-1140). Second, it challenges the model underlying U.S. copyright law that assumes economic gain is the incentive that drives faculty to conduct research and to publish journal articles. Wolpe calls this type of challenge heresy and heresy a form of civil disobedience (1138, 1142). Given the market economy of publishing and the long history of unquestioned copyright transfer, publisher resistance to such dissent is no surprise. Their crisis rhetoric is examined later in this article.

The gift and market economies have always clashed, but the incompatibility was relatively inconspicuous until digital technologies changed what was possible, what researchers expected, and what publishers did with their gifts. Now that technology enables vast dissemination at minimal cost and journal publishers are leveraging technology to raise prices, license access and limit fair use, the moral choice from the perspective of many authors is open access to the gift of journal literature.

Law and Ethics

Before examining the behavior of authors, publishers and librarians in the dispute over open access, it is important to distinguish law and ethics. The two are not synonymous. Ethics is concerned with right and wrong. It discerns good from bad behavior based on principles of conduct grounded in moral values, duty and obligation. The law is concerned with prescribed rules of conduct enforced by a controlling authority. The judiciary discerns legal from illegal behavior. Laws may or may not be ethical, though the legislature endeavors over time to align law and ethics, for example, in legislation on civil rights and the rights of the disabled.

Determining whether a behavior is ethical entails examining the intentions, foreseen consequences and values motivating the behavior (Sinnott-Armstrong). Ethical intentions are

both self- and other-regarding; they consider what is best for all concerned. Foreseen consequences can be benevolent, innocuous or harmful. Ethics allows harmful foreseen consequences to be accepted reluctantly if the harm does not exceed the benefit (Arneson 1-2). Reluctant acceptance must be demonstrated in attempts to avoid or to minimize harm. On the value hierarchy, greater, intrinsic goods dare not be sacrificed for lesser, extrinsic goods. For example, the public good must not be sacrificed for private gain. Finally, if behavior results in harmful unforeseen consequences and the harm exceeds the benefit, steps must be taken to correct course.

Researcher Ethics and Practice

Research faculty have a hybrid ethic (McSherry 110). They want to create and give gifts, but they also want the academic exception that enables them to own copyright to their work rather than have it owned by their institution as a work for hire. Copyright ownership preserves their honor, academic freedom, control of their work and sense of propriety (McSherry 125-140).

Many faculty members resist efforts to help them manage their copyrights. They resist policies that would require them to retain certain rights or to grant certain rights to their institution. They resist these initiatives because they perceive them as threatening their honor, autonomy, control of their work and sense of propriety (McSherry 103, 105-106).¹

Despite this strong stand, authors willingly transfer their copyright to journal publishers. They intend in transferring copyright to get broad distribution of their gift. The foreseen consequence is recognition of their contribution to the discipline. They do not receive royalties from the publisher. Highly valued articles might yield indirect financial gain in the form of promotion or grant funding, but gifts must be freely given to secure this benefit.

What researchers did not foresee over centuries of blithely transferring copyright to journal publishers was the day when publishers would hold their gifts hostage for a ransom increasingly

¹ Though faculty at eighteen universities have approved policies mandating OA, recently faculty at the University of Maryland rejected a proposed policy that only encouraged OA (Suber, "Lessons from Maryland").

few could pay. When that day arrived, the response was the OA movement to free the hostages and end the perceived harm to authors and the public good. The official rhetoric of the movement upholds copyright law. To increase faculty participation, leaders encourage the use of author addenda to modify copyright transfer agreements and push for OA mandates (Swan and Chan, ROARMAP). To minimize harmful consequences to publishers, they support reasonable delays (embargoes) before making articles OA, the study of alternative economic models to finance journal publishing, and compacts to facilitate publishers transitioning from toll access to open access (Suber, “AAA adopts 35 year embargo”; SPARC; Shieber).

In practice, researchers do not understand their copyrights or manage them well. They typically do not consider copyright transfer terms when selecting a publisher or try to negotiate copyright transfer terms.² Many faculty sign agreements without even reading them and many are confused about who owns the copyright to their work (Troll Covey, “Faculty Rights”; University of California 61; Swan and Brown 56). They are also confused about open access. Few faculty who self-archive believe they need publisher permission to self-archive. Regardless of their beliefs, most self-archivers do not ask permission and are unaware of publisher OA policies (Swan and Brown 56, 48).

Not surprisingly, faculty are infringing copyright to their own work. My study of Carnegie Mellon faculty self-archiving practices discovered that 38% of the 4,816 journal articles self-archived on personal or departmental websites were not aligned with publisher policies (Troll Covey, “Self-Archiving Journal Articles”).³ Assessment of alignment was based strictly on whether publisher policy allowed self-archiving on websites and if so, whether the policy allowed, required or prohibited self-archiving the Version of Record (NISO 3-4).⁴ The biggest problem by far was self-archiving the Version of Record when it was prohibited: 73% of the

² According to Ellen Duranceau and Ivy Anderson, “Faculty promotion and tenure processes depend on publishing in particular journals, and authors therefore do not feel empowered to push back on standard publisher policies; nor is debating points of copyright a natural fit for many authors” (33).

³ Carnegie Mellon did not have an institutional repository when this study was conducted in 2007-08.

⁴ Assessing whether the OA articles complied with publisher policy was not possible. Though general publisher policies were found for 92% of the OA articles, the general policy might not apply to all the publisher’s journal titles. OA author manuscripts seldom noted whether it was the author’s Original Manuscript, the Submitted Manuscript or the Accepted Manuscript (NISO 1-2). Whether the embargo period had been respected prior to self-archiving could not be determined for many articles.

unaligned articles were publisher PDFs.⁵ In disciplines where key publishers prohibited OA, self-archiving in breach of the prohibition was a significant problem. In disciplines where faculty share work early in its life cycle, self-archiving in breach of publisher policies that allow self-archiving of the author’s manuscript prior to publication but require faculty who self-archive to self-archive the Version of Record after publication was a problem. See tables 2 and 3.

Table 2. Carnegie Mellon faculty self-archiving of journal articles.

College	Faculty		Articles			
	Total	OA	Total	OA	Not aligned with policy	Policy unknown
Business and economics	90	46%	1,415	16%	18%	13%
Computer science	205	67%	2,340	55%	31%	8%
Engineering	179	30%	4,713	24%	35%	7%
Fine Arts	184	3%	200	17%	58%	15%
Humanities & social sciences	148	34%	2,419	40%	63%	8%
Public policy & management	54	17%	380	26%	45%	19%
Science	158	31%	3,414	41%	29%	5%
TOTAL	1,018	34%	14,881	32%	38%	8%

Table 3. Carnegie Mellon faculty OA article lack of alignment with publisher policy.

College	OA prohibited	Pub PDF required	Pub PDF prohibited
Business and economics	7%		93%
Computer science	5%	25%	70%
Engineering	25%	14%	61%
Fine Arts			100%
Humanities and social sciences	9%	1%	90%
Public policy and management	22%	2%	76%
Science	47%		53%
TOTAL	18%	9%	73%

Conversations with Carnegie Mellon faculty revealed that some of them knew they were self-archiving in breach of publisher policy; some of them did not. Those who knowingly infringed copyright to their own work assumed no harm to the institution or to their personal reputation. Those who were concerned about copyright infringement and those who were concerned that OA would kill key journals by eliminating subscriptions did not self-archive.

⁵ According to a study published by the Publishing Research Consortium (PRC), 70% to 80% of authors want to provide open access to the Version of Record and 50% to 60% believe that publishers allow it (Morris 12).

Publishers care when faculty infringe copyright to their own work because of the potential impact on the market, but they have not charged them with copyright infringement. Publishers need faculty submissions to stay in business; sanctions could produce an unwanted backlash of sympathy for authors. The academy seems not to care if faculty infringe copyright to their own work. Self-archiving in breach of publisher policy is not seen as a serious breach of standards of faculty conduct. Administrators do not interfere with faculty autonomy, perhaps because the institution has limited liability for faculty copyright infringement (U.S. Copyright Office 11-12). Nevertheless, universities have mounted programs, often led by librarians, to educate authors about their copyrights, the benefits of OA and the need to retain the rights necessary to make their work OA. The futility of this approach is beginning to be acknowledged (Hahn 28; Duranceau and Anderson 33). The approach more likely to increase self-archiving and compliance with copyright law is institutional or governmental mandates. Despite researcher resistance to interference in managing their copyrights, a study conducted by Alma Swan and Sheridan Brown indicates that a large majority (94%) of faculty would comply with a mandate.⁶

Publisher Ethics and Practice

Publishers have an ethic of economic rights. They intend in acquiring copyright to broadly distribute journal articles through sales. The foreseen consequence is economic gain. To increase economic gain, for-profit publishers created artificial scarcity, triggering the spiral of increasing prices and decreasing subscriptions that invited the competition of open access. The formerly unforeseen consequence now seen by many publishers is authors stipulating the terms for copyright transfer or, more likely, rescuing their work held hostage without negotiating the right to self-archive their work or paying the ransom for hybrid journals to make their work OA. In an attempt to minimize harmful consequences, publishers resist OA mandates, reject author addenda and either prohibit OA or allow it if certain conditions and restrictions are met.

In theory, many journal publishers support OA. In December 2009, most (62%) of the 661 publishers in the SHERPA RoMEO database allowed self-archiving of some version of their

⁶ In addition to mandates, other approaches are being explored. Experiments are underway to incorporate authors' rights into library licenses for electronic resources (Duranceau and Anderson 35-36). Standard author-publisher contracts and a universal addendum for author-publisher agreements are also being discussed (Hahn 28, 30).

articles in some venue, in a sense releasing hostages and restoring their gift status (RoMEO). But in practice, what do they release when and where?

Over a third (38%) of the publishers in the RoMEO database prohibit self-archiving, holding all article versions hostage with no terms for their release. Of the publishers that allow OA, most hold the Version of Record hostage and many prohibit self-archiving in an institutional repository. In a study conducted by the Publishing Research Consortium (PRC), 90% of the journals that allowed OA prohibited self-archiving the Version of Record (Morris 12). Presumably most faculty want to provide open access to the Version of Record and most publishers hold this version hostage because it is the most useful presentation of the gift. Roughly 80% of the 203 publisher policies examined in the PRC study allowed self-archiving on websites, but only 60% allowed self-archiving in an institutional repository (Morris 10). The study also reported that from 2005 to 2008 the number of publishers that allowed self-archiving increased, but among large publishers (those that publish most of the journal articles) there was a decrease in allowing self-archiving, particularly of the Version of Record (Morris 14).

My analysis of publisher policies explored in the Carnegie Mellon study of faculty self-archiving practices confirms that most publishers hold the Version of Record hostage and that publisher policies are more liberal about self-archiving on websites than institutional repositories. See table 4. Because faculty websites are typically deleted when faculty leave the institution, prohibitions on providing open access in an institutional repository in effect hold articles hostage from long-term preservation.

Table 4. Carnegie Mellon analysis of publisher self-archiving policies.
 Total publishers = 282 Total titles = 2,833 IR = institutional repository

Publisher policy	Author's Original or Submitted Manuscript		Author's Accepted Manuscript		Version of record (publisher PDF)	
	Publishers	Titles	Publishers	Titles	Publishers	Titles
Allowed on website	43%	83%	65%	90%	25%	17%
Allowed in IR	38%	75%	54%	80%	20%	14%
Prohibited on website	48%	14%	33%	9%	56%	75%
Prohibited in IR	52%	22%	44%	20%	61%	79%

Beyond limiting support for OA to less useful versions of an article and less secure venues for article preservation, many publishers specify conditions and restriction for OA that require maintenance over the life cycle of the work. For example, some policies stipulate that the Original Manuscript must be removed when the article is submitted for publication, accepted for publication or after publication. Some policies allow the Accepted Manuscript to be self-archived only after the article has been published. Table 5 indicates the percentage of publishers and journal titles examined in the Carnegie Mellon study that will release hostages under various circumstances. The dizzying array of stipulations and tedious tracking required for full compliance suggest that publisher support of OA is disingenuous. The policies reflect little understanding of disciplinary culture or respect for researchers' time.

More telling than publisher policies as a gauge of actual support for OA is the crisis rhetoric marshaled in response to the proposed National Institutes of Health (NIH) open access mandate in 2007. A group of scientific publishers hired a public relations "pit bull" to develop anti-OA strategies (Giles 347). The goal was not to make precise statements or to engage OA advocates in intellectual debate, but to craft media messages that would garner support for the opposition. Shortly thereafter, the Partnership for Research Integrity in Science & Medicine (PRISM) was launched with support from the Association of American Publishers. PRISM charged the OA movement with threatening peer review and the integrity of the scientific record, illegally forcing publishers to surrender their articles and copyrights, putting scholarly publishing at risk and censoring scientific information. The charges are false or dishonest (Suber, "Publishers Launch"), but they continue to fuel the ongoing campaigns to revoke the NIH open access mandate and to prevent passage of the Federal Research Public Access Act that would legislate a similar mandate for other government funding agencies (H.R. 801; S. 1373).

The crisis rhetoric of journal publishers is limited to describing the situation as dangerous. The rhetoric eschews facts for media fanfare, being careful not to expose the underlying conflict between author and publisher ideologies and values. Exposing the conflicting interests would acknowledge that journal publishers do not speak for authors and risk revealing that the economic model of copyright is not the incentive driving production of journal articles.

Table 5. Carnegie Mellon analysis of publisher OA policies conditions and restrictions.
 Total publishers = 282 Total titles = 2,833 IR = institutional repository

Publisher policy	Author's Original or Submitted Manuscript		Author's Accepted Manuscript		Version of Record (publisher PDF)	
	Publishers	Titles	Publishers	Titles	Publishers	Titles
Allowed	30.14%	61.77%	36.17%	51.25%	11.70%	3.81%
Allowed with permission	1.42%	0.67%	1.77%	0.21%	1.06%	0.11%
Allowed only on private websites	0.35%	0.11%				
Allowed after accepted for peer review	0.35%	0.18%				
Allowed, but must remove after accepted for publication	0.71%	2.36%				
Allowed, but must remove after publication	3.55%	8.19%				
Allowed after publication			2.48%	1.02%		
Allowed after publication with permission			0.35%	0.04%	0.71%	0.07%
Required after publication					2.13%	5.79%
Allowed after embargo			9.93%	21.88%	3.19%	1.59%
Allowed after embargo; embargo on website longer than embargo on IR			0.35%	0.32%		
Allowed on website; request permission for IR	0.35%	0.88%	0.71%	3.32%		
Allowed on website after publication; allowed in IR after embargo			1.42%	1.38%	0.71%	2.19%
Allowed on website; prohibited in IR	5.32%	8.30%	9.22%	9.07%	4.96%	2.86%
Allowed on website if sign License to Publish (not Assignment of Copyright); prohibited in IR			0.35%	0.60%		
Allowed on website, but must remove during peer review; prohibited in IR	0.35%	0.07%				
Allowed on website after accepted for publication; prohibited in IR			0.35%	0.49%		
Allowed on website after publication; prohibited in IR	0.35%	0.07%	0.71%	0.11%		
Required on website after publication; prohibited in IR					0.71%	0.56%
Allowed on website after embargo; prohibited in IR			0.71%	0.21%		
Allowed in IR; prohibited on website	0.35%	0.32%	0.35%	0.07%		
Allowed in IR, but must remove when submitted for publication; prohibited on website	0.35%	0.25%				
Allowed in IR, but must remove after accepted for publication; prohibited on website	0.35%	0.11%				
Allowed in IR after embargo; prohibited on website			0.35%	0.11%		
Allowed if externally funded or required by institution			0.35%	0.04%		
Prohibited	46.45%	13.34%	32.62%	9.32%	54.96%	74.94%
Prohibited unless pay fee					0.71%	0.39%
Unclear	9.57%	3.39%	1.77%	0.56%	19.15%	7.70%
TOTAL	100%	100%	100%	100%	100%	100%

Librarian Ethics and Practice

The ethic of librarianship is service. Librarians organize, preserve and provide equitable access to resources. We uphold intellectual freedom and resist censorship. We do not advance personal or private interests. We treat others fairly and with respect. And most importantly for the purposes of this article, “We respect intellectual property rights and advocate balance between the interests of information users and rights holders” (ALA, *Code of Ethics*). Our professional practice is defined, informed and guided by our core values. The values that motivate our participation in the OA movement are service, equitable access, democracy, preservation and social responsibility (ALA, *Core Values*). Our profession requires us to resist the commodification of knowledge that cannot be owned.

Academic librarians participating in the open access movement intend to educate campus faculty about the benefits of OA, to help them make their work OA and to support alternative economic models for scholarly publishing. The foreseen consequences are increased faculty participation in the OA movement, more OA articles, and lower prices for journals, all of which will facilitate research and innovation and serve the public good.

When Carnegie Mellon’s provost provided the University Libraries with funding for an open-access institutional repository, we faced the quandary encountered by all libraries that operate OA repositories and mediate the deposit of materials. How do we populate the repository as quickly and cost-effectively as possible while respecting both copyright and the beliefs and behaviors of the faculty? Obviously we must consult publisher policy, but must we insist on full compliance with publisher policy?

Full compliance with publisher policy will slow the deposit of materials and increase costs. Mediating the maintenance required for full compliance would be tedious if not impossible. Faculty will likely ignore or be discouraged by repeated queries about their submissions. Certainly repeated rejections will discourage their participation in the repository. In short, requiring full compliance with publisher policy would yield poor return on the investment in the repository and compromise many of the core values of librarianship.

In contrast, requiring alignment with publisher policy would enable us to support and educate the faculty, reduce risks and costs, and uphold our professional values. But alignment would mean knowingly and willingly mediating copyright infringement. At Carnegie Mellon, the University Libraries is the unit accountable for the university's copyright policy. According to the policy, "all members of the university community must comply with U.S. Copyright Law" ("Copyright Policy of Carnegie Mellon University"). Presumably we must also comply with publisher policy. Alignment is illegal, but is it unethical?

As I adjudicate the border dispute over OA, alignment with publisher policy is ethical because of the nature of research, the permission of the author and the transparency of the breach. Openly infringing copyright to one's own work given as a gift is significantly different from surreptitiously infringing someone else's work or work produced for economic gain. No one seems to perceive infringement of a gift by its creator as theft on a par with piracy of music, movies or software. Research is funded, conducted and published for the public good, not economic gain. Publisher interest in restricting access to journal articles does not serve researcher interest in the broadest possible distribution of their work (Suber, "An Open Letter"). Faculty who infringe copyright to their own work make an important and conspicuous statement about their interests. Regardless of whether they are aware of the infringement, the OA copies openly challenge the current copyright regime. They indicate what Kevin Smith observed: "faculty authors feel a legitimate sense of ownership over the products of scholarly publishing, even when they have not retained legal ownership" ("Presses, Piracy and the Slumping Economy"). Open challenges and established alternatives are powerful forms of dissent (Martin, "Against Intellectual Property").

Alignment with publisher policy is best for all concerned. It facilitates equitable access and encourages the use and application of research for the public good. It respects faculty autonomy and control of their work and facilitates recognition of their contribution to the discipline. It respects and serves the university mission, entrepreneurial spirit and need for asset protection. And it respects copyright law and publisher policy to the extent that librarians can without abandoning our values. Alignment increases the return on investment in research and in the

institutional repository. Furthermore it enables librarians to assist in hostage rescue and to send a signal about overly restrictive, high-maintenance publisher policies. Faculty concerned about copyright infringement can fully comply with publisher policy.

Each library must decide what constitutes sufficient alignment to assuage its legal concerns. The intentions driving this position are self- and other-regarding. Harmful foreseen consequences are reluctantly accepted, demonstrated by efforts to minimize charges of copyright infringement. If in time harmful unforeseen consequences appear, steps can be taken to correct course.

The Call

The time has come for librarians to protest and to resist not just in intellectual debate, but in our behavior and to do so openly. Faced with the disrespectful demands and dishonest assertions of self-serving publishers, we must exercise and foster civil disobedience and moral courage in the border dispute over open access. Civil disobedience, disobeying a law on grounds of moral or political principle to influence society to accept a dissenting point of view, is not mere passive resistance. It is action in a value-laden situation in which the conscience objects and hardship lurks. According to Rushworth Kidder and Martha Bracy, action in such circumstances takes moral courage: the strength and resolve to act to preserve the cross-cultural core values of honesty, fairness, respect, responsibility and compassion (20-22, 26-27).

Current copyright law is not achieving its constitutional purpose for research artifacts.⁷ It is impeding rather than promoting progress. According to Georgia Harper, the copyright monopoly as it is currently cast is no longer tolerable because it strips research of its status as a gift for the common good (8). Reform is needed and copyright scholars predict that reform is coming (Litman; Samuelson). But the law changes at a glacial pace, much slower than changes in digital technology and human behavior. The law now lags significantly behind social consensus in the academy. To paraphrase Henry David Thoreau, in a democracy, when conscience and law clash

⁷ According to the *U.S. Constitution*, the purpose of copyright is “To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries” (Section 8).

we are morally justified, if not duty bound, to follow our conscience, not wait for the law to change (par. 4).

According to the *U.S. Declaration of Independence*, the government derives its just powers from the consent of the governed. When these powers become destructive of the ends they were designed to serve, the people have a right to lay a new foundation and to organize power in a form more conducive to their safety and happiness (par. 2). In the border dispute over open access, researchers and librarians need to lay a new and principled foundation for research artifacts that recognizes the unique source and goal of these gifts in the marketplace. Addressing those who would stifle the possibilities afforded by digital technologies, John Perry Barlow's bold statement in *The Declaration of the Independence of Cyberspace* fits our current predicament with copyright law kowtowing to commercial interests:

You do not know our culture, our ethics, or the unwritten codes that already provide our society more order than could be obtained by any of your impositions.... Your legal concepts of property, expression, identity, movement, and context do not apply to us.... [W]e cannot accept the solutions you are attempting to impose.... Your increasing obsolete information industries would perpetuate themselves by proposing laws, in America and elsewhere, that claim to own speech itself throughout the world.... These increasingly hostile and colonial measures place us in the same position as those previous lovers of freedom and self-determination who had to reject the authorities of distant, uninformed powers.

In the digital era, research is better served by open access than toll access. The OA movement is what James Boyle calls the "existence proof" (200). The critical task for OA advocates is to demonstrate that journal publishers do not speak for authors and that current copyright law is inappropriate for research (Harper 10). Librarians have a right and a responsibility to participate in this demonstration.

According to Lawrence Lessig, we must "stop believing, listening and deferring" to those who champion the current imperialistic, one-size-fits-all model of copyright. He urges those who

object to the current copyright regime to become “radical, militant activists” and to “avoid restrictions that make no sense to the underlying business model” of the academy (“It’s about Time”). OA advocates should focus on the distinction between royalty-free and royalty-producing content and the disparity between author and publisher interests and incentives. We need not belittle or denigrate the market economy, but simply recognize the obvious: “that humans act for different motives, and the motive to give deserves as much respect as the motive to get” (Lessig, *Remix* 227).

As librarians we must do what we can to avoid pitfalls, but we must stand for our values and endure what comes. Ethics are more important than rules of law. According to Henry David Thoreau in *Civil Disobedience*:

Must the citizen ever for a moment, or in the least degree, resign his conscience to the legislator? Why has every man a conscience then? I think that we should be men first, and subjects afterward. It is not desirable to cultivate a respect for the law, so much as for the right. The only obligation which I have a right to assume is to do at any time what I think right. It is truly enough said that a corporation has no conscience; but a corporation of conscientious men is a corporation *with* a conscience. Law never made men a whit more just; and, by means of their respect for it, even the well-disposed are daily made the agents of injustice. (par. 4)

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