Faculty and Copyright: a Repository Challenge

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Copyrights are the rights granted to authors, but COPYRIGHT sounds legal and intimidating. Lots of misconceptions around copyright. AUTHOR rights is more appealing language.
Section 8 includes:

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.

History of copyright
That one line (that encompasses copyrights and patents) evolved into a statute that is now a full Title in the U.S. Code, and runs to 13 chapters plus appendices. No wonder copyright is intimidating!
The problem is copyright is complicated, so how do we make sure faculty understand what they need to? Faculty members, and your, eyes start to glaze over. The vast majority of repository content falls under “literary works”, but there could also be works of pretty much of these, with the exception, of course of buildings.
For a work to be copyrighted: FOE

- **Fixed in any tangible medium of expression**
- **Original works of authorship**
- **Expression of an idea, not merely the idea itself**

Anything with a “modicum” of originality, that is fixed (i.e. not what I am saying right now, but the content of these slides). Facts or ideas cannot be copyrighted. Can’t copyright a story idea (I thought of it first) – it has be expressed in a tangible medium. Can’t copyright facts. E=mc2 not copyrightable; the paper showing how it was derived is.
§ 106. Exclusive rights in copyrighted works

Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

1. to reproduce the copyrighted work in copies or phonorecords;
2. to prepare derivative works based upon the copyrighted work;
3. to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
4. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
5. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
6. in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

Glazed eyes again, but notice – a “copyright” is a bundle of rights, and the owner of the copyright can retain, transfer, or license any one of the rights.
Copyright is a bundle of rights, and “sticks” in the bundle can be retained or transferred. Publishing should find a balance between what is fairly given and fairly retained.
Exceptions

107: Fair Use
108: Library Copying
109: First Sale
110(1): Face-to-Face Teaching
110(2): TEACH Act

Librarians and faculty should know something about each of these exceptions, but that is not for today
Copyright Transfer Agreements

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So initially the author holds all copyrights, but when she goes to publish she is presented with a CTA. Just like the statute itself, it is full of legalize that make her eyes glaze over. Her priority is to get published (MUST GET TENURE) so she just signs it. Now, she gave away all of her copyrights for free. What are the implications?
I just got a take down notice about my article that I posted on Academia.edu

(1) to reproduce the copyrighted work

(3) to distribute copies or phonorecords of the copyrighted work to the public

Looking at examples where exclusive rights are implicated
Faculty signed entire copyright over to Elsevier, so Elsevier controls when the work is reproduced and distributed, not the author
My book isn’t available in Romanian, but a Romanian publisher wants to translate and publish it

(2) to prepare derivative works based upon the copyrighted work;

A translation is a derivative work, and the publisher decides when or if it can be translated and published.
I want to show my film at a local film festival

(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly;
I want to make my work more accessible by adding it to my school’s *Digital Commons Repository*

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