

# **Copyright, Open Access and Scholarly communication**

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# What is copyright?

'A bundle of exclusive rights which the law gives to authors and creators to control certain activities relating to the use, dissemination and public performance of their original works'

Copyright term = lifetime of author plus 50 years  
On expiry - material goes into the public domain

# What laws govern copyright in South Africa?

- SA Copyright Act No. 98/1978 (as amended) & Regulations
- Copyright Amendment Act No. 9/2002
- Berne Convention
- TRIPS (Agreement on Trade-Related Aspects of IP Rights)
- WIPO Copyright Treaty & Performances & Phonograms Treaty

# Works protected by copyright

- Literary, musical and artistic works
- Sound recordings
- Computer programs
- Cinematographic films
- Broadcasts
- Programme-carrying signals
- Published editions

# Authors' Rights

- To reproduce the work in any manner or form
- To publish the work if it has not been published before
- To perform the work in public
- To broadcast the work
- To cause the work to be transmitted in a diffusion service
- To make an adaptation of the work

# Authors' rights (cont'd)

- Authors should not sign away all their rights
- Author's Rights and Addendum (SPARC) - <http://www.arl.org/sparc/author/>.
- Authors retain their moral rights

# Copyright ownership

- Literary and musical works = author or creator
- Photographs = person responsible for composition of photo
- Artistic works = artist, sculptor, cartoonist
- Computer-generated literary or artistic work = person who undertakes arrangements necessary for the creation of work
- Sound recordings & films = person who makes the arrangements for the making of the recording or film
- Published editions = the publisher
- For computer programs = person who exercised control over the making the program.
- Broadcast = person who first broadcasts
- Programme signal = 1st person to send the signal to

# Copyright ownership (cont'd)

Copyright can be shared/belong to a 3<sup>rd</sup> party:-

- To an institution – via policy/assignment or new IPR Bill
- To a newspaper or employer – in course & scope of employment
- To a publisher – by written assignment of rights

Can also be commissioned, bequeathed or sold

# Users' rights?

- NO user rights - only limitations & exceptions
- International agreements allow legal flexibilities
- Copyright Act, Section 12 - “Fair dealing”
- Copyright Act, Section 13 (Regulations) - for education, libraries & archives
- Analogue = use restricted
- Digital = access & use restricted

# Contracts/Licences

- Strict conditions
- Contract law overrides copyright law
- Shrink-wrap and click-wrap contracts
- E-databases – for paid subscribers only
- Complete control over works

# Copyright clearances

When applying for permission, obtain the following rights:-

- To reproduce whole works & convert to digital
- To create a modified or derivative work
- To display the work electronically
- To download it onto CD, DVD or other device
- To make the work accessible without technological
- restrictions to users (or to 'unlock' such restrictions)
- To have permission in perpetuity to allow migration, conversion and/or adaptation as technologies change

# What is Open Access?

- Free
- Immediate
- Full Text
- Online access
- Limited or no copyright restrictions.

# Why Open Access for authors?

- Most research articles accessible by only a few
- Online managed, permanent database of scholarly output
- Open Access (OA) maximizes:-
  - research *visibility, usage and uptake*
  - research *applications, impact and citation*
  - research *productivity, progress and funding*
  - research *manageability and assessability*

***By maximising research accessibility!***

# Why Open Access for universities?

- There is an ethical argument that research funded by the public should be available to the public.
- To maximise, measure & reward the uptake, usage, applications and impact of a university's research output
- To collect, manage & showcase a permanent record of the university's research output.

# Open access 'routes'

- **GOLD** = authors publish in OA journals that make their articles freely accessible online immediately upon publication. OA journals are peer-reviewed. Depending on the model, authors may have to pay publishers a fee to publish.
- **GREEN** = authors publish in a subscription journal, but also make their articles freely accessible online, usually by depositing them in either an institutional repository or central repository (either peer-reviewed postprints or non-peer-reviewed preprints).

# Publishers' archiving policies

- **GREEN** = can archive pre-print and post-print
- **BLUE** = can archive post-print (ie final draft post-peer-review)
- **YELLOW** = can archive pre-print (ie pre-peer-review)
- **WHITE** = archiving not formally supported

(source: <http://www.sherpa.ac.uk/romeoinfo.html#colours>)

# Creative Commons

- Free legal and technical tools to facilitate access to digital content ([www.creativecommons.org](http://www.creativecommons.org))

## Licences:



- Attribution (standard in all CC licences)



- Non-Commercial



- No Derivative works



- Share Alike

New! CC BY for commercial

# Science Commons

- Focus areas – licensing, publishing & data
- Science Commons ([www.sciencecommons.org](http://www.sciencecommons.org)) plans -
  - to evaluate & draft open, voluntary & interoperable legal solutions for databases – 'some rights reserved'
  - to provide standard contracts and technologies for institutional-sharing and archiving

# Recommendations

- Amend the following Acts:-
  - Copyright Act 78/1998
  - National Library Act No. 92/1998
  - South African Library for the Blind Act No. 91/1998
  - Legal Deposit Act No. 54/1997
  - Electronic Communications and Transactions Act No. 25/2002
- Protect 'fair dealing' in digital environment
- Provide legal 'keys' to 'unlock' digital content
- Provide access to public-funded research via Open Access

# Thank You

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(click on 'Service', then 'Copyright')

(N.B. References not included in slides – available on request)

# Useful websites

- Publisher copyright policies & self-archiving - [www.sherpa.ac.uk/romeo.php](http://www.sherpa.ac.uk/romeo.php)
- Research funders' open access policies - [www.sherpa.ac.uk/juliet/](http://www.sherpa.ac.uk/juliet/)
- Institutional Repositories – [www.sherpa.ac.uk/repositories](http://www.sherpa.ac.uk/repositories)
- Open Directory of OA Repositories - [www.opendoar.org](http://www.opendoar.org)
- Research funders' open access policies - [www.sherpa.ac.uk/juliet/index.php](http://www.sherpa.ac.uk/juliet/index.php)
- Director of Open Access Journals – [www.doaj.org](http://www.doaj.org)
- Author's Rights and Addendum (SPARC) – [www.arl.org/sparc/author/](http://www.arl.org/sparc/author/)
- Where researchers should deposit their articles – Alma Swan - <http://openaccess.eprints.org/index.php?/archives/438-Alma->
- Open Access Overview – Peter Suber - [www.earlham.edu/~peters/fos/overview.htm](http://www.earlham.edu/~peters/fos/overview.htm)