



The Association of Learned and Professional Society Publishers
Shaping the Future of Learned and Professional Publishing



**AUTHOR AND PUBLISHER RIGHTS FOR ACADEMIC USE:
AN APPROPRIATE BALANCE
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A position paper of the International Association of Scientific, Technical and Medical Publishers (STM), the Association of American Publishers Professional and Scholarly Publishing division (AAP PSP), and the Association of Learned and Professional Society Publishers (ALPSP)

There is much discussion in the academic community about the publication in scholarly journals of the output of academic and research work, and whether copyright (by way of transfer or license) is an obstacle to or a vehicle for scholarly communication. In part this is related to the needs that are well-understood by the scholarly publishing community for authors to use their work in their teaching, in presentations to and discussions with their peers, and for specific uses by their institutions (note discussion below).

Those who consider carefully the issues involved note that use by researchers, faculty, and academics does not need to conflict with rights for journal publishers. The vast majority of academic publishers, and an even larger majority of academic journals, facilitate through journal publishing agreements or institutional licenses a high level of usage rights by authors and their institutions (and in that sense can be identified as scholar-friendly—see discussion in “ALPSP Principles of Scholarship-Friendly Journal Publishing Practice”).

Copyright or an exclusive publication right is not inherently inconsistent in any event with academic or scholarly debate or discussion of published scholarly content. The principles of “fair use”, “fair comment” or “fair dealing”, and the fact that copyright protection does not extend to the underlying facts or ideas, (but only the expression of them) means that academics and critics are always free to note and comment about research developments by criticizing and quoting published articles (without the necessity of obtaining consent). Of course such quotation should follow generally accepted scholarly principles concerning the quotation of just enough of the original to convey the critical point, and proper citation and crediting.

A question may be raised as to whether copyright transfers or licenses are appropriate for academic publishing. What benefits do publishers gain from obtaining some degree of exclusivity in publishing rights, and do those benefits also benefit the academic community and society as a whole? Given the scholar-friendly nature of most academic journal publishers' copyright policies, a further question may be raised as to whether anything more is needed from publishers in order to accommodate the needs of academics and academic institutions.

Copyright transfers or exclusive licenses, even with the rights reserved by authors for academic uses as noted above, provide the legal basis for subscription and licensing activities, whether in the print or the digital environment and whether for journals or individual articles. Transfers or exclusive licenses ensure that publishers have the right to deal with uses beyond the 'first publication right', to facilitate electronic delivery and investments in such systems, and to manage permissions and similar rights management systems. Exclusive rights also provide a legal basis for publishers to administer copyright and permissions matters for authors and enforce copyright claims with respect to plagiarism and related ethical issues, and are used as a tool in certain cases to determine the formal publication status of disputed articles (see the STM Statement on Preserving the Record of Science, March 2006).

Publishers often rely, as do many other copyright industries, on exclusive legal rights to ensure that they themselves are negotiating and authorizing transactional (such as document delivery services) and other subsidiary uses, and obtaining the revenues for authors and for their journal programs from such activities, and to conversely enable publishers to enforce rights against other parties who are copying and distributing copies of published materials without authorization. Publishers believe that such unauthorized activities are impacting journal and "pay per view" revenues, whether such parties operate for monetary gain or not. STM, AAP PSP and ALPSP have supported copyright actions taken in recent years to deal with large-scale revenue-driven copying activities.

In our view, the management of the scholarly publishing system is best done by publishers as professionals, and it is important to remember that publishers are in the business of making content available to the widest possible audience, provided they can do so in financially-viable fashion. Exclusive rights are critical to administering the scientific record and ensuring viable business models for journals.

Journals help identify and support research communities, and serve as quality indicators. The prestige of publication in certain journals is often a useful measure for authors and their institutions as to the quality of underlying research programs. Editor and author support and services are also critical to quality, and more online services are now being provided. Supporting the quality mechanisms of journals publishing is an important element of the cost of high-quality publishing.

Recently, a number of funding agencies, public and private, have asserted a right to control the distribution of articles that result from funded research programs. Publishers generally recognize the importance of research funding, and the public interest involved,

but are concerned about the potential to waste monies with unnecessary duplicate systems, confuse the scientific record, and undermine journal revenue, given the large volume of funding for scientific and medical research. Many publishers also question whether the goals of these agencies could be better met through alternative means (posting of abstracts or pre-prints, links to publishers' own web sites, the actual creation of more consumer-oriented content). Publishers are gravely concerned that on one hand their investments in and contributions to the editing and peer-review systems are dismissed as trivial, while on the other hand these agencies insist that nothing will help to meet the agencies' goals other than open public access to the articles that benefit the most from publishers' contributions.

Most publishers in the scholarly community recognize, as noted above, that most academic or scholarly uses by authors of their own papers are appropriate and unlikely to harm business models. Typically publisher policies and publishing agreements note the retention or granting of permission for extensive use of author's papers within the author's institution, notably for teaching purposes, and posting of some version of the paper for institutional repositories and author personal pages.

Many publishers of academic journals go much further and have adopted business models that support author-pays or funding agency-pays models, or rely directly on foundation or academic society support, advertising, and the like.

Our view is that the appropriate balancing of rights for academic journal publishing should be on these general terms:

- Academic research authors and their institutions should be able to use and post the content that such authors and institutions themselves provide (as noted above, most publishers already provide for this) for internal institutional non-commercial research and education purposes; and
- Publishers should be able to determine when and how the official publication record occurs, and to derive the revenue benefit from the publication and open posting of the official record (the final published article), and its further distribution and access in recognition of the value of the services they provide.

An important implication of the above view is that funding agencies, search engines, and other third parties who wish to use or distribute the publisher versions of journal articles should only do so upon consultation and under an agreement with the publisher.

STM, AAP PSP and ALPSP note that there are exceptions and limitations to copyright laws that may in certain limited circumstances permit the copying of journal articles for certain purposes, but notes that these exceptions are thus far limited to traditional photocopying and do not permit the exploitation of such materials over the Internet. In our view, this is recognition by the relevant legislatures that society is best served if the creative community is provided an appropriate incentive through copyright to empower and enrich the digital environment.