Authors Addenda:

Updating current forms and strategizing on adoption opportunities

CC Global Summit, Lisbon, May 2019

Rosarie Coughlan, Queen’s University
Roger Gillis, Dalhousie University
Diane Peters, Creative Commons
Jennifer Zerkee, Simon Fraser University
Introductions

Rosarie Coughlan, Scholarly Publishing Librarian, Queen’s U (Canada)

Roger Gillis, Copyright & Digital Humanities Librarian, Dalhousie U (Canada)

Diane Peters, General Counsel, Creative Commons (Global)

Jennifer Zerkee, Copyright Specialist, Simon Fraser U (Canada)
Our goals

- Authors rights in academic publishing, global perspectives
- Authors Addendums, use and application
  - Perspectives from Creative Commons
- Revisions to the Canadian Authors Addendum
- Beyond addenda, a call to action
Author rights in context

➔ Copyright and author rights
➔ What do we mean by ‘authors rights’?
➔ Who owns the copyrights in an author’s work?
“who pays the piper calls the tune”
Example: UK

Copyright normally owned by the employer, unless there is an agreement otherwise.

Universities may waive copyright in certain kinds of publications written by employees:

→ Research publications and textbooks where the author retains copyright

→ Course materials where the University asserts its ownership of copyright
Example: Canada

d. A Course Authorship Agreement or Course Revision Agreement shall grant the University an irrevocable non-exclusive, non-transferable (other than to other post-secondary educational institutions under a reciprocal arrangement), non-royalty bearing license to use the Member’s Intellectual Property created and/or provided under the Agreement by the Member for the purpose of teaching students enrolled in a Queen’s University course for which the Intellectual Property was created and/or provided, including where there are modifications, updates and changes to the course in accordance with Paragraph 3.e of this Appendix. Any use of Intellectual Property created and/or provided under the Agreement that is not included in the license is prohibited without the consent of the Course Author or Course Reviser.

e. The license referenced at Paragraph 3.d shall give the University the right to:

   i. place any Intellectual Property of the Member into another medium or format as appropriate for course delivery;

   ii. transfer all Intellectual Property into a current or any successor learning management system or delivery medium;
Example: USA

Consider: “Work for Hire” - your employer owns the copyright for that work from the moment it comes into being.

No written agreement is required for the creative work of a regular employee to be deemed a work for hire (one is usually made).

The "scope of employment" can be defined so that whatever the employee creates on her own time outside that scope clearly belongs to her.
Open Access & authors rights

Tri-Agency Open Access Policy on Publications

“3.1 Peer-reviewed Journal Publications
Grant recipients are required to ensure that any peer-reviewed journal publications arising from Agency-supported research are freely accessible within 12 months of publication.”
Draft Recommendations
MIT Ad Hoc Faculty Task Force on OA - March 16, 2019

Recommendations
The Task Force offers recommendations organized around three strategies for supporting the open dissemination of MIT research and educational outputs:

1. Policy recommendations
2. Infrastructure and resource recommendations
3. Advocacy and awareness recommendations

Policy recommendations

1. Adopt an all-campus open access policy, granting MIT non-exclusive permission to openly disseminate scholarly articles written by any MIT author. Such a policy would apply to scholarly articles written by undergraduate and graduate students, staff, post-doctoral fellows, research scientists, and other MIT community members who produce scholarly research articles while employed and/or enrolled at MIT, and would be modeled on the existing MIT Faculty Open Access Policy. This is not intended to apply to work that students produce solely for courses; it is not intended to apply to work that is not intended to be published.
Authors retain copyright of their publication with no restrictions. All publications must be published under an open license, preferably the Creative Commons Attribution Licence CC BY. In all cases, the license applied should fulfil the requirements defined by the Berlin Declaration.
Issues and limitations

Sharing works outside of publishers websites (e.g. personal website, institutional repository, social networking sites)

Lack of awareness around options (negotiating terms, addenda, CC licenses)

Knowledge around copyright may be limited - researchers face different pressures (tenure & promotion, publishing in certain venues)

Previous rights arrangements (e.g. assignments of certain rights in previous contracts/licenses)
Caring about sharing

Researchers often want to share their publications (personal websites, institutional repositories, etc.) but restrictive agreements may restrict them from doing so.

Publishers escalate battle against ResearchGate. Inside Higher Ed.  
Researchers are unaware of options

Using addenda or other tools

Negotiating and understanding licenses and contracts (what am I signing away?)

Implications and limitations of assigning copyright
Pressures faced by academic researchers

The ticking time clock of tenure

Publishing within certain journals/publication venues (which may have restrictive copyright arrangements)

Lack of rewards / incentives for publishing Open Access (with less restrictive rights) formats

Draft report on Open Access (MIT Taskforce)

Preliminary Findings from the Review, Promotion, and Tenure Study (Alperin et. al.) | Preprint.
Other barriers

Click-through agreements (little room for negotiation)

Previous agreements/licenses
Revising the Canadian addendum

Canadian Association of Research Libraries / Association des bibliothèques de recherche du Canada

2/3 of librarians find the addendum useful*

*with limitations
2016 survey of researchers

27% of authors sign publishing agreements without reading them

86% of authors would like a service providing assistance with publishing contracts
“What factors prevent you from negotiating with publishers?”

- Do not have knowledge
- Have not considered
- Too much trouble
- Need this journal for P/T
- All of the above
Get to know your rights you may want to ask to retain consult the Canadian Author Addendum and Look through the
Canadian Author Addendum on the CARL website to
familiarize yourself with its contents.

Determine which of these rights you wish to retain e.g.
sharing the work with students and colleagues, deploying in
repositories, using in teaching, or in future publications.

Read through the agreement you have been provided by
your publisher* and determine what rights are not covered
under this agreement (your institution’s scholarly
communication Librarian or copyright officer may offer
assistance in interpreting the agreement).

If a publication requires click through agreement at the
time of submission, you can communicate with the journal
editor about your options for negotiating additional rights.
You may for example submit an addendum request to the
editor at the time of a publication offer.

Download and edit the Canadian Author Addendum (either
on your computer or by hand on a printed version) to select
the rights you wish to retain.

Sign and date a printed copy of the Addendum and
email and then forward with your signed agreement, and work
to receive a response. It is recommended that you sign your
addendum to an addendum quickly, use email and/or as a note
next to your signature on the author agreement.

Paragraph 4 of the Addendum states that ‘In the event that
Publisher publishes the Work in the journal or book identified
herein or in any other form without signing a copy of the
Addendum, Publisher will be deemed to have ascribed to the
author all benefits accruing to the author under this
Addendum’. It is nevertheless recommended that authors
exercise extra due diligence by flagging the addition of
an addendum as soon as possible as the enforceability of this
date relies on the consideration of the full communication
between the two parties.

Revised Canadian Author Addendum

Acknowledgment of Prior License Grants:

...Publisher acknowledges that Author’s assignment of copyright or Author’s grant of exclusive rights in the Publication Agreement is subject to Author’s prior grant of a non-exclusive copyright license to Author’s employing institution and/or to a funding entity, such as an agency of the Canadian government...
CARL guide to using the Canadian Author Addendum

1. Get to know your rights
2. Determine which rights you want to retain
3. Read your publishing agreement to see what rights it gives you
4. Download and fill out the Canadian Author Addendum
5. Submit the addendum to your editor
CARL guide to author rights

Before you submit

During submission and review

After publication
Before you submit

1. Select your publication venue carefully
2. Identify rights you want to retain
3. Review funder and institutional policies
4. Additional considerations:
   • Third-party content
   • Publishing research data
During submission and review

1. Understand the terms of your agreement
2. Negotiate to retain your rights if necessary
After publication

1. Retain a copy of your publishing agreement
2. Reclaim your rights
3. Share your work as widely as permitted
Get to know the rights you may want to ask to retain consult the "Canadian Author Addendum" and look through the Canadian Author Addendum on the CARL website to familiarize yourself with its contents.

Determine which of these rights you wish to retain (e.g., sharing the work with students and colleagues, depositing in repositories, or making versions of it publicly accessible).

Read through the agreement you have been provided by your publisher and determine what rights are not covered under this agreement (your institution’s scholarly communication librarian or copyright office may offer assistance in interpreting the agreement).

If a publication requires click-through agreement at the time of submission, try communicating with the journal editor about your options for negotiating additional rights. You may, for example, submit an addendum request to the editor at the time of a publication offer.

Download and edit the Canadian Author Addendum (either on your computer or by hand on a printed version) to reflect the rights you wish to retain.

Sign and date a print copy of the Addendum, and email it to the editor along with your signed agreement, and wait to receive a response. It is recommended to ensure you signed all pages of the Addendum. Publishers will be in touch to revise the terms of the Addendum.

Paragraph 4 of the Addendum states that “In the event that Publisher publishes the Work in the journal or book identified herein or in any other form without signing a copy of the Addendum, Publisher will be deemed to have consented to the terms of this Addendum.” It is nevertheless recommended that authors exercise due diligence by verifying the addition of an addendum (see 4b) above) as the irreversibility of this clause relies on consideration of the full communication between the two parties.

Creative Commons & author addenda

CC Scholars Copyright Addendum Engine (current) Offerings

- Goal: ensure authors retain some rights to publish their works on open terms when submitting articles for publication
- Creative Commons, SPARC, MIT, and many dozens if not hundreds of types of addenda, with various terms
  - See http://oad.simmons.edu/oadwiki/Author_addenda
- SCAE: generates standard a standard addendum for submission with publication agreements

<table>
<thead>
<tr>
<th>Type</th>
<th>Authors may ...</th>
</tr>
</thead>
<tbody>
<tr>
<td>CC/SPARC</td>
<td>Immediately post online under BY-NC or equivalent</td>
</tr>
<tr>
<td>CC Immediate Access</td>
<td>Immediately post published version online if no charge to access</td>
</tr>
<tr>
<td>CC Delayed Access</td>
<td>Post final version (after peer review) online if no charge to access, Post published version after 6 months</td>
</tr>
<tr>
<td>MIT</td>
<td>Use in academic work at MIT, deposit in Dspace, and if NIH-funded deposit in PubMed Central</td>
</tr>
</tbody>
</table>
Utility and impact; Are addenda effective?

Measuring success, value of addenda overall

- Use by authors – learnings
- Acceptance by publishers and/or change in standard publication agreements
- Biggest Impact: education and empowerment of authors

Considerations for the future

- Ongoing utility and impact? Data is sparse
- Expansion of legal terms to address changing ecosystem
- Technology
- Education // Socialization
- Other (potentially) more impactful mechanisms
The larger ecosystem for authors
Rights reversion

- Publishing agreements may contain a reversionary rights clause (different or in addition to statutory rights reversion).
- Allows an author to regain some or all of the rights in her book from her publisher when its triggering conditions are met.
- Pro tips:
  - Authors can still negotiate with their publishers in the absence of a contractual clause.
  - Keep a copy of your publication contract.
- Authors Alliance provides free information about rights reversion ([authorsalliance.org/resources/rights-reversion-portal](http://authorsalliance.org/resources/rights-reversion-portal))
Termination rights: why take them back?

The opportunity to recapture rights allows creators to:

● Give new life to works that have outlived their commercial lives (by, for example, releasing them to the public on open terms)

● Renegotiate contracts and enjoy more of their works’ financial success
Termination rights (U.S.) (rightsback.org)
Termination rights (global): RightsBackResource

https://labs.creativecommons.org/reversionary-rights/
Many countries have laws giving statutory rights that allow authors to reclaim or have their rights returned. Generally, come in two flavors:

- **Automatic reversion**: e.g., in Canada
- **Termination upon demand**: e.g., in Poland

Moral rights as termination rights:

- Primarily in civil law countries
- Control reuses, possibly regain
- Not typically transferable or licensable
What’s the RightsBackResource?

- Searchable database of termination rights in all countries
- Aggregates
  - Laws (enacted and pending/proposed)
  - Case law and administrative decisions
  - Scholarly articles and resources
  - Links to termination tools and guides currently U.S. and Poland
  - Other information, including submitters of content if provided
- Consider contributing!
How to Contribute


Country
Poland

Number
art. 57, Section 1

Effective Date
1994-02-04

Link

Link (in English)
http://www.copyight.gov.pl/media/download_gallery/Act%2On%20Copyright%20and%20Related%20Rights.pdf

Summary
"If the acquirer of the author's economic rights or the licensee who has undertaken to disseminate the work does not start the dissemination within the agreed time limit or if there is no agreed time limit, the author may renounce or terminate the contract within two years from the acceptance of the work and may claim the damage to be repaired after the expiry of an additional time limit, not shorter than six months." This provision was meant to protect the interests (both moral and economic) of the creator (and legal successors), which concern the public presentation (public access) of his work. The author has a right to renounce or terminate the contract and claim the damage. If the acquirer of the author's economic rights or the licensee does not start the dissemination of the work within the agreed time limit. The author can exercise his rights only after the expiry of an additional period, not shorter than six months after agreed time limit or if there is no agreed time limit, after two years from the acceptance of the work. This provision does not apply to architectural and architectural and urban planning works.

Contributed By
Katarzyna Strycharz
Hearing from you
Call to action

What more can be done to help creators be aware of their options and negotiating their rights when publishing?

What can the broader CC community do to promote retaining rights?
Resources and further reading

SPARC author addendum
CARL author addendum and guides
CC Scholars Copyright Addendum engine

Authors Alliance:
  Guide to Open Access
  Guide to Publication Agreements
Model Publishing Contract