

LEGAL AND POLICY ISSUES FOR REPOSITORY PROJECTS AND REPOSITORY MANAGERS



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GETTING THE POLICY AND LEGAL ISSUES RIGHT



- Don't ignore them (they are important)
- Don't worry about them (there are solutions)
- Don't assume that everybody else is doing everything correctly (two wrongs do not make a right in law)
- Do take advice (there is plenty of experience now available)
- Do find a balance between being over-zealous and over-cautious (legal issues can ruin any enterprise either by getting the participants in trouble or by inducing stagnation)
- Do get the backing of your institution (so that the writ lands on the VC's desk and not on yours)
- Do set out procedures clearly (so that other people cannot say "we were not told")
- Do keep records (so that in the unlikely event of any legal action you can show what you have done or not done)

POLICY FIRST



- Don't let the legal tail wag the policy dog (this generally happens with commercial enterprises who will not agree to anything without their lawyers' approval but in academia policy should come first)
- Policies should fulfil the objectives of the project or service (policies are there for a purpose)
- Policies and politics go together (e.g. a university copyright policy is generally a compromise between the interests of management and the interests of academic staff)
- If your university does not have a copyright policy requiring re-use rights and repository deposit, please work to get such a policy
- Policies are always more effective when they have widespread support (e.g. mandating deposit in a repository will only be effective if the stick is combined with a carrot)
- People need to know what the policies are (this applies to project/repository staff as well as to users)

COPYRIGHT (UNAVOIDABLE)



- Every piece of content in a repository, and even the repository itself, has copyright associated with it
- Historically copyright was intended to encourage new development (by protecting the tender new plants) but in practice often stifles new development (through the fear of legal action)
- Legal action by copyright owners is very rare in academic life and will be even rarer if sensible policies are followed (it is the rash who end up in court)
- Repository or project managers should ensure that they do not inadvertently become responsible for somebody else's breach of copyright
- Third party rights tend to cause the main problem (e.g. If an academic deposits content for which s/he does not own the copyright)
- Take-down policies are vital as an escape route

ACADEMIC ANGELS AND PUBLISHER DEVILS?



- Stereotypes do not always fit reality
- Academic staff and students are often careless about copyright and regularly sign away important rights
- Some publishers are academic-friendly and either do not insist upon copyright transfer or allow generous re-use rights
- The SHERPA/RoMEO database is a reliable guide to publisher policies, but be aware that some publishers who look “green” may have restrictions upon repository deposit or re-use for particular titles
- Some academic authors may be more restrictive than publishers in wishing to restrict re-use
- Always seek permission to use third party content: a letter/e-mail outlining what you want to do with the content with “if I do not hear from you by.....” may be sufficient

A FEW KEY ISSUES



- Please encourage academic authors to use a licence to publish instead of copyright transfer
- Look out for Creative Commons licences: they are a big help when authors have used them
- Re-use rights are important both for paper content (e.g. study packs) or for electronic content (e.g. text-mining)
- Please include version identification in repository metadata (e.g. reprint, postprint, publisher's pdf, all with dates of versions)
- Essential to have a section on copyright information on the repository/project web-site, advising depositors and users of basic facts about copyright and advising that responsibility for copyright clearance of third-party content lies with depositor

AND FINALLY.....



- In true legal fashion, I must advise you that nothing I have said should be taken as formal legal advice and is not JISC policy (and I am not liable for anything in this presentation!)

But good luck, and thank you for listening!