

After the Addendum: Author Rights Management and/as Library Service

by Marcel LaFlamme

This report presents the findings from a qualitative study of Rice University faculty attitudes and practices around author rights conducted by Marcel LaFlamme, a graduate student in the Department of Anthropology, during his tenure as a Fondren Fellow. This project was supervised by Shannon Kipphut-Smith, Fondren Library's scholarly communications liaison.

Background

When researchers publish their scholarly writing, they generally sign agreements that define the terms under which the published work can be distributed. Often, these agreements serve as a mechanism for transferring copyright of the work from the author to the publisher. By the late 1990s, though, this blanket transfer of copyright was being called into question, both in response to the serials crisis in academic libraries and in dialogue with a broader rethinking of copyright emerging out of the free and open-source software movement. By arranging to retain some of the rights that they had formerly signed away, researchers would (it was thought) give libraries greater bargaining power with publishers and support the creation of alternative channels for the dissemination of scholarly research.

One of the most important strategies for retaining author rights was the author addendum, pioneered by the MIT Libraries in January 2006 and boosted to prominence by the Scholarly Publishing and Academic Resources Coalition (SPARC) later that year. In a widely circulated brochure, SPARC exhorted researchers, first, to know their rights as copyright holders and, then, to scrutinize the agreements they were asked by publishers to sign, since these agreements “may capture more of your rights than are necessary to publish the work.”¹ Ensuring that an agreement strikes an appropriate balance between the interests of author and publisher is, the brochure emphasized, “up to you.”² Yet this responsabilizing language was tempered by the availability of the SPARC addendum, which authors were encouraged to append to their publisher agreements. The addendum would, if accepted, allow the author to retain certain rights to the published work, including those of noncommercial reproduction and distribution.

Even as the scholarly communications landscape continues to change, the idea of the author addendum has enjoyed remarkable staying power. Critics have charged that many of the provisions stipulated in these addenda are now standard features of publisher agreements, like the right to deposit a preprint version in an institutional repository.³ Then, too, the material process of completing a publisher agreement has evolved over the course of a decade; instead of printing, signing, and scanning a paper document, authors are in some cases asked to affix an electronic signature to a web-based form with no option to upload supplementary materials. For these and other reasons to be developed over the course of this report, it may be time for academic libraries to expand their playbook of strategies for supporting the retention of author rights.

¹ SPARC, “Author Rights” brochure (2006), <https://sparcopen.org/our-work/author-rights/brochure-html>.

² *ibid.*

³ Sanford G. Thatcher, “On the Author’s Addendum,” *Journal of Scholarly Publishing* 40 (2008).

Project Scope

The initial project proposal, written by Shannon Kipphut-Smith, called for a usability study of existing author rights resources at Rice, which include one tab of a LibGuide on copyright and fair use (<http://libguides.rice.edu/c.php?g=45195&p=287362>) and sections of the Open Access at Rice website (see, in particular, <http://openaccess.rice.edu/navigating-copyright>). However, in consultation with Marcel LaFlamme, the decision was made to refocus the project as a qualitative study of attitudes and practices around author rights among the researchers that Fondren serves. Previous, survey-based studies have asked researchers to rank a list of reuse rights in terms of the priority they would place on retaining them⁴ and assessed their overall approach to publisher agreements.⁵ Kipphut-Smith and LaFlamme agreed that a more in-depth, interview-based study might yield insight into what sort of author rights resources researchers want and need.

In designing the present study, LaFlamme drew on an approach from the anthropology of commodities known as the *object biography*.⁶ The study would aim to reconstruct the submission, review, publication, and subsequent reuse of a specific article-length work by study participants, with heightened attention to moments at which decisions involving author rights were made. By asking about the participant's most recently published work, the study would elicit an account of experiences that were still fresh in the participant's mind. The study would also triangulate the participant's interview responses with the author agreement governing the work in question, permitting an empirical check of the participant's perceptions about the retention of rights.

Methods

Rice's Office of Institutional Effectiveness provided the research team with a list of tenure-stream faculty by department and rank, which LaFlamme used to generate a stratified random sample of potential participants. Initially, the research team hoped to conduct interviews with assistant, associate, and full professors at all seven tenure-granting Schools at Rice University, in order to get a robust sense of differences across career stage and discipline. An initial round of email invitations went out in October 2016 and, in light of the modest response rate, the research team revised its target number of participants down to 10, with at least one representative from all seven Schools and some heterogeneity in faculty rank.

Semi-structured interviews were conducted in faculty offices or at the Brochstein Pavilion, lasting between 30 and 90 minutes. The interviews were audiorecorded and transcribed in their entirety; transcripts will be deposited in Rice's institutional depository once identifying information has been removed. The research protocol was approved by Rice's Institutional Review Board, and all participants were briefed on the purpose of the study, the risks and benefits of participation, and the protections in place to protect their rights and their confidentiality.

⁴ Sally Morris, "Journal Authors' Rights: Perception and Reality," Publishing Research Consortium Summary Paper 5 (2009), <http://publishingresearchconsortium.com/index.php/110-prc-projects/summary-papers/journal-authors-rights-summary-paper/140-journal-authors-rights-perception-and-reality>.

⁵ Gale Moore, "Survey of University of Toronto Faculty Awareness, Attitudes and Practices Regarding Scholarly Communication: A Preliminary Report" (2011), <http://hdl.handle.net/1807/26446>.

⁶ Igor Kopytoff, "The Cultural Biography of Things: Commoditization as Process," in *The Social Life of Things: Commodities in Cultural Perspective*, edited by Arjun Appadurai (Cambridge: Cambridge University Press, 1986).

Findings

The process of identifying participants' most recent article-length publication underscored the sheer diversity of scholarly output at a university like Rice. The works identified included seven journal articles and three book chapters, and their publishers ranged from major university presses and commercial publishers to a small European publishing house. Five of the works were single-authored, and while the median number of authors on the other five works was eight, one article was credited to a collaboration of over five hundred authors. Of the ten works under consideration, one had been published on an open-access basis.

The author agreements governing these works were no less diverse. At one end of the spectrum, an interviewee in the School of Architecture reported that he was rarely asked to sign a formal agreement in conjunction with his publications. Informal agreements struck over email were standard. An interviewee in the School of Natural Sciences indicated that the journal in which his article appeared asked authors to accept a set of terms and conditions upon submission of a manuscript, but did not ask them to sign a separate document. Of the agreements governing the other eight works, seven transferred copyright of the work to the publisher; one allowed the author to retain copyright, but assigned the publisher an exclusive license to publish the work.

Most of the interviewees confessed that they had spent relatively little time reading the agreement for the work in question. "Like, two minutes," an interviewee in the Shepherd School of Music estimated, adding: "I'm exposing my character flaws!" An interviewee in the Jones School of Business narrated his process of reviewing author agreements: "I'll be like, di-di-di-di-di-di [miming using his finger to scan the text], boom, send it back. Without reading anything." In contrast, an interviewee in the School of Engineering said that she tries to spend "a good ten minutes or so" on agreements with unfamiliar publishers, although she allowed that "I haven't always been rigorous about making sure that I really, truly understood the agreements that I've signed." None of the interviewees had ever negotiated with a publisher to retain rights beyond those granted by the agreement they were sent. "I've been very acquiescent when it comes to the contracts," an interviewee in the School of Architecture reflected.

For some interviewees, these reading habits reflected their sense that author agreements were, in practical terms, impossible to change. "For me to take up an issue with Wiley," one said, "when Wiley's got ten lawyers that have reviewed this and done this for fifteen years with a bunch of people, they're just going to say no and I don't have the means to do anything other than that." A lack of access to relevant expertise emerged in another interview, in which a participant recalled that he had reached out to Rice's Office of the General Counsel with a question about the reuse of third-party content. The response he got was "the address of a lawyer in Houston who could help me with it, which is probably like, I don't know, \$600 an hour, consultancy that you cannot pay with your research funds." Junior faculty also framed their reluctance to negotiate the terms of an author agreement in terms of the pressure to publish and make a compelling case for tenure. In this context, the agreement gets framed as "the last hurdle before this thing I've been working on for so long gets out," such that, as one interviewee laughingly put it, "I'll sign anything."

For other interviewees, and particularly for senior faculty, inattention to the fine points of author agreements reflected their sense that a failure to comply simply did not appear to carry any consequences. "I've just never heard of anybody ever getting in real trouble for breaking any of these publishing things," one full professor told me. Another, who serves as a department chair,

noted that “unless this is a problem for Rice in that faculty are ignoring legal contracts they’ve signed and that makes [the university] look bad, as far as I can see, it’s not really a problem.” Indeed, some interviewees argued that the reuse of published work in ways not authorized by a formal agreement carried potential benefits for publishers. “I see this as a kind of gray area,” one interviewee said, “and I’d like to keep it that way. If it becomes black and white, then I have to start paying too much attention to this. I’d rather have it be gray.”

In reference to their most recent publication, participants were asked whether any versions other than the publisher’s version were publicly available and, if so, where they could be found. Here, the aim was to establish (without judgment or threat of repercussion) how the participant’s practices of reuse compared to the terms of the author agreement and to elicit his or her attitudes toward various alternative channels of distribution.

Rice Digital Scholarship Archive

Out of the ten study participants, five were not familiar with Rice’s institutional repository. Two were aware of the repository but unsure of its value, with one bluntly stating that “I’ve never known of anybody who looked for anything there.”⁷ Two indicated that they deposited articles when prompted to do so by Fondren staff, one of whom had done so for the work under discussion (technically, in violation of the embargo period stipulated in the relevant author agreement). Only one participant described the repository as part of a deliberate strategy for making her work more accessible. This participant praised Fondren staff for working with her to ensure that the deposited version of her article included key elements of the published version, like page numbers.

Subject Repositories

Just two of the study participants were regular contributors to subject repositories. An interviewee in the School of Natural Sciences held up arXiv as “the most important tool we have,” providing timely access to article content regardless of publisher restrictions. An interviewee at the Jones School reported that the Social Science Research Network was equally central to his research practice; in the case of the work under discussion, he had uploaded a preprint version of the article “to put a flag in the ground” and then uploaded a revised version once it had been accepted by the journal where it would appear. When asked if researchers in his field would have any reason to prefer the published version of the article to the repository version, he replied “zero.”

For other participants, though, this culture of prepublication sharing was hard to imagine. An interviewee in the School of Humanities reported that “people try to avoid that, because you want to get published, you want to get cited in the way that the publishing agency has defined it. So you don’t want to send anything out in advance. People really like to see finished products.” For this researcher, the publication of a single-authored monograph would mark her emergence as a finished product in her own right, and until then she was wary of depositing her work anywhere (even if author agreements allowed her to do so). “This might be a bad approach,” she admitted, but it stemmed from “an anxiety about presenting myself in a half-baked way, and therefore hoping not to call any attention to myself until I’ve had the opportunity to present an integrated self.”

⁷ However, see Beth St. Jean, Soo Young Rieh, Elizabeth Yakel, and Karen Markey, “Unheard Voices: Institutional Repository End-Users,” *College and Research Libraries* 72 (2011), on researchers accessing repository content through search engines like Google without realizing it.

Academic Social Networks

Websites like ResearchGate and Academia.edu have grown dramatically over the past decade and, despite the consternation of some librarians,⁸ have become important platforms for the dissemination of scholarly research. Only one of the study's ten participants was unfamiliar with these services. Of the remaining nine, one indicated that he had posted as many as one hundred full-text articles to one of these services. "Clearly, I'm violating some copyright," he told me. "I haven't been flagged for it yet. I'm waiting for this, you get this letter someday that you're gonna be sued. But I've never been asked to take them down. I figure, I get one warning shot and then I can take them down, but nobody's ever sent me one." While this participant's motivation to post his articles stemmed from a commitment to accessibility, another interviewee gave a more self-interested reason for uploading her scholarly output: "If you aren't putting your stuff out there, people aren't going to cite you as much."

Even among less active users of academic social networks, this sense of pressure to make themselves and their work visible was keenly felt. "You kind of have to crawl out of your introvert hole and make your presence known," one interviewee explained. Another lamented that the websites themselves did not provide much guidance on what was permitted: "It kind of makes it seem like you're the one who should know. Like, it doesn't reject things. Like, this is too soon, or we know you're not allowed to put it up there until a year later or something like that. You're definitely at your own risk." Some participants took their cues from colleagues to gauge which version of a work to upload, while others improvised solutions of their own: for instance, posting the first three pages as a kind of preview. "I mean," this participant acknowledged, "maybe the publisher wouldn't even agree to that. I didn't ask them."

To be clear, not all study participants were active users of academic social networks. Three participants indicated that they have signed up for accounts, but have not posted their work, and the two participants who are active users of subject repositories have also remained on the sidelines. "These things tend to flash over quickly," one ruminated, "so who knows?" Still, subject repository users and academic social network users shared the view that journal articles were cumbersome to access through Fondren's website in comparison to these alternative channels. "Some of them are easy," a frequent ResearchGate user noted, "but sometimes [Fondren will] say they have them and they don't, and it's like 'aaahhh!'" The growing expectation that full-text content will be available with a single click suggests that both libraries and publishers have an incentive to either improve existing authentication systems or to set them aside altogether.

Recommendations

As new publishing models and channels for dissemination proliferate, researchers at Rice need to be able to navigate this terrain confidently and responsibly. Fondren is poised to play a central role in preparing researchers to do so, but this will require moving beyond the provision of author rights resources and into the realm of service delivery. No website, however well researched, will be comprehensive and yet specific enough to meet the needs of Rice's diverse, demanding faculty. As one study participant put it, "I would never read through something like that."

⁸ Katie Fortney and Justin Gonder, "A Social Networking Site is Not an Open Access Repository," University of California Office of Scholarly Communication blog (2015), <http://osc.universityofcalifornia.edu/2015/12/a-social-networking-site-is-not-an-open-access-repository>.

Two models of author rights services developed at other universities serve as jumping-off points for the recommendations that follow. The first is the Rights Well Workshop developed at the Oregon State University Libraries, which trains subject liaisons to offer author rights workshops to the departments they serve. The workshop revolves around collaborative review and discussion of specific author agreements, and ideally it includes an assessment component that measures a subsequent change in behavior among participants. However, the workshop also emphasizes that it falls to the author to “make the appropriate adjustments to the [agreement] if necessary.”⁹

The second model, developed at Eastern Illinois University, involves repositioning subject liaisons as scholarly communication coaches who can guide faculty throughout the life cycle of a publication on issues including, but not limited to, author rights.¹⁰ Here, an ongoing, one-on-one relationship between liaison and faculty member is envisioned as the basis for working together to retain copyright or negotiate an addendum. This model acknowledges that researchers are not likely to learn everything they need to know about author rights in a one-shot workshop. Yet it does not include an explicit assessment component, and it depends on a refunctioning of positions that not all libraries will be in an organizational position to undertake.

Combining the strengths of both models, this report recommends ***the creation of an agreement review service*** to be headed up by Fondren’s Scholarly Communications Liaison. Several study participants stated that such a service would be useful, as in these examples:

A contract review process would be great, if Rice offered that. If there was somebody over there that, when this comes into my inbox, I could say, could you take a look at this? If I could say, here are the things that I have concerns about, generally. Can you help me in how I might approach this with the publisher? That would be very good for me. I think that would be terrific, actually.

Maybe some help with understanding to what degree [a particular use of an article] is still within the green zone and where it starts to shift outside of that. Something like that could be helpful. I wasn’t really aware of any of that [at Fondren], and that’s why I didn’t try to take advantage of it. But I would, if it were around.

Depending on the terms of the agreement and the nature of the author’s concerns, the review process could include the relevant subject liaison and/or legal counsel, whether through Rice’s Office of the General Counsel or through a lawyer well versed in copyright law and on retainer for occasional consultations. Such a review process would lend itself to assessment, in that the review team could follow up with the author as to whether the publisher granted any additional rights that the author sought to retain. Over time, this data could be made publicly available, lending transparency (and perhaps even reproducibility) to a negotiation process that is presently cloaked in anecdote and hearsay.

Actively promoting this new service will be essential if it is to succeed: an initial publicity push should be followed by profiles of Rice faculty who used the service and were able to retain particular rights as a result. As with so many library programs and services, satisfied faculty will

⁹ Andrea A. Wirth and Faye A. Chadwell, “Rights Well: An Author Rights’ Workshop for Librarians,” *portal: Libraries and the Academy* 10 (2010), <http://hdl.handle.net/1957/17099>.

¹⁰ Todd Bruns, Steve Brantley, and Kirstin Duffin, “Scholarly Communication Coaching: Liaison Librarians’ Shifting Roles,” in *Partnerships and New Roles in the Twenty-First Century Academic Library*, edited by Bradford Lee Eden, Rowman and Littlefield (2015).

be Fondren's most valuable advocates. Over time, of course, there is no reason that this service cannot be extended to researchers at the postdoc and graduate student level, but this report recommends starting with tenure-stream faculty to get a sense of demand (and given that the research out of which this proposed service originated was specific to that population).

In addition to the agreement review process, this report has two further recommendations. First, Fondren should consider **facilitating departmental retreats** in which an author agreement for a core journal could be collectively revised. This recommendation follows closely on the Rights Well Workshop model, but it recasts the review of a particular author agreement as more than an exercise. By encouraging faculty to think with their colleagues about which author rights might be important to retain and by asking them to work toward a written consensus, Fondren stands to catalyze conversations that do not appear to be happening at the departmental level and, in the best-case scenario, to generate discipline-specific addenda that an entire department could use. Here, the addendum is reinvented not as a one-size-fits-all solution, but as the product of local, highly contextual negotiations. Hint: good catering will help.

Second, Fondren should consider **offering academic social network checkups** for researchers who are concerned about whether their use of services like ResearchGate and Academia.edu is in compliance with publisher policies. As the present study established, some researchers are aware that their use is not in compliance and are not especially concerned. This is their prerogative, and Fondren need not get into the role of policing how faculty use these sites. However, other researchers are looking for direction on using these services responsibly and, more broadly, on balancing the competing pressures of compliance and visibility. A checkup that compared a researcher's postings to the relevant author agreements and then explained any associated risks, without passing judgment, could be valuable for some faculty.

Conclusion

The rise of author rights discourse has given researchers a new vocabulary for helping to define how their scholarly work circulates. Yet if the idea of author rights is to take hold beyond a principled core of open-access advocates, its conceptual weaknesses must be addressed. These include the assumption that researchers will cultivate a new, critical set of reading practices with respect to author agreements, even as scholars of similar agreements have concluded that this is unlikely.¹¹ These also include the move to responsabilize the author, as autonomous agent, for the management of his or her rights. As the SPARC brochure says, "it's up to you."¹²

Fondren's approach to author rights should start with a realistic assessment of researcher reading practices, as documented in the present study. It should also move beyond the rhetoric of responsabilization, which is meant to empower but also implicitly casts blame on researchers who have not made the retention of author rights a priority. Instead, Fondren's approach should proudly re-embed the management of author rights in the provision of knowledgeable, responsive library service. Rather than pointing researchers to a prefabricated addendum and then expecting them to do the rest, the recommendations presented here envision rights management as a partnership between researchers and Fondren staff. Such a partnership stands to advance the researcher's individual objectives even as it promotes wider access to scholarly research.

¹¹ Omri Ben-Shahar and Carl E. Schneider, *More than You Wanted to Know: The Failure of Mandated Disclosure*, University of Chicago Press (2016).

¹² Here, see Ilana Gershon, "Neoliberal Agency," *Current Anthropology* 52 (2011).