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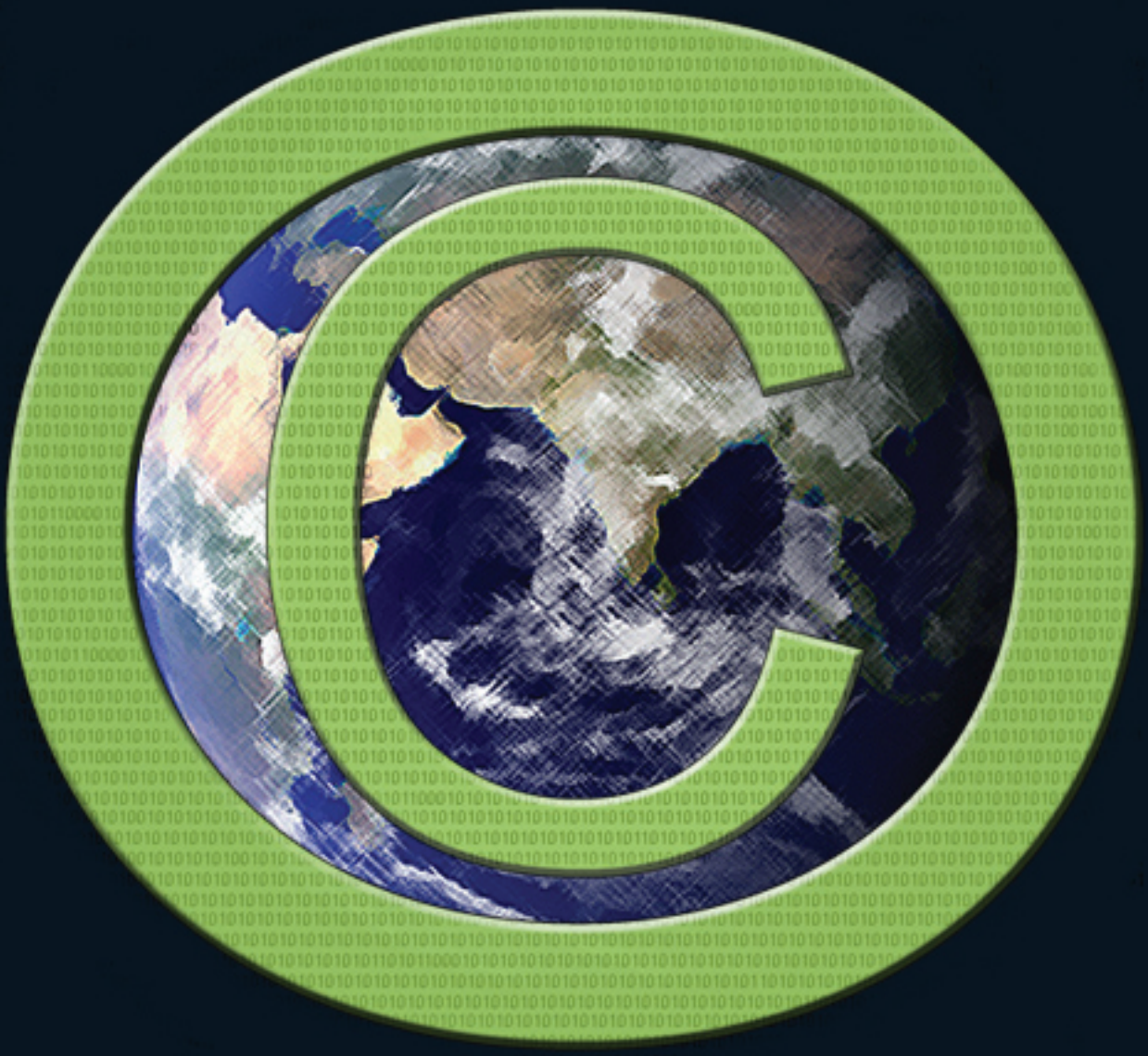

WHO OWNS YOUR WORK?

Copyright in the Digital Age

Colorado State University

It's been ten years since CSU Libraries launched its Web site, and since then the Internet has revolutionized the way we bring you information. Today the Library provides you with access to more than 24,000 electronic journals and more than 198 databases, regardless of whether you're at home, at the office, or out in the field. The Library Web site has no doubt transformed the way that CSU faculty and staff conduct their writing and research. The Internet has had a similar effect on the classroom, with students now able to do research from computer labs inside the Library, across campus, in their dorm rooms, and beyond. Thanks to the Library's Electronic Reserve system, we're also making it easier for you to share materials online with your students without the costly expense of paper copies.

As a society, we are in the midst of an information revolution. For the first time in history, Internet technology enables the dissemination of knowledge and the exchange of ideas both globally and instantly. The Internet is also transforming notions of authorship. As blogging, e-mail listservs, and other forms of online publishing are embraced across academia, the ways in which we publish and share our work are being radically transformed.

In the midst of this burgeoning technology, lawmakers are faced with important questions on the ways in which to govern—or, some would argue, to protect—information in the digital environment.

This issue of *Library Connection* explores copyright in the digital age. Who owns creative work and who has the right to share it? For educators, the "Know Your Copy Rights" insert, produced by the Association of Research Libraries (ARL), will serve as a quick guide to help you navigate some important questions when sharing digital content in the classroom. If you did not receive an insert, the information is freely available on the web at http://www.knowyourcopyrights.org/. We're happy to assist you in the Library and the General Counsel's Office can also answer specific legal questions pertaining to copyright information.

The article we present here in *Library Connection* is addressed to you as authors. It is meant to help you explore the options of ownership of your own creative work—the rights you have, the rights you sign away, and the rights you may want to keep.

Who Owns Your Work?

Exploring Copyright in the Digital Age

In an academic setting, publishing is essential. It enables us to communicate our research and teaching to others, to further the exploration of ideas and theories, to share discoveries and make important advances that directly impact our communities and quality of life. Ideally, publishing gives us a voice in the vast discourse of our fields. Most practically, it provides us with professional standing and enables us to pursue important advancements such as tenure. Most view publishing as the end result of months or sometimes years of toil—the products of our research and teaching.

Once our work has been accepted, especially if it is to be published by a top tier journal, we often sign whatever paper the publisher puts in front of us. It is so important that our work has made the journey from our own desktop and into the wider world to be read, discussed, and hopefully cited that most of us probably don't even know what it is we are signing away.

I use the term "we" deliberately, to include librarians. Although open access is one of the key issues being tackled by libraries and librarians worldwide, a recent study shows that librarians are no more aware than other academic faculty of what rights they sign away, nor are they particularly motivated to publish in journals that allow them to retain their rights. According to an international study published by City University in London, 13% of authors across disciplines indicated a detailed interest in copyright and intellectual property rights. These results are strikingly similar to a 2007 survey of librarians published by researchers from Southern Illinois University Carbondale, which reported that only 10% of respondents indicated such an interest.[1]

The assertion is not that this behavior is bad or should be judged harshly; instead, the question is why do we do this? Why do authors take such little interest in the rights to their own intellectual property? And in today's online environment, when publishing lacks some of the traditional barriers and the environment more readily supports the dissemination of information, what is the effect of this behavior? Should we be doing something different with the rights to our own work?

1. Carter, H., C. Snyder and A. Imre. (2007) "Library Faculty Publishing and Intellectual Property Issues: A Survey of Attitudes and Awareness." Libraries and the Academy. 7.1: p. 65-79.
2. Cartoon Credit: ESA European Space Agency (http://www.esa.int/SPECIALS/Intellectual_Property_Rights/SEMPF825WVD_1.html)

Traditional Publishing: A Brief History

There is no question that in the traditional publishing market, publishers add value to authors' work. Essentially, we sign away our rights to our work because of the efforts publishers put into our work in return—the long, labor-intensive process of facilitating peer-review; proofing, copy-editing, and typesetting; and marketing and distributing copies to readers. We provide the rights to our "intellectual property" and publishers provide the value of distributing our work. In turn, publishers profit from this exchange primarily by making money, and authors profit indirectly through tenure, promotion, acclaim, etc.

Copyright was born of this exchange—sort of. The printing press was introduced in England in 1476, and with it sprang up a literate public. It was then that authors began the tradition of selling their works to publishers, who in turn printed "copies." The first laws governing this trade were a means for the Crown to control "dissident tracts" and required registry with the Stationer's Company. This policy of censorship created essentially a monopoly of the book trade in England, and an elite, specialized class of book publishers and sellers emerged.[3] Even when royal censorship waned, they controlled what books were published because they held the rights to make copies, and so they controlled the ideas circulating in the public sphere and for how much those ideas were bought and sold.

Authors then, like the authors of today, retained some rights. The publisher could not add or subtract text, change the words, etc. However, the small number of publishers holding perpetual copyrights dictated what was publicly disseminated and their price control limited the number of people who could gain access to it. Effectively, their power amounted to a kind of censorship similar to that of the British monarchy's. It was generally in the publishing cartel's interest to publish work that sold, even if the work presented ideas that were controversial. Yet, if work was not making it out and onto the shelves, how would the public know what was lost?

By implementing the Statute of Anne in 1709, British Parliament tried to limit the monopoly power of booksellers and limited copyright to fourteen years duration, with a possible renewal by the author for an additional fourteen years. Copyright was also extended by twenty-one years for works that were then already in circulation.

As the twenty-one year extension neared its end, a copyright war of sorts ensued. Known as the "Battle of the Book Sellers," London publishers sought to retain their copyright in perpetuity. The publishers presented their struggle in terms of protecting the author's rights to proprietary ownership of their work. They argued that authors should have the right not only to own, but also to sell their rights to their work in perpetuity, thus protecting the publisher's rights to copy in perpetuity. The argument was fraught with personal tragedies where "pirates" stole works from upstanding businessmen.[4]

In the end, the Statute of Anne prevailed and copyright terms were limited to a set amount of time, after which works would transfer into the public domain. This meant that an author would always be regarded as the creator, but publishers small and large

3. Halbert, D. Intellectual Property in the Information Age. Connecticut and London: Quorum Books, 1999.
4. Ibid, p. 5-7.

Know Your Copyrights™

(http://www.knowyourcopyrights.org/)
A guide for educators using copyrighted works in academic settings.

Copyright Permission Assistance Available to CSU Faculty and Staff

Photocopying or other reproduction of copyrighted works raises important legal issues for the University academic community. Although the Fair Use doctrine in the 1976 Copyright Act allows the use of copyright material for educational purposes, the law does not apply to many instances.

To help protect the University and help the academic community adhere to copyright permission law, the Department of Communications and Creative Services offers a copyright clearance and permission service to faculty and departments that print course packets and lab manuals sold out of the University Bookstore.

For more information, contact Juliana Hissrich, copyright clearance coordinator, at (970) 491-6432 in Communications and Creative Services, or submit your course packet order online at: http://www.ccs.colostate.edu/order_forms/fastprint_coursepackets/. Some permissions can take six to eight weeks to receive from publishers and authors, so planning ahead is a must in the world of copyright.

could make copies of that work as long as they could afford the printing press technology. For the consumer, the expiration of copyright drastically reduced the cost of books, especially popular ones. In essence, the copyright limits greatly broadened the pool of those gaining access to knowledge. The decision broke the monopoly power of the booksellers, but also struck a balance between an author's rights (and by extension a publisher's rights) to profit from their creation while recognizing that knowledge is a public good. By offering a limited monopoly, publishers could profit for a time and then the works became public, more affordable, and more likely to benefit society as a whole.

In America, the Constitution gave "Congress the power to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." In order "to prevent the concentrated power of publishers," the framers of the Constitution supported "a structure that kept copyrights away from publishers and kept them short," at least for the first two hundred or so years (Lessig, 2004, p.130-131).[5]

Fast Forward: Publishing Goes Digital

Now it is 2007. We are all publishers. We all have the power and tools to create copies. This is not some Orwellian fantasy, this is our reality. We can all think of things, write them down, take pictures or record sounds, and transmit that information to a broad range of audiences around the world. We can send an e-mail to a listserv with a readership of hundreds. We can print a thousand copies of something and have it professionally bound for very little money. The very article that you're reading right now is also published online, in a blog. (You are welcome to log on and publish your thoughts on this issue for the world to read at http://lib.colostate.edu/blogs/libraryconnection/.)

In this market, traditional publishing still happens and copyrights are still exchanged. Each of you will probably publish one or more articles in a peer-reviewed journal this year. Chances are that your work will end up in an online version of the journal, or perhaps will only be published online when the journal publisher eliminates print versions to take advantage of the high speed and low cost afforded by the Internet. Therefore, publishing in this traditional fashion supports a broad-based dissemination of your work.

But, by giving publisher's the rights to disseminate your work, does this exclude you from exercising your own right to share your work with students and colleagues with the ease and convenience of the digital environment? Can you send the link of your work to a listserv of your colleagues? Can you reproduce a copy of your work to share with your class? Can you post your work on a personal, departmental, or university Web site? What if your library doesn't own the journal you've published in? What if your colleagues' libraries don't own the journal you're published in? If, a few years from now, the journal in which you've published goes under, what happens to your work?

5. Lessig, L. Free Culture. New York: Penguin Press, 2004
6. Cartoon Credit: www.cartoonstock.com

Free Culture vs Permission Culture

The answers to these questions? *It depends.* This is not meant to make you panic. Of the 149 publishers included in the RoMEO publishers' copyrights database, approximately 78% allow you to retain those rights, including the right to self-archive (posting to a personal, departmental or university Web site). Those publishers include the American Physical Society, Elsevier, and Cambridge University Press.[7] (You can access this list of publishers online at http://www.sherpa.ac.uk/romeo.php.)

The "Know Your Copyrights" pamphlet produced by ARL also explains that sharing your work with your students constitutes fair use, and is therefore allowed in the academic setting. But this also means that 22% of publishers included in the RoMEO database don't allow you to retain these kinds of rights to your own work. Among the publishers that don't allow you to self-archive are the American Chemical Society, the American Medical Association, and the Modern Humanities Research Association.[8] Because the RoMEO database is not comprehensive, it is likely that other publishers also don't allow you to retain your rights.

Almost as fast we develop information sharing technology, laws pop up to govern that technology. Copyright law is constantly shifting. In his book, *Free Culture*, Lawrence Lessig paints a bleak picture of how we are migrating away from a free culture that understands and values creativity and knowledge—where the best minds of the present exist because they can collaborate and build upon the creative giants of the past—toward a permission culture that seeks to define and limit the uses of culture and its future creators. In his book, Lessig outlines the ways in which the reach of copyright law has steadily expanded.

Over the last forty years, Congress has extended existing copyrights eleven times. One such addition, the Sonny Bony Copyright Term Extension Act of 1998 (CTEA), extended copyright effectively to 95 years.[9] The law extends back to any work published after 1923 and prevents that work from passing into the public domain.

Legally, when a work passes into the public domain this means that the author is still given credit for the work, but that the work can be copied and reproduced without the specific permission of the copyright holder. As previously mentioned, in the 1800s this introduced consumer competition into the print publishing market, and the result was that copies of works such as Shakespeare's plays could be acquired for much less money. Therefore, works in the public domain were accessible to many more people and many more people could be enriched by them. Extending copyright to 95 years greatly alters this equation, especially in the context of the Internet. For example, one could scan the *Complete Poems* by Charlotte Bronte (whose works are in the public domain) and make her work freely available online to anyone with an Internet connection. (Bronte would, of course, need to be given credit for her work.) However, one could not create the same type of Website using poems by William Carlos Williams, whose work is not in the public domain.

More importantly, when a work enters into the public domain, it commonly frees others to make creative or derivative works from it. Imagine, for example, if Shakespeare's works were not in the public domain. Would the copyright holder have approved Arthur Laurent's *West Side Story* or Craig Pearce's 1996 film *Romeo and Juliet*? Copyright was originally intended to expire so that published works would enter into our body of knowledge and could be creatively used by anyone. However, the CTEA restricts those rights to a single copyright holder and requires that individuals who wish to use that work track down the copyright holder and get their permission to use it—nearly 100 years after the work was produced. Why?

7. University of Nottingham. (2006) Sherpa RoMEO Publisher Copyright Policies & Self-Archiving. Retrieved February 28, 2007 from http://www.sherpa.ac.uk/romeo.php.
8. Ibid, retrieved March 12, 2007.
9. Lessig, p. 134-135.

Read the CTEA and DMCA for Yourself

The actual wording of the CTEA bill can be found online at: http://www.copyright.gov/legislation/s505.pdf

The actual wording of the DMCA bill can be found online at: http://www.copyright.gov/legislation/dmca.pdf

Arguably, the CTEA provides important benefits to those whose works are still commercially viable. The law has enabled copyright holders who retain the rights to profitable works to make money off of them. For example, Disney still owns Mickey Mouse, and Robert Frost's estate still owns the rights to his collection, *New Hampshire*. However, what about works that are no longer commercially viable? What about works that are orphaned or have gone out of print? What about works that could and should be shared with the masses? What about works that other creative minds wish to use as springboards?

Copyright requires no registration. There is no system of tracking copyright ownership. Therefore, if someone wanted to digitize these abandoned works to make them available again to the public they would first have to track down the copyright holder, which takes a tremendous amount of time and considerable effort.

In 1930, 10,047 books were published. In 2000, 174 of those books were still in print.[10] Unless it is stored in optimal conditions, the average shelf life of a book is 50-60 years. Legally, a library must go to extensive lengths to prove that it is not violating copyright to "save" copies of these works. Most often, the library can make a print photocopy, but that too that will degrade overtime. It cannot, however, make a digital copy that could be more readily stored and used.

The situation is perhaps more dire for film. The Museum of Modern Art houses 13,000 American films, over half of them are orphaned[11] and they are degrading as you read. Under the CTEA, they cannot be digitized or restored without permission, despite the fact that no one is claiming them. One hundred years from now, when and if their copyright expires, they will already be lost.

Likewise, if someone wanted to recreate a work in a new medium, such as making a book into a Web site or film, finding the copyright holder of an out-of-print work presents a daunting and sometimes impossible task. This begs the questions: In an effort to protect icons, what elements of our culture are being lost? What future creativity is being hampered?

Copyright as applied in the digital environment has also come to restrict the use of material far beyond the restrictions enforced in print. Traditional copyright protects only the first sale, meaning that once you've bought a book, CD, newspaper, magazine, etc. you are free to read it one hundred times, give it to a friend who can then give it to another friend, sell it at a used media store, or donate it to a library.

The Digital Millennium Copyright Act (DMCA) of 1998 changed all that. The act was aimed at enforcing copyright in the digital environment. However, the restrictions enacted by that law and the technology needed to enforce those restrictions severely limits our rights to digital materials that we've paid for—much more so than copyright law for print materials.

The DMCA effectively rendered behavior that was previously legal suddenly illegal. Under the DMCA, we cannot share purchased materials peer to peer (even if it's to a single friend, just like you would have done with that printed book). Access to materials can be restricted by digital publishing technology so that individuals can no longer read a book as many times as we want as we could have with a printed book. And forget about selling those items at a used media store or donating them to a library.

In other words, if you purchase a printed book, you can give it to a friend. If you purchase and download an Ebook and give that to a friend, you are committing an act of piracy. When a library purchases a print magazine, anyone could walk into the library and read it. When a library purchases rights to an online journal, the license may restrict access to only those who are formally affiliated with the institution that signed the contract and is paying for access. If you purchase a CD, you can sell it at any used music store and collect the profits. You could not do the same with the MP3 files of the same CD, even if you were to delete them completely from your computer.[12]

The DMCA is recognizably an industry reaction to the fact that items in a digital environment can be shared much more readily. An Ebook could be sent to 100 people by email, much like a music file could be sent to 10,000. These acts have been rendered illegal. Yet in doing so, we have allowed the passage of a law that exponentially expands other's control over how we use knowledge and ideas that we have bought and paid for. Is there a better balance that might be struck?

Current Standings

Regardless of where you fall in the copyright debate or the degree to which you view knowledge as individual property, a public good, or a mix of both, the reality is that something isn't working with the current state of copyright law. The forces of copyright and ownership and being paid for distributing intellectual property don't balance with the free exchange of knowledge and ideas in the way Internet technology can facilitate. There is evidence of this everywhere across all disciplines.

According to a recent survey conducted by the American Association for the Advancement of Science, scientists used to fear that patents would limit their access to research tools and technologies; however, that concern has been replaced by an increased difficulty in getting access to data.[13] Even though Congress has repetitively extended copyright terms over the last forty years, patent terms have been left alone and those rights expire after twenty years. The research community has long debated whether or not patents might infringe on important scientific advancement. Might this community raise the same debate around copyright, which now lasts almost a century?

The law as it stands seems also to be limiting the histories that can be told. When professors Cathy Davidson and Ada Norris sought to document the life of Yankton Nakota writer and activist Zitkala-Ša, their publisher would not even consider use of any works that fell outside of 1922, fearing the time and expense it might take to clear copyright claims.[14]

The law as it stands seems also to be limiting the music that can be played. Dr. Susan Pickett, Catharine Chism Professor of Music at Whitman College writes, "I have been dealing with the problem of orphaned copyrighted works during my 15 years of research about women composers. Frankly, I can see why some people just blatantly break the law: there are so many barriers and dead ends and catch-22s that it's frustrating beyond words even to the most law-abiding person… There needs to be an international registry of people who have legal rights over music so that it's easier to find out whom to contact for permission" (Duke Law School, 2005, p.2).[15]

Something about regulating the exchange of information isn't working, or isn't working as efficiently as it should be. In an information age, knowledge is at our fingertips. Yet, Congress continues to enact laws that restrict access. They will continue to do this unless more people engage in the shaping of knowledge in the digital environment.

10 Lessig, p. 222.
11. Center for the Study of the Public Domain at Duke Law School. (2005). *Access to Orphan Films: Submission to the Copyright Office*. Retrieved March 16, 2007 from http://www.law.duke.edu/cspd/pdf/cspdorphanfilm.pdf.
12. The UCLA Institute for Cyberspace Law and Policy. (2006). The Digital Milenium Copyright Act. Retrieved March 8, 2007 from http://www.gseis.ucla.edu/iclp/dmca1.htm.
13. Blumenstyk, G. (2007) "Study Shows Patents Don't Hurt Science." Chronicle of Higher Education. 53(21).p. 31.
14. Center for the Study of the Public Domain at Duke Law School. (2005). *Orphan Works Analysis and Proposal: Submission to the Copyright Office March 2005*. Retrieved March 16, 2007 from http://www.law.duke.edu/cspd/pdf/cspdproposal.pdf.
15. Ibid.

Find Out More

Additional information about copyright and digital legislation:

- **The Lessig Blog** (http://www.lessig.org/blog/). Author of *Free Culture*, Lawrence Lessig is a professor of law at Stanford Law School and founder of the school's Center for Internet and Society. This blog discusses current copyright law and its cyber implications.
- **Public Knowledge** (http://www.publicknowledge.org/), an advocacy group working to promote and defend a "vibrant" information commons in the digital environment. The site includes resources, news releases, current legislation, litigation, and a blog on copyright and fair use policy.
- **American Library Association Copyright Page** (http://www.ala.org/ala/washoff/WOissues/copyrightb/copyright.htm) includes information on current copyright policies and debates.

Managing Your Copyright

The great value of the Internet is that having a journal publish your work is no longer the end of the story. You have the power and tools to help distribute your own work so that it can resonate in ways never before imagined. First, you have to be sure to retain at least some of your copyright during the publishing process. Here's how:

- **Establish a Creative Commons License** (www.creativecommons.org). Creative commons is a nonprofit organization that helps "authors, scientists, artists, and educators easily mark their creative work with the freedoms they want it to carry." It allows you to copyright your work while enabling people to more readily copy and distribute your work—provided they give you credit—in the ways you want them to.
- **Publish in journals that allow you to retain your rights**. This will make it possible for you to share your work in the digital environment. The RoMEO database (http://www.sherpa.ac.uk/romeo.php) is a growing list of permissions that are normally given as part of each publisher's copyright transfer agreement. It is searchable by publisher and enables you to add publishers to the list. Self-archiving (posting on a personal/ departmental website or in a digital collection supported by the University) is a key right to retain so that you can create a digital copy of your own body of work.
- **Download the SPARC Author Addendum** (http://www.arl.org/sparc/author/addendum.html). When added to traditional publication agreements, the addendum will help you to retain more of your own rights to your journal publications and make it possible for you to more easily control your work in the digital environment (including protecting your right for online posting or using portions of your articles in future work.)

What Are Your Thoughts?

Logon to the *Library Connection* Weblog (http://lib.colostate.edu/blogs/libraryconnection) to post your comments on this issue.

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