Legal Issues for Open Access: Managing Multiple Copyright Interests

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Three Sets of Four

- Interested parties
- Questions for OA management
  ◦ Relationships among the parties
- Management strategies
4 copyright interests

- Authors
- Institutions (as employers and as hosts of repositories)
- Owners of material incorporated into new works
- Users
Question 1 – Who owns the work?

- Copyright usually vests automatically in author.
- Some countries recognize work for hire, where employer institution owns copyright.
- Joint authors may disagree.
- If copyright was transferred to a publisher, publication contract will rule.
Question 2 – Content owned by others?

- Incorporated content from 3rd party works.
  - Fair use / fair dealing?
    - OA distribution may change the analysis.
  - Permission?
    - Must be broad enough for OA distribution.
Question 3 – Licensing for OA distribution.

- Institution needs license to make work available.
  - From the author(s)
    - Institutional mandate
    - Individual form within submission workflow
  - From the publisher
    - Usually right retained by the author(s)

- Must get sufficient rights for type of distribution planned.
Question 4 – What are users able to do?

- “Licensing out”
  - Without clear statement, all rights are reserved.
  - Repository needs to tell users what they can do with the works therein.
  - License to users determined by rights held by or given to institution from authors & publishers
    - What do “green” publishers really allow?
4 steps for managing copyright

- Clear policy about ownership of scholarly works.
- Policy & expertise regarding fair use / fair dealing.
- Licensing mechanism from rights holders to institution.
- Licensing out to users.
Creative Commons

- If author can give institution a CC license, institution can share with users on same terms.

- CC BY/NC/NO-DR?
  - Protects moral rights

- Must obtain sufficient rights from owner/rights holder.
  - Licensing in → licensing out