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Author Rights

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Materials for DBER Group Discussion on 2016-01-28

Presenters & Affiliations

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Sue Ann Gardner, MLS

University Libraries

University of Nebraska-Lincoln

Title

Author Rights

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Copyright Basics and Author Rights: True or False
DBER Seminar, UNL, January 28, 2016
Sue Gardner, Scholarly Communications Librarian

True or False:

___ U.S. copyright allows the copyright holder to: 1. make copies of the work, 2. create derivative works, 3. distribute the work, and 4. perform or display the work.

___ An item must be published before it is copyrightable.

___ You have to register a textual work, such as an essay or a book, with the Library of Congress for the work to be copyrighted in the United States.

___ When you sign a contract with a publisher that gives the publisher the exclusive right to distribute your work, you have the right to put an electronic copy of the published version on *your own* Web site, but not a social media site like ResearchGate.

___ You have the rights over a photograph that someone takes of you.

___ Publishing contracts for articles contain standard legal language, so it is a waste of time to read through them before signing.

___ Joint authors have to get permission from all of the other authors before giving permission to someone else to post the work in a university's institutional repository.

___ The length of term of copyright in the U.S. for items published in 2016 in most cases is the life of the author plus 70 years.

___ Paying an Open Access fee allows an author to retain control of his or her own work.

___ Under Fair Use, you can legally create course packs with any materials that are relevant to the course.

___ U.S. government employee-authored works are not copyrighted.

___ "Orphan works" are those whose copyright holder cannot be determined.

___ "Public domain" means that there are no copyright or licensing restrictions on a work and it can be distributed, modified, copied, or displayed by anyone legally.

___ Orphan works are in the public domain.

Copyright Basics and Author Rights: True or False
DBER Seminar, UNL, January 28, 2016
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True or False:

___ U.S. copyright allows the copyright holder to: 1. make copies of the work, 2. create derivative works, 3. distribute the work, and 4. perform or display the work. (T)

___ An item must be published before it is copyrightable. (F)

___ You have to register a textual work, such as an essay or a book, with the Library of Congress for the work to be copyrighted in the United States. (F)

___ When you sign a contract with a publisher that gives the publisher the exclusive right to distribute your work, you have the right to put an electronic copy of the published version on *your own* Web site, but not a social media site like ResearchGate. (F)

___ You have the rights over a photograph that someone takes of you. (F)

___ Publishing contracts for articles contain standard legal language, so it is a waste of time to read through them before signing. (F)

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___ "Orphan works" are those whose copyright holder cannot be determined. (T)

___ "Public domain" means that there are no copyright or licensing restrictions on a work and it can be distributed, modified, copied, or displayed by anyone legally. (T)

___ Orphan works are in the public domain. (F)

United States Copyright and Intellectual Freedom: A Very Brief Overview for Authors

By Sue Ann Gardner, Scholarly Communications Librarian, University of Nebraska-Lincoln

For Nebraska's *Intellectual Freedom Handbook*, January 2016

Introduction

Understanding the basics of copyright is integral to the safeguarding of intellectual freedom. Knowing your rights as an author will help you protect your intellectual property, as well as help guide you to share it in the way you wish.

Copyright particulars are truly complicated, but the basic underpinnings are straightforward. The United States Constitution refers to copyright (Article I, Section 8), "the Congress shall have power . . . to promote the progress of science and useful arts, by securing for limited times to authors ... the exclusive right to their respective writings." The U.S. Congress implemented the first Copyright Act in 1790, basing it on a British statute, and there have been several revisions since.

Litigation happens around copyright all the time, so the interpretation of the law is constantly changing.

What Is Copyright?

Copyright applies to an original work (a text, sound recording, art work, or one of several other forms) once it has been fixed in a tangible form. Ideas and processes cannot be copyrighted. A work does not have to be formally published and no registration is required to copyright a work, though registration with the U.S. Library of Congress is required in order to sue for copyright infringement. A copyright symbol is not required for a work to be considered copyrighted in the United States.

Copyright is held, at least initially, by the creator of a work, unless the work was made for hire, meaning, in the course of one's job. Some employers, like universities, often have policies that reconfer copyright to the creator of a work developed in the course of employment, usually with exceptions.

Copyright gives the holder the exclusive right to, 1. make copies of the work, 2. create derivative works, 3. distribute the work, and 4. perform or display the work. "Exclusive" means that no one else has the right to do these things legally, except under the terms of Fair Use (see below).

Transfer of Copyright

Though copyright is held initially by the creator of a work, it can be transferred. Publishers and producers often require that copyright be transferred to them before they will edit and distribute a work. You cannot reclaim copyright once you have given it away, so be careful

when you are asked to sign a contract. READ THE CONTRACT to know what you are giving up BEFORE YOU SIGN (*always read the contract!*).

Once you give away your copyright, you no longer retain any copyrights, meaning you cannot legally copy, derive from, distribute, perform, or display the work you created. If you do not want to sign the contract, you may need to take your work elsewhere, self-publish it, or let it remain solely in manuscript form. Recall that even manuscripts are copyrighted. However, once you sign a contract, publishers may claim rights over your manuscript as well as the final, published form. So be aware of this. You may even lose control over your manuscript *once you sign a contract*.

Ownership of a copyrighted item does not bring with it ownership of the copyright itself. You may purchase a book and own the book, but you do not own the copyrights in the book. Similarly, you may possess a letter, but only the writer of the letter owns the copyright of it. Photographers possess the copyright of their photographs. The subjects in the photographs do not own the rights.

Permissions and Licensing

Sitting on top of copyright are permissions and licensing. The people or entities who own copyright in original works can allow others to use the works in certain ways. They can allow permissions on a case-by-case basis or through a license. When a copyright holder places a license on a work, it is a way of communicating what permissions are allowed by whom and what restrictions there are over use. When asked to sign a contract to invoke a license, again, READ THE CONTRACT. Know what licensing terms will be in force once a contract is signed and DO NOT SIGN if you do not agree to the terms.

Copyright holders do not necessarily have to give permissions to anyone (though some use would be allowed by Fair Use), or they can go to the other end of the spectrum and put a license on their work that effectively places the work in the public domain. One such form of license is called a Creative Commons Zero (CC0) license, and this gives anyone the right to copy, distribute, derive, display, or perform the work with no extra permission and no attribution needed. Licenses can run the gamut between those extremes. Unlike transfer of copyright, licenses *in certain cases* can be revoked or have limitations attached.

To determine whether you have permission to use copyrighted material, you may locate a license for the work that spells out the terms, or you may have to ask for permission to use it. Use may come with stipulations, such as being required to attribute the copyright holder, for instance.

Length of Term of Copyright

The length of term of copyright varies depending on several factors, but suffice it to say that it is very long--for example, the life of the author plus 70 years for works created by a single author

and published in 2016. The copyright term can also be formally extended under most circumstances.

U.S. Government Works

Works created by U.S. government authors in the course of their work are not copyrightable. They exist in the public domain meaning that others can duplicate them, derive works from them, and publicly display or perform them to their heart's content, with no permission required.

Joint Authorship

Works created by joint authors are copyrighted by all authors equally. Each author has full copyright over the work and can make decisions about what to do with it unilaterally, so each does not have to ask permission of the other authors to do so. A commonly held assertion (though there is debate about this) is that if an article is written by several authors, the article exists as a unified entity and copyright covers it in its entirety. Parts of it are not usually copyrighted separately, unless there is a clearly distinguished portion, such as a graphic element that could stand on its own.

Orphan Works

When searching for the owner of a copyright, such an entity may not be found, in which case the item is an orphan work. Orphan works are not necessarily in the public domain. Read the latest Federal guidelines for advice about how to proceed when wishing to use an orphan work.

Fair Use

The Copyright Law states that, "fair use of a copyrighted work ... for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use ... is ... fair, ... the factors ... considered ... include: 1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; 2. the nature of the copyrighted work; 3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and 4. the effect of the use upon the potential market for or value of the copyrighted work."

The language governing Fair Use seems straightforward, but its interpretation is often hotly litigated. The determination of whether a use would be considered a legally Fair Use is, therefore, a moving target.

Copyright Infringement

Infringement can be a civil or a criminal offense. Remedies vary, but can involve simple take down requests, or can include monetary damages and even jail time.

International Copyright

There is no international copyright law, but there are conventions to which the U.S. is a signatory, and there are other applicable acts and international agreements that provide guidance pertaining to cross-country copyright issues.

Patents and Trademarks

Patents and trademarks are distinguished from copyright. According to the U.S. Patent and Trademark Office, a trademark is a word, phrase, or symbol that identifies a brand, and a patent is a limited duration property right that covers an invention.

Sources of More Information

American Library Association. 2014. *Copyright: An Interpretation of the Code of Ethics*. Available at <http://www.ala.org/advocacy/proethics/copyright>.

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Bushell, David. 2011. Understanding Copyright and Licenses [with comments by other authors]. *Smashing Magazine* (June 14, 2011). Available at <https://www.smashingmagazine.com/2011/06/understanding-copyright-and-licenses/>

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Masterson, Jr., John T. 2002. *Overview of Intellectual Property Rights and the TRIPS Agreement*. Available at <http://www.osec.doc.gov/ogc/occic/ipr.html>.

United States Copyright Office. 2014. *Copyright Law of the United States; Historical Information; Related Information*. Available at <http://copyright.gov/title17/>.

United States Copyright Office. 2011. *Copyright Law of the United States and Related Laws Contained in Title 17 of the United States Code*. USCO Circular 92, xiii, 350 pages. Available at <http://copyright.gov/title17/circ92.pdf>.

United States Copyright Office. 2015. *Orphan Works*. Available at <http://copyright.gov/orphan/>.

[Sites viewed January 6, 2016. No legal advice is implied in the information in this essay. Always consult with qualified professionals in cases of legal matters.]

Authors' Rights and Publishers' Wishes

Discipline-Based Education Research Group
University of Nebraska-Lincoln, January 28, 2016

Paul Royster & Sue Gardner
Office of Scholarly Communications, UNL Libraries



Copyright lessons:

1) If you wrote it, you own it.

1a) If a group wrote it, the group owns it collectively.

1b) Any member can give permission, but any income must be shared.

2) If you sell it or give it away, you no longer own it.

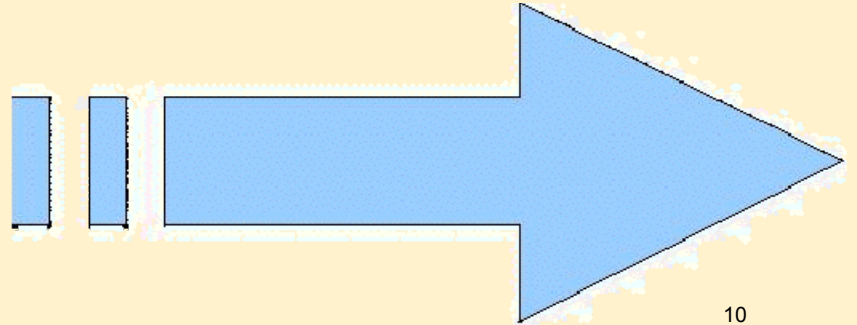
Most publishers want you to do this, so that they will own your content.



Copyright Transfer

Most publishers want the author to transfer the copyright to the publisher.

Sometimes they settle for “all publishing rights”, which amounts to the same thing in effect.



When you sign over your copyright, the assignee can keep your work totally locked up for:

- the rest of your life
- plus 70 years after you die



=



+



Author Rights You Want

- Re-publish
- Distribute to classes and colleagues
- Post on website or repository
- Control creation of derivative works
- Prevent unwanted uses

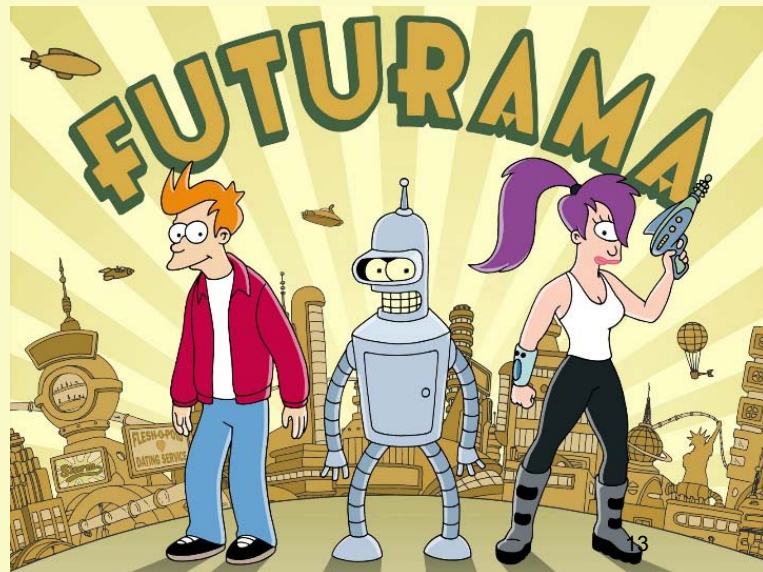


Copyright on this year's articles will expire ...

today	2016
plus life of author, say	+ 40 years
plus additional	+ 70 years

In the year	2126
--------------------	-------------

I'm sure Fry, Bender, & Leela will enjoy them.



Currently, what is in copyright ?

1. Everything* created since 1963
2. Stuff first published 1923-1963 that was ...
... *properly marked and renewed*.

* Must be eligible for copyright.



What is not eligible for copyright ?



1. Facts or Data
2. Things not the result of a “creative act”
3. U.S. government works

Using other people's stuff

Reproducing portions of a copyrighted work for purposes of commentary, criticism, scholarship, teaching, or news reporting is not “infringement”—this is called “**fair use**.”



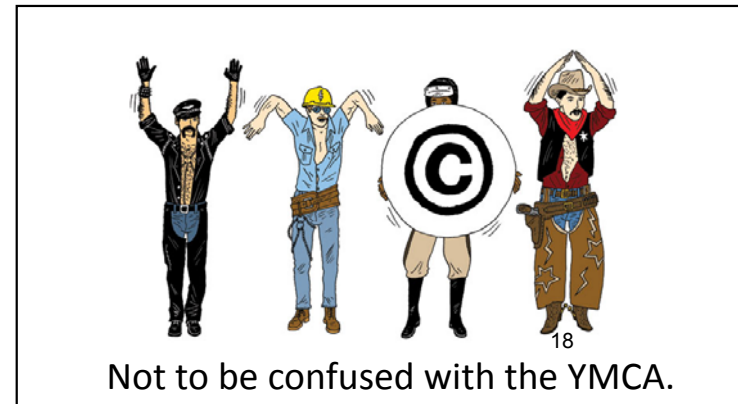
4 factors determine “fair use”

1. Nature of the original material
2. Nature of the use
3. Amount used
4. Effect on the value of original



The DMCA

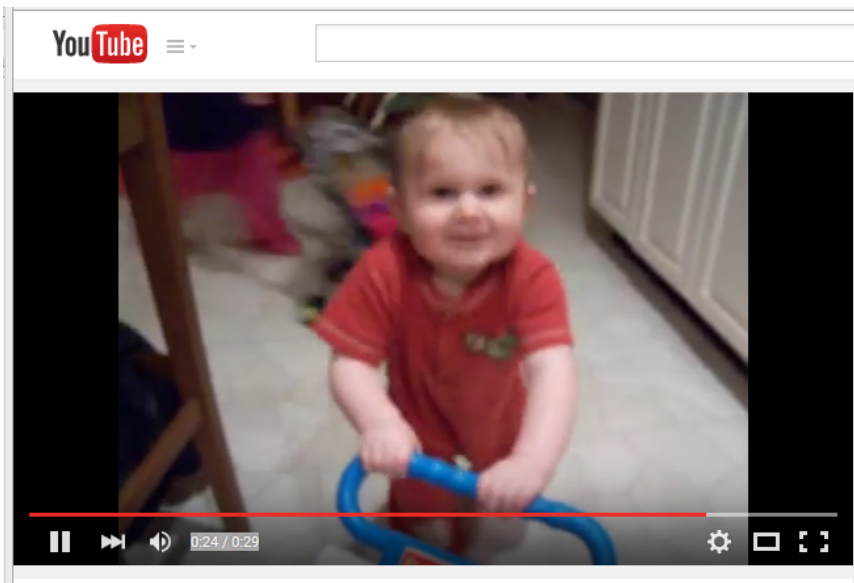
- Digital Millennium Copyright Act was passed by Congress in 1998, and signed by President Clinton.
- Criminalizes circumvention of encryption and access protection.
- Protects hosting sites (“safe harbor”) that comply with takedown notices from copyright holders.



“Dancing baby case”

(Lenz v. Universal)

- Takedown notices
- DMCA (Digital Millennium Copyright Act)
- Copyright abuse
- Fair Use



Lenz v. Universal

- **February 2007:** Stephanie Lenz uploads video to YouTube; **May 2007,** Universal requires removal, citing copyright infringement.
- Lenz (& EFF) sued, seeking 1) declaratory judgment that video does not infringe Universal's copyright, plus 2) damages, plus 3) injunction stopping Universal from bringing further copyright claims.
- **Sept. 2015:** US Court of Appeals for the 9th Circuit (San Francisco) rules that copyright holders must consider fair use before asking services like YouTube to remove videos that include material they control. Allows suit to go forward.



What's happening in publishing ...

... since the arrival of digital?

Technologically, work has become

- easier to produce
- easier to share
- easier to disseminate worldwide



Practically, however, work has become:

- concentrated in hands of fewer publishers
- harder to get (legally)
- more expensive
- less circulated



Academic publishers reap huge profits as libraries go broke

5 companies publish more than 50 per cent of research papers, study finds

CBC News | Posted: Jun 15, 2015 5:00 AM ET | Last Updated: Jun 16, 2015 8:23 AM ET



A student leafs through bound journals at a library at the University of Toronto. A new study shows that the five largest, for-profit academic publishers now publish 53 per cent of scientific papers in the natural and medical sciences – up from 20 per cent in 1973. (Adrian Wyld/Canadian Press)

Vincent Larivière, Stefanie Haustein, & Philippe Mongeon, The Oligopoly of Academic Publishers in the Digital Era, *PLOS One* (June 15, 2015), doi: 10.1371/journal.pone.0127502

Therefore:

The Open Access Movement

- Budapest (2002) and Berlin (2003) declarations
- Creative Commons licenses
- SPARC & JISC
- DOAJ, OASPA, COAR, etc.



Open Access / Creative Commons license

This gives everyone permission to re-distribute, revise, re-format, re-organize, make derivative works, etc.

So you can distribute, but so could anyone else.



Drawbacks



1. Sometimes costs money (up to \$4500)
2. Surrenders control over further uses and derivatives

Disclaimer:

- I am not an apostle for Open Access
- I believe in **public access**,
not necessarily Open Access



What's the difference?

Open access* = license to re-use, re-post, re-distribute, re-combine, re-work, revise, etc.



*Budapest definition

Public access = right to read, download, and store for free (but not to re-distribute)

FREE DOWNLOAD >>

Open Access: How it happens

1. Author pays

“Article Processing Charges” (APCs) of \$600 to \$4,000 per article, depending on publisher, e.g.

PLOS One = \$1600

BMC Parasites and Vectors \$1995

Parasitology International \$2200



2. Author finds a friendly “no-APC” OA journal, like

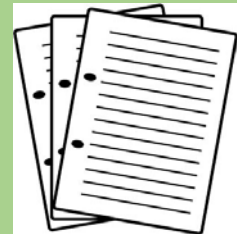
Insecta Mundi = \$0

(Center for Systematic Entomology, Gainesville, FL)



Public Access: How it happens

1. Author posts published PDF on personal or university web page or repository, with journal's permission.
2. Author posts revised MS on personal or university web page or repository, with journal's permission.



Subscription publishers who allow public posting of their pdf's:

- American Astronomical Society
- American Fisheries Society
- American Institute of Physics
- American Mathematical Society
- American Meteorological Society
- American Physical Society
- American Society for Cell Biology
- American Society for Microbiology
- Company of Biologists
- DeGruyter
- Helminthological Society of Washington
- Materials Research Society
- Missouri Botanical Garden Press
- Mycological Society of America
- University of Chicago Press
- University of California Press
- MIT Press
- Leiden University Press
- Rockefeller University Press
- Amsterdam University Press
- Journal of Insect Science
- Optical Society of America
- Center for Systematic Entomology
- Society for Industrial and Applied Mathematics



Subscription publishers who allow public posting of authors' revised MS:

- Elsevier
- John Wiley & Sons
- Taylor & Francis
- Springer Verlag
- Nature Publishing
- Royal Society
- American Chemical Society
- Sage Publications
- National Academy of Sciences USA
- Am Assn for the Advancement of Science
- American Psychological Association
- American Society of Plant Biologists
- Brill Academic Publishers
- Oxford University Press
- Cambridge University Press
- Institute of Electrical and Electronics Engineers
- Johns Hopkins University Press
- Penn State University Press
- Karger
- Kluwer
- Mary Ann Liebert
- and hundreds more
- *In fact, at least 80% of published articles are eligible for public posting, in some version.*



Free public posting permitted for:

1. Publisher version, within 12 months	25%
2. Author MS version, within 12 months	50%
3. Author MS version, more than 12 months	10%
4. No free public access*	15%

*Present Am. Soc. of Parasitologists policy (also Harvard University Press, Harvard Business School Press, et al.)

If your article derives from NIH-funded research

It must be deposited in PubMed Central for public access within 12 months ...

... whether your publisher allows it or not.



If an author is a US federal government employee ...



- U.S. government works are not subject to copyright
- They are immediately “public domain” and can be re-used and reposted without limitations



What's an author to do?



1. Kiss your content good-bye
2. Pay for “hybrid” open access
3. Pay for “gold” open access (PLOS, etc.)
4. Find a free open access journal
5. Negotiate an author's addendum
6. Put in repository for “green” public access
7. Ignore and infringe

Green OA – Use the Repository

- Publish where you normally would.
- Take advantage of most publishers' policies to deposit a version in your institutional repository—like the UNL Digital Commons.
- This creates free **public** access, not open access.

Based on “author self-archiving” rights

Advantages

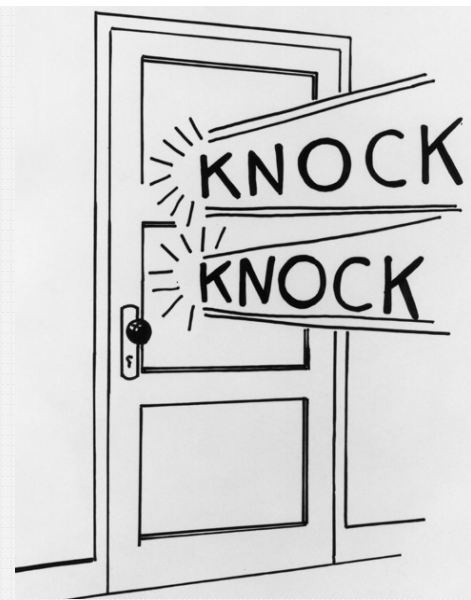


- Free to author
- Free to user
- Google-indexed, no barriers
- Widest possible dissemination



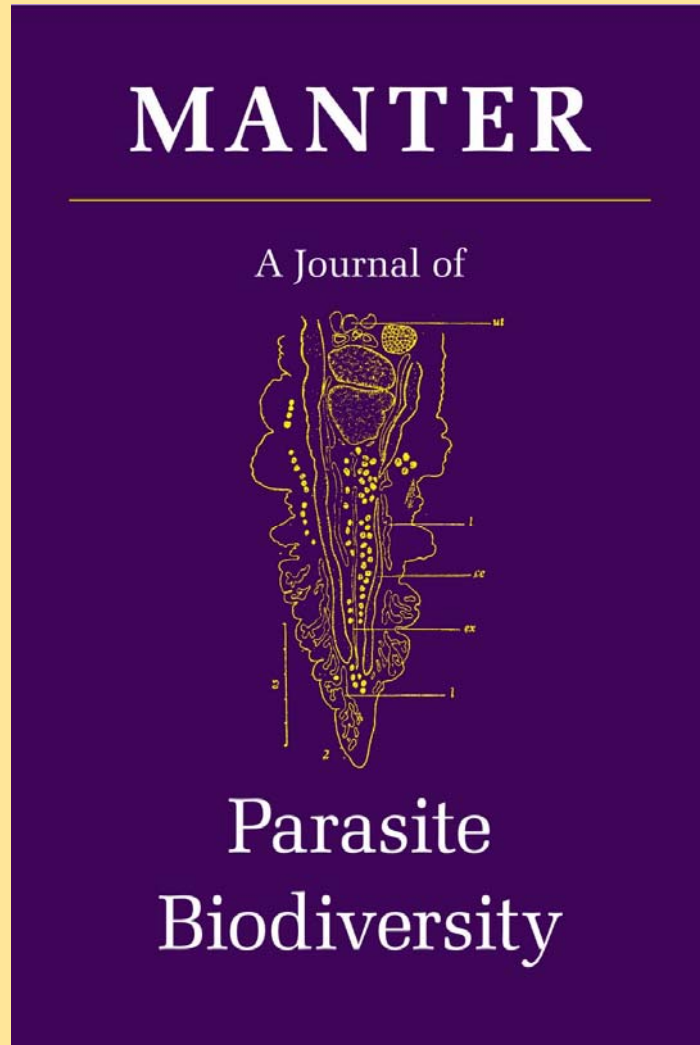
Publishing opportunities

- Repositories can increase research impact exponentially
- Institutions (or societies) can sponsor low investment journals: no paper, no postage, no inventory, no paywalls, free hosting
- Journals can publish with fast turn-around; no waiting for enough articles to make a full issue



For example:

Established: 2015
Sponsor: University of Nebraska
Editor: Scott Gardner

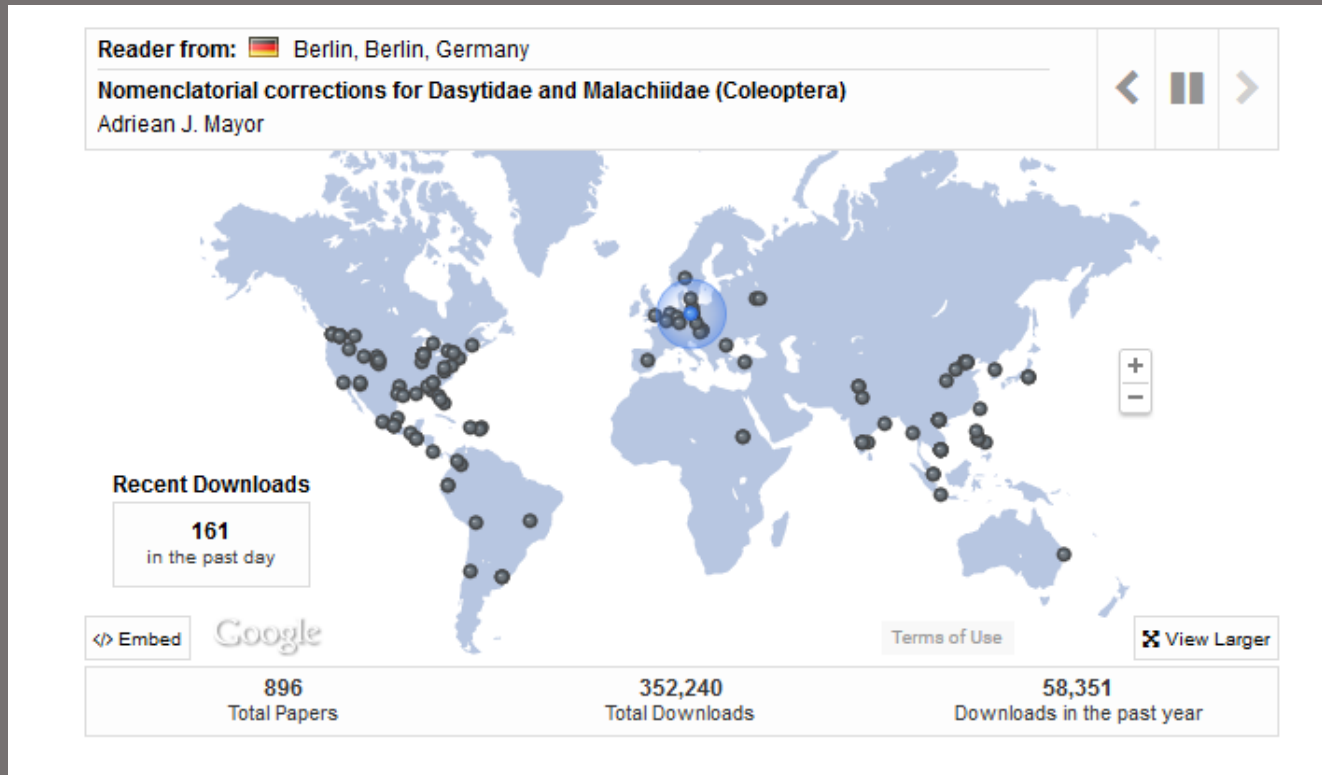


What happens to public access articles?

They get downloaded and distributed worldwide



Insecta Mundi



(avg 393/per paper)

(avg 160/day)

Google search results for "sinners in the hands".

About 10,700,000 results (0.38 seconds)

#1 Sinners in the Hands of an Angry God - DigitalCommons ...
digitalcommons.unl.edu/civilecontent/cg/article=1053&context...
 by J Edwards · 1741 · Cited by 5 · Related articles
 Sinners in the Hands of an Angry God: A Sermon. Preached at Enfield, July 8th, 1741. Jonathan Edwards. Church of Christ in Northampton. Reiner Smolenski ...

Sinners in the Hands of an Angry God - Wikipedia, the free ...
https://en.wikipedia.org/wiki/Sinners_in_the_Hands_of_an_Angry_God
 "Sinners in the Hands of an Angry God" is a sermon written by British Colonial Christian theologian Jonathan Edwards, preached to his own congregation in ...
 Doctrine · Purpose · Application · Effect and legacy

Sinners in the Hands of an Angry God - The Jonathan ...
edwards.yale.edu/archive/path.../y4yM100Hy53am/v
 A description for this result is not available because of this site's robots.txt - learn more.

Sinners in the Hands of an Angry God Summary - eNotes.com
www.enotes.com/topics/sinners-hands-an-angry-god
 Complete summary of Jonathan Edwards' Sinners in the Hands of an Angry God. eNotes plot summaries cover all the significant action of Sinners in the Hands ...

Sinners in the hand of an angry God - Johnathan Edwards ...
www.youtube.com/watch?v=yvjLME3Q2d8
 Nov 21, 2012 · Uploaded by tass00001
 And falling into the hands of the living God, lost, is a fearful thing, my beloved ... Jonathan Edwards, whose ...

Sinners In The Hands Of An Angry God by Edwards - Study ...
study.com/.../sinners-in-the-hands-of-an-angry-god-by-edwards-summ...
 Jonathan Edwards's "Sinners in the Hands of an Angry God" is one of the most famous sermons ever preached. Read this lesson to find out more about...

Sinners in the Hands - Texas Monthly
www.texasmonthly.com/articles/sinners-in-the-hands/ · Texas Monthly ·
 Twenty-seven-year-old Catherine Grove is a member of a small, insular, and eccentric church in East Texas. Her parents think she's being brainwashed.

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 Sinners in the Hands of an Angry God [Jonathan Edwards] on Amazon.com. "FREE" shipping on qualifying offers. Though first, delivered 250 years ago, ...

Jonathan Edwards: Sinners in the Hands of an Angry God ...
blogs.blueletterbible.org/jonathan-edwards/sinners-in-the-hands-of-an-angry-god
 Jun 25, 2014 · The first of these resources is a classic sermon from Puritan preacher Jonathan Edwards titled, Sinners in the Hands of an Angry God.

Searches related to sinners in the hands

- sinners in the hands of an angry god text
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- sinners in the hands of an angry god apush

#1 UNL Digital Commons

#2 Wikipedia

#3 Edwards Yale edition

#4 enotes.com

#5 YouTube

#6 study.com

#7 Texas Monthly

#8 Mtn View, CA schools

#9 Amazon.com

#10 Blue Letter Bible

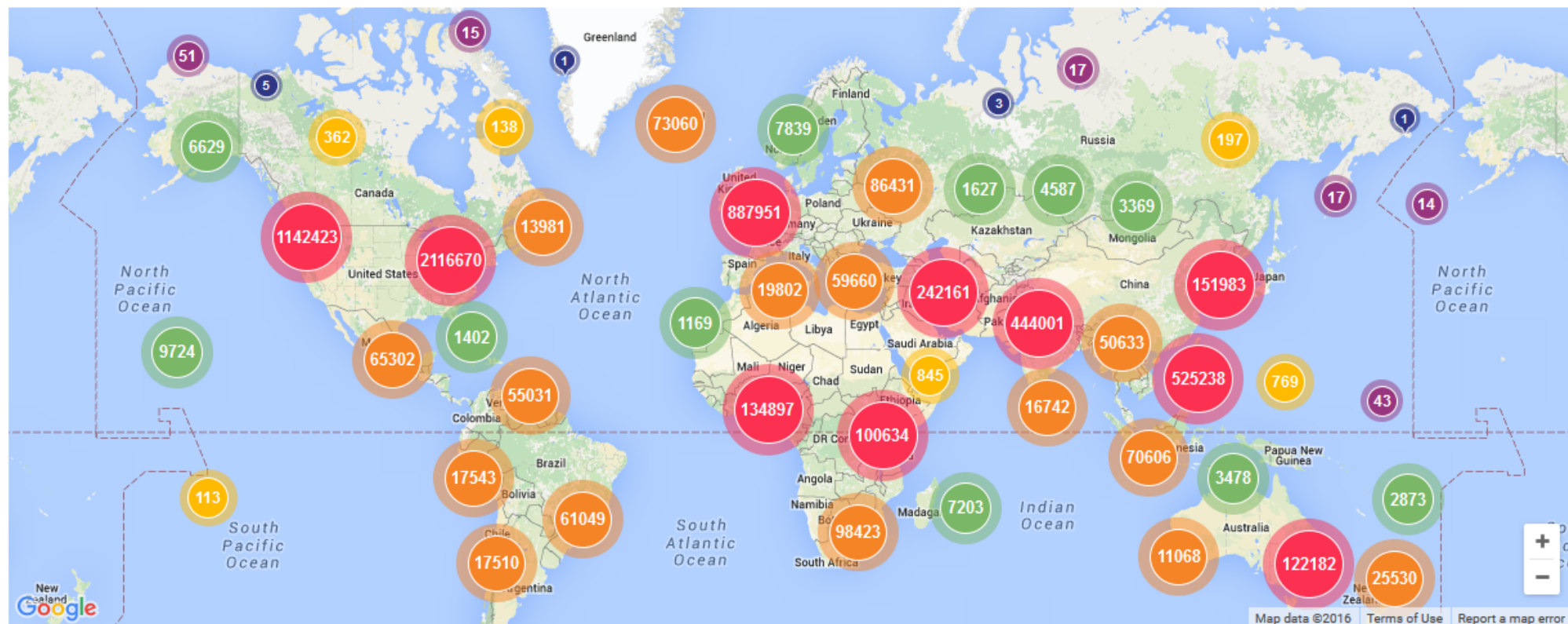
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sinners in the hands

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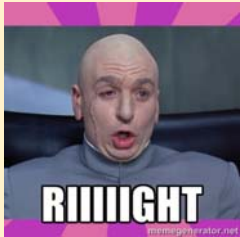
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