

Copyright in a  
Publish or Perish World:  
  
Know Your (Copy)rights

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Copyright Coordinator / Legal Advisor  
June 14, 2012

# Outline

- What's going on with scholarly publishing?
- What rights do you have as an author?
- What normally happens to my © when I publish?
- How is Open Access different?
- What should I look out for when publishing?
- What can I do if I don't like the publishing terms?
- Can publishing be affected by grant agreements?
- Discussion?

What's going on with  
scholarly publishing?

# The Cost of Knowledge

## 12067 Researchers Taking a Stand. [See the list](#)

Academics have protested against Elsevier's business practices for years with little effect. These are some of their objections:

1. They charge exorbitantly high prices for subscriptions to individual journals.
2. In the light of these high prices, the only realistic option for many libraries is to agree to buy very large "bundles", which will include many journals that those libraries do not actually want. Elsevier thus makes huge profits by exploiting the fact that some of their journals are essential.
3. They support measures such as SOPA, PIPA and the ~~Research Works Act~~, that aim to restrict the free exchange of information.

The key to all these issues is the right of authors to achieve easily-accessible distribution of their work. If you would like to declare publicly that you will not support any Elsevier journal unless they

## Add you

First and Last Name

Affiliation

Email

only

Subject

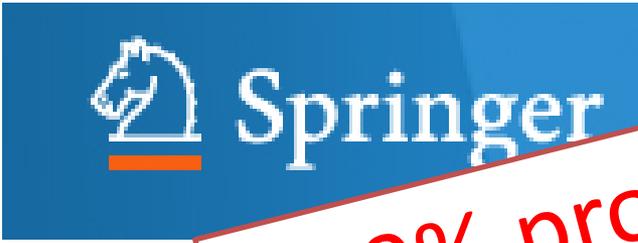
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36% profit



42% profit

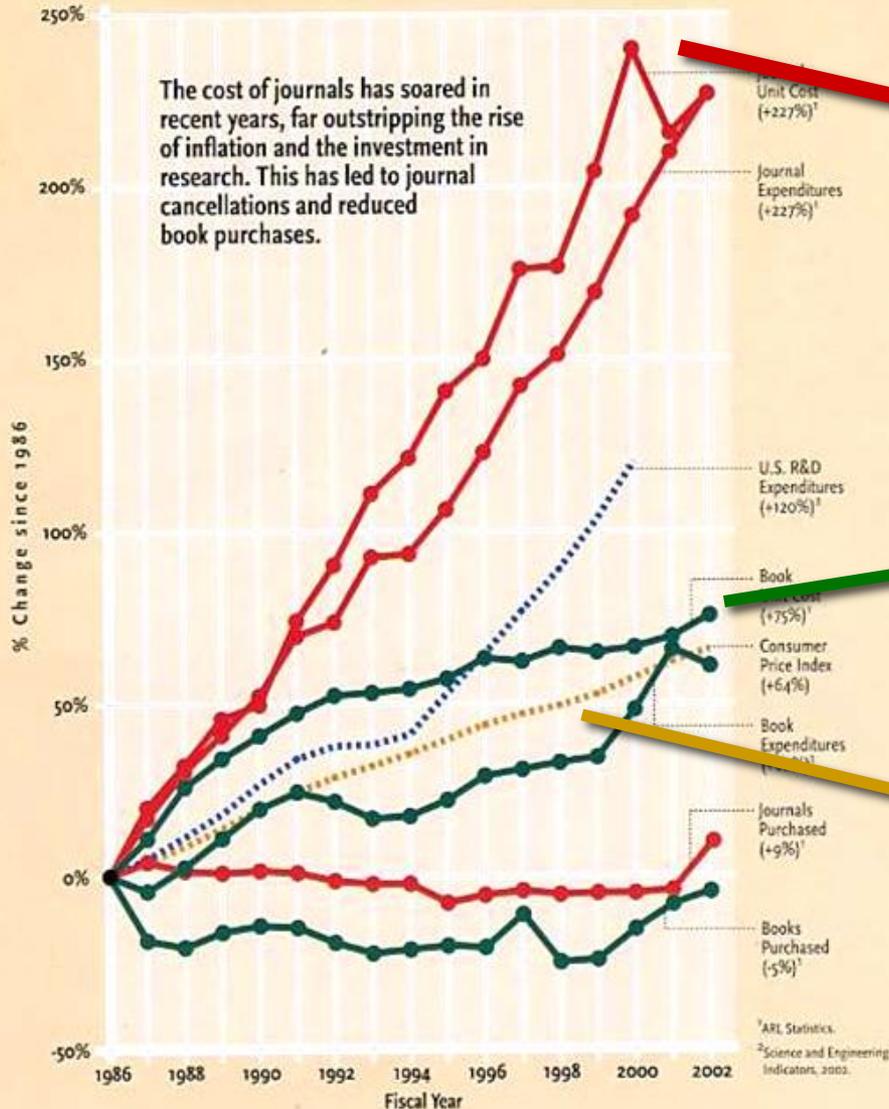


33.9% profit



# Book and Journal Costs, 1986–2002

North American Research Libraries



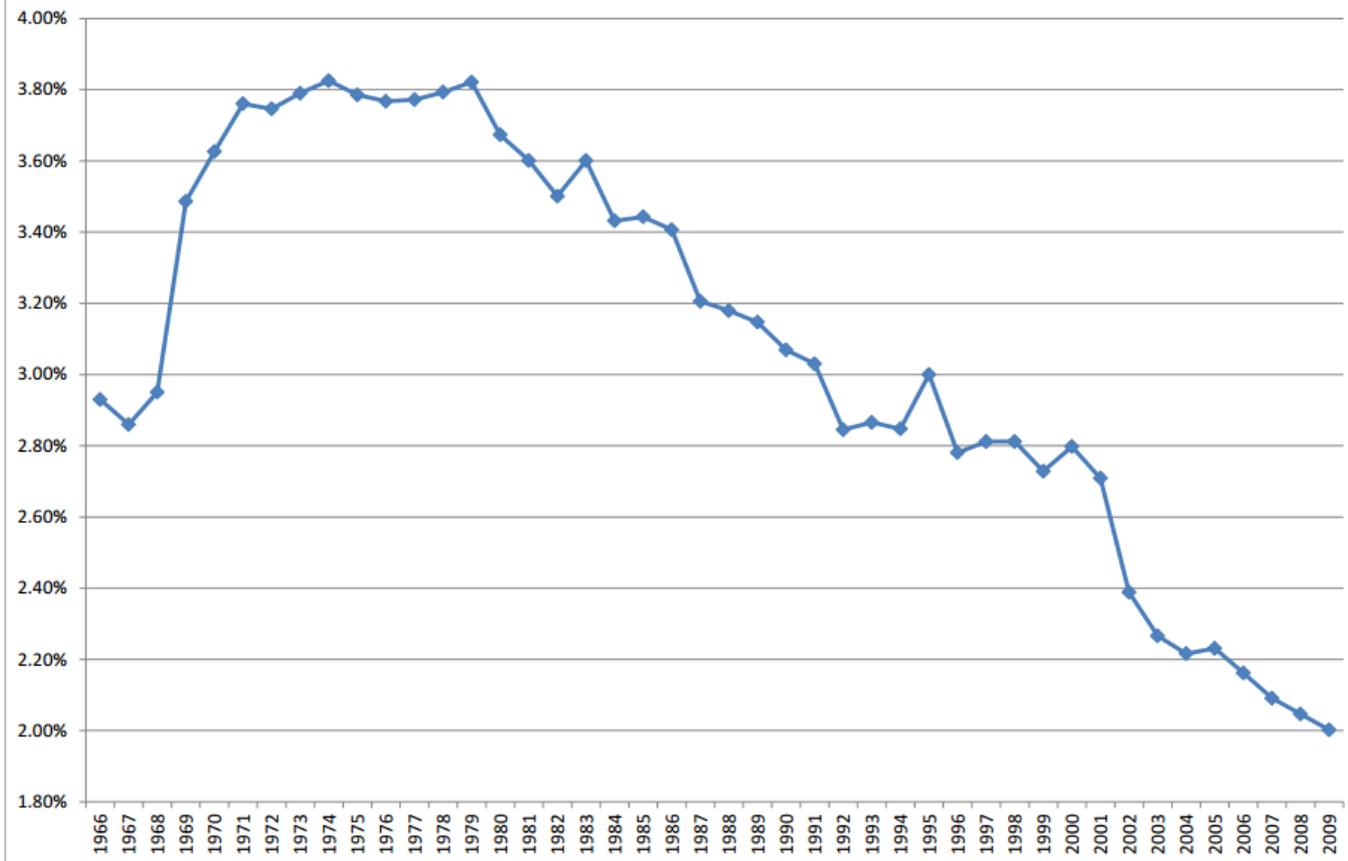
The result:

Average serial price up 227%

Average book price up 65%

CPI up 57%

**Library Expenditure as % of Total University Expenditure  
(Average of 17 US Institutions Reporting Since 1966)**



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## THE HARVARD LIBRARY TRANSITION

### News

#### News Archive

- » Call for Participation: Resource Sharing Workflow Analysis
- » Board Approves Charge to Develop Collection and Content Development Strategic Plan
- » Sniffin-Marinoff Named Overseer of USS Constitution Museum
- » A Note from Helen Shenton and Mary Lee Kennedy
- » Library Overview Page Updated
- » Project Update: Tell Us
- » The Transit of Venus: Harvard 18th and 19th Century Student

# Faculty Advisory Council Memorandum on Journal Pricing

## Major Periodical Subscriptions Cannot Be Sustained



To: Faculty Members in all Schools, Faculties, and Units  
From: [The Faculty Advisory Council](#)  
Date: April 17, 2012  
RE: Periodical Subscriptions

We write to communicate an untenable situation facing the Harvard Library. Many large journal publishers have made the scholarly communication environment fiscally unsustainable and academically restrictive. This situation is exacerbated by efforts of certain publishers (called "providers") to acquire, bundle, and increase the pricing on journals.

Harvard's annual cost for journals from these providers now approaches \$3.75M. In 2010, the comparable amount accounted for more than 20% of all periodical subscription costs and just under 10% of all collection costs for everything the Library acquires. Some journals cost as much as \$40,000 per year, others in the tens of thousands. Prices for online content from two providers have increased by about 145% over the past six years, which far exceeds not only the consumer price index, but also the higher education and the library price indices. These journals therefore claim an ever-increasing share of our overall collection budget. Even though scholarly output continues to grow and publishing can be expensive, profit margins of 35% and more suggest that the prices we must pay do not solely result from an increasing supply of new articles.

The Library has never received anything close to full reimbursement for these expenditures from overhead collected by the University on grant and research funds.

The Faculty Advisory Council to the Library, representing university faculty in all schools and in consultation with the Harvard Library leadership, reached this conclusion: major periodical subscriptions, especially to electronic journals published by historically

What rights do you have as an author?

(but first, are you an author?)

I actually wrote, drew, composed or produced  
the work in question



**VS**

I made substantial contributions to the intellectual content of the paper, either in the form of:

- Conception and design
- Acquisition of data
- Analysis & interpretation of data
- Drafting of manuscript
- Critical revision of manuscript
- Statistical analysis
- Obtaining funding
- Administrative, technical or material support
- Supervision

*(Journal of the American Medical Association)*

*Any substantial intellectual contribution to a work's composition pursuant to a common design ... should, in principle count as co-authorship.*

*- Vaver, Copyright Law*

Now, what rights do you have as  
an author?

```
graph TD; A[Author is first owner of ©] --> B[Unless work produced in the course of employment - then employer owns]; B --> C[Unless there is an agreement to the contrary]; C --> A;
```

Author is first  
owner of ©

Unless work produced in  
the course of  
employment - then  
employer owns

Unless there is  
an agreement to  
the contrary

## **ARTICLE 39 – COPYRIGHTS**

### **39.01 Overview**

The Copyright Act of Canada recognizes that the author of a work shall be the first owner of the copyright except where the author is employed under a contract of service and the work was made in the course of this employment. In this case, the employer of the author(s) shall be the first owner of the copyright if there is no agreement to the contrary. Pursuant to the latter, the University agrees and undertakes to transfer to the author(s) and hereby transfers to the author(s) ownership of the copyright(s) in any materials produced by faculty, subject to any exceptions hereinafter specifically mentioned.

*BUFA Collective Agreement 2011 - 2014*

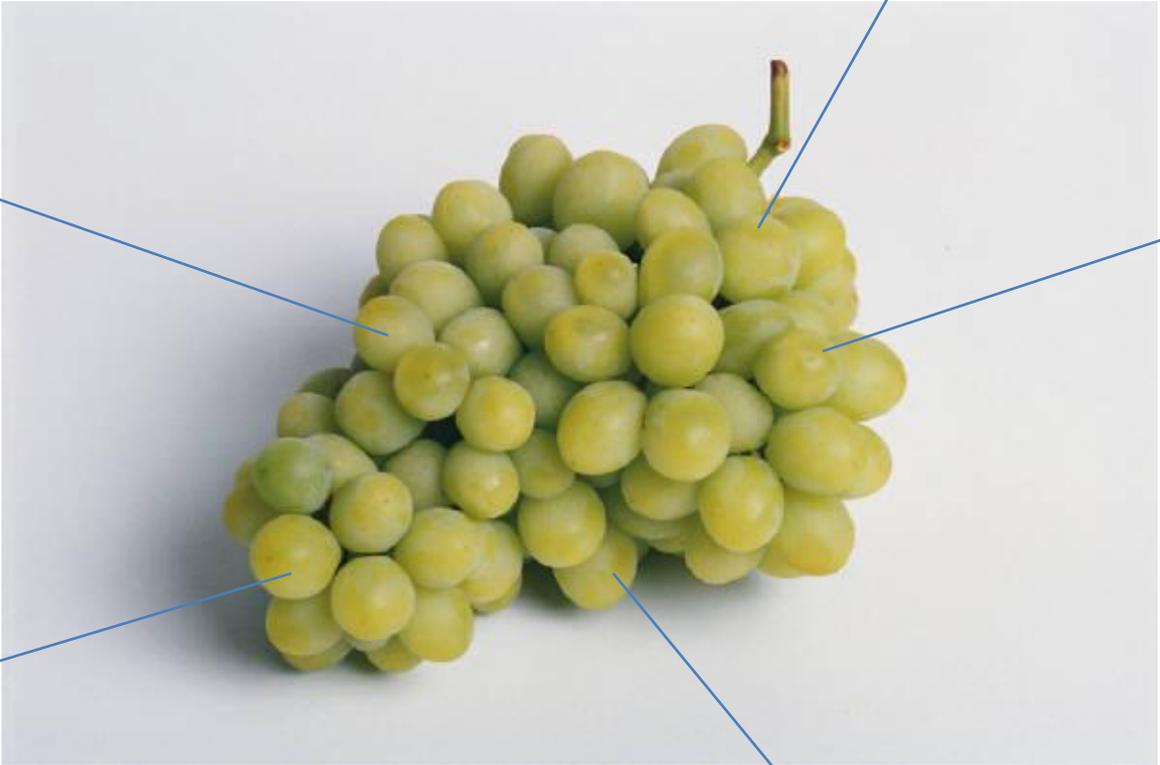
.... so, you own the ©  
in your research publications!

What does © ownership mean?

© =

A bundle of rights, including:

- The right to reproduce a work (or a substantial part of the work)
- The right to publish a work
- The right to translate a work
- The right to communicate a work to the public by telecommunication
- The right to authorize any of these acts.



The right to translate

The exclusive right to publish for 6 months

The exclusive right to publish

The non-exclusive right to adapt

The right to translate in China

What normally happens to my  
© when I publish?



# Traditional © Practices

- Author transfers © to journal publisher
- Author retains limited rights, e.g. right to present paper at conference
- Scope of “reserved rights” varies

# Example

- *Journal of the American Medical Association*

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\_\_\_\_\_  
Your Signature

\_\_\_\_\_  
Date Signed

# A slightly nicer example

- *Trends in Cognitive Sciences*

## THE PUBLISHING AGREEMENT

### Assignment of publishing rights

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  - Scholarly Posting
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  - Internal Institutional Use

# What?

- Pre-print = submitted/pre-refereed version

## **Pre-print**

Author's own write-up of research results and analysis that has not been refereed, nor had any other value added to it by a publisher (such as formatting, copy editing, and the like).

- Accepted Author Manuscript = final version (post-review) before publisher formatting

## **Accepted Author Manuscript ("AAM")**

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# What?

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# A slight variation ...

- Author retains copyright but grants publisher the exclusive right to publish, adapt, translate etc.
- Author reserves certain non-exclusive rights.
- May affect who can bring infringement proceedings.

# Example

- *Proceedings of the National Academy of Sciences USA (PNAS)*

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# What does the publisher get?

- The National Academy of Sciences get the exclusive and irrevocable right to:
  - Publish
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  - Display
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  - Create derivative works
  - Use the work in any form ...
  - And permit others to do any of the above ...

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# Example

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## BioMed Central Open Access license agreement

### Brief summary of the agreement

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- to copy, distribute, and display the work;
- to make derivative works;
- to make commercial use of the work;

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# Hybrid models

- *e.g. The Journal of Neuroscience*
  - Author grants The Society for Neuroscience an exclusive licence for six months from publication, and a non-exclusive licence from then on.
- *e.g. AoB Plants*
  - Author grants exclusive licence to Oxford University Press, but may pay open-access fee to have work may available on Open Access basis.

What should I look out for when publishing?

# It depends...

- Right to incorporate paper in other works - e.g. thesis, conference paper, book ...
- Right to use in teaching
- Right to share with colleagues
- Distinctions between pre-print, post-print etc.
- Embargo periods
- Right to post in institutional repositories

What can I do if I don't like the publishing terms?

# Clarify & negotiate

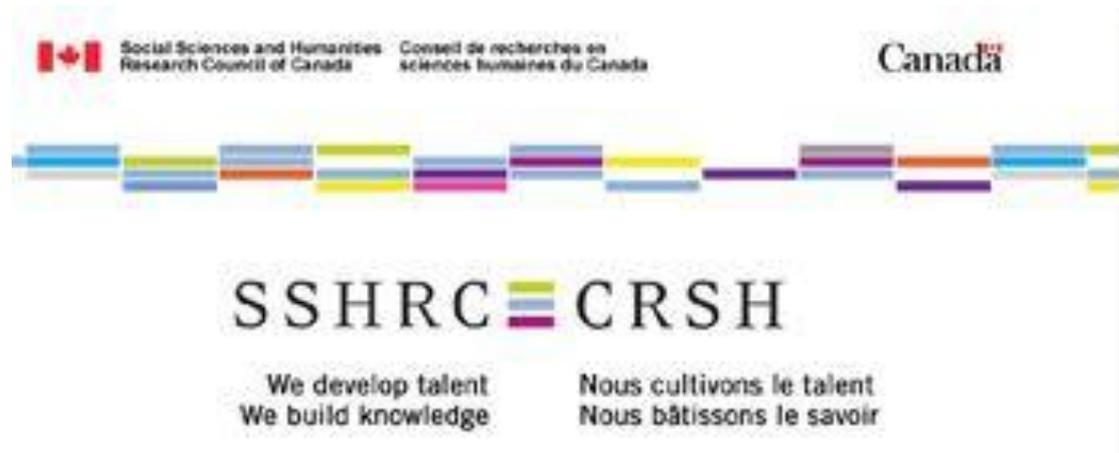
- Clarify rights with publisher
- If you don't have the rights you want, ask!
- Consider using author addendums:
  - SPARC Author Addendum  
(<http://www.arl.org/sparc/author/addendum.shtml>)
  - Scholar's Copyright Addendum Engine  
(<http://scholars.sciencecommons.org/>)
- Most effective technique – strike out unwanted terms / write in and initial changes

Can my grant agreements affect  
publishing?



Beginning January 1, 2008, researchers awarded new or renewed funding from CIHR are reminded to adhere with the following new responsibilities:

- ensure that all research papers generated from CIHR funded projects are freely accessible through the Publisher's website or an online repository within six months of publication;



- 2004 - SSHRC took the position of supporting open access in principle
- 2005 – Approved a policy on open access, “deciding to take “an awareness-raising, educational and promotional approach to [the policy’s] implementation, rather than imposing mandatory requirements.”
- Costs associated with open access publishing are considered by SSHRC to be eligible grant expenses



**NSERC  
CRSNG**

- No Open Access policy
- “For many disciplines, the most common and effective means of disseminating results is through the publication of articles in refereed journals. However, other means of dissemination exist, including transfer of technology to Canadian industry, and **the onus is on the researcher to select the most appropriate vehicle to ensure maximum impact on the field.**”

# Mandatory Archiving Policies

[Canadian Breast Cancer Research Alliance \(CBCRA\)](#) (28 Jun 2009)

[Canadian Cancer Society \(CCS\)](#) (01 Oct 2008)

[Canadian Health Services Research Foundation \(CHSRF\)](#) (23 Apr 2009)

[Canadian Institutes of Health Research \(CIHR\)](#) (04 Jan 2007)

[Concordia University](#) (24 Apr 2010)

[Fonds de la recherche en sante Quebec \(FRSQ\)](#) (05 Feb 2009)

[Genome Canada](#) (23 Apr 2009)

[Heart and Stroke Foundation of Canada](#) (05 Jul 2010)

[International Development Research Centre \(IDRC\)](#) (13 Jul 2011)

# Discussion & questions