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Galadriel Chilton, Joelle Thomas

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COMMENTARY

A Tragicomedy of Communication and Information Dissemination Fails

Galadriel Chilton *Head of Electronic Resource Services, University of Connecticut – Storrs*
Joelle Thomas *Reference, User Experience & Media Technologies Librarian, University of Connecticut – Storrs*

Authors' Note:

At the JLSC editors' request, the names of the conference and publisher have been removed, and select email exchanges have been excluded from this commentary. Furthermore, out of the authors' consideration for the organizations involved, we included salient excerpts rather than full emails between the authors, the conference proceedings editors, and the publisher. However, as the authors work at a state institution, the full emails are subject to FOIA requests.

THE CAST

Joelle Thomas & Galadriel Chilton: Two academic librarians committed to the dissemination of and access to information.

The Conference: An information professionals organization that purports to promote the sharing of ideas among all members of the community.

The Publisher: A large for-profit scholarly publisher that publishes the Conference's proceedings as a special issue of a closed-access journal.

INTRODUCTION

In the following tale, we the authors document our experiences attempting to disseminate one conference paper that we hoped would be beneficial to others in librarianship in addition to aiding our promotion portfolios.

We could sum up our experience with the following dialogue, repeated many times over:

The Conference: "We want you to do X."

Us: "We seek to do X with Y."

The Conference: "Okay, we'll look into Y." (Followed by extended silence suggesting that Y was in progress.)

The Publisher: "What? You can't do that."

However, for the sake of the scholarly record and in the continued pursuit of access to information, a full exploration of the events is useful. Though it is also worth noting that there were assumptions and expectations on our part, all of which proved to be disastrous.

PROLOGUE

In February 2013, we received a speaker's letter confirming acceptance of our presentation for the Conference in

June 2013. As we had agreed to submit a paper for the conference proceedings, the letter specifically noted:

- Papers were "due in mid-July 2013."
- "The paper will be published under a non-exclusive agreement which permits self-archiving."

The only follow-up we received was a note indicating that recorders—those writing papers for presentations in which the authors were not submitting a manuscript—needed to submit their reports by July 12, 2013. Concluding that information for presenters would surely come later, we went about our regular summer work.

In hindsight, we made two critically incorrect assumptions:

- That there would be follow-ups including the firm paper submission deadline, author guidelines, and an author agreement.
- "Reports" must be the distinguishing term for those documents written by recorders, and different than the "paper" we had agreed to submit.

ACT I: SUBMITTING THE MANUSCRIPT

On July 11, 2013 Galadriel received an email that papers were due July 12, 2013. A link to the author guidelines and author agreement was also included, along with a statement that "You are probably past the point of needing to review the Author Guidelines" and a "reminder" that the guidelines and copyright/license to publish forms were available on the Conference's website.

These author guidelines and an outdated copyright/license to publish form were behind a members-only login, but as we discovered, were still accessible via a Google site-search and cached page view. We understood that a new copyright/license to publish form was in the works, so we did not review the older form.

With such a short deadline, we strongly considered withdrawing our paper from the proceedings; however, based on our schedules, we determined that we could submit our paper late and sent the following to the editors: "Being new to [the Conference], we've found the proceedings process a bit confusing. However, Joelle and I will have our paper to you by Friday, July 26."

Upon submission of our paper, we received a link to an author agreement to complete, along with a note that our figures needed adjusting. Once we had resubmitted the figures, we received a reply promising to "be in touch eventually."

We proceeded to redline the license agreement to coincide with our philosophy of information dissemination and also to comply with State of Connecticut licensing requirements. Key changes requested were:

- The article would be licensed under a Creative Commons Attribution ShareAlike License (CC BY-SA),
- The authors would not indemnify the Publisher, and
- The jurisdiction of the agreement would be Connecticut.

The editors acknowledged receipt of our redlined author agreement and indicated that the board liaison to the Publisher would be contacting the Publisher about our requested changes, adding that they were "not sure if [the changes] will fly in accordance with [the Conference]'s deal with [the Publisher], which [the editors have] never seen."

Additionally, the editors requested a statement from UConn that would support our strong preference for a CC license, as this would help the board liaison make our case to the Publisher.

The response that we received from the Conference proceeding's editor after sending UConn's OA policy statement included the news that the Publisher was "working on an entirely different copyright form which they neglected to tell [the Conference] when they were asked about it in April."

For the rest of the summer and autumn, no further communication took place.

ACT II: AUTHOR AGREEMENT VOLLEYING

In January, following a protracted silence (during which the Conference asked us to provide feedback on their speakers' resource webpage, but offered no updates

on the status of our agreement), we received an email directly from the Publisher instructing us to correct our article proof and submit a signed author agreement. When we reviewed the attached agreement, we found it very similar to the original that we submitted but riddled with typos (such as "agreeement" and "writen"). We redlined the agreement, correcting the misspellings as well as re-asserting our terms, and returned it as requested by the Publisher.

As we worked on our proof edits, Galadriel received an email from the Conference instructing us to disregard the instructions from the Publisher and submit all corrections directly to the Conference proceedings editors. We did so, including the correction of "(c) Galadriel Chilton and Joelle Thomas" to "CC BY-SA Galadriel Chilton and Joelle Thomas."

On a Friday afternoon, we received an email from the Conference informing us that Creative Commons was not an option and instructing us to choose between a copyright transfer to the Conference or a license to publish with the Publisher "ASAP." The Conference editor added, "If you want to strike out particular clauses and initial them—e.g., the indemnification clause—do feel free."

After discussing the issue and agreeing that we were unwilling to publish under such a restrictive license, we replied Monday morning that if those were our only options, we wished to withdraw our article from publication. Less than an hour later, we received an email that opened with "Before you give an ultimatum" and went on to state that we owed the Conference an explanation after all the effort they'd gone to on our behalf, that pulling our paper would delay the entire publication, and that other authors had "negotiated [terms] as needed."

We were somewhat taken aback by what we perceived as a defensive and affronted response, but we composed a reply citing our commitment to free access to scholarly materials and explaining that we had never intended to publish under such a restrictive agreement; we had consistently requested a Creative Commons license and believed that negotiations were taking place between the Conference and the Publisher, and until that Friday we had not been told this would be impossible. If we had been denied earlier in the process, we would have withdrawn our paper then. We also asked what open models other authors had successfully negotiated.

Our email was forwarded to one of the Conference board liaisons, who responded thoughtfully to our concerns and pointed us to the Publisher's Author Rights Pilot Initiative for the Library & Information Science (LIS) research community, which is explained on a portion of the Publisher's website but not mentioned in the license we were given to sign. We replied that we were happy to publish with these rights in place; we just wished to have them made explicit in the legally binding agreement. We never were given examples of open models that other authors had negotiated, so we assumed that the changes we had been encouraged to make—i.e., explicitly asserting those authors' rights—were among them.

On February 21, we submitted a new redlined version of the agreement to the Conference editors as agreed so that they could pass it on to the Publisher. We requested the following changes:

- The authors would not indemnify the Publisher,
- The jurisdiction of the agreement would be Connecticut,
- The authors' rights from the website would be included in the agreement itself, and
- All misspellings would be corrected.

In early March, we received an email from the Publisher rejecting the original Creative Commons version of our authors' agreement. We replied by forwarding the author's agreement we had sent to the Conference in February and helpfully cc:ed our contacts at the Conference. In retrospect, this was one of many communication failures between the Conference and the Publisher that should have prepared us for what came next.

ACT III: THE TURNABOUT TWIST

One month later, we received an email from the Publisher summarily rejecting all changes to the agreement, including those that the Conference specifically suggested we make.

We were stunned:

Our Request	The Publisher's Response
Remove # 13 Indemnification clause.	We cannot strike this clause.
Governing Law. Change jurisdiction from U.S. to Connecticut	We cannot change governing law on our copyright forms. We issue many thousands of such forms, and cannot track changes of jurisdiction.
Under Appendix 2. Clarify the author rights.	If you would like clarification of our Green Open Access policy we could issue a statement with the agreement clarifying your rights, but this would be in the form of an addendum to the agreement.
Add a #14 statement: "nothing in this Agreement is intended to limit in any way whatsoever rights under the Fair Use provisions of United States or international law to use the Article."	We cannot add this language. If there is an author reuse you would like to clarify we could include that by way of addendum.

At least they fixed the spelling.

For the second time, we found ourselves composing an email declaring that we would pull our paper from publication if certain terms were not met. We explained that as state employees of Connecticut, we could not sign the agreement with the indemnification clause and non-Connecticut jurisdiction in place, but could sign an agreement that was silent on these matters. We also requested the addendum clarifying our rights. As we conferred with each other, we expressed surprise that the Publisher claimed it was impossible to change the jurisdiction; surely other authors with similar requirements have published with them. Had no one ever pushed back on this issue?

"Cannot" proved a flexible word. The Publisher sent us a new agreement with the indemnification and jurisdiction clauses struck from it via an addendum, as well as the addendum including the explicit authors' rights we requested. However, the addendum misnumbered the clauses that were to be struck, and we had to ask for yet another version with the correct clauses identified. At this point, we seriously wondered whether this had all been a test to see if we were actually reading the contracts.

EPILOGUE

If this is what two persistent librarians without the pressure of publishing for tenure encounter when attempting to disseminate their work to the world, is it any wonder that some faculty, graduate students, and other scholars agree to closed access? Time is a luxury when the tenure clock is ticking, and even for scholars who fully support open access, withdrawing an article from publication is not always a realistic negotiation technique. Without the standing to push back against such terms, many authors find themselves signing what "amounts to a 'contract of adhesion'—meaning a contract in which one party has all of the power and it was not freely bargained" (Ludlow, 2013). When signing an author agreement with a closed access publisher, this usually means relinquishing one's copyright whether one wants to or not.

When publishers can demand whatever they wish of authors, the free exchange of ideas is replaced by suppression, democracy ceases, and it becomes increasingly necessary to resist censorship, as seen when it took an editorial board's threatened resignation before Taylor & Francis printed an article critical of publishers (Jump, 2014).

Such draconian actions against free expression,

> should 'one' be a publisher trying to justify one's existence in a turbulent new world—as all publishers must do—directly violating principles of academic freedom and debate in a journal devoted to innovation[,] would seem to be shooting oneself right in the foot. (Robinson, 2014)

Yet publishers continue to engage in such self-defeating behavior, without an eye toward long-term consequences for the future of scholarly communication. It takes a while for that bullet to hit the foot, after all.

Since publishers and librarians both play essential roles in scholarly communication, we might hope that librarians would help keep the balance by pushing back against unhealthy publishing models. Unfortunately, while many libraries and librarians are proponents of open access as one response to closed access, this is not always the case. We learned that one of the reasons that the Conference's proceedings are not an open access publication is because the payment the Conference receives from the Publisher for printing the proceedings helps cover the Conference's operating costs. While publisher/vendor sponsorship of conferences is an established practice, the exchange of operating funds for a closed-access publication appears to us as a conflict with the organization's mission and the purpose of librarianship. If the very ones who should be protecting the foundations of the dissemination of information are not fulfilling their roles, how can scholarly communication as a whole be anything but lame?

In the end, we are left pondering how this experience is just another example of the alarming state of scholarly communication and academic publishing:

> The current state of academic publishing is the result of a series of strong-arm tactics enabling publishers to pry copyrights from authors, and then charge exorbitant fees to university libraries for access to that work. The publishers have inverted their role as disseminators of knowledge and become bottlers of knowledge, releasing it exclusively to the highest bidders. (Ludlow, 2013)

Indeed, even as some publishers have begun to respond to the appeal of open access, they have done so in ways that profit them. Publisher support for open access and self-archiving by authors is less than stable, since

> publishers are free to change their level of support for self-archiving and they do, sometimes many years later. Policies that appear stable could change in the future. . . .For-profit policies appear designed to thwart the green route to open access and incentivize the alternative: paid open access publishing. (Covey, 2013, p. 7)

This was certainly our experience.

Before the Conference's board liaison informed us of the Publisher's special Library & Information Science Author Rights Pilot Initiative, the Conference pointed us to the Publisher's Gold Open Access publication option as the only possible alternative to signing away our author's rights. The cost of this was wildly disproportionate to the value added to our article, particularly given that our conference proceedings were not even put through peer review.

For a person or entity that should be pro-access to become one of the forces hindering it by promoting or supporting such practices is frustrating and disheartening. In Article IV of The Library Bill of Rights, our profession asserts that protecting free access to our cultural record (which includes scholarship) is part of our work: "Libraries should cooperate with all persons and groups concerned with resisting abridgment of free expression and free access to ideas" (American Library Association). Why are members of our profession making this work harder?

As Aaron Swartz noted, "There is no justice in following unjust laws. It's time to come into the light and, in the grand tradition of civil disobedience, declare our opposition to this private theft of public culture" (2008).

We have an abundance of resistance work to do.

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CONTACT THE AUTHORS

Galadriel Chilton
Head of Electronic Resource Services

Joelle Thomas
Reference, User Experience & Media Technologies Librarian

University of Connecticut Libraries
369 Fairfield Way
Storrs, CT 06269

galadriel.chilton@lib.uconn.edu
joelle.thomas@lib.uconn.edu