

Authors' **Rights: Use** the Law, **Share** Your Scholarship, **Change** the World

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Roadmap

- Copyright Basics
- Using 3rd Party Material in Your Writing (Figures!)
- Copyright provisions in a publishing agreement
- Things to think about
- Publishing and Dissertations
- Changing the World
- Resources
- Q&A

Copyright Basics

- Automagical - no more “formalities” (notice, registration); just “fixation in a tangible medium”
- Ownership vests initially in author(s) - note the unusual status of scholarship vis-a-vis work for hire rules.
- “Bundle” of rights: divisible, licensable, transferrable
- Term of protection: Life of the author+70 years

Including **Third Party** Material in Your Work

- Examples: Quotations, Figures, Images
- Three Key Questions:
 - Is copyright even an issue?
 - Is this a fair use?
 - If I need permission, how can I get it?

3rd Party Material: Is © even an issue?

- Content *not encumbered* by copyright:
 - **Facts**, concepts, discoveries, systems
 - **Federal** Government Works (be careful...)
 - Works that have **shed their copyrights** - 95+ years old, non-renewed, missing formalities (pre-1978)
 - “**De minimis**” uses - a sentence or two, a tiny portion of a larger work
- **Other norms** may apply - plagiarism, ethics, contracts, etc.

Copyright Office on What's Not Eligible

1. Ideas, procedures, processes, systems, methods of operation, concepts, principles, or discoveries
2. Merger of idea and expression
3. Facts
4. Typeface and mere variations of typographic ornamentation
5. Format and layout
6. Works that aren't original
7. Mere copies
8. De minimis authorship
9. Words and short phrases
10. Works consisting entirely of information that is common property
11. Measuring and computing devices
12. Mere listing of ingredients or contents
13. Blank forms
14. Characters
15. Scènes à Faire
16. Familiar symbols and designs

Is this a fair use?

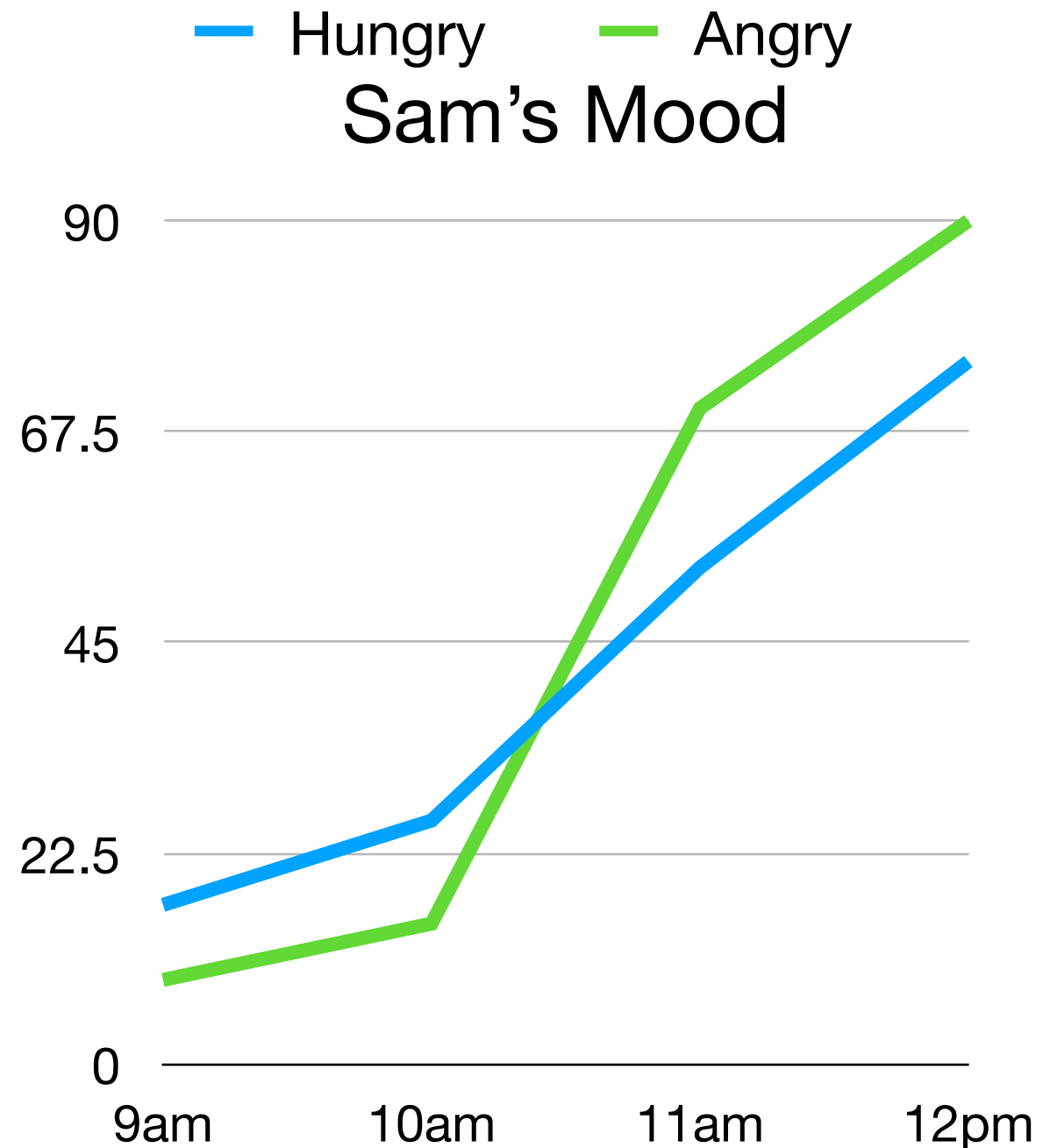
- The law permits unlicensed fair use “for purposes such as criticism, comment, scholarship...teaching.”
- Not every use for these purposes is fair; four factor test considers:
 - Purpose - uses for scholarly, non-commercial purposes are favored. Transformative uses are heavily favored.
 - Nature of the work used - highly creative/fictional works may be less available for fair use purposes (but not really...)
 - Amount used - is the amount you use (a) appropriate to your legitimate purpose, (b) likely to serve as a substitute for the original
 - Market effect of the use - does your use undermine/unfairly compete with the work you used in its traditional/reasonable/likely future market

If I need **permission**, how can I get it?

- **Open licenses**: notices connected to a work that grant permission proactively to the public, often subject to conditions — e.g. Creative Commons (CC-BY, etc.)
- **Publisher Guidelines**: The STM Permissions Guidelines created by major STM publishers (ACS, Elsevier, Springer, Nature) allow free use of a variety of materials from these publishers, but often require notice of use
- Publisher and journal **policies and forms** - check for permissions info on the website of the journal or the publisher associated with the content you want to reuse (but note: they will rarely turn down your \$\$)
- Ask the **author** - but be *very* careful. Authors rarely retain rights in their work once it's published

Example: Facts & Figures

- Is copyright even an issue?
- Ask:
 - Does the figure reflect a modicum of creative/ expressive choice? or...
 - Does it represent facts/data in a standard format?



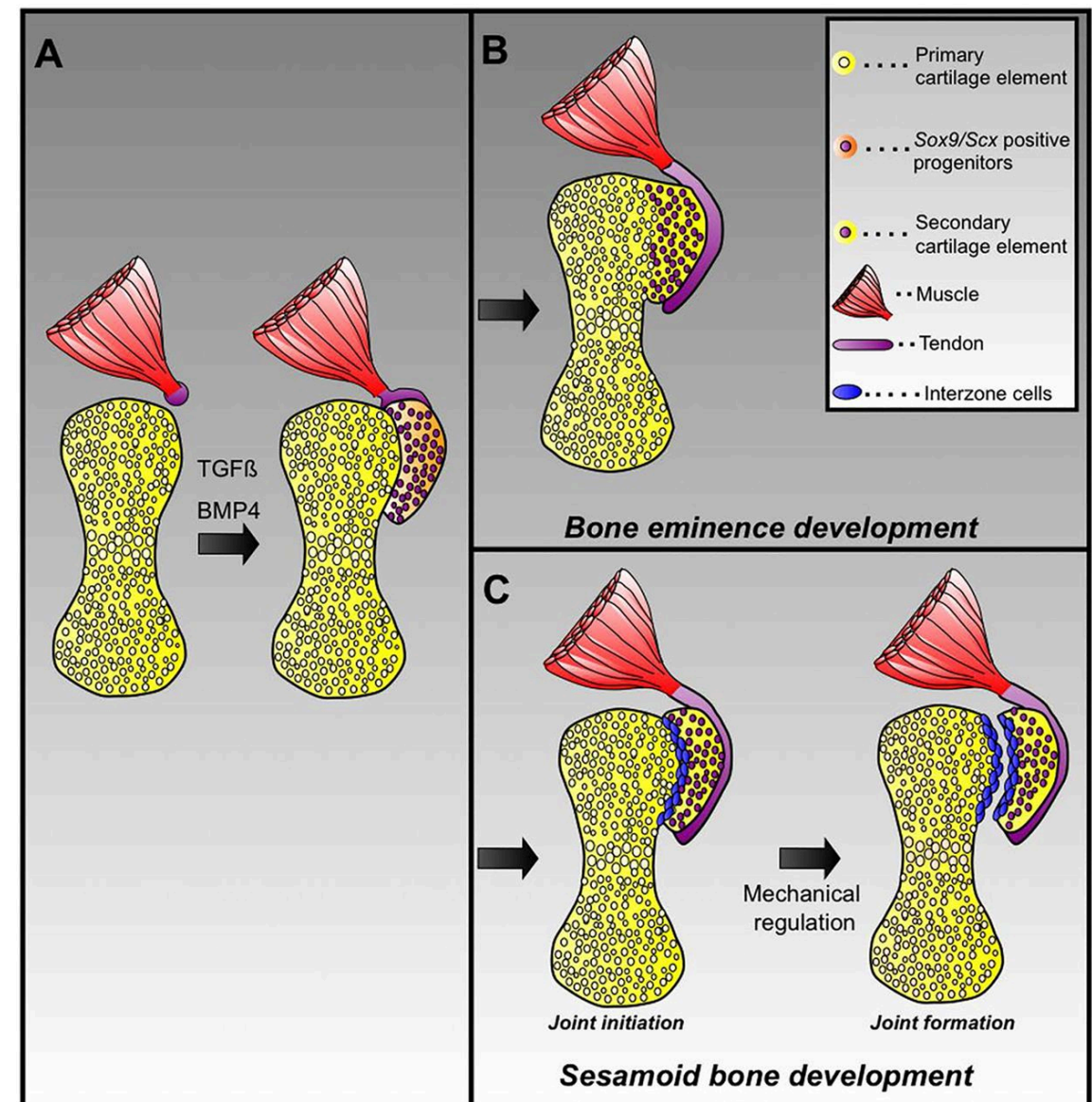
Example: film stills

- Is it fair use?
 - Purpose: Criticism, commentary?
Transformative purpose?
 - Nature: creative (but meh)
 - Amount: appropriate to purpose?
Commercial substitute?
 - Market effect: Unfair
substitution?
- Society for Cinema and Media Studies' Statement of Fair Use Best Practices for Media Studies Publishing



Example: Illustrative Figure

- Is copyright even an issue?
- Is it fair use?
- How can I seek permission, if I need it?
 - Not an STM signatory
 - No open license
- Permissions link in column on the right



Common © Provisions in Author Agreements

- **Transfer or License** to the publisher
 - Transfer vs. license - does it matter? Look to bottom line: who can do what.
 - E.g., from Elsevier:
 - “I hereby **assign to the Copyright Owner [i.e, publisher!!]** the **copyright** in the manuscript identified above...and any tables, illustrations or other material submitted for publication as part of the manuscript (the “Article”). This assignment of rights means that I have granted to the Copyright Owner the **exclusive right to publish** and reproduce the Article, or any part of the Article, in print, electronic and all other media (whether now known or later developed), in any form, in all languages, throughout the world, for the full term of copyright, and the right to license others to do the same....”
- Compare, JCEL:
 - “Author hereby **grants to the Publisher a license** on the following terms: the irrevocable, royalty-free right to publish, reproduce, publicly display, publicly perform and distribute the Work in perpetuity throughout the world in all means of expression by any method or media now known or hereafter developed, including electronic format;...
 - “Nothing in this agreement constitutes a transfer of the copyright by the Author...”

Common © Provisions in Author Agreements cont'd

- Inclusion of 3rd-party material - three typical provisions:
 - Author affirms there is no 3rd party material in the work
 - Author affirms she has permission to use all 3rd party material —e.g., Elsevier:
 - “I have obtained written permission from copyright owners for any excerpts from copyrighted works that are included and have credited the sources in the Article or the Supplemental Materials.”
 - Author affirms all 3rd party material is included lawfully — e.g., JCEL:
 - “To the best of the Author’s knowledge, the Work does not infringe the copyright or other intellectual property or literary rights of another.”
- Author indemnity of journal

Things to Think About

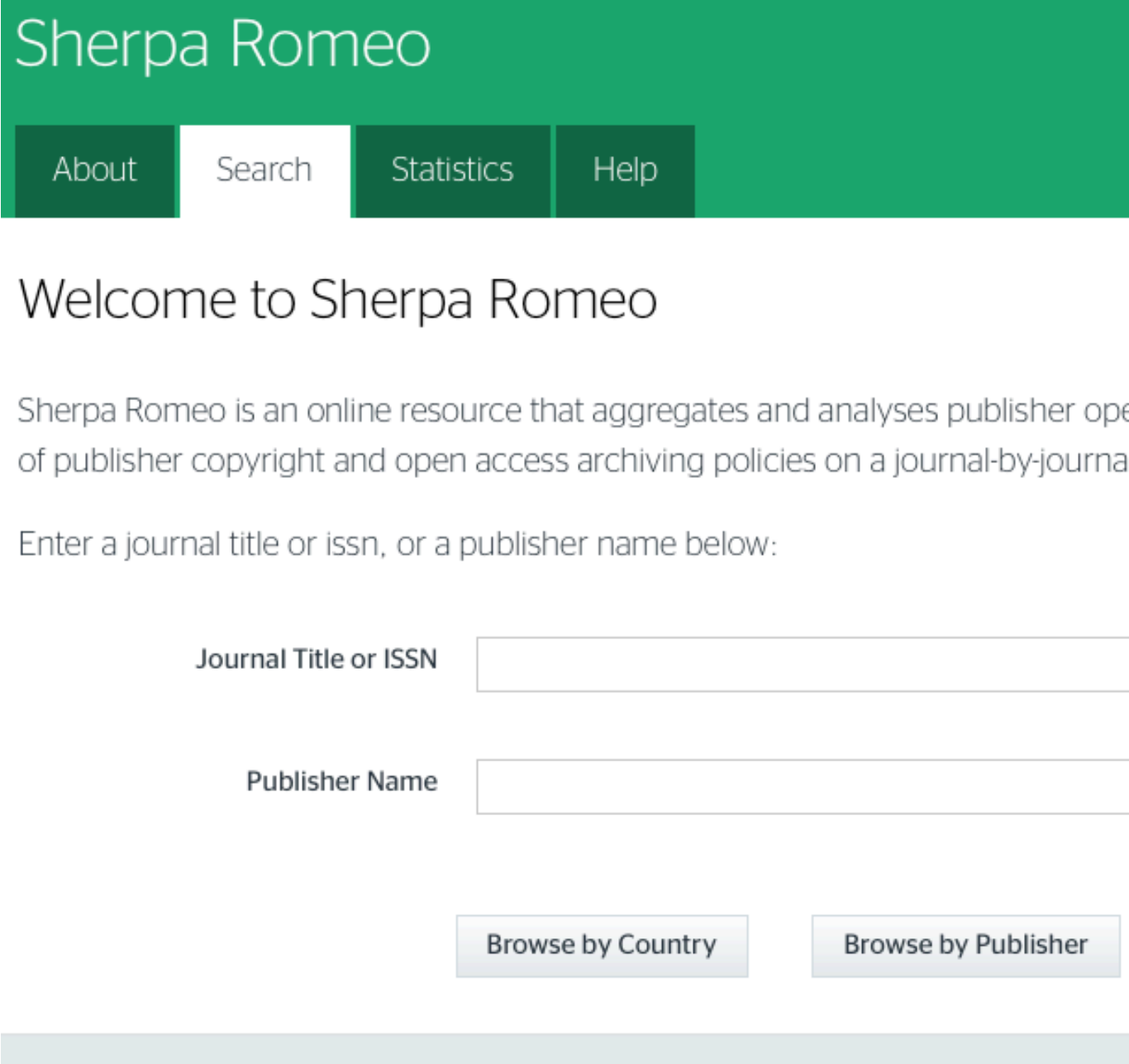
- Funder open access requirements (NIH, e.g.)
- Your own goals for the piece—P&T, engage your field, impact a public debate, support teaching, etc.
- What uses you'd like to make with the work after it's published
- What uses you'd like others to be able to make of the work after it's published

Rights you might **reserve** for yourself

- Right to **deposit/publish** a **version** of the article:
 - in your institutional **repository** (libra.virginia.edu)
 - in a **subject** archive/preprint server - e.g., arXiv, SSRN, Humanities Commons
 - on your personal **website**/departmental site
 - on a **social network** (e.g., academia.edu)
- Right to **use** article in teaching, conference presentations, etc.
- Right to reuse/reprint portions of article in **future books, articles**
- Other ideas?

Key resource: SHERPA RoMEO

- Massive archive of policies for major publishers
- Links to full policies
- Categorizes publishers' default policies re author reuse
- Nomenclature:
 - “pre-print”
 - “post-print”
 - “publisher PDF”
- Notice/Citation Requirements



The screenshot shows the Sherpa Romeo website. At the top is a green header with the text "Sherpa Romeo" in white. Below the header is a navigation bar with four buttons: "About", "Search", "Statistics", and "Help". The "Search" button is highlighted. Below the navigation bar is a section titled "Welcome to Sherpa Romeo". Underneath this title is a paragraph of text: "Sherpa Romeo is an online resource that aggregates and analyses publisher open access policies on a journal-by-journal basis". Below this paragraph is a prompt: "Enter a journal title or issn, or a publisher name below:". There are two input fields: the first is labeled "Journal Title or ISSN" and the second is labeled "Publisher Name". Below the input fields are two buttons: "Browse by Country" and "Browse by Publisher".

Sherpa Romeo

About Search Statistics Help

Welcome to Sherpa Romeo

Sherpa Romeo is an online resource that aggregates and analyses publisher open access policies on a journal-by-journal basis

Enter a journal title or issn, or a publisher name below:

Journal Title or ISSN

Publisher Name

Browse by Country Browse by Publisher

Flavors of Open, and a note about “predatory publishers”

- Open Access in two flavors:
 - Green: author publishes in traditional journal, but archives a version of her article with an open license in an open repository
 - Gold: article is published by the journal with an open license (often for a fee)
- Green is often available for free by default, to subject to conditions
- “Predatory” publishers - ThinkCheckSubmit.org

Publishing and Dissertations

- Two scenarios:
 - Dissertation/thesis —> Article/Book
 - Article/Book —> Dissertation/thesis
- Publisher policies are key
 - Both scenarios are very (and increasingly) common
 - Many/most publishers have policies to address them
- Publisher policies are evolving, vary by `

Changing the World

- Use open licenses - [CreativeCommons.org](https://creativecommons.org/)
- Open Access - lowering price barriers to scholarship
- Open Educational Resources (OER) - promote affordability, innovation in teaching
- Open Data/Open Science/Open Workflows - for reproducibility, transparency, collaboration
- Use fair use - American University Best Practices

Resources

- Copyright Essentials for Scholarly Work: <https://copyright.library.virginia.edu/copyright-resources/essentials/>.
- **Authors Alliance** - <http://www.authorsalliance.org>
 - Guides to Open Access, Rights Reversion, and more
 - By and for academic authors
- **Authors Guild** - <https://www.authorsguild.org>
 - For book deals, agents, etc.
- **Sherpa/RoMEO**: <http://sherpa.ac.uk/romeo/index.php>.
 - Guide to publisher policies on sharing article versions
- “Principles of the JCEL Publication Agreement” - <https://journals.ku.edu/index.php/jcel/article/view/5913>
 - Thoughtful breakdown of a modern publishing agreement written with authors’ rights and public access as key goals

Resources (cont'd)

- **SPARC** - <https://sparcopen.org>
 - All things Open - OA, OER, Open Data
 - SPARC Author's Addendum for journal contracts
- **Center for Open Science** - <http://cos.io>
 - Open workflows, open data, pre-print repositories
- **Center for Media and Social Impact** - <http://cmsimpact.org/codes-of-best-practices/>
 - Fair Use Best Practices and Supporting Materials

Any questions?

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