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Since a contract trumps rights under copyright law, the argument can be made that the author has fewer rights than does any other person over his own paper. While copyright law has the concept of "fair use", it could be argued that because the APS contract enumerates the rights of the author, and since "fair use" is not amongst those, that the fair use right is extinguished. I am positive that this is not the intention of the APS.

Furthermore, even were one to grant "fair use" as a right retained by the author, as well as others, the courts have found that even a sentence or two could be considered substantial use placing the copying out of fair use. Since every physicist knows that equations are a form of expression, are a language capable of expressing an idea in many different ways, equations themselves fall under copyright. Thus the courts could well see that a single equation in a paper could be regarded as falling outside of "fair use".

As I understand it, under copyright law, a derived work falls under the copyright of the original unless the work represents an independent creation. While some other person could claim that any similarity between their work and the original was solely a consequence of the similarity of ideas (which cannot be copyright) and was independently created from those ideas, such "independent creation" is clearly not a defense available to the author.

I believe that encouragement of the author to develop his idea and to promulgate his idea is one of the aims of the APS, I believe that the following would encourage that without trampling on the APS desires with respect to copyright.

Suggestion 1:

Derived works by the author(s): In case another work is created which is derived from the current work, and in which all of the following conditions apply, the copyright in that derived work rests with the authors of that work, and no claim by APS or its successors will be made on that copyright, except that that derived work shall include a reference, in the standard form for the field, to this work as published in an APS Journal. The conditions are that no more than a total of 50% of the contents of this paper, whether text, equations, tables, or figures, is included in that derived work, that no less than 10% of that derived work consists of new material not covered by this copyright, and that at least one of the authors of that derived work also be an author of this work. In cases where the first two conditions do not apply, and the new work is for commercial purposes, explicit permission of the APS is required.

2.It is the author's overriding interest that the work he has done be associated with his name. He does not want his work dissociated from his name, nor does he want the meaning of his work altered to say something he never meant to say, or opposite to what he intended.

In most of the world copyright law includes the concept of "moral rights". These grant explicit rights to the author to have his name associated with his creation and are separate from his copyright interests in his work. Transfer of copyright does not transfer moral rights. In the USA, the courts have ruled that no such separate rights exist under US copyright

law– that the only rights rest in the copyright itself. Once a person has transferred copyright he has also transferred all moral rights. This means authors of works created in the USA have fewer rights than say a Canadian author has. Under Canadian law copyright transfer does not transfer moral rights (and in fact it is very difficult to transfer moral rights). Thus were the APS to place Leo Kadanoff's name onto an article that you wrote in the US, you would have no legal recourse since the APS owns the article under the transfer. On the other hand were APS to do that to me, a Canadian, I could sue the APS under the moral rights clause in Canadian law if the APS distributed that article in Canada. I use Canada as an exemplar, as the same would apply in other countries with the concept of moral rights.

Thus this suggestion attempts to make the rights afforded to authors who create their work in the United States the same as those already afforded authors whose works were created in the rest of the world.

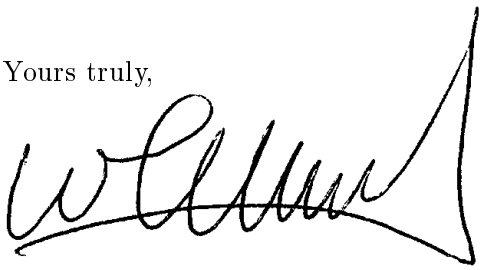
Suggestion 2:

In no case will the APS remove or transfer or alter the authorship designation of a paper without the consent of the author(s). Furthermore, except for editorial changes, APS will not alter the contents of the paper without the permission of the author(s). This clause does not apply to the removal of fraud, plagiarism, libel or other serious malfeasance on the part of an author with respect to the paper.

Note that Suggestion 1 is the most crucial. It addresses a problem that is is most urgent. The issue is one that most authors already ignore, and one that could bring the whole APS transfer contract into ineffectiveness. (Refusal to enforce the terms of the contract in cases where it is known to be violated make it extremely difficult to enforce them in other cases.) It is also one where any author who takes the contract seriously has their ability to carry out their normal scientific duties impeded, which is not, I am sure, an intention of the APS.

Thank you for your attention to this issue.

Yours truly,



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