

## Raising the Bar: Legal Perspectives on Scientific Communication

**Hopkins DB. Ideas, their time has come: an argument and a proposal for copyrighting ideas. Albany Law Review Winter 1982;46:443-73.**

Electronic information and the controversy over downloading music from the Web with Napster have recently hogged the copyright spotlight, but this article takes the copyright issue to its very heart. According to the 1976 Copyright Act (17 US Code, section 102[b] [supp I 1977]), “in no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.” Aside from changes in society since 1909, when US copyright law was first enacted, Hopkins argues, the rationale for not copyrighting ideas is questionable. Copyright is intended to make ideas more available, but it is just as likely that it causes ideas to be suppressed by their originators. Hopkins does not address this, but one could say that part of the beauty of science is that it has created its own system of protection for ideas: citation in the scientific literature.\*

\*For information: on copyright basics, see [www.loc.gov/copyright/circs/circ1.html](http://www.loc.gov/copyright/circs/circ1.html). For a list and brief descriptions of amendments to the copyright law, see [www.loc.gov/copyright/title17/92preface.html](http://www.loc.gov/copyright/title17/92preface.html).

**Shinn AM Jr. The First Amendment and the export laws: free speech on scientific and technical matters. George Washington Law Review 1990;58:368-403.**

In light of the recent travails of Wen Ho Li, a review of laws concerning the export of information may be worthwhile. The Export Administration Amendment (EAA) Act of 1985 asserted that “it is the policy of the United States to sustain . . . the ability of scientists . . . to communicate research findings . . . by means of publication . . . and other forms of scholarly exchange.” This scholarly exchange includes communication of information to noncitizens or resident aliens in the United States or to noncitizens outside the United States, for example, by publication or by physical transfer or transmission of information. Only seven cases of free-speech issues in the national-security context reached the courts from 1970 to 1990. In 1990 three major statutes governed science and technology communication: the EAA, the Arms Export Control Act, and the Invention Secrecy Act.

**Noah L. Sanctifying scientific peer review: publication as a proxy for regulatory decisionmaking. University of Pittsburgh Law Review 1998;59:677-717.**

Should information in science journals ever serve as the basis for government decisions? For example, a drug has been approved for a particular use by the Food and Drug Administration (FDA). An article in a scientific journal indicates that the drug is also effective and safe for some other use. The manufacturer wants to promote the drug for the other use. Solely on the basis of the information in the scientific article, FDA will allow the other use and will allow the company to distribute

the article as a means to promote the use. In another example of such “delegation of government authority”, courts might admit scientific information in a court only if it has been published in a scientific peer-reviewed journal. Noah argues that, as government is becoming more privatized, delegation of authority to scientific peer review could expand, but this would be unwise for reasons that science editors understand very well. Most interesting to editors in this article, however, may be that there is now a definition of *scientific or medical journal* in the United States Code, albeit the Annotated Code. \*\*

\*\*The term ‘scientific or medical journal’ means a scientific or medical publication-

- (A) that is published by an organization
  - (i) that has an editorial board;
  - (ii) that utilizes experts, who have demonstrated expertise in the subject of an article under review by the organization and who are independent of the organization, to review and objectively select, reject, or provide comments about proposed articles; and
  - (iii) that has a publicly stated policy, to which the organization adheres, of full disclosure of any conflict of interest or biases for all authors or contributors involved with the journal or organization;
- (B) whose articles are peer-reviewed and published in accordance with the regular peer-review procedures of the organization;
- (C) that is generally recognized to be of national scope and reputation;
- (D) that is indexed in the *Index Medicus* of the National Library of Medicine of the National Institutes of Health; and
- (E) that is not in the form of a special supplement that has been funded in whole or in part by one or more manufacturers.

21 US Code Annotated,  
section 360aaa-5[5] [West supp.  
1991]pp 709-10.