



A2P2 ISSUE BRIEF: ACS AND ELSEVIER v. RESEARCHGATE

AUGUST 1, 2019

ABOUT THE LITIGATION

On October 2, 2018, the American Chemical Society (ACS) and Elsevier, publishers of peer-reviewed journals, filed a copyright infringement lawsuit in the U.S. District Court of Maryland against ResearchGate, a for-profit professional social networking site where scientists and researchers can share, discover, and discuss research.

ACS and Elsevier allege that ResearchGate uploads unauthorized copies of journal articles to its platform and encourages others to do so by 1) directly asking them to upload content, 2) encouraging the use of a feature that allows users to request the full text of a work from an author, and 3) misleadingly promoting the concept of self-archiving. Based on these allegations, ACS and Elsevier argue that ResearchGate should be liable for direct copyright infringement, inducement of copyright infringement, and contributory and vicarious copyright infringement. ACS and Elsevier are asking the court to order ResearchGate to stop reproducing and distributing their copyrighted content, to delete unauthorized copies of their copyrighted content from ResearchGate servers, and to pay damages.

In its February 13, 2019 response to the complaint, ResearchGate admits that when authors opt to make their work publicly available on its platform, it stores a copy of that content on its servers. ResearchGate also admits that, through an automated process, it accesses copies of some publicly available publications that are then uploaded to its servers for the purposes of indexing the content. ResearchGate denies that its activities are infringing.

Read More: [ACS and Elsevier's Complaint](#)
[ResearchGate's Answer to Complaint](#)

WILL AUTHORS OF ARTICLES AT ISSUE BE NOTIFIED ABOUT THE LAWSUIT?

ResearchGate asked the court to order ACS and Elsevier to notify the co-authors of each article at issue in the case about the lawsuit. It argued that it is not clear that co-authors have relinquished their interests in the copyrights (including the right to share those articles via ResearchGate) because sample publication agreements from ACS and Elsevier suggest that only one co-author, commonly referred to as the corresponding author, signs any assignment of copyright to the publishers. As such, ResearchGate argued that co-authors who never signed contracts are at minimum co-owners of copyrights whose interests are “likely to be affected by a decision in the case” and notice of the lawsuit is therefore mandatory under § 501(b) of the Copyright Act.

The court denied the motion to serve notice on all co-authors, in part because there was no evidence to suggest that the corresponding author was not a “duly authorized agent” who signed the agreement

on behalf of the co-authors, as allowed by the Copyright Act. As a result, the authors of the articles at issue in the case will not be formally notified about the lawsuit.

Read More: [Giving the Authors a Voice in Litigation? An ACS v. ResearchGate Update](#), David Hansen
[Opinion Denying Motion for Notice Under 17 U.S.C. § 501\(b\)](#)
[Exhibit A to ACS and Elsevier's Complaint](#): List of articles at issue in the case

WHAT SHOULD SCHOLARLY AUTHORS KNOW IN LIGHT OF THE LAWSUIT?

When an author's article is accepted for publication, she may be asked to transfer her exclusive rights to the journal in a publication agreement. This means that the publisher, not the author, will have the right to control how the article is copied and shared. If an author shares an article on ResearchGate in a way that is contrary to the terms of her publication agreement, she may be infringing the publisher's copyrights. That said, ACS and Elsevier have not yet taken legal action against individual authors for sharing their articles on ResearchGate. Authors who are concerned about making their works widely available, including on sites like ResearchGate, can consider the following options:

- **Share a version of the article that is allowed under the terms of the publication agreement:** Authors who have already signed a publication agreement should review the terms of their agreement to understand what version they are allowed to share, if any, as well as any restrictions on where, when, and how that version can be posted. ACS and Elsevier's complaint acknowledges that, generally speaking, the author of an article published in ACS and Elsevier journals can freely share their pre-prints (which they define as the author's initial write-up of research results and analysis that has not been submitted to a journal, peer reviewed, or had value added to it by a publisher). According to the complaint, this lawsuit is targeting articles posted to ResearchGate in their final form (known as the "version of record," i.e., the published version that includes publisher coordinated peer review, copyediting, and formatting).
- **Retain the rights needed to make future works available:** When presented with a publication contract, authors should review its terms and consider negotiating for terms that allow them to share their work on personal websites, university repositories, and author networking sites. Authors may also review journal publishers' standard policies regarding sharing on the SHERPA/RoMEO database and opt to submit their work to journals that give them the sharing options they want.
- **Publish in an open-access journal:** Authors may also consider publishing in an open-access journal under an open license (such as a Creative Commons license) that allows them and others to share their research.

Read More: [Publishers' Dispute with ResearchGate: What Researchers Need to Know](#), Brandon Butler

HOW ARE OTHER PUBLISHERS DEALING WITH RESEARCHGATE?

In April 2018, Springer Nature, Cambridge University Press, and Thieme announced an agreement to promote the sharing of articles on ResearchGate "in a way that protects the rights of authors and

publishers.” Under the agreement, ResearchGate and the publishers will work together to educate users about how journal articles can be shared, ResearchGate will continue to remove infringing content in response to publisher notifications, and publishers and ResearchGate commit to developing other pathways to address infringing content. In March 2019, Springer Nature announced a pilot program in which it is working with ResearchGate to make full-text articles from select Nature journals published from November 2017 onward available to all users on ResearchGate.

Read More: [*Springer Nature and ResearchGate Announce New Cooperation If ResearchGate is Where Authors Connect and Collaborate*](#), Lisa Janicke Hinchliffe
[*ResearchGate and Springer Nature Pilot Program*](#)

WHAT'S NEXT?

The litigation is still in very early stages and it will be some time until there is a final decision in the case. Authors Alliance will monitor the litigation and provide updates on significant developments.