It will be useful first of all to define what we mean by the terms scholarly communication and open access.

Scholarly Communication is the full cycle of information use and knowledge production by scholars, from research to publication. H-Net has been a big part of this for scholars since the organization’s founding in 1993. Obviously this means first of all the email communication that we made possible, the give and take via the listserv software, moderated by scholarly editors. In this sense H-Net facilitates the early phases of research. But H-Net also established itself early on as a particular kind of publisher, an open access publisher.

Peter Suber defines open access in his Open Access (Cambridge, Mass.: MIT Press, 2012) as barrier-free access to online works and other resources…the term was introduced by the Budapest Open Access Initiative in February 2002.” Suber’s excellent book doesn’t mention H-Net anywhere; nor does it mention that members of H-Net’s Council were among the early online signatories of the BOAI declaration ten years ago.

Since very early in its history, H-Net has

- insisted upon unfettered online access to its list logs, book reviews, and other content of its public networks (email, gopher for a few years, and Web—including 32,000 reviews to date)...with rare exceptions like H-Grad
- resisted requests to retract or withdraw messages when someone has disagreed with their content
- exposed all public content to indexing crawlers

Suber and the open access movement argue that scholars disseminate their works primarily not in order to make money, but to contribute to scholarship and make an impact. H-Net contributors knew this years before their institutions began to build institutional repositories, require grad students to deposit their dissertations there for open access, and enact open access mandates for faculty publications. Today a growing body of research supports the proposition that open access increases impact. H-Netters understood why open access was in scholars’ interest before the American Historical
Association did. Fortunately the AHA is coming around, now that it provides open access to the articles (but not the reviews) in the *American Historical Review*.

H-Net has also addressed copyright issues head on, and learned from the process.

The first major area of copyright awareness was the redistribution of newspaper articles via the email lists. Some editors argued that the scholarly purpose of the lists was sufficient to qualify this redistribution as fair use. A consensus emerged, however, that such redistribution does not satisfy the conditions in the fair use statute. First of all, an H-Net list is not a classroom. Second, mere redistribution is not a transformative use.

In 1999 H-Net enacted a copyright policy, available online at [http://www.h-net.org/about/intellectualproperty.php](http://www.h-net.org/about/intellectualproperty.php). The policy enjoins editors against illicit redistribution of copyrighted materials and defines very restricted conditions when it may be permissible. Editors have, with very rare exceptions, followed and internalized this policy ever since. Observance of the policy is especially important for us because material posted to the lists is publicly accessible and removing it from the logs poses major technical difficulties.

The second major area of copyright awareness involves H-Net Reviews. Publishers provide review copies as requested by the editors, who then commission reviews of the books that fall into their subject areas. Following email distribution of the reviews, we began to archive them, first in gopher and then on the Web. H-Net claimed copyright in the reviews for itself, the rationale being that its provision of the review copy to the reviewer made the resulting review a work for hire.

In claiming copyright H-Net was on shaky ground: work for hire is intended for worker-employer situations. H-Net hoped that the reviews would eventually provide a revenue stream in the form of printed or CD compilations: its finances were uncertain for many years, and it seemed that the reviews might provide a solution. It is important to note that H-Net never compromised its preference for public access to the Web archive of reviews, and also that the reviewers themselves were willing to give their content away, to make a contribution to scholarship...just as Suber and the open access advocates argue that scholars typically do. The reviewers were ahead of H-Net Council, which asserted copyright in its hope for this revenue stream.

Finally, in 2006 H-Net Council adopted the Creative Commons attribution-non-commercial-no derivatives license (see [http://creativecommons.org/licenses/by-nc-nd/3.0/us/](http://creativecommons.org/licenses/by-nc-nd/3.0/us/) ) for reviews. There was a vigorous discussion of this in Council, and the result was one of its rare non-unanimous decisions. In my last term as Vice President for Research and Publications, I argued that real prospects for earning revenue through a repackaging of reviews were small and that, furthermore, the Creative Commons license was more consistent with H-Net’s well-established philosophical commitment to open access. Behind Creative Commons is the postulate that the creative process is advanced by widespread access to a domain where content is shared under generous but clearly defined terms. The Creative Commons license is standardized, lawyer-drafted, and machine-readable. By adopting the license, H-Net has contributed to the popularization of Creative Commons licenses among historians.
Scholarly communication and copyright have come a long way in academe since 1993. H-Net’s history and philosophical foundations provide good prospects that it will continue to have a strong role in open access advocacy and in engagement with copyright issues.