

Richard Holdaway

From: Jeff Field <jeff.field@canterbury.ac.nz>
Sent: Thursday, 25 August 2016 4:44 p.m.
To: Richard Holdaway
Cc: Travis Horton; david.hawke@ara.ac.nz; Rod Carr; 'Nicola Hansen'; Deborah Wekking
Subject: RE: Release of an embargoed MSc thesis and unauthorised publication of data from the thesis

Hi Richard

I think the urgent actions are out of the DVC R's office and he has asked Deb to arrange a meeting between you and him quickly. The meeting in 2 weeks was a result of juggling diaries to try to get all the players in one room.

Regards
Jeff

From: Richard Holdaway [mailto:turnagra@clear.net.nz]
Sent: Thursday, 25 August 2016 10:04 a.m.
To: Jeff Field <jeff.field@canterbury.ac.nz>
Cc: Travis Horton <travis.horton@canterbury.ac.nz>; david.hawke@ara.ac.nz; Rod Carr <rod.carr@canterbury.ac.nz>; 'Nicola Hansen' <nicola@nicolahansen.co.nz>
Subject: RE: Release of an embargoed MSc thesis and unauthorised publication of data from the thesis
Importance: High

Dear Jeff

To recap, during our telephone conversation on Sunday, you asked me to provide the details of the problem and, explicitly, what I thought the appropriate response by the University should be. I provided those details immediately and clearly, in my first email to you on Monday morning.

This morning *Quaternary science reviews* confirmed that they has instituted a formal investigation on the publication of our data and informed us further of the circumstances and timetable of the submission and revision of the published manuscript. Their review prompts me to write and ask that the process of enquiry and response in the University not be delayed any longer. We have provided already all the available information. In my personal view, the University now has all the information it requires to initiate action on the misappropriation of information copyright to the Institution, and, as set out below, which can be construed also to be copyright to my own organisation.

While I certainly do not minimise or downplay the importance of the effects of the unauthorised publication of our data on my two colleagues, the information is not pivotal to their individual research programmes. It is, however, at the core of mine, and I stand to lose far more from the release of that information and its use by a competing laboratory. That (mis-use) seriously compromises my ability to gain the full benefits accruing from publishing the results of my Marsden Fund project.

I wish to emphasise that although the data were generated in a Canterbury University laboratory, the project was conceived by myself and the measurements were made on material collected during a project under contract between my company and the Marsden Fund. As the situation might also be of significance to the Marsden Fund, this morning I apprised their management team by telephone of the details as know at present, and asked them for their response. The manager to whom I spoked was understandably taken aback by the situation and I was assured that senior managers will be meeting at their earliest opportunity to discuss the matter, which has apparently never arisen before for a Marsden Fund project.

Although I have of course agreed to attend the meeting with DVC-R, and appreciate the opportunity to contribute, I see that matter as being of greater urgency than might be dealt with by a meeting in two weeks' time. The parties have had the information for five months and they have shown every willingness to use the information to their own benefit. They are unlikely to have set the data aside and work only from their own now, in preparation of future manuscripts down a research path revised on the basis of the MSc thesis data.

That they will do so is even more obvious now that the actual course of progress of their manuscript through the editorial process has been clarified. As the Editor-in-Chief informs me/us, the researchers obtained the thesis only after their original manuscript, which we are assured by the journal did not contain any reference to the thesis or data from it, had been rejected. The original manuscript was submitted on 12 February, rejected, the thesis was obtained in March, the revision, based on our data, was re-submitted on 10 April, and the paper published on 16 May. It is difficult to conceive of any other scenario than that this was a deliberate acquisition and use of data belonging to other researchers in the furtherance of their own programme. That the journal editors are undertaking a formal investigation indicates at the very least their disquiet at the situation.

I would like to discuss these matters with you further in person as soon as possible. As I set out in my original email, I retain the right of independent action on these matters because, although I was an employee of the University at the time of the MSc project, my contract was terminated by the University in March 2015. No one has more to lose by the actions of these researchers than I do, so I must do what is necessary now to protect my own situation by stopping the further use of these data, as well as contributing to the University's response to both the release of the data, and their unauthorised use.

Thank you for your attention.

Regards

Richard

Dr Richard N Holdaway

Palaecol Research Ltd

From: Jeff Field [<mailto:jeff.field@canterbury.ac.nz>]

Sent: Monday, 22 August 2016 12:40 p.m.

To: Richard Holdaway

Cc: Travis Horton; david.hawke@ara.ac.nz; Rod Carr; Nicola Hansen

Subject: RE: Release of an embargoed MSc thesis and unauthorised publication of data from the thesis

Dear Richard

I have briefed the VC and DVC Research this morning and escalated the matter to the Offices of the DVC Research and Librarian for action and direct engagement with you and your colleagues.

Ngā mihi nui
Jeff



Jeff Field J.P.

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From: Richard Holdaway [<mailto:turnagra@clear.net.nz>]
Sent: Monday, 22 August 2016 12:51 a.m.
To: Jeff Field <jeff.field@canterbury.ac.nz>
Cc: Travis Horton <travis.horton@canterbury.ac.nz>; david.hawke@ara.ac.nz; Rod Carr <rod.carr@canterbury.ac.nz>; Nicola Hansen <nicola@nicolahansen.co.nz>
Subject: Release of an embargoed MSc thesis and unauthorised publication of data from the thesis
Importance: High

Dear Mr Field

Further to my telephone call to you this morning (21 August 2016), I wish to provide the University with details of two breaches of its data security: both are serious, one for its implications for other data held in embargoes theses awaiting publication of the data by the rightful owners, and the other, even more serious, is the unauthorised publication - "misappropriated" – data from that thesis unacknowledged as to source. I will also be forwarding to you my initial email to Library Services and the (indirectly given) response to my questions and concerns. I have also attached the published paper referred to below. I want to make it clear at the start, that the points raised below on the publication of these data are not in the way of accusations: the published paper is evidence in itself.

The first issue, the release of an embargoed MSc thesis without reference to the supervisors, we regard as most unfortunate, but if the recipient(s) had then not made use of it as they did, it would mainly a concern for the University and its Library policy and protocols. These will obviously need amendment or adherence to existing protocols demanded, if such already exist. Otherwise such breaches may occur again, and with even more sensitive information that the student and supervisors believed was safe under embargo.

We regard breaking the embargo, which the supervisors had believed – naively as it transpired – would be absolute, as the word itself indicates, the responsibility of the University of Canterbury Library. **It is most definitely not the former student's responsibility. We would view with dismay any attempt to move the blame to the student.** They, having left university two years before and not being party to the protocols, did not appreciate the seriousness of their action. Believing, on the basis of the address of the person requesting the release, that that person was a student, they agreed. The Library did NOT consult ANY of the supervisors at that time, indeed Dr Horton did not know about the breach of the embargo until I told him today (21 August). Dr Hawke and I were made aware of it only on Thursday. The student did not know that the person requesting the release was a scientist who is part of a virtual laboratory in competition with the University of Canterbury team. Again, I emphasise that none of the supervisors attaches any blame whatsoever to the former student. In our view it is clearly the library processes that allowed an embargoed thesis to reach a "hostile" laboratory.

It is the second issue, what that laboratory did with the data, and did very rapidly, that we think demands a full, rapid, and unequivocal response from the University of Canterbury, the form of which we, as you requested this morning, suggest below. To not respond promptly and decisively to a deliberate and egregious flouting of the most basic ethics of the scientific and indeed any academic community would be to acquiesce to those practices. The publication of data from the thesis in a journal without acknowledgement of its source, as though the data had been generated by one or more of the authors, is simply misappropriation – theft – of intellectual property of the supervisors and, through them, the university itself. The evidence is in the publication itself, and, being there, cannot be explained away or denied.

The publication of our data cannot not be passed off as an “error” or even “an error of judgement”. The manuscript is developed so directly around those key data that it has to have been a deliberate act. It is therefore manifestly a premeditated use of another laboratory’s results presented as their own, without acknowledgement of source. It is apparently an attempt to claim priority for a major new insight into New Zealand’s megafauna, and in particular as an attempt to gain priority for the revision of their own previously-published views on moa ecology, which our data show to have been largely incorrect.

The timing of events makes it clear that this was the intent. The thesis was accessed in **March 2016**; the manuscript was submitted to *Quaternary Science Reviews (QSR)* on **10 April 2016**, with its core conclusions based on our data. It was submitted as an “Opinion” paper, but formatted so clearly as a research article that you could be forgiven for believing it to be original research. As an opinion piece, it would have received minimal refereeing, and rapid publication. That is indeed what happened: the paper was published on-line on **16 May 2016**, less than five weeks after submission. The thesis embargo was not due to expire until **31 July 2016**. A full research paper may have taken months to pass the review and editorial process and the authors were well aware of both the expiry date and the possibility – indeed probability, given both that the thesis had been embargoed and that the embargo was shortly to be lifted – that we were moving to publish. They obviously would have been aware of the embargo and the expiry date because they had received the thesis only by direct application and not by simply downloading the pdf. They cannot deny that they knew of the embargo. They were, therefore, perfectly well aware that they were in possession of privileged information: the very reason for a thesis to be embargoed is the student and their supervisors see the information and conclusions as important and publishable and they have a right of priority for that publication.

In the paper published in *QSR* on 16 May, the “embargoed” MSc thesis is cited nine times, but not, crucially, as the source of the key data, the stable isotopic values for fossil leaves from the Pyramid Valley site in North Canterbury. These measurements are a vital anchor point for analyses of the diet of moa. They were made in the University of Canterbury stable isotope laboratory by the MSc student’s principal supervisor, Associate Professor Dr Travis Horton, on samples prepared by the student from material collected by myself and my team in a Marsden Fund supported excavation at the site in February 2008. That excavation was undertaken by my company Palaecol Research Ltd, under permit from the Queen Elizabeth II National Trust, as part of a major Marsden Fund project. No other excavation has been permitted in this QE II covenanted site since 1965 so there is no possibility that the data presented in the paper were generated by any of the authors of the paper in question. They were collectively Dr Horton’s, Dr Hawke’s, and my data as well as being a key component of the MSc thesis. The data are significant enough for them to be the basis of a manuscript which will be submitted to *Nature* in the near future. Clearly the authors of the paper in *QSR* had similar views of their importance, and now we will have a task to convince the *Nature* editors that our work is original.

As at the time the thesis work was done, I was a fixed term Professor in the School of Biological Sciences, the unauthorised publication of the data an issue which I will be informing the Marsden Fund, it reinforces the university’s stake in the data, in addition to that obviously obtaining on Dr Horton’s position in Geological Sciences.

The authors of the paper in which our data are presented are based severally in another New Zealand university, two Crown Research Institutes, a major New Zealand museum, and an overseas university. As can be seen in the attached pdf copy of the paper, the lead author, Dr Nic Rawlence, is in the Allan Wilson Centre in the Department of Zoology, University of Otago; Dr Jamie Wood is at Landcare Research Ltd, Lincoln; Dr Paul Scofield is at Canterbury Museum; and Dr Karyne Rodgers is at GNS Science, Lower Hutt. The overseas author is Professor Herve Bocherens, Tübingen University.

How the existence of this thesis came to the attention of these individuals is not known. However, it may be relevant that a manuscript based on the thesis submitted early this year was reviewed by a colleague of Dr Rodgers at GNS Science. That referee recommended that the MS be rejected, as it indeed was, but the referee would then have known the contents of the thesis. Apart from the referees of that paper, no one outside our research group knew of its existence or details of its contents. Dr Rodgers appears on the authorship but her contribution is not spelled out and as she has no previous record of interest in, or publication on, moa biology it is difficult to explain her presence except perhaps in assisting interpretation of the isotopic data or for other services rendered.

So, we have two issues here, the release of an embargoed thesis by an apparent administrative error in the University of Canterbury, and the publication of the pirated intellectual property belonging to academics of the University of Canterbury and others. I have sent an email to the Editor-in-Chief of *Quaternary Science Reviews* apprising him of the unauthorised publication of our data, and how those data were sourced. His journal is part of the Elsevier suite, whose stringent ethical requirements are freely available for inspection on the journal's web page. I have requested that the paper be withdrawn because it was submitted under false pretences, and, contrary to their ethical requirements, based on misappropriated data. I have also asked him require the authors to publish immediately in the journal a full apology, with a statement of where the data were acquired. We view these as being only fair and reasonable actions under the circumstances. Their publication of our data manifestly jeopardises the publication of our own data in journals such as *Nature* where with the novelty and general interest of the results we had every right to be confident of a successful submission.

As regards the actions the University of Canterbury might take, we view the following as the minimum necessary to redress the injury and restore confidence in both the University's data security and ethical practice in scientific publication. As you will be aware, the misappropriation of data constitutes theft, but we leave the potential legal issues raised by the authors' actions aside at present.

We suggest that direct initial contact with the authors would be inappropriate as it would give the individuals independently and as a group an opportunity to obfuscate (even though it might not easily be done when the paper is there for the world to see), and particularly to try and shift blame to the University, or worse, to the student. We therefore request that initial contact be made in writing at the highest level, to the Registrar or Vice Chancellor at the University of Otago, to the Chief Executive Officers of Landcare Research Ltd and GNS Science Ltd, and to the Director of Canterbury Museum. Professor Bocherens is unlikely to have been privy to the source of the information so until it might be proven otherwise, we suggest that only the New Zealand organisations be made aware of the actions of their employees, in the first instance.

We believe that, at a minimum, each organisation should ensure that all copies of the thesis held by their employees are destroyed and that that destruction be **certified in writing** to the University of Canterbury, and individually to the supervisors and student. In recognition of the five months they have been privy to the information in the thesis and their demonstrated misuse of it, they must commit to moratorium on further publication of material from the thesis: we suggest that at least a year from present; two years would be preferable as they will obviously have more publications in hand now that they have posed the question in their title, which would not have occurred to them if they had not seen the thesis.

The institutions should also be asked to collectively and publicly apologise for the actions of their employees. Again, if they don't, it should be made clear that the University of Canterbury would see that as condoning the actions or as trying to minimise their importance, even though misappropriation of data strikes at the very basis of the scientific system.

In addition, and most importantly, we believe that the authors should be required to submit a retraction and apology immediately for publication in *QSR* so that it is made clear to the scientific community where the data came from and how it was obtained. This of course is what I have urged the journal's Editor-in-Chief to demand in my email this morning. I suspect that he might also be considering other possible courses of action that we might take, in making a decision. In that regard, my being no longer an employee of the University or Ara, means I have a freedom of action not available to either Dr Horton or Dr Hawke on such matters.

Any further action would be up to the individual institution, but we take the view that it would be entirely inappropriate if such blatant and deliberate contravention of the most fundamental norms of behaviour in the scientific community were to be deemed to be acceptable. This would be so even if they were condoned tacitly by no further disciplinary action being taken. An accidental breach this was not; deliberate appropriation of data is the most basic of offences. I am sure that if I had been found guilty of such when I was employed at the University of Canterbury, the consequences would have been dire.

Dr Horton supports my writing to you (Dr Hawke is out of contact on family business at present), and indeed has made a close examination of the published paper and brought aspects of it to my attention.

Speaking on my own behalf, I retain the right of further action if appropriate measures are not taken in response to the unauthorised publication of my, and my colleagues data.

I have copied this email to the Vice-Chancellor in my belief that the unauthorised publication of the university's data is a direct attack on the institution's product value and integrity. I have also copied it, for my own protection, to my solicitor, Ms Nicki Hansen, with whom I have discussed the issues as they stand.

The previous correspondence with the library will be forwarded shortly, being my initial approach via Alison Johnston, and a response to me sent via Alison (not directly to me).

Thank you for your attention.

Regards,

Richard

Dr Richard N Holdaway

Palaecol Research Ltd
and
Adjunct Professor, School of Biological Sciences

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