

UNDERSTANDING OPEN ACCESS IN THE ACADEMIC ENVIRONMENT: A GUIDE FOR AUTHORS

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Open Access to Knowledge (OAK) Law Project
Legal Protocols for Copyright Management: Facilitating Open Access to Research at the National and
International Levels

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Preface

This Guide - *Understanding Open Access in the Academic Environment: A Guide for Authors* - has been undertaken as an initiative of the DEEWR funded Open Access to Knowledge (OAK) Law Project and implements the recommendations of the *OAK Law Project Report No. 1: Creating a Legal Framework for Copyright Management of Open Access Within the Australian Academic and Research Sector*.

It aims to provide academic authors with an overview of the concept of and rationale for open access to research outputs and how they may be involved in its implementation and with what effect. In doing so it considers the central role of copyright law and publishing agreements in structuring an open access framework as well as the increasing involvement of funders and academic institutions. The Guide also explains different methods available to authors for making their outputs openly accessible, such as publishing in an open access journal or depositing work into an open access repository.

I am thankful to Ms. Kylie Pappalardo for developing this guide and to Professor Anne Fitzgerald, Messrs. Anthony Austin and Scott Kiel-Chisholm and Ms. Jenny Georgiades for assisting Kylie in this endeavour. I would also like to acknowledge the valuable support of QUT DVC Professor Tom Cochrane, DEEWR Director of Education, Innovation and Infrastructure Policy Ms. Margot Bell, Queensland Government Senior Lawyer Mr. Neale Hooper, QUT eResearch Access Coordinator Ms. Paula Callan and Ms. Wilma Mossink of SURF foundation.

We hope that academic authors will find this guide a useful resource in understanding and implementing open access within Australia's current research environment.

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Purpose of this guide

This guide aims to provide practical guidance for academic authors interested in making their work more openly accessible to readers and other researchers.

The guide explains, in detail, the principles and features of the open access movement and outlines the benefits of open access, particularly those relating to dissemination, citation impact and academic reputation. It examines institutional repositories and open access journals as tools for implementing open access, and explains how they operate and how they can be best utilised by academic authors. The guide further considers how moves by funding bodies and academic institutions to mandate the deposit of research output into institutional repositories affects authors in today's publishing environment.

The underlying law of copyright is also explained, with a practical emphasis on how authors can best deal with their legal rights to enable open access to their academic work. The guide outlines authors' options for providing open access to their work, including the use of copyright licences and open content models such as Creative Commons licences. A Copyright Toolkit is provided to further assist authors in managing their copyright.

Importantly, the guide addresses how open access goals can affect an author's relationship with their commercial publisher. It provides guidance on how to negotiate a proper allocation of copyright interests between an author and publisher in order to allow an author to deposit their work into an institutional repository and reuse their work. The guide addresses both legal and non-legal issues related to maintaining a positive relationship with publishers while still ensuring that open access can be obtained.

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Chapter 1: Introduction

On 16 January 2008, Senator Kim Carr, Minister for Innovation, Industry, Science and Research, wrote in *The Australian*:

Australians look to our scientists and researchers to contribute to our economic, social and environmental wellbeing and to expand our horizons of knowledge. This inevitably involves controversial interpretations. It is through the contest of ideas that we expand our understanding...

...In this context, it is essential to communicate new ideas and to infuse public debate with the best research and new knowledge. Public debate must be as well informed as possible and those who have expertise in the areas under debate must be able to contribute. This means that researchers working in our universities and public research agencies must be – and must be allowed to be – active participants in such debates. We need to reinvigorate the concept of the public intellectual. We need to ensure that public communication is as important as professional discourse.¹

In government and academic institutions, in both Australia and overseas, there is a growing emphasis on the importance of public access to research in order to expand knowledge and encourage discourse. This is the message of the open access movement.

The open access movement, calls upon research academics to provide open access to their research by either publishing their findings in journals that provide open access to their content online or by depositing their work into repositories which make their content freely available over the internet. Academics are facing increasing pressure from their funding bodies and academic institutions to give back to the community by making their research openly accessible.

However, before open access can be achieved, there are important legal issues that must be addressed. Notably, the legal relationship that exists between an author and their publisher must be examined and understood.

Academics are generally reluctant to engage in open access movements because they either fail to see the benefits to them personally or they are concerned about the legal consequences, particularly copyright infringement. However, careful consideration reveals that these seemingly mountainous obstacles are nothing more than molehills. The benefits of open access are numerous, for both researchers and the general public, and legal problems can be avoided by proper rights management.

Academics who properly manage their legal rights in their work will find that not only does this allow them to provide open access to their work, thus contributing to the public stock of knowledge, but that it also provides them with greater control over their work and greater rights to reuse their own work post publication.

¹ Kim Carr, “Liberating the voices of science” *The Australian*, 16 January 2008.

Chapter 2: What is Open Access (OA)?

2.1 Open access defined

The advent of the internet and electronic publishing has meant that information can now be exchanged globally, immediately and effectively. The open access movement has developed in response to these advancements and aims to promote access to information that is open to all and free of technological and economic restraints. Importantly, the open access movement also promotes better management of the law surrounding research outputs, so that open access to research will not be impeded by permission barriers or unnecessary legal restraints. In summary, the open access movement aims to promote the dissemination of knowledge broadly and freely across the internet in a timely fashion.²

Alma Swan, a prominent open access advocate, defines open access as:

It is the free (gratis) online availability of the research results that scholars give away themselves (peer-reviewed journal articles and conference papers, mostly), provided by authors upon acceptance for publication and made permanently available without restrictions on use.³

As can be understood from the above definition, open access primarily focuses on literature that authors publish without expectation of payment.⁴ In other words, research articles that academic authors write and publish for impact rather than payment.

As can also be seen, and as is explained further in the following chapters of this guide, open access is consistent with both peer-review and copyright law. The legal basis for open access is the consent of the copyright owner (or where the copyright term has elapsed – the notion of the “public domain”).⁵

Principles underlying open access

One of the primary principles underlying open access is that wide dissemination of and access to research and scholarly material is desirable so that later work can be informed by the earlier work of others. This prevents duplicative research and advances intellectual development and collective learning.

Avoiding duplicative research also means that the same research is not funded again and again. This is particularly pertinent where publicly funded research is concerned. Open access helps recognise where tax-payers' money can be used to fund new and more progressive research rather than duplicative research with no further public benefit.

A related principle is that the public should have open access to the research that it has funded. It is

² Professor Brian Fitzgerald, Dr Anne Fitzgerald, Professor Mark Perry, Scott Kiel-Chisholm, Erin Driscoll, Dilan Thampapillai and Jessica Coates, *OAK Law Project Report No. 1: Creating a legal framework for copyright management of open access within the Australian academic and research sector*, August 2006, p79, <http://www.oaklaw.qut.edu.au/reports>.

³ Alma Swan, “Open Access: Why should we have it?” *Key Perspectives*, 2006, <http://www.keyperspectives.co.uk/openaccessarchive/journalpublications.html> accessed on 24 March 2008.

⁴ See Peter Suber, “Open Access Overview” *Open Access News* (blog), last revised 19 June 2007, <http://www.earlham.edu/~peters/fos/overview.htm> accessed on 24 March 2008.

⁵ Ibid.

considered unfair to require the public to pay twice – first to fund the research itself and then again to gain access to the research results.

Finally, providing open access to information via a global tool such as the internet is fundamentally important to researchers and academics in developing nations or at poorer institutions which cannot afford to pay costly subscriptions to a wide range of academic journals. Providing equal learning opportunities to these researchers and academics encourages social unity and cultural advancement. It also increases the possibility of the discovery of vital new research, especially in medical fields.

2.2 Why open access?

This section presents arguments advanced by OA advocates, academics, researchers, funding bodies and members of the general public alike, for the adoption of open access.

The ‘value of the researcher’ argument

One argument for open access is based on the inherent value of the researcher as content provider.

Under the current journal publishing model, academics write the articles that are provided to journals, and they also volunteer their time to peer-review articles in these journals for free. Academics also frequently act as editors for journals, and in this capacity are also often unpaid. However, journal publishers require authors to sign over their copyright in their articles to the publisher,⁶ which the publisher then relies upon to sell the articles back to researchers and their institutions for subscription fees.⁷

The argument is that researchers should not have to pay to access and use the content that they provided, reviewed and edited for free. Publishers should value the work and services of researchers more, and researchers should value their own work enough to want to control what is done with it. Providing open access to research not only allows others to access and use a researcher’s work, but also allows a researcher to access and use their own work. Open access also assists authors in controlling their work, by allowing them to decide what uses can be made of the work for free.⁸ The ways in which an author can better control their work are discussed throughout this guide.⁹

⁶ For an explanation of copyright principles, see Chapter 3.

⁷ See, for example, Colin Steele, Linda Butler and Danny Kingsley, “The publishing imperative: the pervasive influence of publication metrics” 19(4) *Learned Publishing*, October 2006, 277-290 at 277, <http://dspace.anu.edu.au/handle/1885/44486> accessed on 24 March 2008; danah boyd, “open-access is the future: boycott locked-down academic journals” *apophenia: making connections where none previously existed* (blog), 6 February 2008, http://www.zephoros.org/thoughts/archives/2008/02/06/openaccess_is_t.html accessed on 24 March 2008; and Robert Darnton, “The Case for Open Access” *The Harvard Crimson*, 12 February 2008, <http://www.thecrimson.com/article.aspx?ref=521835> accessed on 24 March 2008.

⁸ Usually only where the author holds copyright.

⁹ For an author’s perspective on open access in this regard, you may be interested in reading the short opinion piece, “Digital Media, Games and Open Access” by Nick Montfort, available at: <http://grandtextauto.org/2007/12/21/digital-media-games-and-open-access> accessed on 12 March 2008.

Public benefit arguments

A primary incentive for funding bodies to fund research and researchers to conduct research is the hope that research results will benefit the public. This is especially true of medical information, but applies to other information as well. Peter Suber explains, “Essentially, knowledge is a public good, not a commodity. But today we are treating it as a commodity, not a public good.”¹⁰

The argument is that by treating knowledge, information and research as a commodity and by charging high subscription prices to access that commodity,¹¹ we are limiting the public benefit of research by limiting the number of people who can afford to access it.

There are two arms to this argument. The first relates to access by the general public and the second relates to access by researchers.

Under the first arm, it is considered unfair that the public who pay for research to be conducted (most research being funded through taxpayer dollars) and for whose benefit research is undertaken are required to pay *again* to access that research. Most members of the general public do not belong to an institution that subscribes to journals on their behalf, and the public has discovered that most subscription prices are far outside the reach of the average person’s budget.¹²

Under the second arm, there is a concern that the people who arguably need access to research the most – researchers – are also unable to access a growing body of literature, notwithstanding that they belong to subscribing academic institutions.

Academic institutions and libraries have for years now been facing what has been called the ‘serials crisis’. That is, faced with drastically increasing journal subscription prices but not drastically increasing library budgets, librarians have had no choice but to cut down the number of journals to which they subscribe. The result is that many researchers are finding that their institution no longer subscribes to the journals that they need the most. In some cases, they cannot access copies of the journals in which their own research is published. No institution can subscribe to every journal, and many institutions can no longer afford to subscribe to the most relevant journals in certain disciplines.

What does this mean for researchers and research? In short, research development slows, in some cases even stagnates. Researchers who cannot access the relevant research literature cannot then build upon that research to make further developments. Research is duplicated, wasting time, energy and public funds.

Jan Velterop explains:

A stronger argument for open access is that it increases the efficiency of scientific discovery. The likelihood of wasting resources and time on duplicative investigation decreases when researchers have comprehensive access to the results of earlier work. ‘Cross-fertilization’ between disciplines and specialities would also be enhanced.¹³

¹⁰ Richard Poynder, “The Basement Interviews: Peter Suber” *Open and shut?* (blog), 19 October 2007, <http://poynder.blogspot.com/2007/10/basement-interviews-peter-suber.html> accessed on 24 March 2008.

¹¹ Peter Suber, “Open Access Overview” *Open Access News* (blog), last revised 19 June 2007, <http://www.earlham.edu/~peters/fos/overview.htm> accessed on 24 March 2008.

¹² See below, under ‘Ethical and moral arguments’.

¹³ Jan Velterop, “Open access and publishing” Volume 1/2008 *The E-Resources Management Handbook*, published by United Kingdom Serials Group (UKSG), 117-121, chapter was published online on 24 January 2008,

Providing more open access to research literature would enable research to be advanced faster and more effectively. This benefits the public as a whole. It is also fairer to the public that is funding the research and the researchers who are conducting the research that they should be able to access this research freely and easily.

Ethical and moral arguments

There are a number of ethical and moral arguments that can be made in support of open access. In his interview with Richard Poynder, Peter Suber states three such arguments:

- the moral argument for giving effect to the original intentions of the researchers and funding agencies, who paid for and conducted the research in order to realise its potential of general utility;
- the moral argument that governments should treat taxpayers fairly and should spend public money responsibly; and
- the ethical argument to provide open access to those who cannot afford to pay, and to distribute the public good of knowledge equitably among all who can make use of it.¹⁴

The first two arguments listed above relate to the idea that the public should be able to derive free and immediate benefit from research that the public has already funded through taxpayer dollars. This idea is discussed in detail above under “Public benefit arguments”.

It is the third argument made by Suber that is most relevant here. Arguments about the ethical duty to provide and support open access usually focus on two broad topics: (1) open access to medical research; and (2) open access for developing countries. Discussion surrounding these two topics can overlap, as it is often developing countries that are most in need of timely and free access to medical research.

There are countless examples to be found that demonstrate how better access to medical research can vastly improve a person’s situation, whether that person resides in a developed or developing country. The proceeding paragraphs offer a mere few examples.

The Open Society Institute (OSI) recounts a story of Nguluwe, a nurse in Malawi who is trying to fight the AIDS epidemic.¹⁵ Every month, Nguluwe takes a bus 20 kilometres to an internet café, where she scours the web for medical articles on AIDS. However, most relevant articles are beyond her reach – locked away behind subscriptions barriers where a single article costs more than an average monthly wage in Malawi. Nguluwe cannot even access articles written by researchers who have visited Malawi to conduct their research. The lack of access is not only frustrating, but heartbreaking. OSI quotes Nguluwe when she says, “HIV and AIDS have hit us in Africa the hardest, and it is up to us to learn what we can to fight the disease. If we can’t obtain the best information, we can’t succeed in our

<http://uksg.metapress.com/link.asp?id=dplay0kyn6nkvk7u> accessed on 24 March 2008.

¹⁴ Richard Poynder, “The Basement Interviews: Peter Suber” *Open and shut?* (blog), 19 October 2007, <http://poynder.blogspot.com/2007/10/basement-interviews-peter-suber.html> accessed on 24 March 2008.

¹⁵ Open Society Institute, “OSI Stories: Open Access to Scientific Research – Sharing Information, Saving Lives” 28 January 2008, updated version of an article originally appearing in the Open Society Institute *2006 Annual Report*, http://www.soros.org/initiatives/information/focus/access/articles_publications/articles/openaccess_20070419 accessed on 24 March 2008.

struggle and millions more will die.”¹⁶

Examples of the need for increased access to medical research can also be found in the developed world. Recently, the National Institutes of Health (NIH), the primary funder of biomedical and health-related research in the United States, called for comments on its new public access policy, which mandates open access to all publications resulting from NIH-funded research (see Chapter 6). A great majority of the comments received were from patients and members of the general public who had experienced difficulties with the closed-access publication system in the past. These comments included:

“As a parent of a child with cancer as well as someone who struggles with my own medical issues, current knowledge on treatment, outcomes, etc. is *extremely* important in order to make informed decisions about treatment and clarify knowledge about the health issues in question. Being able to read about the research provides me with a better picture of available treatment or of ways of handling the various effects, allowing me to ask more specific questions and make decisions based on wider knowledge. The information/questions I ask can and has resulted in better treatment and support for my daughter. The current practice of requiring a subscription or charging a fee for each article quickly goes beyond my ability to pay.”¹⁷

“I am the mother of a child with a rare syndrome, Kabuki Syndrome. It is incredibly difficult to find medical doctors and personnel who have up-to-date information on this syndrome, and it is very difficult to parent a child without some help. The Kabuki Syndrome Network is an entirely volunteer group of parents and has been a lifesaver for so many of us, providing information and advice as we face the many challenges of life with our children. Much of this information comes from medical articles that are available free of charge. We do not have the money to pay fees for these articles, but we are the people that need to see them the most. Please go forward with this proposal to make all research articles that receive your funding available at no charge. You are doing such an incredible service to parents of disabled children everywhere.”¹⁸

“As a person living with a rare genetic disorder, Peutz-Jeghers syndrome (PJS), and a common cancer, metastatic breast, my survival has for years depended upon access to medical journal articles. Whether I’m seeking new doctors for second opinions, gathering information for my current doctors, investigating new treatments, keeping up on research or finding information for members of the PJS Online Support Group, access to medical journal articles is imperative. Over the past 25 years I’ve collected over 200 articles on PJS by traveling many miles to medical center libraries. While the photocopy/printout costs are reasonable – this is time consuming and taxing for someone who is seriously ill. The alternative, to print out articles from a computer, is prohibitively expensive. It’s difficult to judge the value of an article from a PubMed abstract. Spending a dollar or two for copy/print costs is one thing, spending over \$30 is another. Public Access will help physicians as well as patients. Easy access to recent journal articles will help them keep up to date on research and treatment options – an invaluable aid whether treating patients with rare or common illnesses.”¹⁹

“I was diagnosed with leukemia in 1995 at a time when access to information for patients was nearly impossible. Today, with the proliferation of the internet, info is plentiful, but often difficult to separate [sic] fact from fiction. In an era when pro-active patients have a desire to know more, and the medical community is learning how to better deal with informed patients, the NIH’s open access to credible information will make it easier for the patient community to become better informed and better able to make good decisions about treatment. As a grateful cord blood transplant recipient who found information the hard way, thank you for

¹⁶ Ibid.

¹⁷ Comment by Melissa Stoltz on 17 March 2008, http://publicaccess.nih.gov/comments/comments_web_listing.htm accessed on 19 March 2008.

¹⁸ Comment by Linda Lukowski on 17 March 2008, http://publicaccess.nih.gov/comments/comments_web_listing.htm accessed on 19 March 2008.

¹⁹ Comment by Stephanie Sugars on 17 March 2008, http://publicaccess.nih.gov/comments/comments_web_listing.htm accessed on 19 March 2008.

making this possible.’²⁰

From these examples, it is not hard to see the ethical reasons for adopting open access. This reasoning resonates particularly strongly where providing free access to readers who cannot afford to pay subscription prices could help to save lives. Yet there is another potential benefit to providing open access in these situations – the new medical discoveries that could result from the application of prior published research to new cases and in developing countries.

Pragmatic arguments

The pragmatic argument in support of open access is simply that, if we have the technology to improve communications and dissemination of research, then why not use it?

Jan Velterop writes:

Easy-to-use technology that makes the burden lighter has always been persuasive to humans. There are no technical barriers to open access, just barriers of habit, such as restricted-access business models based on the legal construct of copyright.²¹

The internet has introduced new and more effective ways of sharing and discussing research findings. By utilising the internet, we can improve research efficiency. So to ignore the advantages offered by the internet and stubbornly adhere to a system that is rapidly becoming out-dated and unproductive is simply illogical. As Peter Suber argues:

it is simply perverse to spend a lot of public money on research, and then hand over the results to companies who believe that they can only survive by surrounding that knowledge with access barriers.²²

“Self interested” arguments

Not all arguments supporting open access are utilitarian. There are selfish reasons to support open access too, for authors, academic institutions and publishers.

For authors, open access provides greater visibility of their work, which studies show leads to more citations and greater research impact. Alma Swan reports that the data from these studies indicates increased citation impact rates ranging from 40% for biology to 250% for physics.²³ Richard Poynder reports that open access papers are accessed and read three times as much as papers that are not open access.²⁴ A more detailed account of these studies is provided in Chapters 4 and 5. Furthermore, as

²⁰ Comment by Stephen R. Sprague on 17 March 2008, http://publicaccess.nih.gov/comments/comments_web_listing.htm accessed on 19 March 2008.

²¹ Jan Velterop, “Open access and publishing” Volume 1/2008 *The E-Resources Management Handbook*, published by United Kingdom Serials Group (UKSG), 117-121, chapter was published online on 24 January 2008, <http://uksg.metapress.com/link.asp?id=dplay0kyn6nkvk7u> accessed on 24 March 2008.

²² Richard Poynder, “The Basement Interviews: Peter Suber” *Open and shut?* (blog), 19 October 2007, <http://poynder.blogspot.com/2007/10/basement-interviews-peter-suber.html> accessed on 24 March 2008.

²³ Alma Swan, “Open Access: Why should we have it?” *Key Perspectives*, 2006, <http://www.keyperspectives.co.uk/openaccessarchive/journalpublications.html> accessed on 24 March 2008.

²⁴ Richard Poynder, “Open Access: Beyond selfish interests” *Open and shut?* (blog), 20 November 2006, <http://poynder.blogspot.com/2006/11/open-access-beyond-selfish-interests.html> accessed on 24 March 2008.

most academics will know, greater research impact leads to more funding opportunities, greater prestige and career advancement, including higher salaries.²⁵

For academic institutions, the increased visibility of their faculty as a result of open access also leads to the increased visibility of the institution, vastly improving its reputation. Additionally, open access can help institutions to reduce their expenses relating to journal subscription fees.²⁶

For publishers, open access makes their articles more visible and discoverable, drawing readership back to the journal and improving the journal's reputation for publishing quality research. Peter Suber writes, "If a journal is OA, then it can use this superior visibility to attract submissions and advertising, not to mention readers and citations."²⁷

2.3 How open access is achieved: the two different roads

Open access to research is generally provided in two ways. The first way – often called the ‘gold road’ of open access – is by publishing in an open access journal. Open access journals are digital journals that make their content freely available to all immediately upon publication. A journal may be “full OA”, meaning that it makes all of its articles available under open access principles, or “hybrid OA”, meaning that some articles are made openly accessible whereas others are not. Open access journals generally publish under a copyright licence rather than an assignment of copyright, allowing authors to retain copyright ownership of their work. Some open access journals charge publication fees and some do not. Open access publishing is discussed in Chapter 5.

The second way of achieving open access - often called the ‘green road’ of open access - is where authors continue to publish in traditional subscription-based journals, but then deposit (‘self-archive’) a digital copy of their article online, either in a subject-based or institutional (usually university-based) repository or by posting the article to their personal website. Many authors prefer the green road because it allows them to continue publishing with well-established journals in their field or with toll-access journals that they have always favoured (and that are considered to have a higher impact factor). Advocates of the green road usually encourage authors to deposit their work into institutional repositories, as these can be considered the most stable form of open access archiving.²⁸ Self-archiving and institutional repositories are considered in Chapter 4.

2.4 Developments in the open access movement

²⁵ See, for example, Richard Poynder, “Open Access: Beyond selfish interests” *Open and shut?* (blog), 20 November 2006, <http://poynder.blogspot.com/2006/11/open-access-beyond-selfish-interests.html> accessed on 24 March 2008.

²⁶ See Peter Suber, “Open Access Overview” *Open Access News* (blog), last revised 19 June 2007, <http://www.earlham.edu/~peters/fos/overview.htm> accessed on 24 March 2008.

²⁷ Ibid.

²⁸ See Raym Crow, The Case for Institutional Repositories: A SPARC Position Paper, 2002, p12 <http://www.arl.org/sparc/publications/papers.html> accessed on 24 March 2008; Bo-Christer Bjork, “Open access to scientific publications – an analysis of the barriers to change?” 9(2) *Information Research*, January 2004, <<http://InformationR.net/ir/9-2/paper170.html>> accessed on 16 April 2008; SHERPA, “Fifteen Common Concerns – and Clarifications” 2006, <http://www.sherpa.ac.uk/documents/15concerns.html> accessed on 18 March 2008; Peter Suber, “Open Access Overview” *Open Access News* (blog), last revised 19 June 2007, <http://www.earlham.edu/~peters/fos/overview.htm> accessed on 24 March 2008; Alma Swan, “Open access self-archiving: An Introduction” *Key Perspectives*, May 2005, www.ecs.soton.ac.uk/~harnad/Temp/jiscsum.pdf accessed on 24 March 2008.

With the advent of the internet in the early 1990s, it suddenly became possible to share and exchange research as never before. A culture of sharing rapidly developed, particularly with the launch of subject-based pre-print servers such as arXiv in 1991. From this, the open access movement emerged. By 2003, OA was solidly entrenched within the internet culture and community through the Budapest Open Access Initiative, the Bethesda Statement on Open Access Publishing and the Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities.

This section sets out some of the key events in the open access movement, in relation to technology, policy, self-archiving and OA repositories, OA publishing, funding body mandates, Australian developments and rights managements. Where relevant, extra commentary is provided on these events.

Some of these events may not seem significant to you now. You may not even fully understand what they relate to. One purpose of this guide is to assist you in understanding the different branches of the open access movement and how they are relevant to you. Thus, as you read this guide, the significance of the events set out below (and the associated players in the OA movement) should become clearer.

The open access movement is ongoing. Developments are occurring all the time and with greater frequency and more widespread impact. The list below covers merely a snapshot of some of the more notable events to date, as at 20 March 2008. For a more comprehensive list, see Peter Suber's *Timeline of the Open Access Movement* at <http://www.earlham.edu/~peters/fos/timeline.htm>.

Acknowledgement: the following dates and listing of events (up to December 2007) come from *Timeline of the Open Access Movement* by Peter Suber, which is licensed under a Creative Commons Attribution 2.5 License.²⁹

Key events in the OA movement (technology)

- October and November 1990 – Tim Berners-Lee wrote the first web client and server (released March 1991). On 12 November 1990, he published WorldWideWeb: Proposal for a HyperText Project, and on 13 November 1990, he wrote the first web page.
- 16 August 1991 – arXiv launched by Paul Ginsparg.
- 1992 – Entrez launched by the National Center for Biotechnology Information (on CDs, not free until 1993).
- November 1993 – CERN launched its preprint server.
- 1994 – The Human Genome Project launched its open access website.
- 18 November 2004 – Google announced the launch of Google Scholar.

Key events in the OA movement (policy)

- 28 February 1996 – Bermuda Principles issues by participants at the International Strategy Meeting on

²⁹ Peter Suber, *Timeline of the Open Access Movement*, last revised 10 December 2007, <http://www.earlham.edu/~peters/fos/timeline.htm> accessed on 20 March 2008.

Human Genome Sequencing.

- 14 February 2002 – Budapest Open Access Initiative (BOAI) launched by the Open Society Institute.
- 20 June 2003 – The Bethesda Statement on Open Access Publishing is released.
- 22 October 2003 – The Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities was released by the Max Planck Society and European Cultural Heritage Online.
- 5 November 2004 – Thirty-two Italian university rectors signed the Berlin Declaration on Open Access to Knowledge and released the Messina Declaration.
- 13 October 2005 – The Royal Society for the Encouragement of Arts, Manufactures and Commerce published the Adelphi Charter on Creativity, Innovation and Intellectual Property, which articulated a positive vision of intellectual property and endorsed open access.
- 25 June 2006 – Participants in the iCommons iSummit for 2006 released the Rio Declaration on Open Access.

Policy statements about open access have been fundamental in advancing the aims of the OA movement and articulating what exactly is meant by “open access” and “open access literature”. In particular, the Budapest (February 2002), Bethesda (June 2003) and Berlin (October 2003) definitions of “open access” are the most influential for the OA movement, and are sometimes collectively referred to as the BBB definition.³⁰

The Bermuda Principles

In 1996, scientists and funding bodies involved in the International Human Genome Sequencing Consortium developed the Bermuda Principles. The Bermuda Principles were intended to facilitate the rapid and free sharing among scientists of pre-published data on gene sequences.³¹ The Bermuda Principles were one of the first statements on OA, and were reaffirmed at Fort Lauderdale in 2003.³²

The Budapest Open Access Initiative

In December 2001, the Budapest Open Access Initiative (BOAI) was developed at a meeting of the Open Society Institute (OSI) in Hungary. The BOAI extended the principles of OA to peer reviewed scientific literature, by encouraging the self-archiving of published articles and by supporting open access journals.

The BOAI defines “open access” as:

By "open access" to this literature, we mean its free availability on the public internet, permitting any users to

³⁰ Peter Suber, *Open Access Overview*, last revised 19 June 2007, <http://www.earlham.edu/~peters/fos/overview.htm> accessed on 24 March 2008.

³¹ Wikipedia, Bermuda Principles, http://en.wikipedia.org/wiki/Bermuda_Principles accessed on 20 March 2008.

³² The Wellcome Trust, *Sharing Data from Large-scale Biological Research Projects: A System of Tripartite Responsibility*, Report of a meeting organised by the Wellcome Trust and held on 14-15 January at Ford Lauderdale, USA, www.genome.gov/Pages/Research/WellcomeReport0303.pdf accessed on 20 March 2008.

read, download, copy, distribute, print, search, or link to the full texts of these articles, crawl them for indexing, pass them as data to software, or use them for any other lawful purpose, without financial, legal, or technical barriers other than those inseparable from gaining access to the internet itself. The only constraint on reproduction and distribution, and the only role for copyright in this domain, should be to give authors control over the integrity of their work and the right to be properly acknowledged and cited.³³

The full text of the BOAI can be accessed at <http://www.soros.org/openaccess/>. The BOAI was launched by the OSI in February 2002 and has received tremendous community support. As at 20 March 2008, 4423 individuals and 395 organisations have added their names to the BOAI.³⁴

The Bethesda Statement on Open Access Publishing

In June 2003, the Bethesda Statement on Open Access Publishing was released. The Bethesda Statement defines “open access publication” as being one that meets the following two conditions:

1. The author(s) and copyright holder(s) grant(s) to all users a free, irrevocable, worldwide, perpetual right of access to, and a license to copy, use, distribute, transmit and display the work publicly and to make and distribute derivative works, in any digital medium for any responsible purpose, subject to proper attribution of authorship, as well as the right to make small numbers of printed copies for their personal use.
2. A complete version of the work and all supplemental materials, including a copy of the permission as stated above, in a suitable standard electronic format is deposited immediately upon initial publication in at least one online repository that is supported by an academic institution, scholarly society, government agency, or other well-established organization that seeks to enable open access, unrestricted distribution, interoperability, and long-term archiving (for the biomedical sciences, PubMed Central is such a repository).³⁵

The full text of the Bethesda Statement on Open Access Publishing is available at <http://www.earlham.edu/~peters/fos/bethesda.htm#note2>.

The Berlin Declaration

Shortly after the release of the Bethesda Statement on Open Access Publishing, the Max Planck Society and European Cultural Heritage Online released the Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities, in October 2003.

The Berlin Declaration provides a definition of “open access contribution” which mirrors the definition contained in the Bethesda Statement. The signatories of the Berlin Declaration express their goals as being:

Our mission of disseminating knowledge is only half complete if the information is not made widely and readily available to society. New possibilities of knowledge dissemination not only through the classical form but also and increasingly through the open access paradigm via the Internet have to be supported. We define open access as a comprehensive source of human knowledge and cultural heritage that has been approved by

³³ Budapest Open Access Initiative, <http://www.soros.org/openaccess/read.shtml> accessed on 20 March 2008.

³⁴ <http://www.soros.org/openaccess/view.cfm> accessed on 20 March 2008.

³⁵ Bethesda Statement on Open Access Publishing, released 20 June 2003, <http://www.earlham.edu/~peters/fos/bethesda.htm#note2> accessed on 20 March 2008.

the scientific community.

In order to realize the vision of a global and accessible representation of knowledge, the future Web has to be sustainable, interactive, and transparent. Content and software tools must be openly accessible and compatible.³⁶

As at 20 March 2008, the Berlin Declaration has 248 signatories from organisations all over the world. The full text of the Berlin Declaration is available at <http://oa.mpg.de/openaccess-berlin/berlindeclaration.html>.

In February 2005, the delegates of the “Berlin 3 Open Access” conference at the University of Southampton, UK, agreed that:

In order to implement the Berlin Declaration institutions should:

1. implement a policy to require their researchers to deposit a copy of all their published articles in an open access repository and
2. encourage their researchers to publish their research articles in open access journals where a suitable journal exists and provide the support to enable that to happen.³⁷

On the basis of the BBB definition, the Open Society Institute (OSI) has stated that the three main essentials of open access are free accessibility, further distribution and proper archiving. OSI considers OA to be “real open access” if:

- 1) The article is universally and freely accessible, at no cost to the reader, via the Internet or otherwise, without embargo.
- 2) The author or copyright owner irrevocably grants to any third party, in advance and in perpetuity, the right to use, copy, or disseminate the article, provided that correct citation details are given.
- 3) The article is deposited, immediately, in full and in a suitable electronic form, in at least one widely and internationally recognized open access repository committed to open access and long-term preservation for posterity.³⁸

Self-archiving and OA repositories

- 27 June 1994 – Self-archiving was first proposed by Stevan Harnad.
- October 1994 – The Social Science Research Network (SSRN) launched by Wayne Marr and Michael Jensen.
- February 2000 – PubMed Central (free full-text articles) launched to supplement PubMed (free citations and abstracts).
- 29 September 2000 – Southampton University released Eprints, its OAI-compliant software for eprint archiving.³⁹

³⁶ Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities, released 22 October 2003, <http://oa.mpg.de/openaccess-berlin/berlindeclaration.html> accessed on 20 March 2008.

³⁷ <http://oa.mpg.de/openaccess-berlin/recommendation.html> accessed on 20 March 2008.

³⁸ Open Society Institute, *Open Access Publishing and Scholarly Societies: A Guide*, 2005, p.6, http://www.soros.org/openaccess/pdf/open_access_publishing_and_scholarly_societies.pdf accessed on 20 March 2008.

³⁹ For the meaning of “OAI-compliant”, see the Glossary of terms at the conclusion of this guide.

- 1 August 2002 – Project SHERPA (Securing a Hybrid Environment for Research Preservation and Access) and Project RoMEO (Rights METadata for Open archiving) launched by JISC-FAIR.
- 4 November 2002 – MIT released DSpace, its OAI-compliant open-source software for archiving eprints and other academic content.
- 27 January 2006 – The University of Nottingham (UK) and Lund University (Sweden) officially launched OpenDOAR (Directory of Open Access Repositories).
- 19 October 2007 – The Social Science Research Network (SSRN) officially launched the Humanities Research Network, a collection of OA repositories in different fields of the humanities.

Self-archiving and OA repositories are explained in Chapter 4 of this guide.

OA publishing

- 26 April 1999 – BioMed Central announced plan to offer free online access to all of its journals.
- 19 July 2000 – BioMed Central published its first free online article.
- 17 December 2002 – The Public Library of Science (PLoS) received a \$9 million grant from the Moore Foundation for open-access publishing and announced its first two open access journals.
- 17 December 2002 – The Howard Hughes Medical Institute committed itself to cover the publications costs when its researchers published in fee-based open access journals, apparently the first foundation or funding agency to do so.
- 12 May 2003 – The Directory of Open Access Journals (DOAJ) launched by Lund University with funding from the Open Society Institute and SPARC.
- 13 October 2003 – The Public Library of Science launched its first open access journal, *PLoS Biology*.
- 22 June 2006 – CERN published a report outlining its project to convert all the toll-access journals in particle physics to open access.
- 21 December 2001 – The Public Library of Science (PLoS) officially launched *PLoS ONE*.
- 28 June 2007 – Lund University launched Journal Info, an online tool to help scholars evaluate journals where they might submit their work.

Open access publishing and OA journals are discussed in Chapter 5 of this guide.

Funding body mandates

- 1 October 2003 – The Wellcome Trust issued a position statement and research report endorsing open access.
- 14 July 2004 – The U.S. House Appropriations Committee adopted language proposing that the National Institutes of Health (NIH) require open access to NIH-funded research through deposit in the NIH's

PubMed Central. The NIH adopted such a policy on 3 February 2005, and it went into effect on 2 May 2005.

- 1 October 2005 – The Wellcome Trust began implementing its new open access mandate for Wellcome-funded research.
- 28 June 2006 – The Research Councils UK (RCUK) issued its long-awaited open access policy. It lets the eight separate Research Councils go their own way, but on the day of the announcement, three had already decided to mandate open access to the research they fund.
- 29 June 2006 – SHERPA launched JULIET, a database of the open access policies adopted by funding agencies.
- 8 January 2007 – UK PubMed Central (UKPMC) was officially launched by a Funders Group of nine institutions. At the same time, eight of the nine members of the Funders Group announced that they do, or will, mandate OA for the research they fund and mandate deposit in UKPMC.
- April 2007 – JISC adopted an OA mandate for JISC-funded research in the April 2007 version of its grant guidelines.
- 26 June 2007 – The Howard Hughes Medical Institute (HHMI) announced its long-anticipated OA mandate for research publications by HHMI employees (the mandate took effect on 1 January 2008).
- 4 September 2007 – The Canadian Institutes of Health Research (CIHR) announced an OA mandate for CIHR-funded research.
- 6 September 2007 – The UK Arts & Humanities Research Council (AHRC) announced an OA mandate for AHRC-funded research.
- 10 January 2008 – The European Research Council (ERC) announced its new OA mandate (pledged in December 2006) for ERC-funded research.
- 11 January 2008 – The National Institutes of Health (NIH) released the text of its new OA mandate (demanded by Congress in December 2007) for NIH-funded research.

Funding bodies and their role in the OA movement is considered further in Chapter 6 of this guide.

Australian developments

Australia has played an important role in the open access movement. An Australian university – the Queensland University of Technology (QUT) – had the first university-level open access mandate. Australian bodies have also been instrumental in formulating OA policies and developing OA tools and infrastructure.

- 1 September 2001 – The Australian National University (ANU) launched its E-Print Repository, the first OAI-compliant institutional archive in Australia.
- September 2003 – Queensland University of Technology (QUT) adopted a policy that faculty research “is to be” on deposit in the QUT open access repository. The policy took effect on 1 January 2004. This is the first university-level open access mandate.

- 25 May 2004 – The Australian Group of Eight, the country’s eight leading research universities, released a Statement on open access to scholarly information
- 17 December 2004 – The Australian Research Information Infrastructure Committee (ARIIC) issued its Open Access Statement.
- 21 February 2006 – Queensland University of Technology created an Open Access to Knowledge (OAK) Law project. The official launch took place 29-30 November 2006.
- October 2006 – The Australian government published a report on the Research Quality Framework (RQF) recommending open access to publicly funded research.
- 2 November 2006 – The Australian Government Productivity Commission released a report recommending open access to publicly-funded research.
- 3 December 2006 – The Australian Research Council (ARC) Funding Rules for 2008 ask grantees to deposit their ARC-funded work in an OA repository or explain why not.
- 9 December 2006 – Australia’s National Health and Medical Research Council (NHMRC) adopted a policy to encourage OA for NHMRC-funded research, and said it will soon ask non-complying grantees to justify their non-compliances.
- 27 March 2007 – The Australian Government Productivity Commission released a report that supported OA.
- April 2007 – The Australian Partnership for Sustainable Repositories (APSR) launched Online Research Collections Australia (ORCA), a registry and support network for OA repositories in Australia.
- 7 February 2008 – The Open Access to Knowledge (OAK) Law Project launched the OAKList, a database of information about publishing agreements and publishers’ OA policies.

Rights management

- June 1998 – Scholarly Publishing and Academic Resources Coalition (SPARC) launched by Association of Research Libraries (ARL).
- 15 May 2002 – Creative Commons launched by Lawrence Lessig.
- 5 March 2005 – SPARC officially launched its Author’s Addendum to help authors modify publishing contracts and retain the rights they need to authorize open access.
- 27 January 2006 – MIT developed its Copyright Amendment Form to help authors retain the rights they need to authorize open access.
- 6 June 2006 – Science Commons launched Scholar’s Copyright, three “author addenda” for copyright transfer agreements to help authors retain the rights they need to provide open access to their work.
- 25 October 2006 – JISC and SURF drafted a model license to help authors retain the rights they need for open-access archiving.
- 17 May 2007 – SPARC and Science Commons announced a consolidation and enhancement of their author addenda.

Rights management is an important issue in open access and a focus of this guide. The relevance of copyright law to OA is explained in Chapter 3. Proper rights management is discussed in Chapters 8 and 9, and a Copyright Toolkit is contained in Appendix One to assist you with managing your rights in your work.

Chapter 3: Understanding copyright law

This chapter provides a brief overview of copyright law. It is important for you to understand the basic principles underlying copyright law, because it is one area of law that is most relevant to your role as academic author. Copyright law underpins how a person can deal with a written work such as a journal article or a research report. The person who owns copyright in a work will be able to control whether that work can be copied, shared online or used by others. For this reason, a proper understanding of copyright law is fundamental to the consideration of whether or not a work can be made open access.

3.1 What is copyright?

Copyright is a collection of legal rights that attach to an original work when it is created. Copyright law allows the copyright owner of a work to control certain acts to do with their work (e.g. copying) and to prevent others from using the protected work without permission (unless the user can rely on a legal exception to copyright infringement). In Australia, the legislation governing copyright law is the *Copyright Act 1968* (Cth).

Copyright protection will arise automatically when an original work is created (see section 3.2). In Australia, there is no need to register copyright. Creators will sometimes place a © copyright symbol on their work to notify others that it is protected by copyright. However, this is not a requirement of copyright protection, and even works that are not marked with a © may be protected by copyright.

Copyright is sometimes referred to as a bundle of economic rights. This is because copyright does indeed serve an economic function. By granting monopoly rights in a work to the copyright owner, copyright law allows the owner to exclusively exploit those rights and to receive remuneration when other people exploit those rights.

3.2 Original expression in a material form

Copyright does not protect ideas and pure facts. It only protects the *expression* of those ideas or facts in a material form. Expression in a material form will occur when, for example, material is written down or typed into a computer.

Copyright will also only protect *original* expressions. Under copyright law, “original” does not mean novel or inventive. Rather, the work must originate from the author (i.e. not be copied from someone else).

Copyright will not be infringed where the same or similar ideas (contained in, for example, document “A”) are expressed in a substantially different way (in document “B”) that is itself an original expression (not copied from document “A”).

3.3 Works and subject matter other than works

In the *Copyright Act 1968* (Cth), copyrightable material is divided into two categories – “works” and “subject matter other than works”. “Works” includes literary works (written materials), artistic works

(visual images), dramatic works and musical works. “Subject matter other than works” includes sound recordings, cinematograph films, and television and sound broadcasts.

For the purposes of this guide, we will focus on the literary works category. Journal articles and other research records and publications will fall within the literary works category. They fall within this category because they are written materials; the perceived literary merit of the article or publication is irrelevant. Tables and data compilations are also classified as literary works in the *Copyright Act 1968* (Cth). We acknowledge that now and increasingly in the future, other kinds of materials will be contained in digital repositories and published in electronic journals. These materials may include images, diagrams and graphs, which fall within the artistic works category, and multimedia objects, which will usually be classified as “subject matter other than works” under the *Copyright Act 1968* (Cth).⁴⁰ However, for the time being, the content of digital repositories and electronic journals overwhelmingly consists of articles and written materials, and for this reason the literary works category will be the focus of this guide.

3.4 Exclusive rights

A copyright owner is accorded a number of exclusive rights in relation to their copyright work. For a literary work, a copyright owner will have the exclusive right to:

- reproduce the work in a material form (i.e. copy);
- publish the work;
- perform the work;
- communicate the work to the public;
- make an adaptation of a work (e.g. a translation); and
- control rental of the work, where the work is a computer program or is reproduced in a sound recording.⁴¹

A copyright owner’s most important right is the right to reproduce the work in a material form. This includes converting the work to or from a digital form, such as scanning the work onto a computer or downloading and printing the work from the internet.

A work will be reproduced where the entire work is copied or where a substantial part of the work is copied. A “substantial part” is measured by assessing the quality as well as the quantity of the part copied. A reproduction of a copyright work will occur where there is “objective similarity between an alleged reproduction and the copyright work, such that one is recognisable as a copy of the other.”⁴²

The right to communicate the work to the public is also very relevant in the environment of open access. In the *Copyright Act 1968* (Cth), “communicate” is defined to mean “make available online or

⁴⁰ For example, the TrustDR Project (<http://trustdr.ulster.ac.uk/>) is concerned with the practical issues of setting up digital rights management systems (DRM) in repositories of learning objects specifically. Learning objects can be defined as digital or non-digital resources that can be used to support learning, and may consist of text, images, sound and video: see http://en.wikipedia.org/wiki/Learning_Objects accessed on 17 April 2008.

⁴¹ Note that under US copyright law (which is commonly reflected in publishing agreements and policies) the “communication” right will often be referred to as a “distribution”, “electronic transmission” or “public display” right, and possibly even a “public performance” right, and the “adaptation” right is often referred to as a “translation” or “derivative works” right.

⁴² Jill McKeough, Andrew Stewart and Philip Griffith, *Intellectual Property in Australia* (3rd edition), 2004, p214.

electronically transmit...a work or other subject-matter.”⁴³ Thus, placing a copy of a research article in an open access repository (see Chapter 4) will be an exercise of the copyright owner’s exclusive right to communicate the work.

Unless they are operating with the permission of the copyright owner or under a legislative exception to copyright infringement, a person will not be able to exercise any of the exclusive rights of the copyright owner in relation to a copyright work.

3.5 Copyright term

Copyright protection is granted for a limited period of time, after which the material passes into the public domain. While copyright protection exists, a person will not be able to use a copyright work without the permission of the copyright owner or in the absence of a statutory exception.

For published literary works, the copyright term is the life of the author plus 70 years from the end of the calendar year in which the author dies.

Note that this copyright term is measured by reference to the life of the author (i.e. the initial creator of the copyright work) and not the life of the copyright owner (which may be a different person or entity to the author).

For literary works that have not been published or made available to the public, the copyright term is 70 years from the end of the calendar year in which the work is first published or made available to the public.⁴⁴

3.6 Copyright ownership

Under copyright law, the author of a work will be the first owner of copyright in that work. An exception to this rule is that an employing institution may take copyright in a work where the work was created by an employee in the course of their employment. It is advisable to carefully check the terms of your employment contract to determine whether your employing institution controls copyright in work created by you within the course of your employment.

Just because an author is the first copyright owner of a work does not mean that they will remain as copyright owner. Copyright ownership can be transferred to another person or entity through a process known as ‘assignment’. See section 3.7 for more on assignment.

Sometimes, a work will be created by more than one author, such as where more than one author contributes to the writing of an article. In these cases, the assessment of copyright ownership may be more complicated. If each author has contributed a separate and distinct part of the work, then each author will hold copyright in their separate part only and no one person will hold copyright in the overall work. However, if the authors were working together such that it is impossible to distinguish between the contributions of each different author, then the authors will hold copyright in the overall work together as joint owners. Joint owners hold copyright in the work equally and copyright cannot

⁴³ *Copyright Act 1968* (Cth), s 10(1).

⁴⁴ Note that this term does not apply to computer programs.

be assigned without the consent of all owners.

3.7 Assignment

An assignment of copyright occurs when a copyright owner transfers their copyright interests to someone else. Often, this is done in exchange for payment or provision of a service. To be valid at law, an assignment must be in writing and must be signed by or on behalf of the assignor (the person who is transferring their rights).

An assignment may be a full assignment or a partial assignment. A partial assignment may be limited to a certain right (e.g. the right of adaptation), time (e.g. for five years) and/or place (e.g. within Australia). A full assignment occurs when copyright is transferred completely to someone else. It is important to remember that a full assignment leaves the assignor with no residual copyright in the work. This means that from the point of assignment onwards, the assignor is like any other user and can only use the work with the permission of the assignee or if operating under a statutory exception to copyright infringement (even if the assignor is the creator of the work).

Many publishers require authors to fully assign copyright in an article to the publisher before the publisher will agree to publish the article in their journal. The assignment clause is usually contained in the publishing agreement or “copyright transfer form”.

The extent to which publishers actually require a full assignment of copyright in order to be able to publish your work is debateable. Often, this will be a commercial decision on both your part and the part of your publisher. Publishers may offer the following reasons for requiring assignment of copyright in your work:

- that it enables the publisher to effectively protect your work against copyright infringement and/or plagiarism;
- so that the publisher can efficiently process third party permissions and enter into licensing arrangements regarding your work;
- so that the publisher can maintain the integrity of your work through centralised management of all media forms; and
- that it facilitates wide distribution of your work by the publisher.⁴⁵

However, these reasons can be effectively countered. For example, in relation to protection from plagiarism, Peter Suber writes:

It's inaccurate and disingenuous to argue that publishers need exclusive rights to prosecute plagiarists. First, the rights are rarely used this way. Plagiarism is typically punished by the plagiarist's institution, not by courts --that is, by social norms, not by law. Second, if it's ever desirable to pursue a plagiarist in court and authors don't give publishers the right to do so on their own, then authors retain that right to use as they see

⁴⁵ See: Project Romeo, Advocacy presentation: The author, the publisher, their copyright agreement and it's terms, licensed under a Creative Commons Attribution-No Derivatives-Non Commercial License, <http://www.lboro.ac.uk/departments/ls/disresearch/romeo/RoMEO-Advocacy-presentation.ppt> accessed on 7 May 2008; see also by way of example, Blackwell Publishing Copyright Assignment Form and Notes on the Assignment of Copyright (2003) www.kellogg.northwestern.edu/research/journals/JEMS/JEMS_CAF.pdf accessed on 7 May 2008; and the *Journal of Defense Modeling and Simulation: Applications, Methodology, Technology* Journal Contributor's Publishing Agreement www.scs.org/PUBS/jdms/JDMS_CopyrightAssignment.pdf accessed on 7 May 2008.

fit. Third, many authors would rather have a larger audience and impact than give their publisher the seldom-used legal tools to prosecute plagiarists. Authors should make this decision, not publishers. Finally, if an author discovers a plagiarist and the publisher really wants to get involved, the author can always delegate the publisher to act as his/her agent. For this purpose, publishers don't need rights from the time of publication, nor do they need exclusive rights, let alone a policy to limit access to the author's work.⁴⁶

Arguably, the second, third and fourth points made by Suber could also apply to publishers' claims that they need exclusive rights to protect a work from copyright infringement. If an author retains copyright in their work, then they also retain the right to seek a legal remedy for any infringement of that copyright. Further, an author may authorise a publisher to commence an action for copyright infringement in the author's name.

In relation to the argument that publishers need an assignment of copyright in order to protect the integrity of your work, BioMed Central has stated:

It is exceptionally rare for a scientific publisher to use copyright law to defend the integrity of a scientific paper on behalf of an author. In fact BioMed Central knows of no situation where this has happened. The "scientific integrity" argument simply provides a convenient excuse, which is used by traditional publishers to attempt to justify their requirement for transfer of copyright. Meanwhile, the real reason for copyright transfer is clear. Publishers regularly use copyright law to protect the profits they derive by controlling access to the literature.⁴⁷

The argument that publishers need copyright ownership in order to grant permissions and enter into licensing arrangements can also be countered. If you own copyright, then you will control who has permission to use your work and who has authority to grant permissions to use your work. You can give your publisher permission to sub-licence your work to others (i.e. you give your publisher a licence to further licence use of your work to other parties) or you can avoid the problem of granting individual permissions altogether by attaching an open content licence such as a Creative Commons licence to your work (for more information on Creative Commons licences see Chapter 8).

Finally, as explained in Chapter 2, it is the internet and open access that facilitates wide distribution of your work, not copyright ownership by your publisher.

You may be willing to give up ownership and control of your work for the reasons advanced by publishers (above). However, where you prefer to retain ownership and control over your work, an assignment will not be ideal. There are now mechanisms available to assist you in negotiating with publishers so that you, as author, can retain some rights to your work. These mechanisms are discussed in detail in Chapters 8 and 9. If you are unsure about whether you have already assigned copyright in an article to your publisher, contact your publisher and request a copy of your publishing agreement so that you can confirm whether you have assigned your copyright.

3.8 Licensing

A copyright owner may want to grant someone else permission to exercise one or more of the copyright owner's exclusive rights, without actually transferring copyright. They can do this by granting a

⁴⁶ Peter Suber, "Balancing author and publisher rights" *SPARC Open Access Newsletter*, issue #110, 2 June 2007, <http://www.earlham.edu/~peters/fos/newsletter/06-02-07.htm#balancing> accessed on 14 May 2008.

⁴⁷ Jonathan B Weitzman (Ed), "(Mis)Leading Open Access Myths" *Open Access Now*, BioMed Central, Myth 11 <http://www.biomedcentral.com/openaccess/inquiry/myths/?myth=copyright> accessed on 14 May 2008.

licence. A licence enables a copyright owner to permit others to use or deal with their work in a way that would otherwise infringe copyright.

There are a number of different types of licences. Firstly, a licence can be limited in the same way that an assignment can be – by the rights permitted, the time when or within which the rights can be exercised, or the place where the rights can be exercised.

Secondly, a licence can be exclusive or non-exclusive. An exclusive licence grants the relevant rights to the licensee only, and the licensor (copyright owner) cannot then grant the same rights to anyone else or exercise those rights themselves. An exclusive licence must be in writing. A non-exclusive licence gives permission to the licensee to exercise the relevant rights, but also allows the copyright owner to grant the same permission to others and to continue to exercise those rights themselves.

Finally, a licence may be contractual or non-contractual. A contractual licence operates like a standard contract – in exchange for permission to exercise the relevant rights, the licensee agrees to do or give something in return (at law this is called “consideration”). A non-contractual licence is essentially a bare permission to exercise the rights granted. A copyright owner can still place restrictions on a non-contractual licence, but the licensee is not contracting to fulfill any additional obligations.

Whether a licence can be revoked (taken back) once it is given will depend on:

- whether the licence is a bare permission (usually revocable);
- whether the licence is exclusive (usually irrevocable unless there is an express statement to the contrary);
- the terms of a contractual licence; and
- any express or implied statements made by the copyright owner.

An increasingly popular way to licence copyright works is through the use of an open content licence, such as a Creative Commons licence. These licences are discussed in detail in Chapter 8.

The application of copyright licences is particularly relevant for enabling open access to a work. You may choose to grant a licence to a publisher, rather than an assignment of copyright, in order to retain sufficient rights to be able to provide open access to your work. Alternatively, you may seek a licence from a publisher to whom you have assigned copyright, which would grant you permission to deposit your work in an open access repository. You may also wish to licence additional rights to the institution hosting the open access repository so that the institution may deal with and preserve your work. Finally, you may choose to grant rights to people accessing your work in the repository so that they may use and further distribute your work. How you can use copyright licensing to both grant these rights and retain sufficient control over your work is discussed in Chapters 8 and 9.

3.9 Infringement

Any dealing with a copyright work in the absence of a licence from the copyright owner or a defence or exception under the *Copyright Act 1968* (Cth) will be an infringement of copyright. It will be an infringement for an author who has assigned copyright in their work to another person to deal with the

work without the assignee's permission. It is also an infringement of copyright to authorise another person to exercise one of the copyright owner's exclusive rights without the copyright owner's permission. A copyright owner can bring legal action against an infringer and recover monetary compensation for damage suffered by the infringement.

Infringement will only occur where the whole or a substantial part of a copyright work is dealt with – it will not extend to an insubstantial part of the work, even where that part is used without the copyright owner's permission. There is no strict test as to what constitutes a "substantial part". Rather, it is an objective assessment which takes into account the quality and quantity of the part taken compared to the copyright work as a whole.

3.10 Defences and exceptions to copyright infringement

The *Copyright Act 1968* (Cth) contains a number of defences and exceptions to copyright infringement. These defences and exceptions permit members of the public to make use of copyright works in certain limited circumstances, even without the permission of the copyright owner. They are called the fair dealing provisions and permit a fair dealing of a work to be made for any of the following purposes:

- research or study;⁴⁸
- criticism or review;
- parody or satire;
- reporting the news; or
- judicial proceedings or professional advice.

To be able to rely on one of the fair dealing provisions, a person's use of the copyright work must fall within one of the purposes listed above and it must also be fair. "Fair" is not defined in the *Copyright Act 1968* (Cth), but whether or not a dealing is fair will depend on the circumstances of the use, including how much of the copyright work is used and the nature and purpose of the use.

Reproducing or communicating an entire copyright work is unlikely to be considered "fair" for the purposes of the *Copyright Act 1968* (Cth). Thus, posting an entire article into an open access repository or onto a personal website without the permission of the copyright owner is unlikely to be protected as a fair dealing. Instead, a licence would be required for such uses.

3.11 Moral rights

An author has moral rights in their work, which exist independently of copyright. The three moral rights are:

- 1) the right of attribution of authorship (i.e. the right to be credited as author of the work);
- 2) the right not to have authorship of the work falsely attributed (i.e. not to have their work credited to someone else); and
- 3) the right of integrity of authorship, which is the right not to have their work treated in a derogatory way.

⁴⁸ The "research or study" is limited to private (i.e. your own) research or study: *De Garis and Another v Neville Jeffress Pidler Pty Ltd* (1990) 95 ALR 625 at 629 per Beaumont J.

“Derogatory treatment”, in relation to a literary work, is defined in the *Copyright Act 1968* (Cth) to mean the doing of anything in relation to a work that is prejudicial to the author’s honour or reputation, including material distortion or mutilation of the work.⁴⁹

The rights of attribution of authorship and integrity of authorship are interpreted on a basis of reasonableness and subsequently they will not be infringed where a person’s conduct is found to be reasonable in the circumstances.⁵⁰

Moral rights are personal rights, meaning that they always belong to the author and can never be assigned to another party.⁵¹ However, an author may give written consent to someone to do something with their work that would otherwise infringe their moral rights, such as distributing their article without identifying them as the author.⁵²

Moral rights can only be held by individuals,⁵³ and for copyright works other than cinematograph films, continue for the duration of the copyright term.⁵⁴

3.12 Using the Copyright Toolkit in this guide

Appendix One of this guide is a Copyright Toolkit that you can use to assist you in dealing with your copyright interests. The Copyright Toolkit address issues relating to assignment and licensing of copyright work, but also looks more specifically at legal relationships and obligations that may arise between you (as author of a work) and your publisher, funding body, or hosting institution. These issues are also addressed further in the remaining chapters of this guide. If you work systematically through the Copyright Toolkit, you will find that it is a useful resource in helping you to understand the copyright issues surrounding your work both now and in the future.

⁴⁹ See *Copyright Act 1968* (Cth) s195AJ.

⁵⁰ *Copyright Act 1968* (Cth) s195AR and s195AS.

⁵¹ *Copyright Act 1968* (Cth) s195AN(3).

⁵² *Copyright Act 1968* (Cth) s195AWA.

⁵³ *Copyright Act 1968* (Cth) s190.

⁵⁴ *Copyright Act 1968* (Cth) s195AM.

Chapter 4: Depositing locally: institutional repositories

4.1 What is an institutional repository?

An institutional repository (IR) is an online archive, based at an academic institution, in which academic authors can deposit their work with the intention that it will be openly available in a digital form. Institutional repositories aim to capture research information that authors want to be disseminated and read as widely as possible.⁵⁵

Wikipedia defines “institutional repository” as:

An Institutional Repository is an online locus for collecting, preserving, and disseminating - in digital form - the intellectual output of an institution, particularly a research institution.

For a university, this would include materials such as research journal articles, before (preprints) and after (postprints) undergoing peer review, and digital versions of theses and dissertations, but it might also include other digital assets generated by normal academic life, such as administrative documents, course notes, or learning objects.

The four main objectives for having an institutional repository are:

- to create global visibility for an institution's scholarly research;
- to collect content in a single location;
- to provide open access to institutional research output by self-archiving it;
- to store and preserve other institutional digital assets, including unpublished or otherwise easily lost ("grey") literature (e.g., theses or technical reports).⁵⁶

The Scholarly Publishing and Academic Resources Coalition (SPARC), an international alliance of universities, research libraries and organisations, defines “institutional repositories” as “digital collections capturing and preserving the intellectual output of a single university or a multiple institution community of colleges and universities.”⁵⁷

According to SPARC, an institutional repository has four characteristics. It is:

- institutionally defined;
- scholarly;
- cumulative and perpetual; and

⁵⁵ See SHERPA, “Fifteen Common Concerns – and Clarifications” 2006, <http://www.sherpa.ac.uk/documents/15concerns.html> accessed on 18 March 2008.

⁵⁶ Wikipedia, Institutional Repository, http://en.wikipedia.org/wiki/Institutional_repository accessed on 13 March 2008.

⁵⁷ Raym Crow, SPARC Institutional Repository Checklist and Resource Guide, 2002, www.arl.org/sparc/bm~doc/IR_Guide_&Checklist_v1.pdf accessed on 24 March 2008.

- open and interoperable.⁵⁸

The development of institutional repositories has been described as “a logical extension of existing scholarly communication practices into the digital realm”.⁵⁹ Similarly, Richard Poynder has explained the development of institutional repositories as a strategy that:

...grew naturally out of academia’s long-standing pre-print culture – the practice of distributing print drafts of papers to colleagues prior to publication in order to incorporate and respond to any criticism, trap any embarrassing mistakes, and establish intellectual property ownership of the research.⁶⁰

Are institutional repositories a form of publishing?

Some people mistakenly believe that depositing a work (such as a journal article) into an institutional repository is a form of publishing. They liken it to self-publishing or vanity publishing and therefore ascribe a low opinion of quality to the work.

However, depositing a work into a repository is *not* a form of publishing. In fact, most of the content of institutional repositories are articles that have already been published or accepted for publication in high-quality journals.

Alma Swan writes:

It is *not* an alternative to publishing in learned journals, but an adjunct, a complementary activity where an author publishes his or her article in whatever journal s/he chooses and then simply self-archives a copy. In practice, this means depositing the file, which is usually the author’s final version of the article after peer review has been completed, in an open access archive or repository.⁶¹

Tim Berners-Lee et al write:

[S]elf-archiving and journal publication can and do continue to *co-exist peacefully*, with institutions continuing to subscribe to the journals they can afford, and researchers at the institutions that can afford them continuing to use them; the only change is that the author’s own self-archived final drafts (as well as earlier pre-refereeing preprints) are now accessible to all those researchers whose institutions could *not* afford the official journal version (as well as to any who may wish to consult the pre-refereeing preprints). In other words, the self-archived author’s drafts, pre- and post-refereeing, are *supplements* to the official journal version, not *substitutes* for it.⁶²

There is a way to engage in open access publishing, but it is not through repositories. Open access publishing through open access journals is discussed in Chapter 5. Depositing work in a digital

⁵⁸ Raym Crow, The Case for Institutional Repositories: A SPARC Position Paper, 2002, <http://www.arl.org/sparc/publications/papers.html> accessed on 24 March 2008.

⁵⁹ Kristin Antelman, “Self-archiving practice and the influence of publisher policies in the social sciences” 19(2) *Learned Publishing*, April 2006, 85-95 at 93, <http://eprints.rclis.org/archive/00006023/> accessed on 24 March 2008.

⁶⁰ Richard Poynder, “Open Access: Beyond selfish interests” *Open and shut?* (blog), 20 November 2006, <http://poynder.blogspot.com/2006/11/open-access-beyond-selfish-interests.html> accessed on 24 March 2008.

⁶¹ Alma Swan, “Open access self-archiving: An Introduction” *Key Perspectives*, May 2005, www.ecs.soton.ac.uk/~harnad/Temp/jiscsum.pdf accessed on 24 March 2008.

⁶² Tim Berners-Lee, Dave De Roure, Stevan Harnad, and Nigel Shadbolt, “Journal publishing and author self-archiving: Peaceful Co-Existence and Fruitful Collaboration” (unpublished), 2005, <http://eprints.ecs.soton.ac.uk/11160/> accessed on 18 March 2008.

repository is not a form of publishing in itself but, as described above, is rather a supplementary practice to traditional journal publishing.⁶³

The purpose of open access (OA) and open access repositories has been described as “the constructive one of providing OA to a larger and larger body of literature, not the destructive one of putting non-OA journals or publishers out of business”.⁶⁴ By way of example, commentators point to the fact that despite 15 years of continuous self-archiving by physicists into the subject-based repository arXiv (in numbers that approach 100% of the research published in some fields), both the Institute of Physics Publishing Ltd in the UK and the American Physical Society – both large physics learned societies – have explicitly stated that they could not identify *any* loss of subscriptions to their journals as a result of material being publicly available in arXiv.⁶⁵ Another example can be seen in the *American Journal of Political Science*, which despite having 94.3 percent of its articles posted online remains one of the most prestigious journals in political science.⁶⁶

Other relevant definitions

It may be useful to keep these other definitions in mind when considering institutional repositories:

- **Self-archive** – this describes an author’s act of depositing his or her own work into an online (usually institutional) repository.
- **Pre-print** – the version of an academic paper (usually a journal article) prior to peer-review.
- **Post-print** – also called the “author’s final version”, this is the version of an academic paper after peer-review. It incorporates the changes made as a result of the peer review process and is the version accepted for publication.
- **Publisher’s version** – sometimes called the “definitive version” of an article, this is the final version as published. It includes the publisher’s formatting and typesetting.
- **Peer-review** – an author’s work has been peer-reviewed when it has been subjected to the scrutiny of others who are experts in the field.

⁶³ For more on the “gold road” and “green road”, see Professor Brian Fitzgerald, Dr Anne Fitzgerald, Professor Mark Perry, Scott Kiel-Chisholm, Erin Driscoll, Dilan Thampapillai and Jessica Coates, *OAK Law Project Report No. 1: Creating a legal framework for copyright management of open access within the Australian academic and research sector*, August 2006, p81, <http://www.oaklaw.qut.edu.au/reports>.

⁶⁴ Peter Suber, Open Access Overview, last revised 19 June 2007, <http://www.earlham.edu/~peters/fos/overview.htm> accessed on 24 March 2008.

⁶⁵ See Alma Swan, “Open access self-archiving: An Introduction” *Key Perspectives*, May 2005, www.ecs.soton.ac.uk/~harnad/Temp/jiscsum.pdf accessed on 24 March 2008; and Tim Berners-Lee, Dave De Roure, Stevan Harnad, and Nigel Shadbolt, “Journal publishing and author self-archiving: Peaceful Co-Existence and Fruitful Collaboration” (unpublished), 2005, <http://eprints.ecs.soton.ac.uk/11160/> accessed on 18 March 2008.

⁶⁶ Numbers obtained in a search of 302 regular articles that appeared in the most recent two issues of 16 political science journals as at February 2007: Ted C. Bergstrom and Rosemary Lavaty, “How often do economists self-archive?” 8 February 2007, *Department of Economics, UCSB*, <http://repositories.cdlib.org/ucsbecon/bergstrom/2007a/> accessed on 25 March 2008.

- **Refereed** – another term for a paper that has been subject to peer-review.
- **Unrefereed** – a paper that has not been peer-reviewed, commonly referred to as a pre-print.

4.2 Benefits of institutional repositories

In Chapter 2, the general benefits of open access were discussed. This section explains the particular benefits of institutional repositories to you *personally*. A primary benefit of open access archiving is increased citation to and impact of your research. As Peter Suber says, open access is the microphone of your research.⁶⁷

Research Impact

Research impact has been defined as:

An article's research impact is the degree to which its findings are read, used, applied, built-upon, and cited by users in their own further research and applications. Research impact is a measure of progress and productivity of research. That is the reason why researchers' careers (their salaries, promotions, tenure, funding, prestige, and prizes) depend on their impact; it is also why their universities (which cobenefit from the research funding, progress, and prestige) as well as their research funding agencies (which are answerable for the way they spend taxpayers' money) reward research impact.⁶⁸

There is ample evidence that open access increases the impact of research work. Many studies have compared the citation rates of articles that are openly accessible with the citation rates of articles that are not (because they are behind subscription barriers), and have found that OA articles are cited significantly more than non-OA articles. In fact, Richard Poynder reports that OA papers are accessed and read three times as much as non-OA papers.⁶⁹

The first study showing higher impact for OA articles was carried out by Lawrence, who focused his study on conference proceedings articles in computer sciences published from 1989 to 1999.⁷⁰ Lawrence's study showed a correlation between online availability of the full-text article and citations to that article. The results indicated that OA articles in the computer sciences had a citation impact 336% higher than non-OA articles.⁷¹

⁶⁷ Richard Poynder, "The Basement Interviews: Peter Suber" *Open and shut?* (blog), 19 October 2007, <http://poynder.blogspot.com/2007/10/basement-interviews-peter-suber.html> accessed on 24 March 2008.

⁶⁸ Stevan Harnad, Tim Brody, Francois Vallieres, Les Carr, Steve Hitchcock, Yves Gingras, Charles Oppenheim, Heinrich Stamerjohanns and Eberhard R. Hilf, "The Access/Impact Problem and the Green and Gold Roads to Open Access" 30(4) *Serials Review*, 2004, <http://users.ecs.soton.ac.uk/harnad/Temp/impact.html> accessed on 25 March 2008.

⁶⁹ Richard Poynder, "Open Access: Beyond selfish interests" *Open and shut?* (blog), 20 November 2006, <http://poynder.blogspot.com/2006/11/open-access-beyond-selfish-interests.html> accessed on 24 March 2008.

⁷⁰ See Ian D. Craig, Andrew M. Plume, Marie E. McVeigh, James Pringle and Mayur Amin, "Do Open Access Articles Have Greater Citation Impact?" 1(3) *Journal of Informetrics*, July 2007, 239-248, accessed the author's preprint (summary paper) at <http://www.publishingresearch.net/Citations.htm> on 25 March 2008.

⁷¹ Ibid. See also, Stevan Harnad and Tim Brody, "Comparing the Impact of Open Access (OA) vs. Non-OA Articles in the Same Journals" 10(6) *D-Lib Magazine*, June 2004, <http://www.dlib.org/dlib/june04/harnad/06harnad.html> accessed on 25 March 2008; and Stevan Harnad, Tim Brody, Francois Vallieres, Les Carr, Steve Hitchcock, Yves Gingras, Charles

Kurtz et al have reported similar citation impact results in astrophysics,⁷² and Odlyzko has also reported similar results in mathematics.⁷³

Hajjem et al studied citation counts in 10 disciplines - administration, economics, education, business, psychology, health, political science, sociology, biology and law - for 12 years from 1992-2003. They found that open access articles had a citation impact that was 36% to 172% higher (depending on the discipline) than non-open access articles.⁷⁴

Similarly, Stevan Harnad's teams in Montreal and Southampton have developed a robot that scans the web, searching for scholarly articles that are openly accessible in full-text. They then compare citation rates between OA and non-OA articles in the same issue of the same journal to ensure that like is compared with like.⁷⁵ As Alma Swan reports:

The data that have so far come out of this series of studies, which is ongoing, have demonstrated conclusively that open access doubles downloads and increases citations by an average of around 50% (this rate varies with discipline, from around 40% for biology to 250% for physics, so 50% is a conservative average figure).⁷⁶

The results reached by Lawrence, Kurtz, Odlyzko, Hajjem, Harnad and others make sense – increased exposure results in increased downloads and citations, and therefore greater research impact. Harnad and Brody explain:

OA dramatically increases the number of potential users of any given article by adding those users who would otherwise have been unable to access it because their institution could not afford the access-tolls of the journals in which it appeared; therefore, it stands to reason that OA can only increase both usage and impact.⁷⁷

Oppenheim, Heinrich Stamerjohanns and Eberhard R. Hilf, "The Access/Impact Problem and the Green and Gold Roads to Open Access" 30(4) *Serials Review*, 2004, <http://users.ecs.soton.ac.uk/harnad/Temp/impact.html> accessed on 25 March 2008.

⁷² Michael J. Kurtz, Guenther Eichhorn, Alberto Accomazzi, Carolyn S. Grant, Markus Demleitner, Stephen S. Murray, Nathalie Martimbeau and Barbara Elwell, "Worldwide Use and Impact of the NASA Astrophysics Data System Digital Library" *Journal of the American Society for Information Science and Technology* (2004) <http://cfa-www.harvard.edu/~kurtz/jasist1-abstract.html> accessed on 25 March 2008; and Michael J. Kurtz, Guenther Eichhorn, Alberto Accomazzi, Carolyn S. Grant, Markus Demleitner, Stephen S. Murray, Nathalie Martimbeau and Barbara Elwell, "The Bibliometric Properties of Article Readership Information" *Journal of the American Society for Information Science and Technology* (2004) <http://cfa-www.harvard.edu/~kurtz/jasist2-abstract.html> accessed on 25 March 2008. See also Stevan Harnad, Tim Brody, Francois Vallieres, Les Carr, Steve Hitchcock, Yves Gingras, Charles Oppenheim, Heinrich Stamerjohanns and Eberhard R. Hilf, "The Access/Impact Problem and the Green and Gold Roads to Open Access" 30(4) *Serials Review*, 2004, <http://users.ecs.soton.ac.uk/harnad/Temp/impact.html> accessed on 25 March 2008.

⁷³ A.M. Odlyzko, "The Rapid Evolution of Scholarly Communication" 15(1) *Learned Publishing*, 2002, pp. 7-19, <http://alpsp.publisher.ingentaconnect.com/content/alpsp/lp/2002/00000015/00000001/art00002> accessed on 25 March 2008. See also Stevan Harnad, Tim Brody, Francois Vallieres, Les Carr, Steve Hitchcock, Yves Gingras, Charles Oppenheim, Heinrich Stamerjohanns and Eberhard R. Hilf, "The Access/Impact Problem and the Green and Gold Roads to Open Access" 30(4) *Serials Review*, 2004, <http://users.ecs.soton.ac.uk/harnad/Temp/impact.html> accessed on 25 March 2008.

⁷⁴ Chawki Hajjem, Stevan Harnad and Yves Gingras, "Ten-Year Cross-Disciplinary Comparison of the Growth of Open Access and How it Increases Research Citation Impact" 28(4) *IEEE Data Engineering Bulletin*, 2005, 39-47, <http://arxiv.org/abs/cs.DL/0606079> accessed on 25 March 2008.

⁷⁵ See Alma Swan, "Open Access: Why should we have it?" *Key Perspectives*, 2006, <http://www.keyperspectives.co.uk/openaccessarchive/journalpublications.html> accessed on 24 March 2008.

⁷⁶ Ibid.

⁷⁷ Stevan Harnad and Tim Brody, "Comparing the Impact of Open Access (OA) vs. Non-OA Articles in the Same Journals" 10(6) *D-Lib Magazine*, June 2004, <http://www.dlib.org/dlib/june04/harnad/06harnad.html> accessed on 25 March 2008.

It is becoming increasingly easier to obtain citation records and information on which articles are being cited the most. On 11 March 2008, Scopus (the largest abstract and citation database of research literature and quality web sources)⁷⁸ released TopCited. TopCited is a free citation service that lists the most-cited recent articles in various disciplines. “Users can view the top 20 articles from the past 3, 4, or 5 years in one of 26 subject areas, and view the authors' institutions on a Google Map.”⁷⁹ TopCited can be accessed at: <http://info.scopus.com/topcited/>.

Preservation and version control

In addition to enabling enhanced research impact, institutional repositories can provide an interoperable preservation system, securing research from loss. There are many reasons why research is vulnerable to loss or corruption – the format in which the computer files are saved may become outdated and inaccessible, single computer hard-drives may fail or become corrupted with a virus, online links may fail. An institutional repository can store research safely and securely within a system that is less vulnerable to failure.

Studies have shown that many faculty members assume – often mistakenly – that their materials are already backed-up and permanently accessible.⁸⁰ However, without a proper system in place, this assumption is potentially catastrophic – imagine completely losing all of your research data. By depositing your research into an institutional repository, you can ensure that it will not be lost or accidentally erased from your computer system.

Peter Suber has stated, “When universities host OA archives, they are usually committed just as much to long term preservation as to open access.”⁸¹ In fact, institutional repositories are ideal for long-term preservation because they have dedicated staff to ensure that all files in the repository are maintained in an accessible format.

Your article may already be housed online on your personal website or on the website of a publisher. However, reliance should not be placed on publishers for the long-term storage and preservation of your work. Publisher’s websites may change or may be abandoned if the publisher is bought out or ceases operating. Institutional repositories, being based at universities and academic institutions, are a much more stable storage option.⁸²

⁷⁸ <http://info.scopus.com/overview/what> accessed on 13 March 2008.

⁷⁹ Gavin Baker, “TopCited lists most-cited papers by disciplines” *Open Access News* (blog), 12 March 2008, http://www.earlham.edu/~peters/fos/2008_03_09_fosblogarchive.html accessed on 12 March 2008.

⁸⁰ Nancy Fried Foster and Susan Gibbons, “Understanding Faculty to Improve Content Recruitment for Institutional Repositories” 11(1) *D-Lib Magazine*, January 2005, <http://www.dlib.org/dlib/january05/foster/01foster.html> accessed on 25 March 2008.

⁸¹ Peter Suber, “Open Access Overview” *Open Access News* (blog), last revised 19 June 2007, <http://www.earlham.edu/~peters/fos/overview.htm> accessed on 24 March 2008.

⁸² See Raym Crow, The Case for Institutional Repositories: A SPARC Position Paper, 2002, p12 <http://www.arl.org/sparc/publications/papers.html> accessed on 24 March 2008; Bo-Christer Bjork, “Open access to scientific publications – an analysis of the barriers to change?” 9(2) *Information Research*, January 2004, <<http://InformationR.net/ir/9-2/paper170.html>> accessed on 16 April 2008; SHERPA, “Fifteen Common Concerns – and Clarifications” 2006, <http://www.sherpa.ac.uk/documents/15concerns.html> accessed on 18 March 2008; Peter Suber, “Open Access Overview” *Open Access News* (blog), last revised 19 June 2007, <http://www.earlham.edu/~peters/fos/overview.htm> accessed on 24 March 2008.

Alma Swan writes:

An institutional repository is a secure storage location for working documents or for research data; it becomes the mediator for a one-input, many-outputs scenario, where a researcher can retrieve whichever elements of his or her own research record are needed for a task-in hand (perhaps writing a paper, a lecture, preparing teaching materials, preparing a CV).⁸³

Another benefit of storing your research in an institutional repository is version control. Different versions of a paper may be stored in the repository, all easily accessible to you. By labelling each version clearly and correctly – as a draft, pre-print, post-print etc. – you will always be able to quickly and easily locate the desired version of your research. You will be able to accurately keep track of your progress in compiling and recording your research. For more information on version control in institutional repositories, you can download the VERSIONS⁸⁴ Project Toolkit from: <http://www.lse.ac.uk/library/versions/>.

Personal and promotional uses

Value-added features can be built around institutional repositories to provide further benefits to you as an academic faculty member.

For example, some institutions offer personalised webpages (“Researcher Pages”) that operate like a digital CV. On these pages you can list your publications and showcase your work – with direct links to the full-text of your research papers in the institutional repository.⁸⁵ Harnad et al argue that performance indicators and predictors can be included in standardised university CVs, which can then be harvested by research funders.⁸⁶ This would support (and ease) the process of applying for research funding.

A similar feature is the “Research Tools” page, where a researcher actually completes the task of self-archiving. This page not only acts as a gateway to the institutional repository, but may also be where the researcher controls versions and organises collections of their work. The page can list helpful resources, associate authors with co-authors and “become the hub for web-based services in support of faculty research”.⁸⁷

In an interesting effort to reduce administrative duplication, the University of Melbourne has developed their institutional repository (called UMER) to link in with their finance, human resources and reporting software.⁸⁸ This provides a single source of data on academics, publications and research that

⁸³ Alma Swan, “Open access self-archiving: An Introduction” *Key Perspectives*, May 2005, www.ecs.soton.ac.uk/~harnad/Temp/jiscsum.pdf accessed on 24 March 2008.

⁸⁴ VERSIONS: Versions of Eprints – user Requirements Study and Investigation Of the Need for Standards.

⁸⁵ Nancy Fried Foster and Susan Gibbons, “Understanding Faculty to Improve Content Recruitment for Institutional Repositories” 11(1) *D-Lib Magazine*, January 2005, <http://www.dlib.org/dlib/january05/foster/01foster.html> accessed on 25 March 2008.

⁸⁶ Stevan Harnad, Tim Brody, Francois Vallieres, Les Carr, Steve Hitchcock, Yves Gingras, Charles Oppenheim, Heinrich Stamerjohanns and Eberhard R. Hilf, “The Access/Impact Problem and the Green and Gold Roads to Open Access” 30(4) *Serials Review*, 2004, <http://users.ecs.soton.ac.uk/harnad/Temp/impact.html> accessed on 25 March 2008.

⁸⁷ Nancy Fried Foster and Susan Gibbons, “Understanding Faculty to Improve Content Recruitment for Institutional Repositories” 11(1) *D-Lib Magazine*, January 2005, <http://www.dlib.org/dlib/january05/foster/01foster.html> accessed on 25 March 2008.

⁸⁸ Danny Kingsley, “The one that got away? Institutional reporting changes and open access in Australia” submitted to

can be re-used across financial, human resources and research-support systems.⁸⁹ Presumably, this would make reporting of publications and research progress and applying for promotions and funding easier and less time-consuming for all University of Melbourne faculty members.

Some universities have begun using the institutional repository as a source when assessing faculty promotions. Additionally, studies show that the increased impact factor derived from self-archiving contributes to higher salaries. In the economics field, Hamermesh et al conducted regression analysis and found that the number of citations to an economist's work has a significant positive impact on that economist's salary.⁹⁰ In another study involving a broad range of academics, Diamond found that "citations are a positive and significant determinant of earnings".⁹¹

Other benefits

Institutional repositories provide multiple other benefits to you as an academic. These benefits include:

- Repositories allow you, as author, to exercise greater control over your work, including control over who may access your work and how they may use it.⁹²
- Depositing work into an openly accessible repository can help you to establish priority in research findings, which is important in disciplines such as high-impact physics.⁹³
- Repositories help your work to reach a broader audience than that of a single journal. This is especially beneficial for researchers working in multi-disciplinary fields.⁹⁴
- Self-archiving allows more timely dissemination of your work by shortening the delay that usually occurs between the time an article is accepted for publication and the time the article actually appears in a journal.⁹⁵

Open Access Research April 2007, preprint accessed in the Australian National University's institutional repository (Demetrius) at <http://dspace.anu.edu.au/handle/1885/45158> on 25 March 2008.

⁸⁹ Ibid.

⁹⁰ Daniel Hamermesh, George Johnson and Burton Weisbrod, "Scholarship, citations and salary: Economic rewards in economics" 49(2) *Southern Economic Journal*, 1982; see also Ted C. Bergstrom and Rosemary Lavaty, "How often do economists self-archive?" 8 February 2007, *Department of Economics, UCSB*, <http://repositories.cdlib.org/ucsbecon/bergstrom/2007a/> accessed on 25 March 2008.

⁹¹ Arthur Diamond, "What is a citation worth?" 21(2) *Journal of Human Resources*, 1986, 200-215, <http://www.garfield.library.upenn.edu/diamondam.html> accessed on 25 March 2008; see also Ted C. Bergstrom and Rosemary Lavaty, "How often do economists self-archive?" 8 February 2007, *Department of Economics, UCSB*, <http://repositories.cdlib.org/ucsbecon/bergstrom/2007a/> accessed on 25 March 2008.

⁹² Peter Suber, "Open Access Overview" *Open Access News* (blog), last revised 19 June 2007, <http://www.earlham.edu/~peters/fos/overview.htm> accessed on 24 March 2008.

⁹³ Kristin Antelman, "Self-archiving practice and the influence of publisher policies in the social sciences" 19(2) *Learned Publishing*, April 2006, 85-95, <http://eprints.rclis.org/archive/00006023/> accessed on 24 March 2008.

⁹⁴ Ibid.

⁹⁵ Alma Swan, "Open access self-archiving: An Introduction" *Key Perspectives*, May 2005, www.ecs.soton.ac.uk/~harnad/Temp/jiscsum.pdf accessed on 24 March 2008.

- Institutional repositories can provide a means to store and share research data that cannot be published in traditional journals but which is relevant to research findings.⁹⁶ Such data may include large datasets, graphical files and video or audio files.
- By self-archiving your work, you can ensure that you comply with any open access policies of your funding body (see Chapter 6). Through the sensible adoption of copyright licences, open access repositories can also help you to properly manage your copyright interests in your work.
- By making your work openly accessible, you increase your opportunities to reach and connect with other researchers in your field.
- If all of your work is easily available in the one place – your institutional repository – then you can reduce the time spent performing tasks such as emailing copies of your paper to colleagues or searching for where you saved that old paper.
- One enormous benefit of institutional repositories is that someone else is responsible for maintaining servers and digital tools, saving you time and effort.⁹⁷

So far, the above list of benefits has focused on benefits to you as author. However, it is important not to forget your other role – you as reader and researcher. Institutional repositories offer a significant research benefit by making research by other academics easier to locate and access. This can assist you in keeping up-to-date in your field.

Finally, institutional repositories could have an important beneficial effect on how research is conducted in the future:

Citation linking, in the context of distributed open access repositories, improves user research access, reveals historical and conceptual trends between articles, and facilitates new methods by which to gauge research quality and measure researcher productivity. New benchmarks and evaluation techniques will also evolve to allow further analysis of the entire open access research corpus. Additionally, extensive open citation linking and sophisticated retrospective analysis would permit the creation of literature summaries that could identify the most efficient path through the literature on a particular concept or research subject or map the trajectories of new research generated by a research article.⁹⁸

4.3 Your academic institution

It is important to become familiar with your institution’s repository, the policies under which it is

⁹⁶ Ibid.

⁹⁷ Nancy Fried Foster and Susan Gibbons, “Understanding Faculty to Improve Content Recruitment for Institutional Repositories” 11(1) *D-Lib Magazine*, January 2005, <http://www.dlib.org/dlib/january05/foster/01foster.html> accessed on 25 March 2008.

⁹⁸ Raym Crow, The Case for Institutional Repositories: A SPARC Position Paper, 2002, <http://www.arl.org/sparc/publications/papers.html> accessed on 24 March 2008.

governed and the processes for depositing and accessing work. This will allow you to use the repository properly and in a way that benefits you most as an author and researcher. You should also become acquainted with the staff that manage the repository and its surrounding policies - including the repository manager, the institution's copyright officer and the supporting librarians. These staff members will be able to assist you with any problems or questions that you may have, ranging from practical operation of repository software to copyright issues.

Does your institution have a repository?

The first step is to find out whether your institution has a repository. Most Australian academic institutions now do. OpenDOAR (the Directory of Open Access Repositories) lists 53 repositories in Australia. Of these, 24 are institutional repositories as defined in this guide. The remaining are mainly Australian Digital Theses (ADT) repositories, housing postgraduate student (primarily PhD and research Masters) theses.

There are two ways to discover whether your institution has a repository – you can ask your institution's library staff or you can search online. Both OpenDOAR (<http://www.opendoar.org>) and the Registry of Open Access Repositories (ROAR) (<http://roar.eprints.org>) allow you to search for repositories worldwide.

If your institution does not presently have a repository encourage your institution to establish one. As already noted, there are many benefits to both you personally and to your institution that result from establishing an open access repository. The numbers of repositories being established grows day by day. Alma Swan estimates that the number of institutional repositories worldwide has grown by an average of one per day over the last couple of years.⁹⁹ Both OpenDOAR and ROAR now list over 1000 repositories globally.

Does your institution have an open access policy?

Secondly, it is important that you read and understand your institution's open access policy (sometimes called a deposit policy or a repository policy). This policy should set out what material can be deposited into the repository and what conditions attach to the deposit and access of material. It will also state whether deposit of research work is mandatory or voluntary at your institution. Mandatory deposit policies are discussed below.

Some institutional open access policies have been archived online in the Registry of Open Access Repository Material Archiving Policies (ROARMAP) (<http://www.eprints.org/openaccess/policysignup>). You may also find your institution's policy on its website. Failing that, the best way to obtain a copy of your institution's open access policy is to ask your repository manager or librarian. Talk through the policy with your repository manager and make sure that you understand –

- your obligations under the policy;

⁹⁹ Richard Poynder, "The Open Access Interviews: Dr Alma Swan" *Open and shut?* (blog), 10 January 2008, <http://poynder.blogspot.com/2008/01/open-access-interviews-dr-alma-swan.html> accessed on 25 March 2008.

- what happens to your work once it is deposited into the repository;
- who can access your work and what they can do with it (the default position under the policy and any options for you to alter this); and
- your responsibilities in dealing with your copyright and negotiating with your publisher.

Are you subject to a mandate?

Some institutions have in place a mandate that requires faculty output to be made available in the institutional repository. This mandate may be in addition to the institution's open access policy or it may actually form the institution's open access policy.

Formerly, all such mandates could quite accurately be called "deposit mandates". Deposit mandates are generally imposed on faculty members and academic authors by the university administration from the top down. Deposit mandates require faculty to deposit their work (if the work fulfils certain criteria) into the institutional repository. The onus is on the faculty member to deposit their own work, often with the assistance of a repository manager or librarian. Most institutional mandates today are deposit mandates. Deposit mandates are described in more detail below.

More recently, however, a new type of mandate has emerged. This new mandate can be called a "permission mandate" because it requires faculty to give permission to the university to make their work available in the institutional repository. Instead of requiring faculty members to deposit their work into the IR themselves, the university will often undertake this task on behalf of the author(s). The permission given to the university will usually take the form of a copyright licence, and consequently these policies are sometimes called "University Licences". This permissions-based approach was pioneered by the Harvard University Faculty of Arts and Sciences (FAS) in a ground up initiative. It was the faculty themselves who came together and agreed to give the university an enduring permission to exercise copyright in and make their work available. Permission mandates, University Licences and the Harvard FAS policy are explained further below.

Deposit Mandates

Some institutions make it mandatory for staff to deposit their research output into the institutional repository. Currently only three Australian institutions have imposed a mandate – Queensland University of Technology (QUT), University of Tasmania and Charles Sturt University. QUT was the first Australian institution to impose a mandate, in January 2004. The School of Computing at University of Tasmania has had a mandate in place since 2006, and the University of Tasmania has been introducing a university-wide mandate in a "patchwork" fashion – department by department. On 8 March 2007, Peter Suber reported that the University of Tasmania had announced that it was preparing to implement a university-wide mandate that would require all publications from 2007 onwards to be deposited into a University of Tasmania digital repository.¹⁰⁰ Charles Sturt University introduced an institutional deposit mandate in January 2008.

¹⁰⁰ Peter Suber, "OA mandate at the U of Tasmania" *Open Access News* (blog), 8 March 2008, http://www.earlham.edu/~peters/fos/2008_03_02_fosblogarchive.html accessed on 25 March 2008.

The text of the QUT mandate is:

Material which represents the total publicly available research and scholarly output of the University is to be located in the University's digital or "Eprint" repository, subject to the exclusions noted. In this way it contributes to a growing international corpus of refereed and other research literature available on line, a process occurring in universities worldwide.

The following materials are to be included:

- refereed research articles and contributions;
 - at the post-peer review stage (the accepted draft - also referred to as the postprint);
 - or
 - at the pre-peer review (preprint) stage, with corrigenda added following peer review if necessary.
- un-refereed research literature, conference contributions, chapters in proceedings, etc (the accepted draft).
- theses as prepared for the Australian Digital Theses (ADT) process.

Access to these contributions will be subject to any necessary agreement with the publisher.

The material is to be organised in the repository according to the same categories used for the reporting of research to DEEWR (see Office of Research Web Site).

Material to be commercialised, or which contains confidential material, or of which the promulgation would infringe a legal commitment by the University and/or the author, should not be included in the repository.¹⁰¹

Many deposit mandates, like that at QUT, provide exceptions where the author has assigned copyright in their work to a publisher. For example, the QUT policy expressly provides that, "Access to these contributions will be subject to any necessary agreement with the publisher." Under the QUT policy, faculty must deposit their work in the IR, but where the publisher is the copyright owner of the work, access will not be provided to the work without the permission of the publisher. Some institutions may not require deposit at all without the consent of the copyright owner. Other institutions may require the author to retain copyright in their work or only assign copyright to a publisher that will permit the work to be made available in the institutional repository (although this is less likely).

A university may be able to impose a deposit mandate on their academic faculty through the faculty members' employment contracts. Often, the employment contract will provide that the employee agrees to abide by all policies implemented by the university.¹⁰² Such policies will include any open access policy and/or deposit mandate. A breach of the deposit mandate may then constitute a breach of the employment contract.

A university may adopt a deposit mandate in order to increase the amount of content in its institutional repository. Studies show that deposit mandates achieve significantly more repository content than

¹⁰¹ http://www.mopp.qut.edu.au/F/F_01_03.jsp accessed on 14 March 2008.

¹⁰² For case law addressing the issue of whether an institution can enforce university policies (in the context of patent ownership) through a faculty member's employment contract (by reference, either specific or general, to the policies in the employment contract) see: *Victoria University of Technology v Wilson and Others* [2004] VSC 33 and *University of Western Australia v Gray (No 20)* [2008] FCA 498.

voluntary deposit policies do.¹⁰³ Professor Arthur Sale, a leading open access advocate based at the University of Tasmania, has reported that, “Voluntary deposit policies are known to achieve no greater deposit rate of current research than 30% and more usually around 15%.”¹⁰⁴ By contrast, he states that a deposit mandate will “approach a capture rate of 100% of current research publications, though it will take a couple of years to achieve that goal. Figures of 60-90% can be expected in a short time.”¹⁰⁵

Permission Mandates and University Licences

At the beginning of 2008, Harvard University’s Faculty of Arts and Sciences (FAS) introduced a mandate that had an enormous impact internationally, largely because Harvard took a different approach to mandating open access than other institutions had to date. Instead of requiring academic authors to deposit their publications in the institutional repository themselves – and therefore requiring faculty to take personal responsibility for negotiating copyright interests with their publishers – Harvard took a copyright licence from the faculty which allowed Harvard to exercise copyright in and deposit and make available the faculty’s publications on their behalf. Importantly, the Harvard FAS policy provided that any transfer of copyright to a publisher would be subject to the licence granted to Harvard University.

For these reasons, Peter Suber calls Harvard’s approach a “permission mandate”:

The dozen pre-Harvard university mandates require faculty to deposit their eprints in the institution's OA repository. By contrast, Harvard requires faculty to give permission for OA archiving but not to make the deposits itself. That's why I call it a permission mandate rather than a deposit mandate.¹⁰⁶

The Harvard policy was adopted by the Faculty of Arts and Sciences on 12 February 2008, when they unanimously approved the motion put forward by Professor Stuart M. Shieber:

The Faculty of Arts and Sciences of Harvard University is committed to disseminating the fruits of its research and scholarship as widely as possible. In keeping with that commitment, the Faculty adopts the following policy: Each Faculty member grants to the President and Fellows of Harvard College permission to make available his or her scholarly articles and to exercise the copyright in those articles. In legal terms, the permission granted by each Faculty member is a nonexclusive, irrevocable, paid-up, worldwide license to exercise any and all rights under copyright relating to each of his or her scholarly articles, in any medium, and to authorize others to do the same, provided that the articles are not sold for a profit. The policy will apply to all scholarly articles written while the person is a member of the Faculty except for any articles completed before the adoption of this policy and any articles for which the Faculty member entered into an incompatible licensing or assignment agreement before the adoption of this policy. The Dean or the Dean's

¹⁰³ See, for example, Professor Arthur Sale, “The Patchwork Mandate” 13(1/2) *D-Lib Magazine* January/February 2007 <http://www.dlib.org/dlib/january07/sale/01sale.html> accessed on 5 June 2008; Professor Arthur Sale, “Comparison of content policies for institutional repositories in Australia” 11(4) *First Monday* April 2006 http://firstmonday.org/issues/issue11_4/sale/index.html accessed on 5 June 2008; Professor Arthur Sale, “The acquisition of open access research articles” 11(9) *First Monday* October 2006 http://www.firstmonday.org/issues/issue11_10/sale/index.html accessed on 5 June 2008; Professor Arthur Sale, “Generic Risk Analysis – Open Access for your institution” March 2006 http://eprints.utas.edu.au/266/1/Risk_Analysis-v1.0.pdf accessed on 5 June 2008; Stevan Harnad, “Generic Rationale for University Open Access Self-Archiving Policy” 2006 <http://eprints.ecs.soton.ac.uk/12078/1/genericSApolicy-linked.html> accessed on 5 June 2008.

¹⁰⁴ Professor Arthur Sale, “The Patchwork Mandate” 13(1/2) *D-Lib Magazine* January/February 2007 <http://www.dlib.org/dlib/january07/sale/01sale.html> accessed on 5 June 2008.

¹⁰⁵ Ibid.

¹⁰⁶ Peter Suber, “The open access mandate at Harvard” *SPARC Open Access Newsletter*, Issue #199, 2 March 2008 <http://www.earlham.edu/~peters/fos/newsletter/03-02-08.htm> accessed on 20 May 2008.

designate will waive application of the policy for a particular article upon written request by a Faculty member explaining the need.

To assist the University in distributing the articles, each Faculty member will provide an electronic copy of the final version of the article at no charge to the appropriate representative of the Provost's Office in an appropriate format (such as PDF) specified by the Provost's Office. The Provost's Office may make the article available to the public in an open-access repository.

The Office of the Dean will be responsible for interpreting this policy, resolving disputes concerning its interpretation and application, and recommending changes to the Faculty from time to time. The policy will be reviewed after three years and a report presented to the Faculty.¹⁰⁷

The Harvard FAS open access policy is important for a number of reasons. Firstly, it was a move initiated and approved by the faculty themselves. It is the faculty who sought the mandate and who by doing so, recognised that copyright is an author's right and should be managed appropriately.¹⁰⁸ Secondly, the mandate is unusual in the way it operates. By adopting the mandate, the faculty have pre-committed themselves to grant a licence to the university in any articles that they will write in the future.¹⁰⁹ Any subsequent transfer of copyright to a publisher is subject to this licence, unless the faculty member requests that the university waive the licence in respect to that particular article (i.e. "opts-out").¹¹⁰ In this way, the Harvard mandate works in a similar way to funding body mandates, such as the NIH mandate (see Chapter 6). The significance of this move is that it provides faculty members with stronger grounds when negotiating with publishers – the publisher must demand that the faculty member go back to Harvard and request a waiver of the copyright licence already granted, rather than simply saying "no" when the author requests permission to self-archive their work. As reported in the *Boston Globe*, "the open access policy presumes that the mission of academic publishing is not to make money but to create, preserve, and share knowledge."¹¹¹

The Harvard FAS open access policy can also be described as a "University Licence". A University Licence can be broadly defined as:

[A] grant of permission by a faculty member to his or her employing academic institution to use his or her peer-reviewed scholarly articles for certain purposes. These typically include depositing the article in an institutional repository, complying with funder requirements, and making the article publicly available for download. The scope and limitations of such a license may vary depending on the policy objectives of the institution...¹¹²

In the online press and commentary surrounding the introduction of the Harvard FAS policy, the terms "permission mandate" and "University Licence" have been used interchangeably. In reality, both of

¹⁰⁷ See www.fas.harvard.edu/~secfas/February_2008_Agenda.pdf accessed on 25 March 2008.

¹⁰⁸ Professor Michael Carroll, "Open Access – Preliminary Comments on the Harvard Initiative" *Carrollogos* (blog) 13 February 2008 <http://carrollogos.blogspot.com/2008/02/open-access-preliminary-comments-on.html> accessed on 15 May 2008. Note: Please be aware that although copyright is at first instance an author's right, academic authors may be subject to expectations from their funding body or academic institution to deal with their research and publications in a certain way.

¹⁰⁹ Ibid.

¹¹⁰ Michael Carroll, "Open Access – Harvard – Impact on Librarians" *Carrollogos* (blog) 13 February 2008 <http://carrollogos.blogspot.com/2008/02/open-access-harvard-impact-on.html> accessed on 15 May 2008.

¹¹¹ Globe Editorial, "Open access to brilliant insights" *The Boston Globe*, 19 February 2008, http://www.boston.com/news/education/higher/articles/2008/02/19/open_access_to_brilliant_insights/ accessed on 25 March 2008.

¹¹² Thinh Nguyen and others, *Open Doors and Open Minds: What Faculty Authors Can Do To Ensure Open Access To Their Work Through Their Institution*, A SPARC/Science Commons White Paper, April 2008, p4 http://www.arl.org/sparc/publications/guides/opendoors_v1.shtml accessed on 8 May 2008.

these terms refer to a policy comprising of two elements – the mandate itself and a non-exclusive licence granted to the employing institution. In the recent White Paper, *Open Doors and Open Minds: What Faculty Authors Can Do To Ensure Open Access To Their Work Through Their Institution*, SPARC and Science Commons explain:

Harvard’s policy implements the two important and distinct aspects of open access. First, it mandates deposit in an institutional archive. Second, it creates an automatic license that attaches to the work before the transfer of copyright to the publisher.¹¹³

Similarly, Peter Suber writes:

The policy requires two things of FAS faculty: (1) that they give Harvard non-exclusive permission “to exercise any and all rights under copyright” over their scholarly articles, which includes permission to disseminate OA copies through the institutional repository, and (2) that they send digital copies of their articles to the Provost's Office.¹¹⁴

A University Licence may vary in scope, depending on the choices made by the adopting faculty as to:

- (1) which rights are to be granted under the licence to their institution; and
- (2) whether any conditions or limitations will apply to the licence regarding duration, revocability, the right to sublicense or any other restrictions.¹¹⁵

In the *Open Doors and Open Minds* White Paper, SPARC and Science Commons identify three possible licence grants based on differing levels of scope – the “Broad License Grant”, the “Intermediate License Grant” and the “Narrow License Grant”.¹¹⁶ They describe a Broad License Grant in the following way:

As a practical matter, the broadest possible license grant to the institution is a non-exclusive, perpetual, irrevocable, worldwide license to exercise all of author’s exclusive rights under copyright, including the right to grant sublicenses. Ideally the policy should broadly encompass all of the author’s rights under copyright rather than specific enumerated rights.

A perpetual license means that the license lasts for the duration of the copyright (subject to any right of the author to terminate under statute). Worldwide means that the scope of the license is everywhere copyright protection exists, which is particularly important for online distribution through the Internet. Irrevocable means that the copyright owner (either the author or the publisher to whom copyright is assigned) may not terminate the license at will. The right of sublicense means that the institution may authorize others to exercise the copyright. For example, it would allow an institution to authorize a third party to copy and distribute the article, thus allowing distribution through a Web portal other than the institutional repository’s Web site. This right would also allow the institution to grant rights to public repositories or funders in compliance with funder mandates.

¹¹³ Ibid, p2.

¹¹⁴ Peter Suber, “The open access mandate at Harvard” *SPARC Open Access Newsletter*, Issue #199, 2 March 2008 <http://www.earlham.edu/~peters/fos/newsletter/03-02-08.htm> accessed on 20 May 2008.

¹¹⁵ See Tinh Nguyen and others, *Open Doors and Open Minds: What Faculty Authors Can Do To Ensure Open Access To Their Work Through Their Institution*, A SPARC/Science Commons White Paper, April 2008, p7 http://www.arl.org/sparc/publications/guides/opendoors_v1.shtml accessed on 8 May 2008.

¹¹⁶ Ibid, pp7-9.

Many license grants also state that the license may be exercised “in any medium” in order to avoid any interpretation that would restrict the scope of the license grant only to means of reproduction or distribution available with current technology. However, this may not be always necessary, especially if the license is broadly constructed.¹¹⁷

An “Intermediate License Grant” is one that includes restrictions that modify the scope of the licence, for example, a restriction specifying that the licence will only be exercised after an embargo period.¹¹⁸ The Harvard policy is considered by the authors of the White Paper to fall within this category because it contains a limitation that the articles deposited cannot be “sold for a profit” by the university.¹¹⁹ This means that a faculty author can still grant an exclusive licence to a publisher to sell their article for a profit, or can reserve that right for themselves.¹²⁰

The Harvard FAS open access policy also includes an “opt-out” provision. Faculty may opt-out of both the requirement to forward their article to the Provost's Office for inclusion in the repository and the requirement to grant to Harvard a non-exclusive licence in relation to their article. However, they must provide a written request to their Dean that the policy be waived for their particular article, and they must explain the need for the waiver.

Peter Suber has commented on the opt-out provision as follows:

Does the existence of an automatic opt-out, even with a small administrative hurdle, vitiate the policy? Not at all. Think of a classroom in which teachers require students to sign out before leaving the room. The “waiver” is automatic and students use it. But it's the exception and most students are in their seats most of the time. The policy sends the signal about what is expected, and the expectation alone, perhaps with a small administrative hurdle, makes the scene very different from one with no policy at all.¹²¹

However, he also notes:

So far we don't know whether Harvard will allow partial waivers. For example, could a faculty member agree to give Harvard non-exclusive permission to host a postprint in the IR, but not agree to make the postprint OA until the publisher's embargo runs?¹²²

The final type of University Licence identified in the SPARC/Science Commons White Paper is the “Narrow License Grant”, which is described as:

A narrow license grant might provide the institution only the right to deposit the article in the institutional repository and make it available only by means of the repository's Web site.¹²³

SPARC and Science Commons outline a number of drawbacks to the Narrow License Grant, including that it may not provide an adequate mechanism for complying with funder mandates that require

¹¹⁷ Ibid, p7.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

¹²⁰ Ibid.

¹²¹ Peter Suber, “The open access mandate at Harvard” *SPARC Open Access Newsletter*, Issue #199, 2 March 2008 <http://www.earlham.edu/~peters/fos/newsletter/03-02-08.htm> accessed on 20 May 2008.

¹²² Ibid.

¹²³ Thinh Nguyen and others, *Open Doors and Open Minds: What Faculty Authors Can Do To Ensure Open Access To Their Work Through Their Institution*, A SPARC/Science Commons White Paper, April 2008, p8 http://www.arl.org/sparc/publications/guides/opendoors_v1.shtml accessed on 8 May 2008.

deposit in a public repository such as PubMed Central (see Chapter 6) and its failure to anticipate future technology may eventually necessitate revisiting the issue.¹²⁴

As stated above, the Harvard University Licence was a “ground up” initiative, in the sense that the faculty themselves came together and agreed to give the university permission to host their work in the institutional repository rather than the university administration imposing a mandate on the faculty from the “top down”. In this regard, it is difficult to say exactly how the mandate will be binding on the faculty and particularly on new members of the faculty who join after the original decision is made. Presumably, the policy will purport to be binding in the same way that deposit mandates may be binding – through an employment contract that provides that the employee agrees to abide by all policies implemented by the university and the faculty.¹²⁵

Under the Harvard policy, faculty email their work to the newly formed Office for Scholarly Communication, which will then deposit the work in the university repository on behalf of the faculty member. On 22 May 2008, Harvard Provost Steven E. Hyman announced that Professor Stuart M. Shieber, who was instrumental in formulating the Harvard FAS Policy, would be the director of the Office for Scholarly Communication.¹²⁶ As at May 2008, the Harvard repository has not yet launched.

Peter Suber asks:

[I]f the faculty was willing to self-impose the expectation that they should send their eprints to the Provost's Office, why not self-impose the expectation that they should deposit them directly in the IR? I don't know. But I suspect the answer is that the faculty wanted to lower the barrier to compliance, or reduce the burden on faculty, and understood that it's easier to email an eprint than to deposit one in a repository, even if the difference is small.¹²⁷

Institutions that intend to adopt this method to populate their institutional repository should be mindful of other issues normally dealt with by a Repository Deposit Licence (RDL). A Repository Deposit Licence is a copyright licence that is usually entered into by academic authors at the time of depositing their work into the IR.¹²⁸ The RDL grants to the hosting institution the necessary rights to be able to make the work publicly available in the IR. Additionally, as a risk management strategy the RDL will usually deal with issues such as obtaining warranties from the faculty that their work does not infringe a third party's legal rights and providing warranties to the faculty that their moral rights will be respected. Harvard's University Licence is brief and does not presently require the university or faculty members to provide any warranties in relation to the work. Further, it seems that after granting the initial University Licence, Harvard faculty are not then required to enter into any other agreements with Harvard regarding their work. They must simply email their work to the Office for Scholarly Communication and their obligations are fulfilled. It may be that as the University Licence allows Harvard to “exercise any and all rights under copyright”, Harvard does not consider any further agreements or licences necessary. Additionally, the University Licence allows Harvard to sublicense

¹²⁴ Ibid.

¹²⁵ For case law addressing the issue of whether an institution can enforce university policies (in the context of patent ownership) through a faculty member's employment contract (by reference, either specific or general, to the policies in the employment contract) see: *Victoria University of Technology v Wilson and Others* [2004] VSC 33 and *University of Western Australia v Gray (No 20)* [2008] FCA 498.

¹²⁶ “Stuart M. Shieber to lead new OSC” *Harvard University Gazette Online*, 22 May 2008 <http://www.news.harvard.edu/gazette/2008/05.22/07-shieber.html> accessed on 22 May 2008.

¹²⁷ Peter Suber, “The open access mandate at Harvard” *SPARC Open Access Newsletter*, Issue #199, 2 March 2008 <http://www.earlham.edu/~peters/fos/newsletter/03-02-08.htm> accessed on 20 May 2008.

¹²⁸ For more information about Repository Deposit Licences, see section 4.5 below.

rights to third party end-users – a right that is also often dealt with in a Repository Deposit Licence. Institutions adopting Harvard’s method may choose to implement a brief University Licence similar to Harvard’s licence or they may choose a more comprehensive University Licence that addresses other issues normally covered in a RDL.

As mentioned above, the effect of the Harvard policy is that Harvard takes a licence in the faculty's work before any negotiations occur with publishers, making any transfer of copyright subject to the Harvard licence.¹²⁹ John Mark Ockerbloom explains:

By requiring (non-exclusive) rights to free, open access distribution to any new paper created under its employ, Harvard is effectively calling dibs before the publishers can. So if I’m running a repository at Harvard (or another institution with a similar policy), copyright clearance becomes much easier. I don’t have to look up and carefully parse a journal’s self-archiving policy, try negotiating with publishers, or verify that I have the permitted version of a paper to archive and the proper embargo period. As long as the paper is dated after the mandate went into place, and the paper’s not on my institution’s exception list, I can just grab and go. Or, I can accept my faculty’s and department’s self-deposits without having to go back and forth with them about whether they have the right permissions and are following the right procedures for that publisher. Publishers may want their authors to sign away the rights that they’ve given us, but they can’t, at least not without going out of their way to do so, because we already have those rights.¹³⁰

As John Mark Ockerbloom, Peter Suber and Dorothea Salo all point out, this changes the default position from non-archiving or restricted access to archiving or open access.¹³¹ Michael Carroll also notes that this “empowers the librarians to seed and to manage the institutional repository in a much more robust way.”¹³²

However, the policy is not without its critics, or at least commentators requesting clarifications. Both Noah Gray and Peter Suber note that the Harvard policy is not entirely clear about the version of the work that it expects to be submitted. Noah Gray writes:

[T]his entire policy is very vague with regards to what is meant by the scholarly article or the “final version”. Is that the final, journal-produced PDF? The peer-reviewed, unpublished, non-copy-edited version? The non-peer-reviewed pre-print?¹³³

Similarly, Peter Suber writes:

They should clarify which versions of faculty articles are covered by the policy. The resolution says the policy applies to "the final version of the article". Does that mean the published file, including the pagination and look-and-feel? Does it mean the published language without the look-and-feel? Does it mean

¹²⁹ See, for example, Peter Suber, “The open access mandate at Harvard” *SPARC Open Access Newsletter*, Issue #199, 2 March 2008 <http://www.earlham.edu/~peters/fos/newsletter/03-02-08.htm> accessed on 20 May 2008.

¹³⁰ John Mark Ockerbloom, “We call dibs! (or, the genius of the Harvard mandate)” *Everybody's Libraries*, 22 February 2008 <http://everybodyslibraries.com/2008/02/22/we-call-dibs-or-the-genius-of-the-harvard-mandate/> accessed on 20 May 2008.

¹³¹ Ibid; Peter Suber, “The open access mandate at Harvard” *SPARC Open Access Newsletter*, Issue #199, 2 March 2008 <http://www.earlham.edu/~peters/fos/newsletter/03-02-08.htm> accessed on 20 May 2008; Dorothea Salo, “Making Waves” *Caveat Lector* (blog), 13 February 2008 <http://cavlec.yarinareth.net/archives/2008/02/page/2/> accessed on 26 May 2008.

¹³² Michael Carroll, “Open Access – Harvard – Impact of Librarians” *Carrollogos* (blog), 13 February 2008 <http://carrollogos.blogspot.com/2008/02/open-access-harvard-impact-on.html> accessed on 8 May 2008.

¹³³ Noah Gray, “Harvard open-access policy – can you please be more specific?” *Action Potential* (Nature Neuroscience blog), 14 February 2008 http://blogs.nature.com/nn/actionpotential/2008/02/ng_harvard_open-access_policy.html#91904 accessed on 20 May 2008.

the language approved by peer review but not necessarily copy edited? Could it mean more than one of these things so that faculty would have to submit more than one version of the same article?¹³⁴

Peter Suber has also raised the issue of the timing of faculty submissions to the Provost's Office, pointing out that the policy is not clear about when faculty must submit their work.¹³⁵ He also notes that the policy is silent about how quickly the Provost's Office must deposit submitted work into the repository once it is received. He says:

If [the Provost's Office] works quickly, it could provide OA at or before the moment the article is published. If it works slowly, it will miss a beautiful opportunity to use the permissions it already has in hand. If it delays 6-12 months, then it may as well defer to publisher embargoes.¹³⁶

Finally, Deven Desai writes:

...although the policy of open-access has merits, when mandated by the University it appears that certain Creative Commons approaches are negated. [Further], derivative works problems seem to lurk in this policy. Put differently, where does ShareAlike and non-derivative work restriction fit if at all?¹³⁷

For more academic and publisher responses to the Harvard FAS mandate, see Peter Suber's blog, *Open Access News* as at 13 and 14 February 2008 at http://www.earlham.edu/~peters/fos/2008_02_10_fosblogarchive.html.

Harvard has created an Addendum to Publication Agreement, which is included in the SPARC/Science Commons White Paper and which Harvard authors can use when submitting articles to publishers.¹³⁸ The Addendum notifies the publisher that the author has previously granted a non-exclusive licence to Harvard University and states that the publication agreement is subject to and qualified by that licence.

The SPARC/Science Commons White Paper provides:

If certain statutory formalities are met, a non-exclusive license such as the University License will prevail over a conflicting assignment of copyright to a publisher without the need for further action on the part of the author. This is a main advantage of adopting a University License. To be certain, however, the author should provide some form of notice to the publisher at the time that the publication agreement is entered into that any representations are qualified by the grant of the University License or any other license mandated by funders.¹³⁹

Professor Michael Carroll has written about the risks Harvard authors face if they do not alert their publishers to the fact of the previously granted licence to Harvard University. For more information, see his blog post, "Open Access – Harvard – Author Education" at <http://carrollogos.blogspot.com/2008/02/open-access-harvard-author-education.html>.

¹³⁴ Peter Suber, "The open access mandate at Harvard" *SPARC Open Access Newsletter*, Issue #199, 2 March 2008 <http://www.earlham.edu/~peters/fos/newsletter/03-02-08.htm> accessed on 20 May 2008.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Deven Desai, "Open Crimson: Harvard's Arts and Sciences Goes Open Access" *Concurring Opinions*, 13 February 2008 http://www.concurringopinions.com/archives/2008/02/open_crimson_ha.html accessed on 20 May 2008.

¹³⁸ See Tinh Nguyen and others, *Open Doors and Open Minds: What Faculty Authors Can Do To Ensure Open Access To Their Work Through Their Institution*, A SPARC/Science Commons White Paper, April 2008, p11 http://www.arl.org/sparc/publications/guides/opendoors_v1.shtml accessed on 8 May 2008.

¹³⁹ Ibid, pp8-9.

On 7 May 2008, the Harvard Law School also unanimously adopted an open access policy along the same lines as the Harvard FAS policy described above. For more information, see Peter Suber, “Harvard Law School joins Harvard FAS in mandating OA” *Open Access News* (blog), 7 May 2008 <http://www.earlham.edu/~peters/fos/2008/05/harvard-law-school-joins-harvard-fas-in.html> accessed on 8 May 2008.

What support is offered to self-archiving faculty?

Although the process of self-archiving your work and negotiating your rights may seem a daunting one, you will usually find a strong support network at your institution. This network may comprise of a repository manager who can answer your questions about the repository, a copyright officer who can assist you with managing your copyright, and trained library staff who can help you to deposit your work.

For example, the University of Rochester has implemented the following support structure:

Simultaneously, we are implementing a new content recruitment and user support structure that we hope will make it easier for us to reach out to faculty members, and for faculty members to get the support they need from us, in person and online.

This new structure is based on “library liaisons”, trained subject librarians who are assisting our designated IR collection developer in recruiting content. Library liaisons are available to meet with our faculty members individually or at their departmental meetings to provide information about the benefits of the IR and how it works. Library liaisons and catalogers will also work behind the scenes after faculty members have begun the process of submitting work to the IR by providing support in completing metadata and assigning deposits to appropriate collections.¹⁴⁰

Additionally, many institutions will provide online guidance in the forms of Frequently Asked Questions (FAQ), deposit guides and electronic tutorials. For example, the QUT online assistance can be accessed at: <http://eprints.qut.edu.au/>.

You may also find it useful to speak to your colleagues about their experiences with self-archiving their work.

4.4 Depositing material into the repository

What should you deposit?

Your institution’s open access policy should address what material will or will not be accepted for deposit in the institutional repository. Usually, accepted material will include journal articles, research papers, book chapters and conference papers.

The most common version of deposited material – especially for journal articles - is the author’s final

¹⁴⁰ Nancy Fried Foster and Susan Gibbons, “Understanding Faculty to Improve Content Recruitment for Institutional Repositories” 11(1) *D-Lib Magazine*, January 2005, <http://www.dlib.org/dlib/january05/foster/01foster.html> accessed on 25 March 2008.

version. The author's final version is the version after peer-review, which is accepted by the publisher for printing.¹⁴¹ Where the publisher will allow the publisher's final PDF file to be archived – which is the version including copy-editing and formatting – this is usually preferred.

Some institutions will permit the deposit of pre-prints into the repository and some will not. Where pre-prints are accepted, you should be sure to clearly label the version of any documents deposited. This will assist users of the repository in their research, and will also highlight to them when your material has been peer-reviewed so that it can be relied upon with confidence.

Your repository manager and liaison librarians should be able to assist you with depositing your work into the institutional repository. For more information on how institutional repositories are developed and operated, see the OAK Law Project publication: *A Guide to Developing Open Access Through Your Digital Repository*.¹⁴²

Time and effort

Some authors are reluctant to deposit their work because they believe that it takes a lot of time and effort to do so. How long deposit will take is an understandable concern, particularly for authors with already heavy research schedules. However, evidence shows that it only takes most researchers a few minutes to self-archive their work.¹⁴³ It may take you longer the first time that you self-archive, but as you become accustomed to the system, the time it takes to deposit your work will rapidly decrease.

A survey undertaken by the Joint Information Systems Committee (JISC) in 2005 found that only 20% of authors found some degree of difficulty with the first act of depositing an article in a repository, and that this dropped to 9% for subsequent deposits.¹⁴⁴

Similarly, a study carried out by Les Carr and Stevan Harnad found that the time required for deposit averaged 10 minutes per paper. Considering the rate at which authors had their work archived for them by others (such as librarians or assistants), an author who published one paper per month (an ambitious rate) would spend less than 40 minutes per year on their deposits.¹⁴⁵ Harnad estimates that in the UK alone:

[T]he failure of British researchers to self-archive means that they are annually spurning up to £2,541,500 worth of potential rewards – all for the want of “the few extra keystrokes per article it would have taken to archive their final drafts.”¹⁴⁶

¹⁴¹ SHERPA, “Fifteen Common Concerns – and Clarifications” 2006, <http://www.sherpa.ac.uk/documents/15concerns.html> accessed on 18 March 2008.

¹⁴² Kylie Pappalardo and Dr. Anne Fitzgerald, “A Guide to Developing Open Access Through Your Digital Repository”, *OAK Law Project*, September 2007, available at <http://www.oaklaw.qut.edu.au/node/32> or <http://www.oaklist.qut.edu.au>.

¹⁴³ See Alma Swan, “Open access self-archiving: An Introduction” *Key Perspectives*, May 2005, www.ecs.soton.ac.uk/~harnad/Temp/jiscsum.pdf accessed on 24 March 2008.

¹⁴⁴ Alma Swan and Sheridan Brown, “Open access self-archiving: An author study” JISC, May 2005, http://www.jisc.ac.uk/aboutus/committees/working_groups/scholarly_comms.aspx#downloads accessed on 25 March 2008.

¹⁴⁵ See Leslie Carr and Stevan Harnad, “Keystroke Economy: A Study of the Time and Effort Involved in Self Archiving” (unpublished), *University of Southampton*, 2005, <http://eprints.ecs.soton.ac.uk/10688/01/KeystrokeCosting-publicdraft1.pdf> accessed on 25 March 2005; see also Peter Suber, “Six things that researchers need to know about open access” 94 *SPARC Open Access Newsletter*, 2 February 2006, <http://www.earlham.edu/~peters/fos/newsletter/02-02-06.htm> accessed 25 March 2008.

¹⁴⁶ Richard Poynder, “Open Access: Beyond selfish interests” *Open and shut?* (blog), 20 November 2006,

Peter Suber advises:

If you're worrying about adding a new task regardless of the time required, then think about the many more time consuming jobs you already do to make your work known to the world, such as keeping your c.v. up to date, mailing offprints, and sending your bibliography to deans and department chairs. Self-archiving takes less time and has more impact than any of these.¹⁴⁷

4.5 Copyright and institutional repositories: issues

Copyright is an important consideration when deciding whether to self-archive your work. Depositing your work into an institutional repository and making it openly available is an exercise of the copyright owner's exclusive rights of reproduction and communication (see Chapter 3). Thus, you will only be able to deposit your work if you are the copyright owner or if you have permission from the copyright owner. Whether or not you are the copyright owner of your work will depend on whether you have assigned copyright to your publisher or merely issued them a Licence to Publish (see Chapter 3).

Do you have the right to deposit your published work?

As stated above, you will only be able to self-archive your work if you are the copyright owner or if you have permission from the copyright owner. The person most likely to be the copyright owner of your work – other than you – is your publisher. If you have assigned copyright to your publisher, you will need to obtain their permission to self-archive your work.

It is imperative that you read your publishing agreement carefully and determine whether your publisher is seeking an assignment of copyright, an exclusive licence or a non-exclusive licence. Where the publisher is seeking an assignment or an exclusive licence, you may want to negotiate the terms of the publishing agreement so that you retain more rights. This is especially important if your institution has a deposit mandate or permission mandate to which you are subject. You will need to inform your publisher of your institution's mandate and retain or acquire the necessary rights to allow you to abide by that mandate. Negotiating publishing agreements is addressed in Chapters 8 and 9.

Where you have assigned copyright to a publisher, you will need a licence from them permitting you to make your work available in your institutional repository. Many publishers have general open access policies that state what they allow to be deposited and any conditions imposed on that deposit. Several large publishers, such as Springer and Elsevier, have adopted these "repository-friendly policies".¹⁴⁸

The number of publishers supporting open access is growing. Stevan Harnad and Tim Brody have reported that from 2003 to 2004, the number of journals allowing self-archiving rose from 55% to 83%.¹⁴⁹ The most recent figure was reported in the February 2008 issue of the *SPARC Open Access*

<http://poynder.blogspot.com/2006/11/open-access-beyond-selfish-interests.html> accessed on 24 March 2008, quoting Stevan Harnad.

¹⁴⁷ Peter Suber, "Six things that researchers need to know about open access" 94 *SPARC Open Access Newsletter*, 2 February 2006, <http://www.earlham.edu/~peters/fos/newsletter/02-02-06.htm> accessed 25 March 2008.

¹⁴⁸ SHERPA, "Fifteen Common Concerns – and Clarifications" 2006, <http://www.sherpa.ac.uk/documents/15concerns.html> accessed on 18 March 2008.

¹⁴⁹ Stevan Harnad and Tim Brody, "Comparing the Impact of Open Access (OA) vs. Non-OA Articles in the Same Journals"

Newsletter (issue #118) – that of the 10,000 journal policies recorded on SHERPA/RoMEO,¹⁵⁰ a full 91% now support pre-print and/or post-print archiving.¹⁵¹

Sometimes publishers will include reference to self-archiving in their publishing agreements, but more often their terms are included in a separate open access policy. Where your publishing agreement is silent or ambiguous about self-archiving, you can search for your publisher's self-archiving policy online. There are two excellent and easy-to-use resources available online to assist you in searching for publisher policies. SHERPA (Securing a Hybrid Environment for Research Preservation and Access) has constructed the SHERPA/RoMEO database – an online database of publisher's copyright and self-archiving policies – which is available at <http://www.sherpa.ac.uk/romeo.php>. The OAK Law Project has also launched OAKList, an Australian database of copyright agreements and open access policies from both Australian and international publishers, which is available at: <http://www.oaklist.qut.edu.au>.

Where your publisher has made their open access policy available online, you may not need to seek a separate licence for self-archiving, provided you abide by the terms of the policy. Although the legal status of these policies has never been fully tested, the better view is that they will bind the publisher. For certainty, however, you may wish to seek express, written permission from your publisher. You may request that the publisher include a term about self-archiving in their publishing agreement, or you may simply seek via letter or email written confirmation that you may rely on the publisher's online open access policy. If the publisher is committed to honouring their open access policy, they should not object to providing written confirmation of this fact or to including a relevant clause in their publishing agreement.

Where you are relying on a publisher's open access policy, be careful to follow all conditions set out in the policy to avoid any liability for copyright infringement. For example, some publishers impose an embargo period on deposit or access. This means that for the length of the embargo period – usually 6 to 12 months – you cannot make your work openly available, but at the conclusion of that period you are free to distribute it over the Internet or from a repository with no access restrictions.

If you are confused by the wording of the open access policy, seek clarification from your publisher. You will also need to contact your publisher to seek a separate licence where you wish to exercise rights beyond those permitted in the open access policy, such as applying a Creative Commons licence to your work (see Chapter 8).

If your publisher does not appear to have an open access policy, do not be disheartened. Some publishers will grant permission to self-archive on a case-by-case basis. For example, Elsevier routinely granted individual requests until mid-2004 when it decided to offer a blanket permission instead.¹⁵² Likewise, in a 2007 survey of publishers conducted by the OAK Law Project, it was discovered that of the 17 publishers that did not have a policy formally supporting self-archiving, 11 of those publishers would have allowed some form of self-archiving if asked.¹⁵³

10(6) *D-Lib Magazine*, June 2004, <http://www.dlib.org/dlib/june04/harnad/06harnad.html> accessed on 25 March 2008.

¹⁵⁰ A database of publishers' self-archiving policies, available at <http://www.sherpa.ac.uk/romeo.php>.

¹⁵¹ Peter Suber, *SPARC Open Access Newsletter*, issue 118, 2 February 2008, <http://www.earlham.edu/~peters/fos/newsletter/02-02-08.htm> accessed on 25 March 2008.

¹⁵² Peter Suber, "Six things that researchers need to know about open access" 94 *SPARC Open Access Newsletter*, 2 February 2006, <http://www.earlham.edu/~peters/fos/newsletter/02-02-06.htm> accessed on 25 March 2008.

¹⁵³ Dr Anne Fitzgerald and Amanda Long, "A Review and Analysis of Academic Publishing Agreements and Open Access Policies" (Version 1), *OAK Law Project*, February 2008, available at <http://www.oaklist.qut.edu.au>.

For more on publishers and publishing agreements see Chapter 7; for more on negotiating a proper allocation of rights between you and publisher see Chapters 8 and 9.

Granting rights to the repository institution: Repository Deposit Licences

In order to be able to make your work accessible to the public through an institutional repository, your institution requires you to grant it certain rights. These are copyright-related rights that will allow the institution to make copies of your work for the purposes of the repository (reproduce your work), electronically communicate your work to the public via the repository, and convert your work to different formats for the purpose of preservation.

Usually, your institution will require you to grant these rights through a Repository Deposit Licence (RDL).¹⁵⁴ The RDL will explain the rights required by the institution and request you to grant these rights by agreeing to the licence. To be able to legally agree to the RDL, you will need to be the copyright owner or have permission from the copyright owner. Where you have assigned copyright to your publisher, you should seek permission from your publisher to grant the rights contained in the RDL.

Sometimes, the rights requested in the RDL will not go further than what is permitted by your publisher's open access policy and the pragmatic (although legally untested) view is that you will not need to seek a separate licence. However, for certainty, you may want to seek written confirmation from your publisher, via email or letter, that you may rely on the open access policy (see above). Where the RDL requires more rights than what the publisher's policy currently allows, or where you are unsure about whether the publisher's policy covers the rights sought in the RDL, it is best to seek a separate licence from your publisher. For help in understanding the RDL, speak to your repository manager. For help in understanding how your publishing agreement impacts on your ability to enter into the RDL, speak to your institution's copyright officer.

Some Repository Deposit Licences will also provide for situations where you have deposited work while you are still the copyright owner, but then you subsequently assign copyright to a publisher who does not consent to the material remaining in the repository. In these situations, most institutions will permit you to remove the material from the repository. However, you should check the terms of your RDL or ask your repository manager about the procedure at your institution.

A RDL may also require you to consent to the institution converting your work into different digital formats for preservation and other purposes. Institutions may request this consent because without it, such actions could be considered an infringement of your moral right of integrity of authorship.

For more on granting rights, see Chapter 8. For more information on Repository Deposit Licences, see the OAK Law Project publication: *A Guide to Developing Open Access Through Your Digital Repository*.¹⁵⁵

¹⁵⁴ Where your institution has a University Licence in place (such as that adopted by the Harvard Faculty of Arts and Sciences and the Harvard Law School – see above), these rights may be granted in the University Licence rather than in a separate Repository Deposit Licence.

¹⁵⁵ Kylie Pappalardo and Dr. Anne Fitzgerald, "A Guide to Developing Open Access Through Your Digital Repository", *OAK Law Project*, September 2007, available at <http://www.oaklaw.qut.edu.au/node/32> or <http://www.oaklist.qut.edu.au>.

Granting rights to users: End-User Licences

When you deposit your work into an institutional repository, it becomes openly accessible to all users on the internet. These users can freely read your work and engage in uses that are permitted by law as a “fair dealing” (see Chapter 3). However, you may wish to allow users to engage in a wider variety of uses – for example, to use your work in their teaching. You can allow these further uses by granting a licence to users (called an End-User Licence).¹⁵⁶

Again, to be able to grant this licence you must be the copyright owner or have permission from the copyright owner. Where you have assigned copyright to your publisher, you will need specific permission to grant these rights to users. You may need to negotiate with your publisher to obtain such permission. Chapter 8 explains in detail how you can grant further rights to users. Chapter 9 considers options to assist you in negotiating with your publisher.

4.6 Common concerns about institutional repositories

This section addresses some common concerns that authors have about institutional repositories.

Will depositing your work reduce your chances of being published?

Depositing your work into an institutional repository will not reduce your chances of being published. As stated above, 91% of journals listed in the SHERPA/RoMEO database now support self-archiving of some kind. Additionally, Peter Suber reports that the number of journals still following the Ingelfinger Rule¹⁵⁷ – that is, refusing to publish papers that have already been made available – is diminishing.¹⁵⁸ In 2006, only 7% of surveyed journals still followed the Ingelfinger Rule,¹⁵⁹ and that figure is likely to be less today.

Are institutional repositories professional?

Some authors express concern that repositories are not considered professional and that self-archived articles are not considered to be quality papers.

The critical point to remember is that most self-archived articles are simply copies of fully peer-reviewed articles that have already been published or are soon to be published in learned, well-respected journals. Many repositories will identify when and where a self-archived article was published, thus retaining the perception of quality endowed by the journal. Repositories merely provide another means for researchers to locate quality, peer-reviewed literature.

¹⁵⁶ Note that an end-user need not necessarily be an individual – your own university could be considered an end-user. As far as rights granted to your university as end-user are concerned, these rights may be granted in a University Licence of the kind adopted by the Harvard Faculty of Arts and Sciences and the Harvard Law School (see above), in a Repository Deposit Licence (RDL), or in an End-User Licence that applies equally to the university as it does to individual end-users.

¹⁵⁷ This rule is named after a former editor at the *New England Journal of Medicine*.

¹⁵⁸ Peter Suber, “Six things that researchers need to know about open access” 94 *SPARC Open Access Newsletter*, 2 February 2006 <http://www.earlham.edu/~peters/fos/newsletter/02-02-06.htm> accessed on 25 March 2008.

¹⁵⁹ Ibid.

More and more academic institutions are establishing institutional repositories, including highly regarded institutions such as Harvard University. Moreover, many institutions maintain two repositories – one for faculty research publications and another for graduate student theses. This keeps the work of professional staff separate from that of their students.

Will making your work easily available encourage plagiarism?

A common concern is that providing easy access to work will encourage plagiarism, especially by students. In fact, open access discourages plagiarism by making it easier to detect. SHERPA explains, “It is far easier to detect [plagiarism] if the original, date-stamped material is freely accessible to all, rather than being hidden in an obscure journal.”¹⁶⁰

How will people find your work in the institutional repository?

Some academics have not deposited into an institutional repository because they fail to see the relevance to research practices – how will researchers with no affiliation to the author’s institution find the author’s work in the institutional repository? How will researchers know where to look?

Fortunately, researchers do not have to know where to look. Repositories have been designed to be interoperable through the use of common metadata standards developed by the Open Archives Initiative (OAI). In other words, as long as the repositories contain OAI-compliant metadata, all repositories can be searched via mainstream search engines such as Google, Google Scholar and Yahoo.

SHERPA explains:

Such *institutional repositories* share records about their content with service providers, who then offer search services to users across every record that they hold. This means that a researcher using a search service is searching across all repositories, not just individual ones. Once the researcher finds a record, then they can view the full-text direct from the institutional repository. As well as services which just search repositories, the full-text is also searched by Google, Yahoo and others.¹⁶¹

“Metadata” is the information entered into repository records to describe the material deposited. For example, metadata includes the name of the article deposited, your name as author of the article, and where and when the article was published. Although it may seem a tedious task, it is imperative to enter full and correct metadata at the time of depositing your article. Without it, your article cannot be properly indexed by search engines, thus reducing the likelihood that it will be found and cited by researchers. By entering incomplete or inaccurate metadata, you are only acting to reduce your chances of improved research impact that can be gained by self-archiving.

The fact that institutional repositories are indexed by large search engines such as Google is an important advantage. In 2005 it was found that 72% of authors used Google to search web for

¹⁶⁰ SHERPA, “Fifteen Common Concerns – and Clarifications” 2006, <http://www.sherpa.ac.uk/documents/15concerns.html> accessed on 18 March 2008.

¹⁶¹ SHERPA, “Authors and Open Access” 2006, <http://www.sherpa.ac.uk/guidance/authors.html> accessed on 25 March 2008; see also Alma Swan, “Open access self-archiving: An Introduction” *Key Perspectives*, May 2005, www.ecs.soton.ac.uk/~harnad/Temp/jiscsum.pdf accessed on 24 March 2008.

scholarly articles,¹⁶² and by 2006 this figure was 75%.¹⁶³

Aren't there better places to post your work?

It may seem unnecessary to deposit your work into an institutional repository because your work is already available online either on your personal website, your publisher's website or in a subject-based repository. However, there are ample reasons for depositing your work in an institutional repository as well.

Firstly, subject-based repositories and institutional repositories are not in competition. They can and do contain the same material. By depositing your work in more than one repository, you simply increase the likelihood that it will be found by potential users.

Secondly, as explained above, institutional repositories are easily searchable through the most frequently used search engines. Users can find a work in an OAI-compliant archive without knowing which archives exist, where they are located or what they contain.¹⁶⁴ Work deposited into an institutional repository is more likely to be found than work posted only on a personal webpage.¹⁶⁵

Thirdly, institutional repositories offer value-added services that cannot be found elsewhere, such as personal "Researcher Pages" that list your achievements and publications and provide direct links to your publications in the repository.

Finally and most importantly, institutional repositories are focused on long-term preservation of their content. Dedicated staff have the responsibility of maintaining content in readily-accessible formats and protecting your work from loss or destruction. University-based archives are also more stable than publisher webpages, which may be affected by restructuring or the commercial decisions of the publisher.¹⁶⁶ Put simply, articles in an institutional repository – and links to the articles – will remain stable, readable and permanently accessible.¹⁶⁷

¹⁶² Alma Swan, "Open access self-archiving: An Introduction" *Key Perspectives*, May 2005, www.ecs.soton.ac.uk/~harnad/Temp/jiscsum.pdf accessed on 24 March 2008.

¹⁶³ Kristin Antelman, "Self-archiving practice and the influence of publisher policies in the social sciences" 19(2) *Learned Publishing*, April 2006, 85-95, <http://eprints.rclis.org/archive/00006023/> accessed on 24 March 2008.

¹⁶⁴ Peter Suber, "Open Access Overview" *Open Access News* (blog), last revised 19 June 2007, <http://www.earlham.edu/~peters/fos/overview.htm> accessed on 24 March 2008.

¹⁶⁵ SHERPA, "Fifteen Common Concerns – and Clarifications" 2006, <http://www.sherpa.ac.uk/documents/15concerns.html> accessed on 18 March 2008.

¹⁶⁶ See footnote 82; see also Alma Swan, "Open access self-archiving: An Introduction" *Key Perspectives*, May 2005, www.ecs.soton.ac.uk/~harnad/Temp/jiscsum.pdf accessed on 24 March 2008.

¹⁶⁷ SHERPA, "Fifteen Common Concerns – and Clarifications" 2006, <http://www.sherpa.ac.uk/documents/15concerns.html> accessed on 18 March 2008.

Chapter 5: Open access journals

5.1 What are open access journals?

Open Access Journals (or OA journals) are electronic-based journals that make their published content available freely to all immediately upon publication. They differ from traditional journals (toll access journals) in that their business-model is not based on subscriptions – i.e. readers are not charged fees to access the journal's content.

5.2 Why did open access journals come about?

In the last three decades, the cost of subscriptions to toll access journals has risen four times faster than inflation and is still rising.¹⁶⁸ It has been estimated that by 2000, the average annual subscription of science and technology journals had increased by 80% over the previous decade.¹⁶⁹ The result of such price increases has meant that universities can no longer afford subscriptions to all of the journals that their researchers need. In fact, they can no longer afford subscriptions to even most of the journals that their researchers need. The situation is worse for smaller and rural institutions that do not have the research budgets of their larger counter-parts. And it is worse still for institutions in developing countries, where researchers can often not get access to up-to-date research at all.¹⁷⁰

Open access journals have emerged as a potential answer to this access problem. By making content available online for free, OA journals guarantee that anyone with access to the internet also has access to timely and useful research publications.

5.3 Copyright arrangements

The difference in copyright arrangements between toll access journals and open access journals is that generally authors who publish in open access journals are able to retain their copyright. Instead of assigning copyright to the publisher (as is the usual practice with toll access journals), the author issues a licence to the publisher that is sufficient to grant enough rights to allow the publisher to publish and market the article. The author remains free to deal with the article as he or she pleases – for example, by posting the article online, sharing the article with colleagues and reusing the article in his or her own work and teaching.

Authors may also choose to grant general reuse rights to readers and users. This can be done by applying a Creative Commons licence or other open content licence to their work (see Chapter 8). Some open access publishers will publish under a Creative Commons licence, so that applying the licence becomes a condition of publishing in that journal.

¹⁶⁸ Peter Suber, "Open Access Overview" *Open Access News* (blog), last revised 19 June 2007, <http://www.earlham.edu/~peters/fos/overview.htm> accessed on 24 March 2008.

¹⁶⁹ Richard Poynder, "Open Access: Beyond selfish interests" *Open and shut?* (blog), 20 November 2006, <http://poynder.blogspot.com/2006/11/open-access-beyond-selfish-interests.html> accessed on 24 March 2008 (quoting economist Danny Quah).

¹⁷⁰ See SHERPA, "Authors and Open Access" 2006, <http://www.sherpa.ac.uk/guidance/authors.html> accessed on 25 March 2008; for more on the divide caused by inflated journal prices, see Chapter 2.

Even though open access journals generally have more liberal copyright arrangements, always take care to thoroughly read and understand the conditions that you are publishing under. Some publishers' licences will be more liberal than others. For example, some publishers will seek to impose the condition that while the article is made open access, it is only made available from the publisher's own website and not from the author's institutional repository. More on the copyright arrangements of specific open access and hybrid journals is found at 5.9.

5.4 Publication fees

The question can be asked, if OA journals do not charge subscription fees then how do they afford to operate? Some open access journals charge publishing fees to cover their costs. Generally, publication fees (sometimes called article-processing fees or author fees) are charged to offset publishing costs involved in managing peer review, typesetting and indexing of articles, supporting sales and marketing costs and preserving and archiving the published article.

The price charged by OA journals for publication varies widely, but as an example, the OA journal *PLoS ONE* (published by the Public Library of Sciences) charges US \$1250 per article.

The publication costs charged by some OA journals may seem expensive, but many commentators have argued that they only seem expensive because we have been conditioned to think of publishing as a content-providing enterprise rather than a *service*-providing one. As Karla L. Hahn writes:

The assumption that publishing is about content provision remains largely unexamined. This assumption shapes pricing models, copyright policies, and a host of other practices. Yet, clearly this assumption is no longer useful.¹⁷¹

Commentators argue that the assumption that a publisher is solely or even primarily a content-provider to the reading public is no longer useful because it ignores the crucial fact that the publisher also provides important services to the author. These services include ensuring quality control of the author's work through editing and facilitating peer review and disseminating the work to the public.

Jan Velterop explains:

That is if the *service of publishing* could represent its value rather than the *published content*. The method is 'author-side' paid publishing and it entails asking authors for a financial contribution for performing a service to them instead of selling these authors' content to libraries, sustained by, if you wish to put it in the same terms, the traditional 'reader-side' payments.¹⁷²

Peter Suber uses the analogy that OA journals cover their costs in a similar way that broadcast television and radio stations do – those with an interest in disseminating the content pay the production costs upfront so that access can be free of charge for everyone with the right equipment.¹⁷³

¹⁷¹ Karla L. Hahn, "Talk About Talking About New Models of Scholarly Communication" 11(1) *Journal of Electronic Publishing*, 2008, <http://hdl.handle.net/2027/spo.3336451.0011.108> accessed on 25 March 2008.

¹⁷² Jan Velterop, "Open access and publishing" Volume 1/2008 *The E-Resources Management Handbook*, published by United Kingdom Serials Group (UKSG), 117-121, chapter was published online on 24 January 2008, <http://uksg.metapress.com/link.asp?id=dplay0kyn6nkvk7u> accessed on 24 March 2008.

¹⁷³ Peter Suber, "Open Access Overview" *Open Access News* (blog), last revised 19 June 2007, <http://www.earlham.edu/~peters/fos/overview.htm> accessed on 24 March 2008.

It is worthwhile remembering that often the publication fees will not come out of the author's own pocket. Many research funding bodies allow grant money to be used in the payment of open access publishing fees (see Chapter 6). Some institutions, also, will cover the open access publishing fees of their researchers. For example, the University of California at Berkeley has established the Berkeley Research Impact Initiative (BRII), where researchers can apply for campus funding to subsidize the entire fee for an open access journal (up to \$3000) or half the amount charged by hybrid journals.¹⁷⁴

Many open access journals that charge publication fees will also offer a discount or waiver for contributing authors who are unable to pay the fee because they are from a developing country or for some other reason. The open access journals that offer a discount or waiver include *PLoS ONE*, *Journal of the International Society of Sports Nutrition* (published by BioMed Central) and *Open Electrical & Electronic Engineering Journal* (published by Bentham Open). The Public Library of Science (PLOS), which publishes *PLoS ONE*, states on the *PLoS ONE* website that, "Editors and reviewers have no access to payment information, and hence inability to pay will not influence the decision to publish a paper."¹⁷⁵ Oxford University Press, which publishes hybrid journals including *Journal of Competition Law and Economics*, also offers publishing fee discounts and waivers for authors from developing countries. Under the Oxford Open initiative, authors from a list of over 40 developing countries ("List A") can publish for free, and authors from a list of over 30 other countries ("List B") can publish open access articles for deeply discounted fees.

Although some open access journals charge publication fees, many do not. In fact, a survey conducted in December 2007 by Bill Hooker found that 67% of the open access journals listed in the Directory of Open Access Journals (DOAJ) did not charge publication fees.¹⁷⁶ Carol Sutton and Peter Suber found that 83.3% of society OA journals did not charge publication fees,¹⁷⁷ and Heather Morrison found that less than 10% of OA journals in psychology (8 in 84) charge publication fees.¹⁷⁸

Open access journals that do not charge publication fees are usually able to do so because they are supported by a hosting institution or university (for example, *Harvard Human Rights Journal* is published and supported by Harvard Law School) or because they receive funding from external research or charitable sources. For example, *D-Lib Magazine* is produced by the Corporation for National Research Initiatives (CNRI) and *Ariadne* is funded by the Museums, Libraries and Archives Council (MLA), JISC and the European Union, and also receives support from the University of Bath.

5.5 Peer-review

There is a common misconception that OA journals do not provide peer-review at all or do not provide

¹⁷⁴ Peter Suber, "More on the OA journal fund at Berkeley" *Open Access News* (blog), 28 February 2008, http://www.earlham.edu/~peters/fos/2008_02_24_fosblogarchive.html accessed on 25 March 2008.

¹⁷⁵ <http://www.plosone.org/static/guidelines.action> accessed on 28 February 2008.

¹⁷⁶ Peter Suber, "New data showing that most OA journals charge no publication fees" *Open Access News* (blog), 3 December 2007, <http://www.earlham.edu/~peters/fos/2007/12/new-data-showing-that-most-oa-journals.html> accessed on 25 March 2008.

¹⁷⁷ Peter Suber, "Open Access in 2007" 11(1) *Journal of Electronic Publishing*, 2008 <http://hdl.handle.net/2027/spo.3336451.0011.110> accessed on 25 March 2008.

¹⁷⁸ Heather Morrison, "Less than 10% of Open Access journals in psychology charge a publication fee" *The Imaginary Journal of Poetic Economics* (blog), 2 March 2008, <http://poeticeconomics.blogspot.com/2008/03/less-than-10-of-open-access-journals-in.html> accessed on 25 March 2008.

the same level of peer-review as toll access publishers provide. However, this is not true. Open access publishing is completely consistent with peer-review.

OA journals provide a level of peer-review as rigorous and dependable as that provided by toll-access publishers. They use the same standards, the same procedures, and even the same reviewers as conventional journals.¹⁷⁹

In most cases, reviewers offer their services to journals for free. It stands to reason then that removing subscription charges does not mean that peer-review services are forfeited. Where reviewers are paid for their services, they are simply paid through revenue streams other than subscription charges.

5.6 Quality and impact studies: do open access journals measure up?

A 2002 study into the values that researchers associate with systems of publication and publication venues found that the core values were:

- peer review;
- impact;
- timeliness of publication;
- access to the publication for users;
- affordability of the publication;
- archiving (i.e. that the information will remain permanently available);
- bibliographic services such as cataloguing, abstracting and indexing; and
- reuse rights retained by the author.¹⁸⁰

A 2007 survey of academic authors (conducted by the OAK Law Project) also found that when choosing a publication or publisher, authors attached high importance to the reputation of the publisher, the quality of peer review conducted for the publication and the timeliness of publication.¹⁸¹

With the possible exception of impact/reputation (which we will come to in a moment), the above values are represented to an even greater extent in open access journals than they are in toll access journals. A key purpose of open access journals is to remove affordability and access barriers to published material, and to allow authors and users greater rights of reuse in relation to a work. Additionally, material published in open access journals is made available to the public much faster than material published in toll access journals.

One perceived disadvantage of open access journals at present is their lack of recognised research impact. Research impact can be defined as:

The degree to which findings are read, used, applied, built-upon, and cited by users in their own further

¹⁷⁹ Peter Suber, "Open Access Overview" *Open Access News* (blog), last revised 19 June 2007, <http://www.earlham.edu/~peters/fos/overview.htm> accessed on 24 March 2008.

¹⁸⁰ Dr Mark S. Frankel, "Seizing the Moment: Scientist' Authorship Rights in the Digital Age" *Report of a Study by the American Association for the Advancement of Science*, July 2002, <http://www.aaas.org/spp/sfml/projects/epub/finalrept.html> accessed on 25 March 2008.

¹⁸¹ Anthony Austin, Maree Heffernan and Nikki David, "Academic Authorship, Publishing Agreements & Open Access: Survey Results" OAK Law Project, March 2008, pp16-17 (available on the OAK Law website at: <http://www.oaklaw.qut.edu.au>).

research and applications. Research impact is a measure of the progress and productivity of research.¹⁸²

Research impact is important to authors, because it influences an author's personal reputation, chance of receiving future research funding and likelihood of promotion. The currently academic climate has become one where academics must “*publish or perish*” - and they must publish in journals that give them the desired research impact.

Michael Mabe describes the situation as follows:

The motivation for authors to be seen in a particular journal was described at a meeting of the British Computer Society Electronic Publishing Specialist Group as being primarily to: ‘...reach the eyes of their colleagues, to influence their minds and work, and thus to make an impact on knowledge (not just a contribution to it)’. However, this rather selfless description of the motivation to publish overlooks a number of key issues as far as most authors are concerned. Like their forbears of Oldenburg's time, modern authors publish to establish their own personal reputations and their priority of ideas...In addition, because publications are the only countable and assessable output of research, they have become intimately associated with the evaluation of research programmes, the researchers themselves and the institutions to which they belong. The publication records of a researcher becomes one criterion by which to assess whether they should be the recipient of future research funding; it can also be used to assess eligibility for academic posts and promotions.¹⁸³

A number of studies have been conducted in recent years to determine whether open access publications provide the same level of research impact as traditional publications. It should be noted that many of these studies use citation metrics¹⁸⁴ and/or download metrics to measure research impact. These are relatively new methods of measuring impact – the conventional method is to refer to the Thomson Scientific bibliometrics. However, because many OA journals are new, they are not yet properly covered by Thomson Scientific. Additionally, some commentators have recognised the flaws in Thomson Scientific coverage – namely, that while coverage is excellent for physics, chemistry, biological sciences and clinical medicines, it is only moderate for many humanities fields.¹⁸⁵ Nonetheless, Thomson Scientific coverage remains important in assessing research impact. Fortunately, Peter Suber reports that, “Thomson Scientific is selecting more OA journals for Impact Factors, and more OA journals are rising to the top cohort of citation impact in their fields.”¹⁸⁶

A 2004 study by the Institute for Scientific Information (ISI) found that traditional journals and OA journals had similar citation impact factors.¹⁸⁷ However, other studies have found that OA journals

¹⁸² Stevan Harnad, Tim Brody, Francois Vallieres, Les Carr, Steve Hitchcock, Yves Gingras, Charles Oppenheim, Heinrich Stamerjohanns and Eberhard R. Hilf, “The Access/Impact Problem and the Green and Gold Roads to Open Access” 30(4) *Serials Review*, 2004, <http://users.ecs.soton.ac.uk/harnad/Temp/impact.html> accessed on 25 March 2008.

¹⁸³ Michael Mabe, “(Electronic) journal publishing” Volume 1/2008 *The E-Resources Management Handbook*, published by United Kingdom Serials Group (UKSG), 56-66, chapter was published online on 10 July 2006, <http://www.uksg.org/serials#handbook> accessed on 25 March 2008.

¹⁸⁴ A citation can be defined as “the listing of a previously published article in the reference section of a current work; this is usually taken to imply the relevance of the cited article to the current work”: Ian D. Craig, Andrew M. Plume, Marie E. McVeigh, James Pringle and Mayur Amin, “Do Open Access Articles Have Greater Citation Impact??” 1(3) *Journal of Informetrics*, July 2007, 239-248, accessed the author's preprint (summary paper) at <http://www.publishingresearch.net/Citations.htm> on 25 March 2008.

¹⁸⁵ Colin Steele, Linda Butler and Danny Kingsley, “The publishing imperative: the pervasive influence of publication metrics” 19(4) *Learned Publishing*, October 2006, 277-290, <http://dspace.anu.edu.au/handle/1885/44486> accessed on 24 March 2008 (quoting Moed, H.F. (2005) *Citation Analysis in Research Evaluation*. Dordrecht: Springer, Verlag, p.3.)

¹⁸⁶ Peter Suber, “Trends Favoring Open Access” *CT Watch Quarterly*, August 2007, <http://www.ctwatch.org/quarterly/articles/2007/08/trends-favoring-open-access> accessed on 25 March 2008.

¹⁸⁷ See Stevan Harnad and Tim Brody, “Comparing the Impact of Open Access (OA) vs. Non-OA Articles in the Same

have significantly higher citation impact factors than toll access journals. As noted above, Lawrence (2001) found that for computer science journals, the citation impact of OA articles is 336% higher than the impact of non-OA articles.¹⁸⁸ Similar results have been reported for astrophysics¹⁸⁹ and mathematics.¹⁹⁰ Studies in physics have shown the ratio to be even higher.¹⁹¹ Recent studies by Zhang (2006)¹⁹² and Eysenbach (2006)¹⁹³ have confirmed the OA advantage.

Eysenbach writes:

Rather, there seems to be a sustained effect on the absolute number of citations. In other words, there seems to be not only an advantage in terms of immediacy...but also in terms of the total impact (as measured by the absolute number of citations received over a longer period of time)...It is hard to see how faster and increased utilization and uptake of research results will *not* benefit science, at least in terms of accelerating the speed by which new results are verified, falsified, or built upon by others.¹⁹⁴

Increasingly, authors themselves are recognising the value of open access publishing. In a survey of academic authors conducted by the OAK Law Project in 2007, one participant made this comment:

I believe in open access publishing whenever possible. The problem is that academic audit culture (e.g. RQF, journal impact factors, etc.) works in the other direction, forcing authors back to commercial publishers that want copyright licensed or assigned. Open access journals are lowly weighted in these exercises, even though **they get read more often, generate more reputation** (as measured through conference invitations, etc.) and at least in my field **are at the cutting edge of advance**. [Author's own emphasis added].¹⁹⁵

Journals" 10(6) *D-Lib Magazine*, June 2004, <http://www.dlib.org/dlib/june04/harnad/06harnad.html> accessed 25 March 2008; and J Pringle, "Do open access journals have impact?" *Nature* (Web Focus), 2004, <http://www.nature.com/nature/focus/accessdebate/19.html> accessed 25 March 2008..

¹⁸⁸ Steve Lawrence, "Online or Invisible?" 411(6831) *Nature*, 2001, 521, <http://citeseer.ist.psu.edu/online-nature01/> accessed on 25 March 2008; see also Yanjun Zhang, "The Effect of Open Access on Citation Impact: A Comparison Study Based on Web Citation Analysis" 56(3) *Libri*, September 2006, 145-156, <http://www.librijournal.org/2006-3toc.html> accessed on 25 March 2008.

¹⁸⁹ M.J. Kurtz, "Restrictive access policies cut readership of electronic research journal articles by a factor of two", Harvard-Smithsonian Centre for Astrophysics, Cambridge, MA, 2004, <http://opcit.eprints.org/feb19oa/kurtz.pdf> accessed on 25 March 2008; see also Yanjun Zhang, "The Effect of Open Access on Citation Impact: A Comparison Study Based on Web Citation Analysis" 56(3) *Libri*, 2006, 145-156, <http://www.librijournal.org/2006-3toc.html> accessed on 25 March 2008.

¹⁹⁰ A.M. Odlyzko, "The rapid evolution of scholarly communication: 15(1) *Learned Publishing*, 2002, 7-9, <http://alpsp.publisher.ingentaconnect.com/content/alpsp/lp> accessed on 25 March 2008; see also Yanjun Zhang, "The Effect of Open Access on Citation Impact: A Comparison Study Based on Web Citation Analysis" 56 *Libri*, 2006, 145-156, <http://www.librijournal.org/2006-3toc.html> accessed on 25 March 2008.

¹⁹¹ Tim Brody, Heinrich Stamerjohanns, Stevan Harnad, Yves Gingras, Francois Vallieres, and Charles Oppenheim "The effect of Open Access on Citation Impact", presented at: *National Policies on Open Access (OA) Provision for University Research Output: an International meeting*, Southampton University, Southampton UK, 19 February 2004, <http://opcit.eprints.org/feb19prog.html> accessed on 25 March 2008; see also Yanjun Zhang, "The Effect of Open Access on Citation Impact: A Comparison Study Based on Web Citation Analysis" 56(3) *Libri*, 2006, 145-156, <http://www.librijournal.org/2006-3toc.html> accessed on 25 March 2008.

¹⁹² Yanjun Zhang, "The Effect of Open Access on Citation Impact: A Comparison Study Based on Web Citation Analysis" 56 *Libri*, 2006, 145-156, <http://www.librijournal.org/2006-3toc.html> accessed on 25 March 2008.

¹⁹³ Gunther Eysenbach, "Citation Advantage of Open Access Articles" 4(5) *PloS Biology*, May 2006, 692-698, <http://biology.plosjournals.org/perlserv?request=get-document&doi=10.1371/journal.pbio.0040157> accessed on 25 March 2008.

¹⁹⁴ Ibid.

¹⁹⁵ Anonymous comment in: Anthony Austin, Maree Heffernan and Nikki David, "Academic Authorship, Publishing Agreements & Open Access: Survey Results" OAK Law Project, March 2008 (available on the OAK Law website at: <http://www.oaklaw.qut.edu.au>).

5.7 Discovering OA journals in your discipline

When deciding where to publish your research output, you should at least consider an open access journal. You may ultimately decide that you are not happy with the journal's level of prestige or impact, but you should at least consider the open access possibilities. As explained above, the impact factor of open access journals is increasing all the time. It just may be that the best journal for your content is an open access journal. For example, *Malaria Journal*, an open access publication, recently became the most-cited publication in tropical medicine.¹⁹⁶

The best place to discover open access journals in your discipline is to search the Directory of Open Access (& Hybrid) Journals (DOAJ). Section 5.9 of this guide focuses specifically on the DOAJ. The DOAJ now lists more than 3000 journals, and the numbers are growing each day. Heather Morrison has reported that as at 14 February 2008, the DOAJ had added 136 titles in the last 30 days, a growth rate of 4.5 titles per day.¹⁹⁷

The enormous growth of OA journals could be partially due to the rate of conversion of journals from toll access to open access. Suber has estimated that 65 toll access journals converted to open access in 2007.¹⁹⁸ Some example of toll access journal that have converted are *Oral Tradition*, which has been published since 1986 and converted to open access in 2006,¹⁹⁹ *Scandinavian Journal of Food & Nutrition*, which converted in January 2008 and changed its name to *Food & Nutrition Research*,²⁰⁰ and *Information Logic: Reasoning and Argumentation in Theory and Practice*, which converted in March 2008 after 27 years as a toll access journal.²⁰¹

Lund University has recently launched a companion service to DOAJ called Journal Info, which can be accessed at: <http://jinfo.lub.lu.se/>. Journal Info helps academic authors to evaluate journals where they might submit their work. For all journals included, Journal Info lists any subscription price per article and/or subscription price per citation charged by the journal. It also lists the databases that index the journal. When a user accesses information about a toll access (or “non-OA”) journal, Journal Info also recommends equivalent standards of journals that are OA and indicates the toll access journal’s self-archiving policy.²⁰²

¹⁹⁶ Donna Howell, “Online Journals Gain Readers, Respect” *Investor's Business Daily: Internet & Technology*, 14 February 2008; see also Peter Suber, “Profile of BMC journals and the business value of OA” *Open Access News* (blog), 16 February 2008, <http://www.earlham.edu/~peters/fos/2008/02/profile-of-bmc-journals-and-business.html> accessed on 25 March 2008.

¹⁹⁷ Heather Morrison, “Happy Birthday BOAI! and confirmation of acceleration of growth in DOAJ” *The Imaginary Journal of Poetic Economics* (blog), 14 February 2008, <http://poeticeconomics.blogspot.com/2008/02/happy-birthday-boai-and-confirmation-of.html> accessed on 25 March 2008.

¹⁹⁸ Peter Suber, “Open Access in 2007” 11(1) *Journal of Electronic Publishing*, 2008, <http://hdl.handle.net/2027/spo.3336451.0011.110> accessed on 25 March 2008.

¹⁹⁹ Peter Suber, “Another subscription journal converts to OA” *Open Access News* (blog), 19 September 2006, <http://www.earlham.edu/~peters/fos/2006/09/another-subscription-journal-converts.html> accessed on 18 March 2008.

²⁰⁰ Peter Suber, “Nutrition foundation converts its journal to OA” *Open Access News* (blog), 15 October 2007, <http://www.earlham.edu/~peters/fos/2007/10/nutrition-foundation-converts-its.html> accessed on 18 March 2008; see also <http://journals.sfu.ca/coaction/index.php/fnr/index> accessed 18 March 2008.

²⁰¹ Peter Suber, “Logic journal converting to OA” *Open Access News* (blog) 19 February 2008, http://www.earlham.edu/~peters/fos/2008_02_24_fosblogarchive.html accessed on 25 March 2008.

²⁰² See Peter Suber, “Open Access in 2007” 11(1) *Journal of Electronic Publishing*, 2008, <http://hdl.handle.net/2027/spo.3336451.0011.110> accessed on 25 March 2008.

5.8 Hybrid journals

Hybrid journals are journals that offer some open access articles and some toll access articles. The choice of whether an article will be open access or toll access is made by the author. Authors who choose the open access option will usually be required to pay a fee to cover the costs of publication. However, the author will often be able to retain copyright in the article, or at least many of the rights that enable reuse. The publisher also provides free online access to the article on the publisher's own website (and sometimes also allows the author to deposit the article elsewhere).

Hybrid journals are primarily offered by toll access publishers. Many hybrid journals are toll access journals that are transitioning to open access. This means that hybrid journals are generally provided by larger and well-established publishers and are sometimes journals that are already well known. Authors publishing in hybrid journals may therefore still enjoy the advantage of high impact ratings. Some of the publishers offering hybrid journals and some of the journals that they produce are listed below at 5.9.

Peter Suber has advanced a number of questions that you should ask yourself when considering publishing in a hybrid journal:²⁰³

- Does the journal let participating authors retain copyright?

If it does not, then the journal is removing price barriers for readers, but not permission barriers. This means that every time you or someone else wants to use your work beyond a use that would be permissible at law under one of the statutory exceptions to copyright infringement, you must seek permission from the publisher. Clearly, this is not ideal. You should be able to place your work in a repository or on your website, or use your work in teaching or for other purposes, without having to go through undue effort and delay in seeking permission from the publisher.

- Does the journal use an OA-friendly licence, like those from Creative Commons? Does it let authors do so?

Creative Commons licences and other open content licences make it easy for users to discover what kind of access and reuse rights and conditions attach to a work (see Chapter 8). Where a work has been made open access, particularly if it has broad reuse rights, this should be conveyed to potential users otherwise much of the benefit of open access is lost. As Suber argues, "When the publisher has already given permission but hasn't made the permission easy to discover, then the harm is caused by poor communication."²⁰⁴

- Does the journal automatically deposit participating articles in an OA repository independent of the publisher? Does it allow the author to do so?

Authors should retain the right to make their article available in repositories independent of the publisher and the publisher's own website. This ensures that the article will remain available and openly accessible even in the event that the journal is bought out, ceases operation or changes its access policy. This will also ensure that the author is able to abide by any requirements of their funding body

²⁰³ See Peter Suber, "Nine questions for hybrid journal programs" 101 *SPARC Open Access Newsletter*, 2 September 2006, <http://www.earlham.edu/~peters/fos/newsletter/09-02-06.htm/> accessed 25 March 2008.

²⁰⁴ Ibid.

or institution that the article is made available in an institutional (or other) repository (see Chapters 4 and 6).

- Does the journal waive fees in cases of economic hardship?

This may be relevant to your own ability to pay the publishing fees charged by the hybrid journal. Even if it is not and you can afford to pay the fee, you may want to consider supporting a journal that provides equal OA publishing opportunities to researchers suffering economic hardship.

- Does the journal promise to reduce the subscription price in proportion to author uptake?

Many hybrid journal publishers will periodically review the subscription prices of their hybrid journals and will decrease the subscription rate (generally for online subscriptions only) of each hybrid journal in accordance with the open access adoption for journal articles. Two publishers that undertake this are Taylor & Francis and Oxford University Press. For example, in 2008, the online-only subscription charge for *Carcinogenesis*, a journal published by Oxford University Press, would have been £990, but an 8% open access discount applies, taking the actual subscription cost to £907.

However, some hybrid journals do not reduce subscription charges in accordance with open access uptake. These publishers are essentially getting paid twice for the same article – once by the author and again by subscribers. This is a practice that undermines the purpose of open access and should not be supported by authors.

5.9 The Directory of Open Access (and Hybrid) Journals (DOAJ)

The Directory of Open Access (and Hybrid) Journals (DOAJ) is a comprehensive and very useful online directory of open access and hybrid journals. The DOAJ is hosted by Lund University Libraries in Sweden, and is updated regularly.²⁰⁵

The DOAJ can be accessed at: <http://www.doaj.org>. Users can search for journals by title or by subject area. There is also an option to search for journals according to whether or not they charge a publication fee. When searching for a specific journal, users should be warned to take care in entering the journal name accurately – the search bar is sensitive to misspellings and omissions and will not display results where the title entered does not exactly match the journal name on file.

When retrieving search results, the following information is displayed: journal name; whether the journal is open access or hybrid; ISSN; EISSN; subject; publisher; language; keywords; and whether a publication fee is charged. For the purposes of categorisation, open access is defined as, “The content is available for free to all” and a hybrid journal is explained as, “If you pay the publisher your individual article will be freely available while other articles in the same issue can require subscription for access”.

Links are also provided to the journals' home websites, and for many of the journals a “Further Information” link also appears, which directs users to information such as copyright arrangements,

²⁰⁵ As at 14 February 2008, DOAJ had added 136 titles in the last 30 days: Heather Morrison, “Happy Birthday BOAI! and confirmation of acceleration of growth in DOAJ” *The Imaginary Journal of Poetic Economics* (blog), 14 February 2008, <http://poeticeconomics.blogspot.com/2008/02/happy-birthday-boai-and-confirmation-of.html> accessed on 25 March 2008.

submission requirements and fees charged.

The copyright arrangements under the open access and hybrid journals listed in the DOAJ differ widely, but are generally liberal and favourable to the contributing author. Some, such as *Open Electrical and Electronic Engineering Journal* (published by Bentham Open) and *Philament: An Online Journal of Arts and Culture* (published by University of Sydney) simply state that copyright remains with contributors. *First Monday* obtains from authors a limited licence to publish a manuscript in a given issue, and advises authors that they have the choice of: (1) dedicating their article to the public domain; (2) retaining some rights while allowing some use of their article (and they may choose to use a Creative Commons licence to do this); or (3) retaining full rights including translation and reproduction rights.

Some journals licence all work published as open access in the journal under a Creative Commons licence. Oxford University has chosen to implement Creative Commons Attribution Non-Commercial licences for all articles published under the Oxford Open model. Likewise, work published in the *International Journal of Mathematics and Mathematical Sciences* (published by Hindawi Publishing Corporation) is released under a Creative Commons Attribution License. Taylor & Francis, which publishes journals such as *Issues in Comprehensive Pediatric Nursing*, operates under the following licensing arrangement:

Authors are asked to grant a publishing licence or assign copyright in the normal way. Selection of the iOpenAccess option and payment of the appropriate fee will then allow the article to be made available to all under a Creative Commons Licence (Attribution-Non-commercial-No Derivatives version 3.0). Under this licence we allow tagging and cross-referencing of articles within repositories so that they relate back to the original research grants and programmes.

Authors selecting the iOpenAccess option have no embargo restriction on posting their version of the published article to any institutional or subject repository. Where appropriate, we facilitate deposit on behalf of authors into PubMedCentral.²⁰⁶

The copyright policy for *Issues in Comprehensive Pediatric Nursing* is one that directly addresses deposit of articles into OA repositories. Others include the *Journal of the International Society of Sports and Nutrition*, which makes all articles available through BioMed Central and PubMed Central (subject-based repositories), and the *Journal of Competition Law and Economics*, where authors are informed that:

Authors who choose to participate in the Oxford Open initiative and pay to have their paper freely available online are also entitled to deposit a post-print of their accepted manuscript and/or the finally published version of the article into an institutional or centrally organized subject repository, immediately upon publication. This is provided that they include a link to the published version of the article on the journal's web site, and that the journal and [Oxford University Press] are attributed as the original place of publication, with correct citations given.²⁰⁷

Always be careful to read and understand the copyright policy of the particular journal in which you intend to publish. Some journals, despite being open access, impose stricter copyright conditions than others. For example, the copyright policy of *Educational Technology & Society* (published by IEEE Computer Society) provides:

²⁰⁶ <http://www.tandf.co.uk/journals/iopenaccess.asp> accessed on 28 February 2008.

²⁰⁷ <http://www.oxfordjournals.org/oxfordopen/> accessed on 28 February 2008.

Copyright by the International Forum of Educational Technology & Society (IFETS). The authors and the forum jointly retain the copyright of the articles. Permission to make digital or hard copies of part or all of this work for personal or classroom use is granted without fee provided that copies are not made or distributed for profit or commercial advantage and that copies bear the full citation on the first page. Copyrights for components of this work owned by others than IFETS must be honoured. Abstracting with credit is permitted. To copy otherwise, to republish, to post on servers, or to redistribute to lists, requires prior specific permission and/or a fee.²⁰⁸

The below table is an overview of thirty open access and hybrid journals listed in the DOAJ, grouped according to whether they are open access or hybrid journals and whether or not they charge a publication fee. It is intended to represent a variety of different subject areas and to cover most of the prominent publishing groups (both open access and toll access publishers) that you may have dealt with or be aware of from your publishing experience. Some of the primary open access journals are also listed.

²⁰⁸ <http://www.ifets.info/index.php?http://www.ifets.info/guide.php> accessed on 28 February 2008.

The following information is current as at 28 February 2008:

Open Access – no fee

Journal	Publisher	Subject area
<i>Information Technologies and International Development</i>	MIT Press	Economics; Computer Science
<i>Harvard Human Rights Journal</i>	Harvard Law School	Law; Political Science
<i>SCRIPT-ed</i>	AHRC Research Centre for Studies in Intellectual Property and Technology Law	Law; Technology
<i>Ariadne</i>	UKOLN, University of Bath	Library and Information Science
<i>D-Lib Magazine</i>	Corporation for National Research Initiatives	Library and Information Science
<i>Medical History</i>	The Wellcome Trust for the History of Medicine, University College London	History; Medicine (General)
<i>First Monday</i>	University of Illinois at Chicago Library	Computer Science
<i>Journal of Business Systems, Governance and Ethics</i>	Victoria University	Business and Management
<i>Australasian Journal of Disaster and Trauma Studies</i>	Massey University (School of Psychology)	Psychiatry
<i>Australian Humanities Review</i>	University of Sydney	Languages and Literature
<i>Linguistic Discovery</i>	Dartmouth College Library	Linguistics
<i>Global Media Journal: Australian Edition</i>	University of Western Sydney (School of Communication Arts)	Media and Communication
<i>Educational Technology & Society</i>	IEEE Computer Society	Education; Technology (General)
<i>Journal of Data Science</i>	Columbia University (Department of Statistics)	Statistics
<i>Public History Review</i>	UTS Press Journals, Australian Centre for Public History	History
<i>Invisible Culture: An Electronic Journal for Visual Culture</i>	University of Rochester	Media and Communication; Visual Arts
<i>Philament: An Online Journal of the Arts and Culture</i>	University of Sydney	Languages and Literatures; Social Sciences; Arts in general

Open Access – publication fee charged

Journal	Publisher	Subject area	Fee
<i>The Cardiology</i>	Medwell Publishing	Cardiovascular (medicine)	€200 per article as a printing/processing cost.

<i>International Journal of Mathematics and Mathematical Sciences</i>	Hindawi Publishing Corporation	Mathematics	Article Processing Charge of €400
<i>PLoS ONE</i>	Public Library of Science (PLoS)	Medicine (General); Science (General)	<p>Publication fee: US \$1250.</p> <p>Authors affiliated with one of PLoS Institutional Members are eligible for a discount on this fee.</p> <p>PLoS offer a complete or partial fee waiver for authors who do not have funds to cover publication fees.</p>
<i>Journal of the International Society of Sports Nutrition</i>	BioMed Central	Nutrition and Food Sciences; Sports Science	<p>In 2008 the article-processing charge is £775 (€1040, US \$1520).</p> <p>If the submitting author's institution is a BioMed Central member the cost of the article processing charge is covered by the membership, and no further charge is payable.</p> <p>In the case of authors whose institutions are supporter members of BioMed Central, a discounted article processing charge is payable by the author.</p> <p>Waivers may be granted, particularly for authors from developing countries.</p>
<i>Australian Journal of Basic and Applied Sciences</i>	INSInet Publications	Plant Sciences; Science (General); Agriculture (General)	<p>US \$100 for</p> <ul style="list-style-type: none"> :: 1 Journal Copy :: 10 Reprints :: Online Publication
<i>Open Electrical & Electronic Engineering Journal</i>	Bentham Open	Electrical and Nuclear Engineering	<p>Letters: \$600. Research Articles: \$800. Mini-Review Articles: \$600. Review Articles: \$900.</p> <p>Members of the journal will receive a discount of 50% on the total publication fee.</p> <p>Submissions by authors from developing countries will receive a discount of 30% on the total publication fee.</p>

Hybrid (publication fee charged)

Journal	Publisher	Subject area	Fee
<i>Journal of Competition Law and Economics</i>	Oxford University Press	Business and Management; Law	For an author based at a subscribing institution: * Regular charge - £800 / \$1500 / €1200 * List B developing country charge - £400 / \$750 / €600 * List A developing country charge - £0 / \$0 / €0 For an author based at an institution that does not subscribe: * Regular charge - £1500 / \$2800 / €2250 * List B developing country charge - £750 / \$1400 / €1125 * List A developing country charge - £0 / \$0 / €0
<i>Issues in Comprehensive Pediatric Nursing</i>	Taylor & Francis	Nursing	US \$3250.
<i>International Journal of Clinical Practice</i>	Blackwell Publishing ²⁰⁹	Public Health	For 2007, the Online Open fee is fixed at US \$2600, €1950 or £1300.
<i>International Journal of Politics, Culture, and Society</i>	Springer	Political Science	The basic fee for Springer Open Choice is US \$3,000.
<i>American Journal of Physical Anthropology</i>	Wiley	Anthropology	US \$3,000, payable only in US Dollars.
<i>Advanced Robotics</i>	Brill, VSP	Mechanical Engineering	Distributed under Springer Open Choice (see above).
<i>Computer Communications</i>	Elsevier	Computer Science; Media and Communication	US \$3,000.

²⁰⁹ Note that Blackwell Publishing was recently bought by Wiley; however, it seems that for the present Blackwell continues to be operated as a separate publishing house.

Chapter 6: Funding bodies and their role in the open access movement

6.1 Funding bodies and open access

The benefits of open access are particularly relevant to funding bodies worldwide. Funding bodies have an interest in requiring or encouraging funded researchers to provide open access to their research outputs because it means that:

- the funding body can itself obtain easy access to and use of the research that it has funded;
- the general public will have access to the research that is conducted for the public's benefit (particularly where medical research is concerned); and
- the funding body can better understand the research outputs produced and therefore avoid funding unnecessarily duplicative research.

Further, there are moral arguments for funding bodies' support of open access. This is particularly true where government funding bodies are concerned because in these cases, research funds ultimately derive from taxpayers. As Peter Suber describes, there is the moral argument that governments should treat taxpayers fairly and should spend public money responsibly, and there is the pragmatic argument that governments should maximise the return on the public investment in research.²¹⁰

As argued by Richard Poynder, funding bodies have a primary goal of maximising social good by enabling research, and they therefore have a responsibility to ensure that research funds are used to further this goal. Poynder writes:

Alerted by OA advocates to the fact that the scholarly publishing model currently consists of researchers giving their papers to publishers for free, providing peer review services for free, and then asking their libraries to buy those papers back in the form of journal subscriptions, research funders have had little choice but to conclude that public money is being used neither wisely nor responsibly.

After all, the current system not only allows publishers to make excessive profits, but since it involves locking research behind increasingly expensive financial firewalls it is minimising, not maximising, social good. At the same time it is excluding the developing world from vital information in a heartless manner.²¹¹

6.2 Funding bodies' policies

Around the world, many funding bodies have included statements in their funding rules or policies that require or encourage funded researchers to deposit their research results into an openly accessible repository. Some funding bodies also encourage researchers to publish their research results in open access journals. This section describes the OA position of some of the world's (and Australia's) peak funding bodies.

²¹⁰ Richard Poynder, "The Basement Interviews: Peter Suber" *Open and shut?* (blog), 19 October 2007, <http://poynder.blogspot.com/2007/10/basement-interviews-peter-suber.html> accessed on 24 March 2008.

²¹¹ Richard Poynder, "Open Access: Beyond selfish interests" *Open and shut?* (blog), 20 November 2006, <http://poynder.blogspot.com/2006/11/open-access-beyond-selfish-interests.html> accessed on 24 March 2008.

National Institutes of Health (NIH)

One of the strongest and most influential funding body mandates is also one of the most recent. The National Institutes of Health (NIH) is the primary agency of the United States government responsible for biomedical and health-related research.²¹² On 11 January 2008, NIH announced a revision to its Public Access Policy that made its application mandatory rather than voluntary. The substance of the policy is contained in five points:

1. The NIH Public Access Policy applies to all peer-reviewed articles that arise, in whole or in part, from direct costs funded by NIH, or from NIH staff, that are accepted for publication on or after April 7, 2008.
2. Institutions and investigators are responsible for ensuring that any publishing or copyright agreements concerning submitted articles fully comply with this Policy.
3. PubMed Central (PMC) is the NIH digital archive of full-text, peer-reviewed journal articles. Its content is publicly accessible and integrated with other databases.
4. The final, peer-reviewed manuscript includes all graphics and supplemental materials that are associated with the article.
5. Beginning May 27, 2008, anyone submitting an application, proposal or progress report to the NIH must include the PMC or NIH Manuscript Submission reference number when citing applicable articles that arise from their NIH funded research.²¹³

NIH has estimated that approximately 80,000 articles per year arise from NIH-funded research,²¹⁴ meaning that the new mandatory policy is likely to make a substantial amount of the world's biomedical and health-related research literature publicly available.

Peter Suber has argued that the advantage of the NIH policy is that:

It does not allow publishers the easy opt-out of adopting a contrary in-house rule, but only the hard opt-out of refusing to publish work funded by NIH-funded authors. Second, it makes crystal clear that the policy does not violate the publisher's copyright. NIH-funded authors will retain the right to comply with the NIH policy, even if they transfer all other rights to a publisher.²¹⁵

For more information on how to comply with the NIH policy, see the NIH Public Access webpage at <http://publicaccess.nih.gov/> and the SPARC/Science Commons/ARL Joint Whitepaper: *Complying with the NIH Public Access Policy – Copyright Considerations and Options*.²¹⁶ See also the ARL webpage: NIH Public Access Policy Guide for Researchers at <http://www.arl.org/sc/implement/nih/guide/> and the University of Minnesota Libraries website at <http://www.lib.umn.edu/scholcom/NIHaccess.phtml>. For more on how commercial publishers have reacted to the NIH policy, see Chapter 7.

²¹² <http://en.wikipedia.org/wiki/NIH> accessed at 6 March 2008.

²¹³ See Peter Suber, "The mandates of January" 118 *SPARC Open Access Newsletter*, 2 February 2008, <http://www.earlham.edu/~peters/fos/newsletter/02-02-08.htm> accessed on 25 March 2008.

²¹⁴ See Gavin Baker, "NIH's New Open Access Policy Can Benefit Everyone" *Public Science*, 28 January 2008, <http://www.scienceprogress.org/2008/01/public-science/> accessed on 25 March 2008; and Kimberley K. Barlow, "NIH mandates open access to researchers' publications" 40(10) *University Times*, University of Pittsburgh, 24 January 2008, <http://mac10.umc.pitt.edu/u/FMPro?-db=ustory&-lay=a&-format=d.html&storyid=7903&-Find> accessed on 25 March 2008.

²¹⁵ Peter Suber, "The mandates of January" 118 *SPARC Open Access Newsletter*, 2 February 2008, <http://www.earlham.edu/~peters/fos/newsletter/02-02-08.htm> accessed on 25 March 2008.

²¹⁶ Michael W. Carroll, SPARC/Science Commons/ARL joint whitepaper, *Complying with the NIH Public Access Policy – Copyright Considerations and Options*, February 2008, <http://www.arl.org/sparc/advocacy/nih/copyright.html> accessed on 25 March 2008.

The Wellcome Trust

The Wellcome Trust is an independent charity that funds research to improve human and animal health. It is the United Kingdom's largest non-governmental source of funds for biomedical research.²¹⁷

The Wellcome Trust Position Statement in Support of Open and Unrestricted Access to Published Research, last updated February 2008, provides:

Specifically, the Wellcome Trust:

- expects authors of research papers to maximise the opportunities to make their results available for free
- requires electronic copies of any research papers that have been accepted for publication in a peer-reviewed journal, and are supported in whole or in part by Wellcome Trust funding, to be made available through PubMed Central (PMC) and UK PubMed Central (UK PMC) as soon as possible and in any event within six months of the journal publisher's official date of final publication
- will provide grantholders with additional funding, through their institutions, to cover open access charges, where appropriate, in order to meet the Trust's requirements
- encourages – and where it pays an open access fee, requires – authors and publishers to license research papers such that they may be freely copied and re-used (for example for text and data-mining purposes), provided that such uses are fully attributed
- affirms the principle that it is the intrinsic merit of the work, and not the title of the journal in which an author's work is published, that should be considered in making funding decisions.²¹⁸

The Wellcome Trust deposit mandate became effective for all new projects from 1 October 2005 and for all current projects from 1 October 2006. It applies to all research funded totally or partially by the Wellcome Trust. The Wellcome Trust Grant Conditions (which also contain the deposit mandate) were amended in August 2007 and apply to all researchers whether they are located in the UK or overseas.²¹⁹

In a news article published on the Wellcome Trust website on 21 February 2008, it is stated, “Just eight months after launching its new open access publishing policy, the Wellcome Trust has found that over a quarter of published, Trust-funded papers are freely available through the online repositories PubMed Central and UK PubMed Central.”²²⁰

Other international funding bodies

Many other funding bodies around the world have introduced deposit mandates into their funding policies.

From 1 January 2008, recipients of new or renewed funding from the Canadian Institutes of Health Research (CIHR) are required to deposit the publisher's version or the author's final version of any research publications into an openly accessible repository (preferably an institutional repository) or

²¹⁷ <http://www.wellcome.ac.uk/aboutus> accessed on 3 March 2008.

²¹⁸ http://www.wellcome.ac.uk/doc_WTD002766.html accessed on 3 March 2008.

²¹⁹ http://www.wellcome.ac.uk/doc_WTD004055.html accessed on 3 March 2008.

²²⁰ http://www.wellcome.ac.uk/doc_WTX043341.html accessed on 3 March 2008.

ensure that the publication is openly accessible from the publisher's website within 6 months of publication.²²¹ CIHR states that its rationale for introducing this mandate is that:

CIHR believes that greater access to research publications and data will promote the ability of researchers in Canada and abroad [sic] to use and build on the knowledge needed to address significant health challenges. Open access enables authors to reach a much broader audience, which has the potential to increase the impact of their research.²²²

The European Research Council (ERC) also requires that all peer-reviewed publications resulting from funded research be deposited in an openly accessible repository within 6 months of publication.²²³

The Arts and Humanities Research Council (AHRC) and the National Environment Research Council (NERC), both in the United Kingdom,²²⁴ and CERN (the European Organization for Nuclear Research) require research publications to be deposited in an openly accessible repository at the earliest possible opportunity.²²⁵

The Australian Research Council (ARC) and the National Health and Medical Research Council (NHMRC)

The primary funding bodies in Australia are the Australian Research Council (ARC) and the National Health and Medical Research Council (NHMRC). To date, neither the ARC nor the NHMRC have issued deposit mandates like some of their overseas counterparts. However, both have included statements in their funding rules that encourage the deposit of research results in open access repositories.

The ARC Discovery Projects Funding Rules for funding commencing in 2009 provide:

4. Dissemination of research outputs

4.4.5.1 The Australian Government makes a major investment in research to support its essential role in improving the wellbeing of our society. To maximise the benefits from research, findings need to be disseminated as broadly as possible to allow access by other researchers and the wider community.

4.4.5.2 The ARC acknowledges that researchers take into account a wide range of factors in deciding on the best outlets for publications arising from their research. Such considerations include the status and reputation of a journal or publisher, the peer review process of evaluating their research outputs, access by other stakeholders to their work, the likely impact of their work on users of research and the further dissemination and production of knowledge. Taking heed of these considerations, the ARC wants to ensure the widest

²²¹ Policy accessed via SHERPA-JULIET at www.sherpa.ac.uk/juliet/; see also Ian Graham, "CIHR's Policy on Access to Research Outputs is Now in Effect", 4 February 2008, <http://www.cihr-irsc.gc.ca/e/35683.html> accessed on 25 March 2008.

²²² Ian Graham, "CIHR's Policy on Access to Research Outputs is Now in Effect", 4 February 2008, <http://www.cihr-irsc.gc.ca/e/35683.html> accessed on 25 March 2008.

²²³ Policy accessed via SHERPA-JULIET at www.sherpa.ac.uk/juliet/; see also *ERC Scientific Council Guidelines for Open Access*, 17 December 2007, http://erc.europa.eu/pdf/ScC_Guidelines_Open_Access_revised_Dec07_FINAL.pdf accessed on 25 March 2008.

²²⁴ Other UK Research Councils that have mandated open access to funded research papers include the Biotechnology & Biological Sciences Research Council (BBSRC), the Economic & Social Research Council (ESRC), the Medical Research Council (MRC) and the Particle Physics and Astronomy Research Council (PPARC) – see Richard Poynder, "Open Access: Beyond selfish interests" *Open and shut?* (blog), 20 November 2006, <http://poynder.blogspot.com/2006/11/open-access-beyond-selfish-interests.html> accessed on 24 March 2008.

²²⁵ Policy accessed via SHERPA-JULIET at www.sherpa.ac.uk/juliet/.

possible dissemination of the research supported under its funding, in the most effective manner and at the earliest opportunity.

4.4.5.3 **The ARC therefore encourages researchers to consider the benefits of depositing their data and any publications arising from a research project in an appropriate subject and/or institutional repository. If a researcher is not intending to deposit the data from a project in a repository within six months of the completion of the research, he/she should include the reasons in the project's Final Report.** Any research outputs that have been or will be deposited in appropriate repositories be identified in the Final Report.²²⁶ [Author's own emphasis added]

The ARC Discovery Projects Funding Rules for funding commencing in 2008 contained the same statement. Although the ARC only encourages deposit of research publications in an appropriate repository rather than mandates it, it does require researchers who are not intending to deposit to explain their reasons for refraining. This places a greater emphasis on researchers to consider the basis of their decision and whether that basis is justifiable to the ARC.

The NHMRC Project Grants Funding Policy for funding commencing in 2009 contains the following statement:

16.2 Dissemination of Scientific Results

To maximise the benefits from research, findings need to be disseminated as broadly as possible to allow access by other researchers and the wider community, in accordance with the requirements of the *Australian Code for the Responsible Conduct of Research*. **The NHMRC encourages researchers to consider the benefits of depositing their data and any publications arising from a research project in an appropriate subject and/or institutional repository wherever such a repository is available to the researcher(s).** Any research outputs that have been or will be deposited in appropriate repositories should be identified in the Final Report.²²⁷ [Author's own emphasis added].

In the sense that their policies only encourage rather than mandate deposit of funded research into an openly accessible repository, the primary Australian funding bodies lag behind key funders of research in the United States of America, the United Kingdom, Europe and elsewhere around the world in their support of open access. However, considering the very recent and much publicised mandate of NIH – one of the world's largest funding bodies – it is entirely feasible that the ARC and NHMRC will follow suit and consider introducing deposit mandates into their funding policies in the near future.²²⁸ In fact, it was reported in *The Australian* on 6 February 2008, that Elias Zerhouni, a director of NIH who visited Australia shortly after the NIH mandate was introduced, had warned that a voluntary systems does not always work and had urged the NHMRC to refine its message.²²⁹

6.3 Funding bodies and open access journal publication fees

Many funding bodies also recognise that one of the best and easiest ways to provide open access to a research article is to publish the article in an open access journal. Thus, some funding bodies

²²⁶ Australian Research Council (ARC) Discovery Projects Funding Rules for funding commencing in 2009, p13, http://www.arc.gov.au/ncgp/dp/dp_fundingrules.htm accessed on 25 March 2008.

²²⁷ NHMRC Project Grants Funding Policy for funding commencing in 2009, p23, <http://www.nhmrc.gov.au/FUNDING/apply/granttype/projects/index.htm> accessed on 25 March 2008.

²²⁸ See, for example, Steven Schwartz, "The end of the scholarly journal" *Campus Review*, 8 April 2008.

²²⁹ Bernard Lane, "NHMRC urged to refine its message" *The Australian*, 6 February 2008, <http://www.theaustralian.news.com.au/story/0,25197,23165671-27703,00.html> accessed on 25 March 2008.

encourage their funded researchers to publish in open access publications where possible.

A few funders take an extra step and either:

- provide that research funds may be used in the payment of OA journal publication fees; or
- in some cases, offer to reimburse the costs of open access publication.

It is important to note that in this context “open access journal” includes a hybrid journal, where a publisher will allow an article in a subscription-based journal to be published as open access in return for payment of a fee. It is also important to note that not all open access journals charge publication fees. For more on open access journals, see Chapter 5.

Funding bodies that have displayed a willingness to cover costs of open access publishing include the Wellcome Trust, ERC and CIHR.²³⁰ The Wellcome Trust has displayed this willingness generally and also in relation to specific publishers. For example, the Wellcome Trust has indicated that they will make funds available for authors to pay for open access publication under the Oxford Open option offered by Oxford University Press.²³¹

NIH is another major funding body that may be willing to pay publication fees at fee-based open access journals. The new NIH FAQ website provides:

The NIH will reimburse publication costs, including author fees, for grants and contracts on three conditions: (1) such costs incurred are actual, allowable, and reasonable to advance the objectives of the award; (2) costs are charged consistently regardless of the source of support; (3) all other applicable rules on allowability of costs are met.²³²

The Max Planck Society for the Advancement of Science is an independent, non-profit research organisation in Germany. In a Press Release dated 28 January 2008, the Max Planck Society (MPS) revealed that it had signed an agreement with Copernicus Publications to pay the publication charges for articles submitted by MPS scientists which are subsequently published in open access journals.²³³ On 4 February 2008, it was announced that MPS had entered into a similar deal with Springer, to pay publication fees when MPS scientists choose to publish in one of Springer’s Open Choice journals.²³⁴

At present, ARC and NHMRC Funding Rules do not allow for the funding of publication costs incurred by grant recipients.²³⁵

²³⁰ Policy accessed via SHERPA-JULIET at www.sherpa.ac.uk/juliet/; see also Wellcome Trust Position Statement in Support of Open and Unrestricted Access to Published Research, last update February 2008, <http://www.wellcome.ac.uk/About-us/Policy/Spotlight-issues/Open-access/Policy/index.htm> accessed on 25 March 2008; Ian Graham, “CIHR’s Policy on Access to Research Outputs is Now in Effect”, 4 February 2008, <http://www.cihr-irsc.gc.ca/e/35683.html> accessed on 25 March 2008; and Peter Suber, “The mandates of January” 118 *SPARC Open Access Newsletter*, 2 February 2008, <http://www.earlham.edu/~peters/fos/newsletter/02-02-08.htm> accessed 25 March 2008.

²³¹ <http://www.oxfordjournals.org/oxfordopen/> accessed on 25 March 2008.

²³² NIH Public Access Frequently Asked Questions, <http://publicaccess.nih.gov/FAQ.htm#e3> accessed on 6 March 2008.

²³³ Max Planck Society, New contract with Copernicus Publications (Press Release), 28 January 2008, <http://www.mpg.de/english/illustrationsDocumentation/documentation/pressReleases/2008/pressRelease20080128/index.html> accessed on 25 March 2008.

²³⁴ Peter Suber, “Max Planck and Springer strike a deal” *Open Access News* (blog), 4 February 2008, http://www.earlham.edu/~peters/fos/2008_02_03_fosblogarchive.html accessed on 25 March 2008; and Jan Velterop, “Planck cheque – max. access” *The Parachute* (blog), 4 February 2008, <http://theparachute.blogspot.com/2008/02/planck-cheque-max-access.html> accessed on 25 March 2008.

²³⁵ See Australian Research Council (ARC), Response to the Productivity Commission Draft Research Report Public

6.4 What should you do?

Your funding body's policies and grant conditions may affect how you are able to deal with any publications resulting from your funded research. It is therefore important that you understand your funding body's position on open access and know what you should do to comply with any policies or conditions relating to open access of your research publications. Where your academic institution has funded your research, you may need to refer to any agreement between yourself and your institution relating specifically to the funding granted, or if there is no such agreement, to your employment contract, your institution's Intellectual Property Policy, your institution's self archiving policy, and any other relevant agreements with or policies of your institution.

Discovering and understanding your funding body's policy

SHERPA-JULIET is a database of research funders' open access policies, archiving mandates and guidelines. It is located at: <http://www.sherpa.ac.uk/juliet/index.php>. It is an excellent resource for discovering whether your funding body mandates or encourages deposit of your funded research publications into an openly accessible repository, and whether your funding body financially supports publication in an open access journal that charges publication fees. SHERPA-JULIET was recently upgraded (announcement made on 29 February 2008) to track funders' policies on three different fronts - open access archiving, open access publishing and open access data archiving - and to identify each funders' level of support for open access.²³⁶

Another useful database that lists funders' mandates and policies relating to open access archiving is ROARMAP (Registry of Open Access Repository Material Archiving Policies). ROARMAP is available at: <http://www.eprints.org/openaccess/policysignup/>.

Check these resources to ascertain your funding body's open access policy. If you cannot find your funder listed on either SHERPA-JULIET or ROARMAP, check you funders' website or ask them directly about whether they impose any open access requirements on their researchers.

Understand the consequences for failing to comply with your funders' deposit mandate or open access policy. Many funding bodies will impose penalties for failing to comply, or will consider your failure to comply when assessing whether to grant or extend future funding. Be aware that a failure to comply with an open access policy could detrimentally affect your chances of receiving any future funding from that funding body.

Reconciling your funding body's policy and your publisher's agreement: copyright matters

Your funding body's open access policy may appear to conflict with the publishing agreements of many commercial publishers. Often, publishers will require an author to assign copyright in an article to the publisher, by signing a publishing agreement. The agreement may deny authors permission to deposit

Support for Science and Innovation, December 2006, http://www.arc.gov.au/general/arc_publications.htm accessed on 25 March 2008.

²³⁶ See <http://www.sherpa.ac.uk/news/juliet200803.htm> accessed on 25 March 2008.

their article into a repository or may be silent on the issue. A publisher may consider that it is adverse to their newly-acquired copyright interests in your article to allow deposit in an open access repository.

It is correct that if you assign copyright to a publisher, you (or anyone else) will require the publisher's permission to subsequently deal with the article in question. Permission will be required before you can post the article online or deposit the article into an open access repository. However, you should remember that the funder's grant conditions will apply to you *before* you assign copyright in an article to a publisher. In other words, the funder's grant conditions constitute a pre-existing obligation on your part. This means that choosing to publish with a publisher that requires a full assignment of copyright and refuses to allow deposit in an OA repository may result in your non-compliance of your funder's grant conditions, unless your funder's grant conditions allow you to transfer copyright to a non-supporting publisher. The possible penalties for non-compliance are discussed above.

You should make your publisher aware of your obligations to your funding body, and determine your publisher's position on open access. A funding body's deposit mandate gives you a leverage when negotiating copyright interests with your publisher. It is a contractual obligation on your part that you should not break. You may be able to reach an agreement with your publisher that any transfer of copyright will be subject to you being able to fulfill your obligations to your funding body. To enable this, you may issue your publisher with a partial assignment only or your publisher may licence back to you the right to deposit your article in an open access repository. Alternatively, you may decide to grant a licence to your publisher instead of an assignment, leaving you with the rights necessary to perform your obligations to your funding body. The different options available to you in negotiating with your publisher, and the mechanisms that can help you in implementing these options, are discussed in the following chapters.

Chapter 7: What do publishers think about open access?

7.1 Concerns about open access

You may have read or heard some of the concerns expressed by some publishers that open access will be the downfall of the journal publishing industry.²³⁷ These concerns usually centre on the assumption that increased access to research literature will result in less subscriptions to journals and therefore significantly decreased revenue for journal publishers. In short, journal publishers are afraid of losing their subscriptions.

For publishers, loss of subscriptions is a legitimate consideration. It is only realistic to expect that publishers will (and should) act to ensure their own economic viability. However, commentators have argued that the subscription model is one based on imposing “artificial scarcity” over research literature that the internet can easily make abundant.²³⁸ In an environment where subscriptions costs have risen four times faster than inflation,²³⁹ so that many researchers can no longer afford access to the research literature that they need, the question must be asked: “When is it reasonable for revenue generation to trump research dissemination?”²⁴⁰

Karla L. Hahn writes:

Many current publishing models rely on researchers and scholars ceding control of the intellectual capital that they create and relying on the presumed benevolence of publishers to act in their best interests, or at least the best interests of research advancement. Scholarly content creators may find that even as they wait patiently for new publishing services, old models hinder, rather than help them to make the uses they want of that capital.²⁴¹

In a similar vein, Tim Berners-Lee et al write:

Of course publishers can and should do whatever they wish in order to expand access to their journal content and remain viable. But they certainly have no right to prevent researchers, their institutions and their funders from likewise doing whatever they can and wish in order to expand access to, and the impact of, their own research findings – nor to expect them to agree to keep waiting passively to see whether their publishers will one day maximise their access and impact for them.²⁴²

The predictions of some publishers that open access will damage the journal publishing industry

²³⁷ See Tim Berners-Lee, Dave De Roure, Stevan Harnad, and Nigel Shadbolt, “Journal publishing and author self-archiving: Peaceful Co-Existence and Fruitful Collaboration” (unpublished), 2005, <http://eprints.ecs.soton.ac.uk/11160/> accessed on 18 March 2008.

²³⁸ See, for example, Richard Poynder, “The Basement Interviews: Peter Suber” *Open and shut?* (blog), 19 October 2007, <http://poynder.blogspot.com/2007/10/basement-interviews-peter-suber.html> accessed on 24 March 2008; see also Michael Jensen, “The New Metrics of Scholarly Authority” 53(41) *The Chronicle of Higher Education*, 2007, <http://chronicle.com/weekly/v53/i41/41b00601.htm>.

²³⁹ Peter Suber, “Open Access Overview” *Open Access News* (blog), last revised 19 June 2007, <http://www.earlham.edu/~peters/fos/overview.htm> accessed on 24 March 2008.

²⁴⁰ Karla L. Hahn, “Talk About Talking About New Models of Scholarly Communication” 11(1) *Journal of Electronic Publishing*, 2008, <http://hdl.handle.net/2027/spo.3336451.0011.108> accessed on 25 March 2008.

²⁴¹ Ibid.

²⁴² Tim Berners-Lee, Dave De Roure, Stevan Harnad, and Nigel Shadbolt, “Journal publishing and author self-archiving: Peaceful Co-Existence and Fruitful Collaboration” (unpublished), 2005, <http://eprints.ecs.soton.ac.uk/11160/> accessed on 18 March 2008.

beyond repair have to some extent cultivated a culture of fear not only among publishers but also among academics. Studies show that academics are concerned about seeking more rights from their publisher – many think that their publishers will simply refuse any request for further rights.²⁴³ The traditional system of assessing research impact and academic reputation according to the journal in which an author's article is published places a degree of power in the hands of publishers. Many authors feel that they must submit to publishers' demands to assign copyright or risk not being published in their journal of choice.

The purpose of this chapter is to address and allay these concerns expressed by both publishers and authors. The reality is that there are many publishers who support open access in some form and who have reacted positively to the changing publishing dynamic. For every publisher that argues against open access, there are other publishers and OA advocates who can offer compelling counter-arguments to support open access. This chapter will canvass these arguments. This chapter will also briefly consider the future of scholarly publishing, and will offer advice on how to work with your publisher to reach a mutually beneficial position regarding rights in your work.

7.2 Positive reactions

Despite the concerns described above, publishers have generally reacted positively to open access. These positive reactions have been displayed in many ways, including support for self-archiving, experimentation with and adoption of open access and hybrid models of publishing, adoption of more lenient copyright policies, and general statements in support of open access.

Self-archiving

As mentioned above, over 90% of publishers listed in the SHERPA/RoMEO database now allow author self-archiving of some kind.²⁴⁴ Many of the publishers that have adopted “repository friendly” policies are prominent publishers, such as Springer and Elsevier.²⁴⁵ Some of the policies adopted by publishers are very positive, such as Blackwell Publishing's Position Statement on Open Access:

Blackwell Publishing's Position on Open Access

Open Access is an important development in scholarly communications which aims to deliver unrestricted access to academic research to all those who seek it. Blackwell Publishing has been proactive in the debate: monitoring the evolving issues, contributing to government and industry evaluation initiatives, and advising the 665 societies and 800+ journal editors with whom we work.

At Blackwell our primary goal is to facilitate the dissemination of research through the licensing of access to institutions and individual customers whilst continuing to provide a return to the societies for whom we publish. We will support Open Access models which ensure that viable high quality society publishing

²⁴³ See, for example, Anthony Austin, Maree Heffernan and Nikki David, “Academic Authorship, Publishing Agreements & Open Access: Survey Results” OAK Law Project, March 2008, especially at p28 and p47 (available on the OAK Law website at: <http://www.oaklaw.qut.edu.au>).

²⁴⁴ SHERPA, “Fifteen Common Concerns – and Clarifications” 2006, <http://www.sherpa.ac.uk/documents/15concerns.html> accessed on 18 March 2008; Peter Suber, *SPARC Open Access Newsletter*, issue 118, 2 February 2008 <http://www.earlham.edu/~peters/fos/newsletter/02-02-08.htm> accessed on 25 March 2008.

²⁴⁵ SHERPA, “Fifteen Common Concerns – and Clarifications” 2006, <http://www.sherpa.ac.uk/documents/15concerns.html> accessed on 18 March 2008.

continues to flourish.

Following is a summary of the ways in which Blackwell Publishing and the societies with whom we publish are responding to the calls for Open Access publishing:

1. Self-archiving - Our copyright assignment policy allows authors to self-archive their final version of their article on personal websites or institutional repositories.
2. Author pays - We are offering a new service called Online Open which gives authors the choice to pay a publication fee in order for their article to be openly accessible to all.
3. Free back files - Several journals offer free access to content after a set time period, or to certain types of material such as review articles.
4. Developing world access - We offer free or low cost access to libraries in the poorest countries through our participation in the HINARI, AGORA, OARE, INASP and related initiatives.²⁴⁶

Evidence has been collected that self-archiving does not significantly affect journal subscription rates. For example, as noted above, the American Physical Society and the Institute of Physics Publishing (two large society publishers) have both reported that arXiv, the popular subject-based repository, has not caused any identifiable loss in their subscriptions.²⁴⁷ This is despite extensive use of the arXiv repository by the physics community for a period of 15 years, in some fields making close to 100% of the published research literature freely and readily available.²⁴⁸

For more on publishers and self-archiving, see Chapter 4.

Open access and hybrid publishing models

Many toll access publishers have experimented with providing open access publishing options within their current publishing model. This is often called the “hybrid model” of publishing. Publishers that offer open access options under a hybrid scheme include Springer, Oxford University Press, Taylor & Francis, Elsevier, Wiley and Blackwell.

Additionally, there is an increasing number of full open access journals being offered by toll access publishers and of toll access journals converting to open access. In his overview of open access in 2007, Peter Suber counted 65 journals that had converted from toll access to open access within the year.²⁴⁹ He also reported that in 2007, “Sage launched its first line of full OA journals, after teaming with Hindawi, and after their merger Wiley and Blackwell launched the first full OA journal for either company.”²⁵⁰

For more on open access and hybrid publishing models, see Chapter 5.

²⁴⁶ Accessed at <http://www.blackwellpublishing.com/static/openaccess.asp> on 18 March 2008. HINARI, AGORA, OARE and INASP are acronyms – see the Abbreviations index at the conclusion of this guide for their full meaning.

²⁴⁷ See reports in: SHERPA, “Fifteen Common Concerns – and Clarifications” 2006, <http://www.sherpa.ac.uk/documents/15concerns.html> accessed on 18 March 2008; and Tim Berners-Lee, Dave De Roure, Stevan Harnad, and Nigel Shadbolt, “Journal publishing and author self-archiving: Peaceful Co-Existence and Fruitful Collaboration” (unpublished), 2005, <http://eprints.ecs.soton.ac.uk/11160/> accessed on 18 March 2008.

²⁴⁸ Tim Berners-Lee, Dave De Roure, Stevan Harnad, and Nigel Shadbolt, “Journal publishing and author self-archiving: Peaceful Co-Existence and Fruitful Collaboration” (unpublished), 2005, <http://eprints.ecs.soton.ac.uk/11160/> accessed on 18 March 2008.

²⁴⁹ Peter Suber, “Open Access in 2007” 11(1) *Journal of Electronic Publishing*, 2008, <http://hdl.handle.net/2027/spo.3336451.0011.110> accessed on 25 March 2008.

²⁵⁰ Ibid.

Copyright policies

An exciting trend is that of publishers accepting copyright licences that enable them to publish, rather than complete assignments of an author's copyright. For example, *Avian Diseases*, despite being a toll access journal,²⁵¹ requires only the rights for first publication of a work and allows authors to retain all republication rights.²⁵² Another example is *Nature*, which has begun to use Creative Commons licences for articles reporting genome data (for information on Creative Commons licences, see Chapter 8).²⁵³

Further, Peter Suber has reported that in 2007:

Elsevier adopted a liberal license, permitting a range of re-use rights as well as free online access for the articles it deposits in PubMed Central or UKPMC on behalf of funding agencies who pay it to do so. Generalizing the trend, a group of publishers and research funders agreed that when funders pay publishers to provide open access to an article, then the publishers should remove key permission barriers as well as price barriers.²⁵⁴

General comments

Here is a small collection of comments from various members of the publishing industry, exhibiting a very progressive attitude towards open access.

From Dr. Elizabeth Marincola, Executive Director of the American Society for Cell Biology (ASCB) (a learned society), commenting on the reliance of some learned societies on subscription-based publishing revenue:

I think the more dependent societies are on their publications, the farther away they are from the real needs of their members. If they were really doing good work and their members were aware of this, then they wouldn't be so fearful...When my colleagues come to me and say they couldn't possibly think of putting their publishing revenues at risk, I think 'why haven't you been diversifying your revenue sources all along and why haven't you been diversifying your products all along?' The ASCB offers a diverse range of products so that if publications were at risk financially, we wouldn't lose out membership base because there are lots of other reasons why people are members.²⁵⁵

From Jonathan A. Eisen, Academic Editor-in-Chief at *PLoS Biology*, on accepting the invitation to become Academic Editor-in-Chief and on his conversion to an open access supporter:

So I accepted the invitation and became an Academic Editor. But I confess that I was not yet a true convert to OA or to PLoS Biology. So I decided to do what any good scientist should do in such a situation—I planned a

²⁵¹ See: <http://avdi.allenpress.com/avdionline/?request=get-static&name=subscriptions>, accessed on 17 March 2008.

²⁵² Amber Kispert, "Libraries teach faculty about copyright issues" *The Minnesota Daily*, 28 January 2008.

²⁵³ Peter Suber, "Open Access in 2007" 11(1) *Journal of Electronic Publishing*, 2008, <http://hdl.handle.net/2027/spo.3336451.0011.110> accessed on 25 March 2008.

²⁵⁴ Ibid.

²⁵⁵ "The society lady: an interview with Elizabeth Marincola" *Open Access Now*: 6 October 2003, quoted in Tim Berners-Lee, Dave De Roure, Stevan Harnad, and Nigel Shadbolt, "Journal publishing and author self-archiving: Peaceful Co-Existence and Fruitful Collaboration" (unpublished), 2005, <http://eprints.ecs.soton.ac.uk/11160/> accessed on 18 March 2008.

publishing experiment. I'd had many papers in Science and Nature before. And so I convinced my collaborators on a high-profile paper to submit it to PLoS Biology, to see how this new high-profile OA journal would compare.

But then, while finalizing the paper, a two-month-long medical nightmare ensued that eventually ended in the stillbirth of my first child. While my wife and I struggled with medical mistakes and negligence, we felt the need to take charge and figure out for ourselves what the right medical care should be. And this is when I experienced the horror of closed-access publishing. For unlike my colleagues at major research universities that have subscriptions to all journals, I worked at a 300-person nonprofit research institute with a small library. So there I was—a scientist and a taxpayer—desperate to read the results of work that I helped pay for and work that might give me more knowledge than possessed by our doctors. And yet either I could not get the papers or I had to pay to read them without knowing if they would be helpful. After we lost our son, I vowed to never publish in non-OA journals if I was in control.²⁵⁶

From Dr Emma Hill, Executive Editor, *The Journal of Cell Biology*, Rockefeller University Press (RUP), in response to a call for comments on the new NIH Public Access Policy:

As a university publisher, the RUP represents the middle of the road in the ongoing dialogue about public access to published data – firmly in between the advocates for complete open access and those publishers who hold most or all of their content behind access controls...

...Two of the RUP's three journals have been free to the public, six months after the publication date, since January, 2001. Even though our content is only under access control for a short time period, our subscription revenues have continued to rise over the last seven years. The RUP is thus in the unique situation of demonstrating that it is financially feasible for publishers to permit the release of all of their content in accordance with the NIH Public Access Policy.

At the RUP we strongly believe that scientific publishers have an obligation to release their content to the public, who provide much of the funding to generate that content and to buy subscriptions. In an ideal world, all publishers would fulfill and facilitate this obligation on their own. Although many publishers are doing so, there are still many who are not. We thus strongly support the NIH mandate for deposition of NIH-funded research in PubMed Central...

...Publishers who oppose this policy may present various arguments, but the bottom line is that they fear losing subscription revenue. In a sense they have a financial conflict of interest with respect to this debate that should be declared up front, just as we require authors and reviewers to do with regard to submitted manuscripts.

With tax-payers money, the NIH funds the research. NIH funded researchers perform and review the research. And thus, the data from any resulting publications can and should be made available to the public. To this there should be no argument.²⁵⁷

7.3 Negative reactions

Unfortunately, not all publisher reactions to open access have been positive.

²⁵⁶ Jonathan A. Eisen, "PLoS Biology 2.0" (editorial) 6(2) *PLoS Biology*, February 2008, <http://biology.plosjournals.org/perlserv/?request=get-document&doi=10.1371/journal.pbio.0060048&ct=1> accessed on 17 March 2008.

²⁵⁷ Dr Emma Hill, "Publishers Can and Should Conform with Implementation of the NIH Public Access Policy" Comments for NIH Open Meeting on Public Access, posted 13 March 2008, http://publicaccess.nih.gov/comments/comments_web_listing.htm accessed on 18 March 2008.

On 11 January 2008, the National Institutes of Health (NIH) in the United States of America released a revised Public Access Policy that made mandatory the deposit of all NIH-funded manuscripts into PubMed Central, the NIH digital archive of full-text journal articles (see Chapter 6 for more information).

On 24 January 2008, Barbara Epstein, the director of the University of Pittsburgh Health Sciences Library System, was reported as saying, in relation to the NIH mandate, “[Publishers] can help the authors more or they can help the authors less.”²⁵⁸

However, some publishers had already reacted unfavourable to the proposed NIH mandate. On 3 January 2008, after the enactment instructing NIH to implement a mandatory policy had been passed by Congress but prior to the NIH’s announcement of its revised policy, the Professional/Scholarly Publishing division of the Association of American Publishers (AAP/PSP) issued a press release. In the press release, Alan Adler, AAP’s Vice President for Legal and Government Affairs, stated:

But changing to a new *mandatory* policy that will ‘require’ such submission eliminates the concept of permission, and effectively allows the agency to take important publisher property interests without compensation, including the value added to the article by the publishers’ investments in the peer review process and other quality-assurance aspects of journal publication. It undermines publishers’ ability to exercise their copyrights in the published articles, which is the means by which they support their investments in such value-adding operations. The NIH policy also threatens the intellectual freedom of authors, including their choice to seek publication in journals that may refuse to accept proposed articles that would be subject to the new mandate.²⁵⁹

On 4 January 2008, Peter Suber countered the AAP press release with the following comments:

...Again the publishers pretend to speak for authors when their policy to lock up content harms them. If some publishers hate the NIH policy so much that they refused to publish the work of NIH-funded authors, then author freedom will be limited by the publisher decision, not by the NIH policy, which is compatible with the participation of all publishers. But in fact, no publishers of biomedical journals will refuse to publish work by NIH-funded researchers; the quality and quantity of that research are too great...Finally, since AAP/PSP brings up the subject of taking without compensation, I can add this. If the AAP/PSP had its way, then it would take something of value from U.S. taxpayers without compensation: access to the results of research for which they have already paid in three ways, namely, through the NIH research grant, through researcher salaries at public universities, and through subscription fees at public universities. Private-sector scientific publishers have been huge beneficiaries of public investment and the NIH policy is one small step to give the public something to show for that investment.²⁶⁰

It subsequently appeared that some publishers did not consider that AAP was properly representing their position on the NIH mandate and agreed with much of what Peter Suber had to say. In particular, Dr. Mike Rossner, Executive Director of Rockefeller University Press, objected to the AAP press release and publicly stated that he did not support AAP’s lobbying efforts against the NIH policy.²⁶¹

²⁵⁸ Kimberley K. Barlow, “NIH mandates open access to researchers’ publications” 40(10) *University Times*, University of Pittsburgh, 24 January 2008, <http://mac10.umc.pitt.edu/u/FMPro?-db=ustory&-lay=a&-format=d.html&storyid=7903&-Find> accessed on 18 March 2008.

²⁵⁹ Professional/Scholarly Publishing division of the Association of American Publishers (AAP/PSP), “Publishers Say Enactment of NIH Mandate on Journal Articles Undermines Intellectual Property Rights Essential to Science Publishing” (Press Release), 3 January 2008, http://www.pspcentral.org/publications/AAP_press_release_NIH_mandatory_policy.pdf accessed on 25 March 2008.

²⁶⁰ Peter Suber, “AAP/PSP response to the OA mandate at NIH” *Open Access News* (blog), 4 January 2008, <http://www.earlham.edu/~peters/fos/2008/01/aappsp-response-to-oa-mandate-at-nih.html> accessed on 25 March 2008.

²⁶¹ Dr. Mike Rossner, Open letter from Rockefeller University Press on the NIH Policy, dated 26 February 2008, forwarded (with permission) to the SPARC Authors’ Rights Forum (a closed forum) by Peter Suber on 27 February 2008.

Prior to their protests against the NIH Policy, the AAP/PSP had launched the Partnership for Research Integrity in Science and Medicine (PRISM) in August 2007. PRISM was allegedly the result of advice from Eric Dezenhall, a PR consultant hired by AAP/PSP.²⁶² According to leaked documents published by *Nature* reporter Jim Giles in January 2007, the AAP/PSP, American Chemical Society, Elsevier and Wiley had met with Dezenhall, who had recommended that the publishers combat government open access mandates by equating traditional publishing models with peer review.²⁶³ The PRISM website did just this, as well as asserting that open access would “open the floodgates to non-peer reviewed junk science.”²⁶⁴

The response from important academic publishers was quick and critical. Nine prominent academic publishers publicly denounced PRISM and disassociated themselves from it.²⁶⁵ The publishers were Cambridge University Press, Cold Spring Harbor Laboratory Press, Columbia University Press, MIT Press, Nature Publishing Group, Oxford University Press, Pennsylvania State University Press, Rockefeller University Press, and the University of Chicago Press. Furthermore, James Jordan, the director of Columbia University Press, and Ellen Faran, the director of MIT Press, resigned from the AAP/PSP Executive Council in protest.²⁶⁶

Martin Richardson, Managing Director of Oxford Journals, wrote in a letter to Peter Murray-Rust dated 5 September 2007:

Oxford University Press is not part of the PRISM initiative, and we do not intend to become a signatory to the PRISM Principles.

OUP is very active in several Open Access initiatives, all of which are extensively documented on our website (<http://www.oxfordjournals.org/oxfordopen/>). Our approach has been to develop an evidence-based understanding of the implications of OA on scholarly research dissemination, and to share that with the wider community, and this is our preferred method of contributing to the OA debate.²⁶⁷

Nature Publishing Group (NPG) made this statement regarding PRISM:

Although Nature America is a member of the AAP, we are not involved in PRISM and we have not been consulted about it. NPG has supported self-archiving in various ways (from submitting manuscripts to PubMed Central on behalf of our authors to establishing Nature Precedings), and our policies are already compliant with the proposed NIH mandate.²⁶⁸

Learned societies have also, at times, acted contrary to open access. In November 2005, The Royal Society responded to the Research Councils UK (RCUK) proposed open access mandate by issuing a

²⁶² Peter Suber, “Open Access in 2007” 11(1) *Journal of Electronic Publishing*, 2008, <http://hdl.handle.net/2027/spo.3336451.0011.110> accessed on 25 March 2008.

²⁶³ Ibid.

²⁶⁴ Ibid.

²⁶⁵ Ibid.

²⁶⁶ Ibid. See also Jennifer Howard, “Anti-Open-Access Effort By Publishing Group Loses Another University Press” *The Chronicle of Higher Education: News Blog*, 4 October 2007, <http://chronicle.com/news/index.php?id=3182> accessed on 18 March 2008.

²⁶⁷ Martin Richardson, open letter to Peter Murray-Rust, 5 September 2007, posted by Peter Murray-Rust, “Thank you OUP for not supporting PRISM” *A Scientist and the web* (blog), 5 September 2007, <http://wwwmm.ch.cam.ac.uk/blogs/murrayrust/?p=546> accessed on 18 March 2008.

²⁶⁸ Timo Hannay, “PRISM: Publishers' and Researchers' Intensifying Sense of Mistrust”, 10 September 2007, http://blogs.nature.com/wp/nascent/2007/09/prism_publishers_and_researche_1.html accessed on 17 March 2007.

position statement claiming that open access could have a disastrous effect on the research community.²⁶⁹ The consequence was that 64 fellows of The Royal Society (including nine Nobel laureates) signed an open letter “censoring the RS”.²⁷⁰ In June 2006, the American Anthropological Association (AAA) publicly opposed the Federal Research Public Access Act,²⁷¹ an Act that would require U.S. government agencies with annual extramural research expenditures over \$100 million to make journal articles resulting from funded research publicly available on the internet. The AAA Steering Committee responded by publishing an open letter to the AAA President and Chair, arguing that the AAA had “placed commercial interests at the forefront of its publishing program” and demanding that AAA “develop a member-informed policy on open access.”²⁷²

The important thing to remember from all this is that although publishers and publishing groups have at times reacted negatively to open access, there has always been a strong counter-reaction by other publishers and community members who hold a more balanced view of open access. The publishers that support open access in some way – either by allowing author self-archiving or by offering open access publishing options to their authors – now significantly outnumber the publishers that do not support open access at all.

7.4 The future of scholarly publishing

The current publishing model is a remnant of publishing *before* the internet – when authors had little choice but to submit their work and copyrights to publishers in order to have their work reach an audience. To overcome the problem of dissemination, authors were willing to sign away their rights to publishers who would do the hard work of distribution for them.

The internet solved the problems of dissemination, but the publishing industry still, to a large extent, operates under a model that can be considered “out-dated”.²⁷³ Michael Jensen comments:

...right now we're still living with habits of information scarcity because that's what we have had for hundreds of years. Scholarly communication before the Internet required the intermediation of publishers. The costliness of publishing became an invisible constraint that drove nearly all of our decisions.²⁷⁴

Some academics have expressed dissatisfaction and frustration with the current publishing model, particularly in light of exciting new opportunities offered by open access. Comments made by academics in response to the OAK Law Project's Author Survey (2007) included:

“I feel like part of me is torn away whenever I'm 'forced' to assign copyright in order to get something published. The 'publish or perish' nature of academia makes it imperative that we take offers when we get them, especially in good journals, but it's like someone is cutting away a part of me whenever this

²⁶⁹ Richard Poynder, “Open Access: Beyond selfish interests” *Open and shut?* (blog), 20 November 2006, <http://poynder.blogspot.com/2006/11/open-access-beyond-selfish-interests.html> accessed on 24 March 2008.

²⁷⁰ Ibid.

²⁷¹ Ibid.

²⁷² Ibid.

²⁷³ See for example, Karla L. Hahn, “Talk About Talking About New Models of Scholarly Communication” 11(1) *Journal of Electronic Publishing*, 2008, <http://hdl.handle.net/2027/spo.3336451.0011.108> accessed on 25 March 2008.

²⁷⁴ Michael Jensen, “The New Metrics of Scholarly Authority” 53(41) *The Chronicle of Higher Education*, 2007, <http://chronicle.com/weekly/v53/i41/41b00601.htm>, quoted in Karla L. Hahn, “Talk About Talking About New Models of Scholarly Communication” 11(1) *Journal of Electronic Publishing*, 2008, <http://hdl.handle.net/2027/spo.3336451.0011.108> accessed 25 March 2008.

happens.”²⁷⁵

“I HATE signing away my copyright and would be grateful for anything that could be done to reduce the power of publishers to effectively force me to do so.”²⁷⁶

“Since we are not paid for the enormous labour of publication, it adds insult that increasingly we feel powerless in the face of publishers' demands. Recently, for example, I was refused access to referee reports on an article on the basis that these were 'confidential'. The article was published by the journal but they would not give me the reports which are very important for my research development. Contracts should also commit the publisher to something. I signed a contract with a publisher who then (the editor) then held the article for (number deleted) years before publication. I was contracted and could not withdraw it, even though the contract did not even commit the publisher to publish it.”²⁷⁷

danah boyd, a PhD candidate at the School of Information (iSchool) at University of California (Berkeley) and a Fellow at Harvard Law School's Berkman Center for Internet and Society, has lamented on her blog:

I think that this needs to change. I'd be sad to see some of the academic publishers go, but if they can't evolve to figure out new market options, I have no interest in supporting their silencing practices.²⁷⁸

So what is to become of the journal publishing industry? Will open access be its downfall, as some claim? Experts say that open access does not equal the destruction of the journal publishing *industry*, although it may lead to changes of the current publishing *model*. Innovative publishers will adapt to changes resulting from the open access movement and will remain economically viable.

It has been suggested that when access to information is free and articles can be reproduced easily, then demand will shift to services that add value to that information. Kevin Kelly has stated, “When copies are super abundant, they become worthless. When copies are super abundant, stuff which can't be copied becomes scarce and valuable.”²⁷⁹

The argument has been made that publishers should shift their focus to offer “value-adding” services to authors. These services might include repository services, archiving services, indexing or citation tracking services or print preservation.²⁸⁰ For example, *The Foot & Ankle Journal* (an open access journal – formerly the *Podiatry Internet Journal*) is integrating its website with Wordpress to enable better indexing and searching of articles and to allow authors to highlight colour photos within articles and attach PDF files for colour printing.²⁸¹ Another feature that *The Foot & Ankle Journal* plans to pioneer in 2008 is the embedding of video clips and surgical video within articles or as attachments to

²⁷⁵ See Anthony Austin, Maree Heffernan and Nikki David, “Academic Authorship, Publishing Agreements & Open Access: Survey Results” OAK Law Project, March 2008, p104 (available on the OAK Law website at: <http://www.oaklaw.qut.edu.au>).

²⁷⁶ Ibid., p121.

²⁷⁷ Ibid., p122.

²⁷⁸ danah boyd, “open-access is the future: boycott locked-down academic journals” *apophenia: making connections where none previously existed* (blog), 6 February 2008, http://www.zephorias.org/thoughts/archives/2008/02/06/openaccess_is_t.html accessed on 24 March 2008.

²⁷⁹ Kevin Kelly, “Better Than Free” *The Technician* (blog), 31 January 2008, http://www.edge.org/3rd_culture/kelly08/kelly08_index.html accessed on 18 March 2008.

²⁸⁰ Peter Suber, “Trends Favoring Open Access” *CT Watch Quarterly*, August 2007, <http://www.ctwatch.org/quarterly/articles/2007/08/trends-favoring-open-access> accessed on 25 March 2008.

²⁸¹ Al Kline, “Editorial: Journal Prospectus for 2008: A look at 2007 and beyond” *Foot & Ankle Journal*, 2 January 2008, <http://faoj.wordpress.com/2008/01/02/editorial-journal-prospectus-for-2008-a-look-at-2007-and-beyond/> accessed on 25 March 2008.

articles, which will assist authors in discussing and explaining surgical cases and techniques.²⁸² Another example is the open access journal, *Open Medicine*, which also hosts an open forum where experts can debate the value of the published research and where there can be an ongoing dialogue between published authors and people reading and using their research.²⁸³

Alternatively, it has been suggested that publishers could concentrate on providing peer-review services to authors:

If, on the other hand, the day were ever to come when there was no longer a market for the paper edition, and no longer a market for some of the online added-values, then surely the market can be trusted to readjust to that new supply/demand optimum, with publishers continuing to sell whatever added values there is still a demand for. One sure added-value, for example, is peer review. Although journals don't actually perform the peer review (researchers do it for them, for free), they do administer it, with qualified expert editors selecting the referees, adjudicating the referee reports, and ensuring that the authors revise as required. It is conceivable that one day that peer review service will be sold as a separate service to authors and their institutions, with the journal-name just a tag that certifies the outcome, instead of being bundled into a product that is sold to users and their institutions.²⁸⁴

However the journal publishing industry evolves in the future, two conclusions can be drawn. Firstly, that change is inevitable. But secondly, and importantly, that altered business models can still be successful and can still generate revenue for publishers.

In its 8 March 2008 editorial, *The Lancet*, a medical journal published by Elsevier and one of the oldest peer-review journals in the world, issued this call-to-arms to editors and publishers:

What should editors and publishers do? They need to cast dullness to one side, and become leaders instead of followers. They need to start shaping the physician's information world, instead of reacting to it. They need to pay less attention to their financial bottom line, and commit themselves to a larger, more inspiring mission - to join doctors in working to achieve the highest attainable standards of health for the communities they serve. Most medical publishers have forgotten that mission. It is time they returned to it.²⁸⁵

7.5 Working with your publisher

Publishing agreements

Before your work is published, your publisher will require you to read and sign a publishing agreement. It is imperative that you read this agreement carefully and make sure that you properly understand everything contained in the agreement.

The publishing agreement is the document that sets out the rights and obligations of both you and your publisher. Importantly, it will also determine which party will own copyright in your work. If you sign

²⁸² Ibid.

²⁸³ Roger Cullman, "Michael Geist on E-publishing and the Law" *blogTO*, 12 March 2008, http://blogto.com/tech/2008/03/michael_geist_on_epublishing_and_the_law accessed 18 March 2008.

²⁸⁴ Tim Berners-Lee, Dave De Roure, Stevan Harnad, and Nigel Shadbolt, "Journal publishing and author self-archiving: Peaceful Co-Existence and Fruitful Collaboration" (unpublished), 2005, <http://eprints.ecs.soton.ac.uk/11160/> accessed on 18 March 2008.

²⁸⁵ "Clinical knowledge: from access to action", *The Lancet*, editorial, March 8, 2008, quoted by Gavin Baker, "Lancet editorial on OA" *Open Access News* (blog), 8 March 2008, http://www.earlham.edu/~peters/fos/2008_03_02_fosblogarchive.html accessed on 25 March 2008.

a publishing agreement without reading it or without properly understanding it, then you may be signing away all of your rights without fully realizing what you are doing. The implications of assigning copyright are explained below and in Chapter 3. If you experience difficulty in understanding your publishing agreement, seek the assistance of your institution's copyright officer.

Publishing agreements will usually set out whether copyright is assigned or licensed to the publisher and what rights are retained by the author. For example, the Springer Verlag (Germany) Copyright Transfer Statement provides:

The copyright to this article is transferred to Springer (respective to owner if other than Springer and for U.S. government employees: to the extent transferable) effective if and when the article is accepted for publication. The author warrants that his/her contribution is original and that he/she has full power to make this grant. The author signs for and accepts responsibility for releasing this material on behalf of any and all co-authors. The copyright transfer covers the exclusive right to reproduce and distribute the article, including reprints, translations, photographic reproductions, microform, electronic form (offline, online) or any other reproductions of similar nature.

An author may self-archive an author-created version of his/her article on his/her own website and his/her institution's repository, including his/her final version; however he/she may not use the publisher's PDF version which is posted on www.springerlink.com. Furthermore, the author may only post his/her version provided acknowledgement is given to the original source of publication and a link is inserted to the published article on Springer's website. The link must be accompanied by the following text: "The original publication is available at www.springerlink.com".²⁸⁶

Some publishers, such as Springer Verlag (above) and Wiley make their publishing agreements (or "Copyright Transfer Agreements") available online. Some publishers will only forward to you a copy of the publishing agreement once your manuscript is accepted for publication. The publishing agreements that are made available online can usually be accessed via the SHERPA/RoMEO database. If you wish to see examples of the language used in publishing agreements, the Springer Verlag statement can be accessed at: <http://www.sherpa.ac.uk/romeo.php?id=74>; the Wiley agreement can be accessed at: <http://www.sherpa.ac.uk/romeo.php?id=45>; and the Emerald form can be accessed at: http://info.emeraldinsight.com/authors/writing/jarforms_index.htm (see also Emerald's Author's Charter: <http://info.emeraldinsight.com/authors/writing/charter.htm>).

Most toll access publishers will seek an assignment of copyright. In a survey conducted in 2007, the OAK Law Project found that approximately 85% of publishing agreements sought an assignment of copyright.²⁸⁷ In approximately 85% of the agreements that sought assignment, authors were given no or minimal usage rights of their own work.²⁸⁸

However, a publisher does not always need a full assignment of copyright in order to be able to publish and disseminate your work. Provided that you give your publisher permission (in the form of a licence) to exercise some of your exclusive rights (see Chapter 3) for the purpose of publishing your work, then the publisher will usually be able to perform these functions effectively and legally. The rights necessary for publishing are considered further in Chapter 8.

The reality is that *you* are the copyright owner unless and until you sign away copyright in your

²⁸⁶ PDF accessed via SHERPA/RoMEO at <http://www.sherpa.ac.uk/romeo.php?id=74> on 19 March 2008.

²⁸⁷ Dr Anne Fitzgerald and Amanda Long, "A Review and Analysis of Academic Publishing Agreements and Open Access Policies" (Version 1), *OAK Law Project*, February 2008, available at <http://www.oaklist.qut.edu.au>.

²⁸⁸ Ibid.

work.²⁸⁹ You should therefore think carefully about whether you really want to agree to a publishing agreement that requires you to assign copyright. You should be especially careful if you have already granted a licence over your work to someone else or if you are subject to any pre-existing obligations such as a funder's mandate (see Chapter 6) or an institutional mandate (see Chapter 4).

If you assign copyright, then you are giving away your ownership rights completely. Regardless of the fact that you are the author of the article, you will need to seek permission from the copyright owner for every use that you want to make of the article that may be an exercise of their exclusive rights (unless you are acting under an exception to copyright infringement in the *Copyright Act 1968*). This means that you will need to seek permission to post your work online either on a personal website or in an institutional repository. You will need to seek permission to distribute copies of your article to colleagues. You will need to seek permission to reproduce significant parts of your article in later work.

Some publishing agreements, despite requiring an assignment of copyright, will expressly allow an author to do certain things with his or her work. Additionally, many publishers have policies in relation to self-archiving (see below). However, by assigning copyright you are effectively imposing a duty on yourself to tread carefully. For every use that you want to make of the work (or that you want to allow someone else to make), you must first check whether your publishing agreement or your publisher's policy allows that use. If the publishing agreement or policy is ambiguous (even if it appears that it *might* allow certain uses), you should confirm with your publisher that the use you want to make is acceptable. If the use is not expressly permitted in the agreement or policy, you will need to seek a licence from your publisher to engage in that use (or to be able to grant permission to others to engage in that use). Chapter 9 sets out the mechanisms that you may use to acquire a licence from your publisher.

If you do not wish to assign copyright, you may elect to issue a licence to your publisher instead. A licence will give permission to your publisher to publish and disseminate your work, but will ensure that you retain copyright in your work. By retaining copyright, you will usually retain the rights necessary to reuse your work, post your work online, share your work with others and allow others to make use of your work (though be aware that these rights may be limited if you grant an exclusive licence – see Chapter 3 for more detail). An example of a publishing agreement that is a Licence to Publish rather than an assignment has been drafted by the SURF Foundation together with the Joint Information Systems Committee (JISC) and can be accessed at <http://copyrighttoolbox.surf.nl/copyrighttoolbox/authors/licence/>. The Open Access to Knowledge (OAK) Law Project is also drafting a sample Licence to Publish, which will be available on the project website (<http://www.oaklaw.qut.edu.au/>) shortly. Licences and licensing mechanisms are addressed in Chapters 8 and 9.

Open access journals (and hybrid OA journals) generally allow the author to retain copyright. However, it is still important to read any publishing agreement carefully, whether it is from an OA journal or a toll access journal. Some OA journals seek exclusive licences to undertake certain acts. The effect of an exclusive licence is that permission is granted to the publisher *exclusively* to perform that act. During the term of the licence, permission cannot be granted to anyone else to perform that

²⁸⁹ Note, however, that your ownership rights in your work or what you may do with your work may be affected by your employment contract with your employing institution, your institution's Intellectual Property policy or your funding agreement with your funding body. Where your employing institution has funded your research, your ownership and reuse rights may be affected by both your employment contract and any separate agreement with your institution relevant to the particular research in question.

act and even the copyright owner cannot perform that act. It is therefore important to read the terms of the agreement carefully, because some exclusive licences can be as restricting as assignments. Consider whether the acts or rights sought under the exclusive licence are acts or rights that you would like to exercise yourself or that you might like to grant to others as well. See Chapters 8 and 9 for more information on managing your rights.

Policies

Many publishers also have policies relating to deposit of work into an institutional repository. You can search for your publisher's self-archiving policy (or "OA policy") online in the SHERPA/RoMEO database at <http://www.sherpa.ac.uk/romeo.php> or in the Australian OAKList database at <http://www.oaklist.qut.edu.au>.

The SHERPA/RoMEO database and the OAKList provide information on whether the publisher listed permits pre-print and/or post-print archiving and any conditions attaching to the permission. They also provide information on whether the publisher's policy complies with funders' mandates (and which ones). Additionally, links are provided to the publisher's copyright policy, where that is available online.

As explained earlier, where your publisher has a self-archiving policy available online, you may not need to seek a separate permission to exercise rights expressly addressed in the policy. However, you may wish to seek written confirmation from your publisher to the effect that you are able to rely on the self-archiving policy. You may also ask your publisher to include a clause in the publishing agreement that specifically allows you the right to self-archive your work (this is especially relevant where the publishing agreement requires you to assign copyright).

Consider the self-archiving policy carefully and compare it to your publishing agreement. You will need to seek clarification and/or permission from your publisher where:

- the policy is unclear or you are unsure about the proper application of the policy;
- the policy contradicts what is set out in your publishing agreement; or
- you wish to exercise or grant rights that go beyond what is allowed in your agreement or the publisher's policy.

Chapters 8 and 9 may assist in seeking further permissions from your publisher.

When acting in reliance on a publisher's policy, always be careful to abide by any conditions set out in the policy, such as embargo periods or conditions about where your material can be posted online. If you wish to do something in contravention of these conditions, you will need to seek further permission from your publisher.

If you cannot find your publisher's policy on the SHERPA/RoMEO database or the OAKList, this does not mean that the publisher will not allow self-archiving. It may just mean that they do not have a general (publicly available) policy on the matter. As mentioned above, Elsevier routinely granted individuals requests to authors until mid-2004 when it decided to adopt a general policy instead.²⁹⁰ You

²⁹⁰ Peter Suber, "Six things that researchers need to know about open access" 94 *SPARC Open Access Newsletter*, 2

should still ask your publisher for permission to self-archive your work – you may be pleasantly surprised. As highlighted above, in a 2007 survey of publishers conducted by the OAK Law Project, it was found that of the 17 publishers that did not have a formal self-archiving policy, 11 would have allowed self-archiving if asked.²⁹¹

Negotiating with your publisher

It is important to be able to articulate to your publisher what rights you want to retain and why. Do not be afraid to talk to your publisher – most publishers will be willing to listen to you and negotiate with you.

In a 2007 survey, the OAK Law Project found that approximately 91% of surveyed authors who had amended their publishing agreements by deleting clauses or attaching author addendum had their amendments accepted by publishers.²⁹²

This figure suggests that it is entirely possible – indeed, even probable – to reach a mutually beneficial position with your publisher. To reach this position, you should talk openly and honestly with your publisher about your concerns and about what rights you seek. Offer sample clauses or author addendum to amend the publishing agreement, to demonstrate that you have thought carefully about the issues. Be assertive – remember that copyright is first and foremost an author’s right, and recall all of the hard work that you have put into writing the article that is to be published.²⁹³

Chapters 8 and 9 are designed to walk you through what you should consider in negotiations and how you should approach negotiations with your publisher. Chapter 9 explains the different mechanisms – sample agreements, sample clauses and author addenda – that can be utilised to help you retain the rights you seek.

February 2006, <http://www.earlham.edu/~peters/fos/newsletter/02-02-06.htm> accessed on 25 March 2008.

²⁹¹ Dr Anne Fitzgerald and Amanda Long, “A Review and Analysis of Academic Publishing Agreements and Open Access Policies” (Version 1), *OAK Law Project*, February 2008, available at <http://www.oaklist.qut.edu.au>.

²⁹² See Anthony Austin, Maree Heffernan and Nikki David, “Academic Authorship, Publishing Agreements & Open Access: Survey Results” *OAK Law Project*, March 2008, p28 (available on the OAK Law website at: <http://www.oaklaw.qut.edu.au>). Note: 87 people (approximately 1 in 6 surveyed) had amended their publishing agreements, and 79 people had their amendments accepted by their publisher.

²⁹³ While understanding that copyright is at first instance an author’s right, be aware that academic authors (and their copyright) may often be subject to agreements or understandings with their funding body and/or academic institution.

Chapter 8: Using copyright law to enable open access

8.1 Granting rights

Under copyright law, permission to exercise rights usually reserved to the copyright owner can be granted through a licence. A licence is a permission granted by the copyright owner (or a person with the necessary rights to grant a licence) to another to deal with a copyright work in a certain way. Licences can be broad or narrow in scope and can include a variety of conditions relating to how, when or why the copyright work may be used. Licences are explained in more detail in Chapter 3. The person granting the licence is called the licensor, and the person receiving the benefit of the licence is called the licensee.

In the context of academic articles, licences will usually be granted either by you as author and copyright owner to a publisher, or where you have assigned (transferred) copyright to a publisher, by the publisher back to you for certain purposes. If you want to retain copyright in your work, it is advisable to grant a licence to your publisher rather than assign copyright.

The best kind of licence to grant is a non-exclusive licence. Non-exclusive licences allow you to retain the right to grant identical or similar licences to other people aside from the licensee, and also to exercise the licensed rights yourself. Conversely, exclusive licences grant the licensed rights to the licensee only, to the exclusion of all others including the licensor. Some publishers that publish under a ‘Licence to Publish’ agreement will require an exclusive licence for some rights (usually the right of first publication) and a non-exclusive licence for other rights (such as rights to reproduce or communicate the work). Such agreements can be a useful way to ensure an allocation of rights that is acceptable to both parties. Exclusive and non-exclusive licences are explained in Chapter 3.

Another potential situation involving non-exclusive licences arises when you want to permit people accessing your work online (“end-users”) to engage in certain uses of your work. You can grant this permission through an ‘End-User Licence’. One increasingly popular form of End-User Licence is the open content licence. Open content licences are non-exclusive and are a useful way to reserve your own rights in your work but also allow free use of your work by others. Open content licensing is discussed at 8.3. If you have assigned copyright to your publisher, you will need their permission before you can apply an End-User Licence or open content licence to your work.

When you are negotiating licensing terms with a publisher – whether you are in the position of licensor or licensee – it is common for negotiations to go back and forth as each party attempts to secure the rights best suited to their needs. **Do not be alarmed** if the publisher rejects your first offer of a licence, or refuses to licence to you the rights that you first request. **It is normal to negotiate**. Return with a counter-offer if necessary, always keeping in mind the rights that are most important to you to secure. As long as you remain clear about what rights you want to give and what rights you want to keep, you will usually be able to reach an acceptable resolution. Even if you end up with less rights that you originally set out to retain or acquire, at the very least you will have made your publisher aware that you are not wholly satisfied with the current publishing situation, and this may prompt them to change their copyright arrangements in the future.

If you need assistance with your negotiations, it may be helpful to use the mechanisms described in Chapter 9 and the Copyright Toolkit in Appendix One.

8.2 Necessary rights

As explained above, the most common copyright arrangement between an author and a publisher is that the author assigns their copyright in their work to the publisher. The publisher will often then licence back to the author certain rights to deal with the work. Less common, but increasingly popular, is for the author to retain copyright and simply issue a ‘Licence to Publish’ to the publisher, which gives the publisher permission to exercise the rights necessary to enable them to publish the work.

Before entering into a copyright arrangement with your publisher, you should be aware of the rights needed by the publisher to publish your work. You should also know which rights you wish to retain so that you can engage in certain dealings with your work (such as depositing your work into your institutional repository). Understanding which rights are important to both you and your publisher will assist you in reaching a mutually beneficial position with your publisher, regardless of which party owns copyright.

To begin, you should recall the exclusive rights of a copyright owner. As explained in Chapter 3, the exclusive rights of a copyright owner in relation to a literary work are the rights to:

- reproduce the work in a material form (i.e. copy);
- publish the work;
- perform the work;
- communicate the work to the public;
- make an adaptation of a work (e.g. a translation); and
- control rental of the work, where the work is a computer program or is reproduced in a sound recording.²⁹⁴

This section will set out the rights necessary for:

- a publisher to be able to publish an article and complete all associated tasks;
- you to provide open access to your work, particularly by depositing in an open access repository; and
- reuse of the article by you or others.

Rights necessary to publish a work

A publisher of a work performs many functions, including editing and formatting the work, organising peer review and disseminating the work. In order to perform these functions, a publisher needs to be able to:

- reproduce the work (i.e. make the published copies of the article and make any copies necessary to be able to distribute the article to editors, peer-reviewers etc.);

²⁹⁴ Note that under US copyright law (which is commonly reflected in publishing agreements and policies) the “communication” right will often be referred to as a “distribution”, “electronic transmission” or “public display” right, and even possibly a “public performance” right, and the “adaptation” right is often referred to as a “translation” or “derivative works” right.

- publish the work;
- communicate the work (where the article is also published online in a digital format);
- format and edit the work (which in some cases may amount to an exercise of the adaptation right); and
- grant these rights to others for legitimate publishing purposes (e.g. allow peer-reviewers to reproduce the work to take it home and read).²⁹⁵

As stated in the JISC/SURF Foundation Copyright Toolbox:

Normally a publisher has a world-wide right to publish in other media, in other formats, in other languages, including formats readable by the visually impaired, the right to give third-party permission and the right to enter into agreements with reproduction rights organisations for the collective licensing of rights.²⁹⁶

In order to be able to format and edit your work, and where necessary to convert your work into different digital formats, a publisher may also require you to consent to these actions and agree that they will not infringe your moral right of integrity of authorship (see Chapter 3 at 3.11 for more information on moral rights).

Rights necessary to enable open access

An article may be made openly accessible to the public when you deposit the article in your institutional repository or when you post the article on your personal website. You may also want to share the article broadly in other ways, for example, by emailing multiple copies of your article to your colleagues (which would exceed a “fair dealing” under Australian copyright law – see Chapter 3). In order to make your article OA or to share your article, you will need the requisite rights or permissions to perform the following actions:

- reproduce the work (i.e. make copies in order to share the article);
- convert the article to different files or formats to preserve and maintain the article (which may constitute an exercise of the right of adaptation);
- publish the article (if you are posting the article online or making it publicly available before its official publication in the journal);
- communicate the work by making it available online; and
- distribute the article broadly over the internet.²⁹⁷

If you are depositing your article into an institutional repository, you will also need to grant the repository institution the above rights, so that the institution can legally make your article available through the repository (see Chapter 4 at 4.5 for more information on granting rights to your repository

²⁹⁵ Note that under US copyright law (which is commonly reflected in publishing agreements and policies) the “communication” right will often be referred to as a “distribution”, “electronic transmission” or “public display” right, and even possibly a “public performance” right, and the “adaptation” right is often referred to as a “translation” or “derivative works” right.

²⁹⁶ JISC/SURF Foundation Copyright Toolbox: Right to Publish <http://copyrighttoolbox.surf.nl/copyrighttoolbox/publishers/sample-wording/right-to-publish/> accessed on 12 March 2007.

²⁹⁷ Note that under US copyright law (which is commonly reflected in publishing agreements and policies) the “communication” right will often be referred to as a “distribution”, “electronic transmission” or “public display” right, and even possibly a “public performance” right, and the “adaptation” right is often referred to as a “translation” or “derivative works” right.

institution). This means that if you are obtaining a licence from your publisher on your own behalf, you will also need to secure in that licence the right to grant the above rights to the repository institution.²⁹⁸

Rights necessary to allow reuse

You may want to grant certain rights to the general public to make use of your work. This will allow users who access your article in the institutional repository (IR) to use your article in their own research, teaching or in other ways that might otherwise be an infringement of copyright. Without a further grant of reuse rights, people accessing your work will only be able to read your work and engage in uses that may be considered a “fair dealing” under the *Copyright Act 1968* (Cth).

If you want to grant reuse rights to others, you should carefully consider what uses you want to allow. Do you want to allow commercial use? Do you want to allow others to make derivative works? Do you want to limit use only to teaching purposes? Or do you want to permit use for broad, general purposes? Whatever you decide, you should articulate the specific uses and rights allowed very clearly in the licence granted to users. You must also ensure that you obtain permission from the copyright owner (where this is someone other than yourself) to grant this licence to users. If you are depositing your article in an IR, you may also need to grant to the repository institution the right to allow users to exercise these rights.

One of the easiest ways to grant reuse rights is to use a Creative Commons licence. These are explained in more detail at 8.3. Creative Commons licences allow you to limit permitted uses of your work to uses that you are comfortable with. They also attach to the work in a way that is obvious to users. The advantage of Creative Commons licensing is that you only need to grant one licence over your work, which can then be relied on by both the repository institution and all manner of different users alike.

8.3 Open content licensing and Creative Commons

What are open content licences?

Wikipedia defines “open content license” as “a license designed for distribution of open content material.”²⁹⁹ It defines “open content” as:

Open content...describes any kind of creative work published in a format that explicitly allows copying and modifying its information by anyone, not exclusively by a closed organisation, firm or individual...Technically, open content is royalty free, share alike, and may or may not allow commercial redistribution. Content can either be in the public domain or under an open licence, such as one of the

²⁹⁸ Note that if your institution has in place a deposit mandate, you will be obligated to grant these rights to your institution (usually in a Repository Deposit Licence). If your institution has in place a permission mandate, you may have already granted these rights in a University Licence and will need to inform your publisher of this pre-existing licence. For more information on University Licences, see Thinh Nguyen and others, *Open Doors and Open Minds: What Faculty Authors Can Do To Ensure Open Access To Their Work Through Their Institution*, A SPARC/Science Commons White Paper, April 2008 http://www.arl.org/sparc/publications/guides/opendoors_v1.shtml accessed on 8 May 2008.

²⁹⁹ http://en.wikipedia.org/wiki/Open_Content_License accessed on 10 March 2008.

Creative Commons licenses.³⁰⁰

Note that under Creative Commons licences, “share alike” is an optional term (see below).

Professor Anne Fitzgerald explains open content licensing particularly well:

The development of open content licensing models has made it easier for copyright owners to licence their material to a wider range of people, particularly over the Internet. Open content licensing involves making copyright material available on liberal terms, to ensure that it is readily accessible and available for re-use. A central feature of open content licensing is that while copyright is asserted in the material, the copyright owner exercises their rights to ensure ready accessibility and to permit re-use while still reserving some rights for their sole benefit (for example, to be attributed as the creator of the material).

Importantly, open content licences grant rights to users to do acts that fall within the scope of the copyright owner’s exclusive rights and do not impose further (i.e. non-copyright related) obligations on the users of the copyright material. Open content licences differ from many traditional information licences which seek to impose contractual obligations or constraints on users (for example, restrictions on further dissemination of information or confidentiality obligations).³⁰¹

What are Creative Commons licences?

Creative Commons licences are a type of open content licence. They were developed by the Creative Commons project, which was established in 2001 by Professor Lawrence Lessig and others. The aim of the Creative Commons project is to increase access to creative works by providing flexible copyright options for creators.³⁰² It is premised on a “some rights reserved” system (as opposed to the traditional “all rights reserved”), which allows creators to retain copyright ownership of their work but at the same time licence its use to others on liberal terms.

Under a Creative Commons licence, all people who use the work in reliance on the Creative Commons licence are licensees. Therefore, potentially everyone in the whole world is a licensee. The rights granted to licensees under all Australian Creative Commons licences are the rights to copy, publish, communicate to the public, distribute copies or records of the work, exhibit or display publicly and digitally perform the work, and also the right to make verbatim copies of the work into another format.³⁰³

All Creative Commons licences carry the condition of attribution, so that whenever a work is copied, reused or shared in reliance on a Creative Commons licence, credit must be given to the original creator (i.e. you as author).³⁰⁴

In addition, there are three other conditions that may be imposed on licensees under a Creative

³⁰⁰ http://en.wikipedia.org/wiki/Open_content accessed on 10 March 2008.

³⁰¹ Dr. Anne Fitzgerald and Kylie Pappalardo, Building the Infrastructure for Data Access and Reuse in Collaborative Research: An Analysis of the Legal Context, *OAK Law Project* and *Legal Framework for e-Research Project*, June 2007, 146, available online at <http://www.oaklaw.qut.edu.au/node/33>.

³⁰² Damien O’Brien and Dr Anne Fitzgerald, Copyright Guide for Research Students: what you need to know about copyright before depositing your electronic thesis in an online repository, *OAK Law Project*, May 2007, available online at <http://www.oaklaw.qut.edu.au/publications>.

³⁰³ See <http://www.creativecommons.org> and <http://www.creativecommons.org.au>. Note that the rights granted will differ slightly between US and Australian Creative Commons licences – see footnote 294, 295 or 297 above.

³⁰⁴ See <http://www.creativecommons.org> and <http://www.creativecommons.org.au>.

Commons licence:

- Non-Commercial – the work (and derivatives based upon the work) may be used for non-commercial purposes only;
- No Derivatives – users may only use and distribute exact copies of the work (i.e they may not make derivative works based upon it); and
- Share Alike – users may create and distribute derivative works, but only on the same licensing conditions that apply to the original work (in other words, they must licence their derivative works under the same Creative Commons licence or other licence with the same terms).³⁰⁵

The Share Alike term is intended to ensure that the work always remains freely available to the public.

The above licensing conditions can be combined in different ways to create a number of different licences. The six core licences are:

- Attribution (BY) – this is the most liberal of the Creative Commons licences. It allows others to make any use of the work for any purpose, as long as the original creator is credited;
- Attribution Non-Commercial (BY-NC) – allows any use of the work for any non-commercial use, provided the original creator is attributed;
- Attribution Share Alike (BY-SA) – allows any use for any commercial or non-commercial purpose, as long as the original creator is credited and all derivative works are licensed under identical terms;
- Attribution Non-Commercial Share Alike (BY-NC-SA) – allows use for all non-commercial purposes, provided the original creator is attributed and all derivative works are licensed under identical terms;
- Attribution No Derivatives (BY-ND) – allows use of the work in its current form for commercial or non-commercial purposes as long as the original creator is attributed, but does not allow derivative works to be created (i.e. the work cannot be altered in any way); and
- Attribution Non-Commercial No Derivatives (BY-NC-ND) – this is the most restrictive of the Creative Commons licences. It allows use of the original work for non-commercial purposes only, provided the creator is attributed, and does not allow derivative works to be created.³⁰⁶

Note that the Share Alike and No Derivatives terms are incompatible in the same licence, as the Share Alike term only applies to derivative works.

Remember that applying a Creative Commons licence to your work does not limit the other kinds of licences that you can grant. For example, you may want to allow the entire world to use your work non-commercially. Therefore, you may attach a Creative Commons Attribution Non-Commercial licence to your work. This does not then prevent you from granting a separate licence to a commercial publisher to publish your work commercially.

The other baseline features of Creative Commons licences are:

- they operate worldwide;
- they apply for the entire duration of the copyright term;
- they are irrevocable (cannot be taken back);

³⁰⁵ See <http://www.creativecommons.org> and <http://www.creativecommons.org.au>.

³⁰⁶ Ibid.

- licensees cannot use technological protection measures to restrict access to the work; and
- every copy of the work should maintain a link to the licence.³⁰⁷

It is important to take note of the third feature listed above – namely, that the licences are irrevocable. This means that once you have granted a Creative Commons licence, you can never take it back. You may only terminate the licence on an individual basis if a user has breached the terms of the licence. It also means that if you have granted wide rights under a Creative Commons licence, you cannot then change that licence to limit the rights granted. For this reason, you should:

- think carefully about what rights you want to grant to users before you apply a Creative Commons licence; and
- be sure that you are satisfied for these rights to be granted to users and potential users for the entire duration of copyright.

How do you apply a Creative Commons licence to your work?

It is very easy to apply a Creative Commons licence to your work. You simply need to visit the Creative Commons website at <<http://www.creativecommons.org>> (or the Australian website at <http://www.creativecommons.org.au>>). There, you select which rights you want to grant to users and if you are using the general website, the jurisdiction (country) in which you reside (e.g. Australia). A Creative Commons licence is then automatically generated for your use. You are provided with:

- a pictorial “badge” that you can place on your work to clearly advertise to users which licence applies to your work;
- a link to the “human-readable” (easy to understand) version of the licence;
- a link to the “lawyer-readable” full legal code of the licence, which sets out the rights and obligations under the licence more comprehensively; and
- a “machine-readable” code so that your work can be searched for online on the basis of its licence conditions.

For graphical examples of this process, see the Copyright Toolkit in Appendix One.

There are also Creative Commons Add-ins available for Microsoft Office and OpenOffice.org, which allow Creative Commons licence information to be embedded in Microsoft Word, Excel and PowerPoint documents, and in OpenOffice.org Writer, Impress and Calc documents. To download the Add-ins, and for instructions on how to use them, see http://wiki.creativecommons.org/Microsoft_Office_Addin for Microsoft Office or http://wiki.creativecommons.org/OpenOfficeOrg_Addin for OpenOffice.org.

Where are Creative Commons licences already used?

Some open access journals release their content under a Creative Commons licence. Examples are discussed in Chapter 5. Also see the Directory of Open Access (& Hybrid) Journals (DOAJ) at <http://www.doaj.org>.

³⁰⁷ For more information, see <http://www.creativecommons.org> and <http://www.creativecommons.org.au>.

Some institutional repositories also give depositors the option of releasing their work under a Creative Commons licence, by including this option in the deposit process when an academic deposits their work into the institutional repository. This may be a useful way to apply a Creative Commons licence to your work, but before you do, read the section below to ensure that you are not breaching any legal obligations to your publisher.

Will your publisher allow you to attach a Creative Commons licence to your article?

If you intend to apply a Creative Commons licence to your work before entering into negotiations with a publisher, consider carefully whether applying the Creative Commons licence will prevent you from being published with your publisher of choice. Some publishers will not agree to publish a work that has already been licensed to the general public so liberally. However, some publishers will be happy to publish a work that is under a Creative Commons licence. Each publisher's position will be different. Therefore, it is important to talk openly with your publisher about what actions you have already taken with your copyright and what actions you intend to take.

Explain to your publisher how the Creative Commons licence will or will not affect their interest in your work. The publisher is still free to include the article in their journal, regardless of the Creative Commons licence, and will still be free to sell copies of the journal to libraries, academic institutions and individuals.³⁰⁸ However, the publisher should be aware that the article may also be found elsewhere, such as on the internet.

If you have already assigned copyright to your publisher, you will need to obtain permission from your publisher to attach a Creative Commons licence to your work. Explain to your publisher which Creative Commons licence you wish to use and why. Some publishers will allow you to apply a more restrictive Creative Commons licence to your work (such as a Non-Commercial No Derivatives licence), though few will allow the more liberal Creative Commons licences (such as Attribution only). Negotiations about Creative Commons licences may occur in the same way as negotiations about other licences. For example, a publisher may permit you to apply a Creative Commons licence, but only after an embargo period.³⁰⁹

If your publisher is unwilling to allow you to apply a Creative Commons licence to your article, they may instead agree to a different licence, the terms of which are reached by agreement between you and your publisher. If this is the case, you may find the mechanisms addressed in Chapter 9 and the Copyright Toolkit in Appendix One useful.

If you are still the copyright owner of your work and have only granted a Licence to Publish to your publisher, then you should be free to apply a Creative Commons licence to your work. However, this freedom will be limited if you have granted an exclusive licence to your publisher (see 8.1 and 8.2, and Chapter 3).

³⁰⁸ Note that if you have attached a non-commercial Creative Commons licence to your work, you will need to grant another licence to your publisher to publish and sell your article commercially (they cannot rely on the Creative Commons licence).

³⁰⁹ Some publishers will allow material to become openly accessible after a certain period of time, called an embargo period. An embargo period is most commonly 6 to 12 months, which accords roughly with the period of time during which the publisher has an immediate commercial interest in your work.

Chapter 9: What are your options?

9.1 Making an informed decision

Before approaching your publisher to seek amendments to a publishing agreement or to seek a licence, you should ensure that you clearly understand your own position and motivations, and the positions of your publisher, institution and funding body.

Are you aware of:

- your funder's open access policy?
- your institution's open access policy?
- whether your institution has in place a deposit mandate or permission mandate?
- your publisher's open access policy?
- the applicable copyright law?
- your rights before and after signing the publishing agreement?

Finally, do you know what rights you want in relation to your work and how best to preserve those rights?

Consider the following tables -

Obligations

Funding Body	Do you have a funding mandate that you must comply with?	
	Does your funding body have a (non-compulsory) open access policy?	
	Do you want to comply with your funding body's non-compulsory policy?	
	Are there any consequences for complying or not complying (e.g. may not receive future funding)?	

Institution	Does your institution have a deposit mandate or permission mandate that you must comply with?	
	Does your institution have a (non-compulsory) open access policy?	
	Do you want to comply with your institution's non-compulsory policy?	
	Are there any consequences for complying or not complying (e.g. only articles deposited into the IR will be considered in promotion or tenure applications)?	

Understanding the OA environment

Open Access	Do you understand the benefits of OA to you personally?	
	Do you understand the benefits of OA for the general public?	

Copyright	Do you understand the principles of copyright law and what your rights are?	
	What rights are important to you to retain?	

	Do you want to licence or assign copyright to a publisher (or do you have no preference)?	
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Self-archiving	Do you want to self-archive your work?	
	Do you understand the benefits to you of self-archiving?	
	Are you familiar with the support services offered by your institution for self-archiving faculty?	
	Do you understand what rights you need to licence to your institution?	
	Have you thought about what rights you want to grant to users accessing your work in the repository (i.e. what uses you want to allow)?	

Publisher Policies

Do you have a particular publisher that you want to publish with?	
Do you want to publish in an open access (OA) journal, a toll access journal or a hybrid journal (or no preference)?	
What are your motivations for choosing this publisher?	

Understand your own reasons for choosing a particular publisher or a particular mode of publishing. Are you focused on the best publication venue for your discipline? Are you concerned about impact factors? Is your choice based on future funding or promotion concerns?

Do your research about the publisher you have chosen. It is important to understand the publisher's position on open access before you approach them with any request regarding rights.

Consider –

Does the publisher have a policy on open access or self-archiving?	
Do you understand the policy? Have you highlighted anything that you do not understand so you can seek clarification?	
Are you satisfied with the publisher's policy? Have you identified what you would change?	
If you have chosen an OA or hybrid journal, do they charge publication fees? Do you know how you will pay these fees (e.g. through your funder, institution, or yourself)?	

If the publisher does not appear to have a formal policy on self-archiving, do not be concerned. As mentioned before, in a survey of publishers undertaken by the OAK Law Project in 2007, 17 of 64 publishers were classified as not formally supporting self-archiving, because they did not have a policy to that effect.³¹⁰ However, 11 of those 17 publishers would have allowed some form of self-archiving if asked by the individual author. Therefore, even if the publisher does not appear to formally support self-archiving, it is worthwhile asking permission to deposit your particular paper in an institutional repository. You may be pleasantly surprised with the response you receive.

9.2 Approaching your publisher

³¹⁰ Dr Anne Fitzgerald and Amanda Long, "A Review and Analysis of Academic Publishing Agreements and Open Access Policies" (Version 1), *OAK Law Project*, February 2008, available at <http://www.oaklist.qut.edu.au>.

Before approaching your publisher, ensure that you can complete the following checklist:

Approach your publisher –	For help, see:
Understanding as best as possible your publisher’s policy on self-archiving	SHERPA/RoMEO database or OAKList
Having read and understood your publishing agreement	Seek advice if you do not understand the agreement, e.g., speak to your institution’s copyright officer
Knowing whether you are or are not satisfied with in the policy/agreement	
Knowing what terms you would change in the policy/agreement	
Having formulated suggestions on how to change the agreement. These changes may be your own or may come from an author addendum or sample agreement	9.4 – 9.6 and Appendix One
Being aware of your responsibilities (imposed by mandates, agreements, licences or policies) to your funding body and academic institution	4.3 (institution) and 6.4 (funding body)
Knowing what rights you currently hold and (where applicable) what rights you would no longer hold if you signed the publishing agreement	3.4 and 8.2
Knowing what rights you want to keep and why (i.e. what uses you want to make of your material and why the current agreement would not allow you to undertake these uses)	8.2
Knowing whether you want to assign or licence copyright, and if you want to licence whether you want to grant an exclusive or non-exclusive licence	3.7 – 3.8 and 8.1
Knowing the terms under which you want to assign or licence copyright	9.4
Understanding what rights you would need to be able to grant to your institution in order to deposit your work	8.2
Having thought about what rights you want to grant to users and how you would do this	8.2 – 8.3, 9.5 – 9.6 and Appendix One

It is a good idea to formulate a “best case scenario” and a “worst case scenario” for yourself before approaching your publisher. What will you do if the publisher refuses your request? What are the minimum terms that you will agree to before the publishing agreement becomes completely unacceptable to you?

Be able to explain to your publisher why you want the rights that you seek and why you think that you are entitled to these rights. Inform your publisher that you are not seeking these rights to undermine the publisher’s commercial interest in your work, but rather for your own continued research and teaching purposes and for your own professional advancement. Also inform your publisher of any obligations that you have to your funding body or academic institution.

Importantly, *do not be afraid to negotiate*. It may feel unusual for you, but it will not seem unusual to the publisher. Publishers are commercial entities – they negotiate agreements all the time. In fact,

negotiating your agreement demonstrates that you have enough confidence in the quality of your work to assert your rights. As stated by Kenneth D. Crews and David Wong:

Do not be afraid to negotiate. Publishers are interested in your work, otherwise they would not have asked to publish it. As stated before, instructors have found much success reserving reasonable terms of use of the work for themselves through negotiations.³¹¹

Know what rights the publisher actually needs to publish your work (see section 8.2) and be able to identify where the publishing agreement secures rights that go beyond what the publisher needs. Do not be afraid to ask the publisher to justify why they need the additional rights. As noted above, in a 2007 survey of publishers undertaken by the OAK Law Project, it was found that approximately 85% of the publishing agreements examined sought to assign copyright from the author to the publisher and in around 85% of those agreements, authors were provided with no or minimal usage rights of their own work.³¹² However, only around 5% of the agreements stated why it was necessary to assign copyright to the publisher.³¹³

Reasons given by a publisher for requiring an assignment of copyright in your work may include that it enables them to effectively protect your work against copyright infringement, that it facilitates wide distribution of your work, or that it enables them to efficiently process third party permissions and enter into licensing arrangements regarding your work.³¹⁴ For rebuttals of these reasons, see Section 3.7 of this guide. You should consider whether the reasons given by your publisher are acceptable to you. If you consider that you will be able to protect your work from infringement, disseminate it widely (e.g. through a digital repository) and enter into licensing arrangements (e.g. by attaching a Creative Commons licence to your work) without assigning copyright to your publisher, then you may want to negotiate a different allocation of rights with your publisher.

The remainder of this chapter addresses how to amend publishing agreements and how to select licences and author addenda to present to publishers in negotiations. If you need help preparing for negotiations, look to this guide and the Copyright Toolkit contained in Appendix One. You can also seek additional support from your institution's copyright officer and repository manager.

9.3 Dealing with an older work in which you have already assigned copyright: what you can seek from your publisher

You may want to deposit an older (already published) article in your institutional repository. The first thing to do is locate and read your publishing agreement for that article. You should also check your publisher's self-archiving policy. The agreement or policy may already allow you to deposit your work. For example, your publisher may have a policy of allowing self-archiving after an embargo period of six months. If you are dealing with an older article, you may already be clear of that embargo period. If you are relying on a policy rather than your publishing agreement, you should contact your publisher and confirm that you are permitted to self-archive your work. This will ensure that you are

³¹¹ Kenneth D. Crews and David Wong, "Reserving Rights of Use in Works Submitted for Publication: Negotiating Publishing Agreements" A Project of the IUPUI Copyright Management Center at Indiana University-Purdue University Indianapolis, prepared on 5 January 2004, http://www.copyright.iupui.edu/nego_doc.htm accessed on 25 March 2008.

³¹² Dr Anne Fitzgerald and Amanda Long, "A Review and Analysis of Academic Publishing Agreements and Open Access Policies" (Version 1), *OAK Law Project*, February 2008, available at <http://www.oaklist.qut.edu.au>.

³¹³ Ibid.

³¹⁴ See footnote 45.

not in breach of any express terms of your publishing agreement. If you cannot locate your publishing agreement or publisher's self-archiving policy, contact your publisher and request a copy.

If your publishing agreement prohibits self-archiving or is silent about the issue, then you will need to seek a separate licence from your publisher to permit you to self-archive the article in question. It is too late to amend the original agreement or to present an author addendum.

In seeking a licence, you have a number of options. You may:

- explain to your publisher what uses you want to make of your article, and attempt to draft a suitable licence together;
- attempt to draft a basic licence yourself (perhaps with the assistance of a lawyer or copyright officer), setting out what rights and uses you seek permission for;
- present your publisher with a sample licence (see 9.5 below); or
- show your publisher an appropriate author addendum as an example of the rights you seek, and then allow the publisher to draft the licence or draft a suitable licence together.

A publisher is likely to be helpful in regard to an older article, because they no longer have an immediate commercial interest in it.

9.4 Amending publishing agreements

Where a publisher gives you a publishing agreement that seeks a complete assignment of copyright or an exclusive licence, and that agreement does not allow you to make the uses of your work that you want, you may want to amend the agreement so that it is acceptable to you. You may amend a publishing agreement through any one of the options discussed below.

Evidence suggests that most amendments made by authors seeking rights to self-archive their work or reuse their work are accepted by publishers. In a 2007 survey undertaken by the OAK Law project, approximately 91% of respondents who had amended publishing agreements by deleting clauses or attaching an author addendum reported that their publisher was willing to amend the publishing agreement.³¹⁵

Amending an agreement yourself

Read the publishing agreement carefully. If you are satisfied that you understand the agreement and know what terms you want to delete, insert or amend, then you may want to try making these changes yourself. Rule a line through terms that you want to delete, and write in terms that you want to include. To be binding, you will need to initial beside all the changes you make and the publisher will also need to initial beside the changes as well to indicate that they have seen the changes and agree to them.

Amending the publishing agreement yourself may be a good option if you are only making minor

³¹⁵ See Anthony Austin, Maree Heffernan and Nikki David, "Academic Authorship, Publishing Agreements & Open Access: Survey Results" OAK Law Project, March 2008, p28 (available on the OAK Law website at: <http://www.oaklaw.qut.edu.au>). Note: 87 people (approximately 1 in 6 surveyed) had amended their publishing agreements, and 79 people had their amendments accepted by their publisher.

changes. However, if you are seeking major changes to the agreement, it may be better to present the publisher with an author addendum or sample agreement drafted by a lawyer. That way, you can generally rely on the language used in the agreement as being legally correct and enforceable.

Using sample publishing agreements

There are some sample publishing agreements available to assist authors in asserting their copyright in their work. As most of these sample agreements focus on retaining author rights, they usually take the form of a Licence to Publish rather than an assignment of copyright. This means that the author retains copyright and grants to the publisher sufficient rights to enable the publisher to publish and make available the author's work.

Sample publishing agreements are best used when you are wholly unsatisfied with the publishing agreement offered to you by your publisher. Some publishers will accept a Licence to Publish and some will not. Even when your publisher refuses to accept the Licence to Publish that you present to them, you may be able to reach an agreement with them through negotiations. After negotiations, you may end up with a publishing agreement that lies somewhere in between the publisher's original agreement and your Licence to Publish.

A sample publishing agreement is currently being drafted by the OAK Law Project and will be available shortly on the project website (<http://www.oaklaw.qut.edu.au/>), This agreement will set out the rights licensed to the publisher, the rights retained by the author, and the term of the licence to the publisher.

A sample agreement that is already available is the SURF Foundation/JISC Licence to Publish, which can be accessed at <http://copyrighttoolbox.surf.nl/copyrighttoolbox/authors/licence/>. The SURF Foundation/JISC Licence to Publish also sets out the rights licensed to the publisher and the rights retained by the author, and contains additional terms imposing an obligation to publish on the publisher, and addressing situations involving multiple authors.³¹⁶

The JISC/SURF Foundation Copyright Toolbox website states:

By signing the Licence to publish and sending it to his/her publisher the author grants the publisher a sole licence for certain copyright related acts which have an economic or commercial objective with respect to the article.

At the same time the author retains certain rights for various, scholarly purposes. This licence makes no difference between pre prints, post prints or published articles but stipulates that the published version of the author's article can be disseminated via an institutional or centralised repository immediately after publication in a journal or after an embargo period of maximum six (6) months.

This licence can also be used in the case of multiple authors. One of the clauses deals with this.³¹⁷

³¹⁶ Note that licences drafted overseas may refer to rights differently than licences drafted in Australia. For example, under US copyright law (which is commonly reflected in publishing agreements and policies) the "communication" right will often be referred to as a "distribution", "electronic transmission" or "public display" right, and even possibly a "public performance" right, and the "adaptation" right is often referred to as a "translation" or "derivative works" right. The SURF/JISC Licence to Publish refers to the communication right, and also grants both the right to adapt the work and the right to translate the work into other languages.

³¹⁷JISC/SURF Foundation Copyright Toolbox: Licence to Publish,

An example of a journal that only requires authors to grant a Licence to Publish (rather than assign copyright) is the *University of Ottawa Law & Technology Journal* (UOLTJ). UOLTJ seeks an exclusive Licence to Publish the article in UOLTJ, and a non-exclusive licence to exercise other rights such as the rights to reproduce, publish, distribute, communicate to the public by telecommunication, translate, adapt and use the article. The publishing agreement provides:

The Author retains ownership of the copyright in the Article, including the right to produce, reproduce, publish, distribute, communicate to the public by telecommunication, translate, adapt, perform, display and use the Article in any form whatever (including print or electronic media), and by any technology now known or hereafter developed, subject to those rights granted in this agreement.³¹⁸

The UOLTJ Publishing Agreement is a commendable agreement for a publisher and can be accessed at: <http://www.uoltj.ca/documents/UOLTJLicence.pdf>.

Using sample clauses

Instead of substituting the entire publishing agreement, you may instead choose to include some additional clauses in the publishing agreement to reserve some rights to you. If you are inserting clauses into a publishing agreement, you should initial all changes and require the publisher to initial all changes as well. This shows that the changes have been seen and agreed to by both parties.

JISC and the SURF Foundation have included sample wording in their Copyright Toolbox that can be adopted and used in publishing agreements. They have provided sample wording relating to:

- educational use;
- making available (e.g. through an institutional repository);
- research uses;
- personal use; and
- future reuse.

The Copyright Toolbox website explains how to use the sample wording:

The following pages take the author through a series of provisions designed to assist the author in determining the rights which are important to his/her needs.

Linked to the description of each right is a portion of text that some publishers and authors have found useful in codifying the various rights. Even where some text already exists - for example in a publisher's agreement - the linked text may be found useful in clarifying the right in question so that all parties understand their rights and obligations.

Some of the wording under a heading includes several uses. In that case the author can insert that wording and leave out other provisions and/or articles regarding that use.³¹⁹

<http://copyrighttoolbox.surf.nl/copyrighttoolbox/authors/licence/> accessed 12 March 2008.

³¹⁸ University of Ottawa Law & Technology Journal (UOLTJ) Publishing Agreement and Copyright Licence, <http://www.uoltj.ca/documents/UOLTJLicence.pdf> accessed 12 March 2008.

³¹⁹ JISC/SURF Foundation Copyright Toolbox: Sample Wording, <http://copyrighttoolbox.surf.nl/copyrighttoolbox/authors/sample-wording/> accessed on 12 March 2008.

By way of example, here is one suggested clause for retaining the right to self-archive a work in an institutional or subject-based repository:

Post print

The author retains the right:

- to self-archive an author-created version of his/her article on his/her own web site and his/her institution's repository, including his/her final version; however the author may not use the publisher's PDF version which is posted on <> without permission
The author may only post his/her version provided acknowledgement is given to the original source of publication and a link is inserted to the published article on the publisher's web site. The link must be accompanied by the following text: 'the original publication is available at <> ';
- to post and update the article on e-print servers as long as files prepared and/or formatted by the publisher or its vendors are not used for that purpose unless permission has been obtained. Any such posting made or updated after acceptance of the article for publication shall include a link to the online abstract in the publisher's journal of to the entry page of the journal;
- upload the author's accepted manuscript PDF ('post-print') to institutional and/or centrally organized repositories but must stipulate that public availability be delayed until <> months after first online publication in the journal;

When uploading an accepted manuscript to a repository, the author should include a credit line and a link to the final published version of the article. This will guarantee that the definitive version is readily available to those accessing your article from public repositories, and means that the article is more likely to be cited correctly

This is a pre-copy-editing, author-produced PDF of an article accepted for publication in [insert journal title] following peer review. The definitive publisher-authenticated version [insert complete citation information here] is available online at: <> [insert URL that the author will receive upon publication here];³²⁰

Variations on this clause and clauses relating to pre-prints and definitive versions (publisher's versions) of articles are also provided.

Using author addenda

An author addendum is a document that can be attached to the end of your publishing agreement to alter the legal rights contained in the publishing agreement. A standard publishing agreement generally requires you to transfer all copyright in your material to the publisher. An author addendum allows you to retain certain rights so that you may give your research wide exposure, for example the right to distribute the work in an academic context and the right to publish the work online.³²¹

There are several steps you should take to ensure the author addendum is legally binding:

- Upon reaching the final stage in your negotiation you should notify your publisher that you will be sending them an author addendum to attach to the publishing agreement.

³²⁰JISC/SURF Foundation Copyright Toolbox: Sample Wording: Making Available: Provisions, <http://copyrighttoolbox.surf.nl/copyrighttoolbox/authors/sample-wording/making-available/provisions/> accessed on 12 March 2008.

³²¹ Information provided by Scott Kiel-Chisholm, Project Manager, OAK Law Project, School of Law, Queensland University of Technology, s.kielchisholm@qut.edu.au.

- Ask the publisher to sign the publishing agreement with the comment that “This Agreement includes the attached Author Addendum” and sign the author addendum.
- Upon receiving these documents from the publisher sign both of the documents.
- If the publisher has not signed the author addendum, then it will not be binding.
- If you or the publisher have changed and initialled any clauses in these documents, they will not be binding unless both of you have initialled the change.
- You should keep a copy of both documents on file.³²²

Sometimes, a publisher will have sent you a publishing agreement and you will want to attach an author addendum to the agreement yourself. In this situation, you may attach the addendum, sign the agreement and return it to the publisher. When signing the agreement, it is best practice to write, “My signature is subject to acceptance of the attached addendum.” This will avoid any confusion about whether or not your signature indicates an acceptance of the terms of the publishing agreement in the absence of the addendum.

It is important to remember that a valid contract (such as a publishing agreement) must constitute a “meeting of the minds”; in other words, both parties must agree to the terms of the agreement. Sometimes, a publisher will send a publishing agreement to an author with the agreement already signed by the publisher. If you attach an addendum, sign the agreement subject to the attached addendum and send the agreement back, it will not be binding straight away, even though both you and the publisher have signed the agreement. Because you have changed the terms from those that the publisher signed, the publisher will need to agree to the changes implemented by the addendum before the agreement will be binding.

Some people argue that if the publisher takes the agreement as amended and then continues to publish the author’s article, then the publisher has impliedly accepted the amended terms. In fact, Washington University has recently revised its author addendum to make clear that when authors submit it to a journal, and the journal publishes the underlying article, the publisher will be deemed to have accepted the terms of the addendum.³²³ Nevertheless, you should confirm that the publisher has read and agreed to the terms of the addendum before you do anything in reliance on it.³²⁴

There are various types of addendum currently available for use. Generally the addendum contains the following author rights, allowing the author to:

- reproduce the work for academic purposes;
- reproduce the work for any non-commercial purpose;
- prepare derivative works;
- allow others, including the author’s employer, to make non-commercial use of the work, provided the author and journal are cited;
- reproduce the work in electronic form either immediately or after a certain period of time from publication; and

³²² Information provided by Scott Kiel-Chisholm, Project Manager, OAK Law Project, School of Law, Queensland University of Technology, s.kielchisholm@qut.edu.au.

³²³ Peter Suber, “Open Access in 2007” 11(1) *Journal of Electronic Publishing*, 2008, <http://hdl.handle.net/2027/spo.3336451.0011.110> accessed on 25 March 2008.

³²⁴ If the publisher purports to rely on the agreement that you signed but refuses to acknowledge the addendum that you attached, then there is no “meeting of the minds” and the agreement will not be valid.

- communicate, display or distribute the work online to others, usually by posting the work on the author’s website or by depositing the work into an institutional or subject-based repository.³²⁵

In May 2007, Science Commons and the Scholarly Publishing and Academic Resources Coalition (SPARC) announced the release of new online tools to help authors exercise choice in retaining critical rights in their scholarly articles.³²⁶ These tools included the Scholar’s Copyright Addendum Engine, which is designed to simplify the process of choosing an author addenda. The engine brings together four of the most popular author addenda so that authors can easily selected which addendum best suits their needs.

As stated by John Wilbanks, the Executive Director of Science Commons (at the time, the Vice President):

This is about authors’ rights. Right now, authors trade the most important rights – like the right to make copies of their own scholarly works – to traditional publishers. That trade has led to an imbalanced world of restricted access to knowledge, skyrocketing journal prices, and an inability to apply new technologies to the scholarly canon of knowledge. Our Scholar’s Copyright project addresses this imbalance. Working with libraries and universities, we are providing the Scholar’s Copyright Addendum Engine so that scholars can retain rights to make copies of their own writings available on the Web.³²⁷

Each addendum gives an author non-exclusive rights to create derivative works from their article and to reproduce, distribute, publicly perform and publicly display their article in connection with their teaching, conference presentations, lectures and other scholarly works, and professional activities.³²⁸ The addendum differ in how soon an author can make the final published version of their article available and in whether an author can allow others to re-use their work in various ways.³²⁹

The different addendum are:

- Science Commons/SPARC Access-Reuse Addendum – the author retains sufficient rights to grant to the public a licence to reuse or repost the article, provided the reuse is non-commercial;
- Science Commons Immediate Access Addendum – the author retains sufficient rights to post a copy of the published version of the article online immediately to a site that does not charge for access to the article;

³²⁵ Information provided by Scott Kiel-Chisholm, Project Manager, OAK Law Project, School of Law, Queensland University of Technology, s.kielchisholm@qut.edu.au. Note that addenda drafted overseas may refer to rights differently than addenda drafted in Australia. For example, under US copyright law (which is commonly reflected in publishing agreements and policies) the “communication” right will often be referred to as a “distribution”, “electronic transmission” or “public display” right, and possibly even a “public performance” right, and the “adaptation” right is often referred to as a “translation” or “derivative works” right.

³²⁶ SPARC, “Science Commons, SPARC Announce New Tools for Scholarly Publishing” (Press Release), 17 May 2007, <http://www.arl.org/sparc/media/07-0517SC.html> accessed on 25 March 2008.

³²⁷ Ibid.

³²⁸ Note that under US copyright law, “distribute”, “publicly display” and even possibly “publicly perform” have similar meanings to “communicate” under Australian law, and “create derivative works” is similar to “adaptation” under Australian law.

³²⁹ Explained on the Sciences Commons website at <http://scholars.sciencecommons.org> accessed on 25 March 2008.

- Science Commons Delayed Access Addendum – the author may immediately post a final version of the article (as edited after peer-review) to a site that does not charge for access to the article, but must not make the published version of the article available to the public until six months after the date of publication; and
- MIT Copyright Amendment – developed at the Massachusetts Institute of Technology, this addendum allows authors to continue using their article in their academic work, to deposit their article into an institutional repository and to deposit any National Institutes of Health (NIH) funded manuscripts on the National Library of Medicine's PubMed Central database.

The Scholar's Copyright Addendum Engine can be accessed at <http://www.arl.org/sparc/author/completeonline.html>. It is very easy to use – you simply select which addendum you would like to use and insert some basic information (such as your name and the name of your publisher), and the addendum is automatically generated for you to print and present to your publisher. Remember to always keep a copy of any documentation that you give to your publisher. For more on how the Scholar's Copyright Addendum Engine works, see the Copyright Toolkit in Appendix One.

Some universities other than MIT have also drafted their own author addendum. Two notable examples are University of Michigan and University of Minnesota. The University of Michigan Author's Addendum provides:

3. Repositories. The Author shall retain the right to deposit the published version of the Article in an open-access digital repository maintained by the Author's employing institution, such as University of Michigan's "Deep Blue", by an academic consortium to which the employing institution belongs, such as the Committee on Institutional Cooperation (CIC), by a non-profit scholarly society, and/or by a governmental funding agency. At the Publisher's written request, open access to the Article may be delayed for a period not to exceed 12 months from the date of publication.
4. Personal Website. The Author shall retain the right to post the published version of the Article on the Author's personal website.³³⁰

The University of Minnesota Author Addendum, adopted on 3 May 2007, states:

2. After a period of six(6) months from the date of publication of the article, the Author shall also have all the non-exclusive rights necessary to make, or to authorize others to make, the final published version of the Article available in digital form over the Internet, including but not limited to a website under the control of the Author or the Author's employer or through digital repositories including, but not limited to, those maintained by CIC institutions, scholarly societies or funding agencies.³³¹

You may be uncertain as to whether your publisher will accept an author addendum to their publishing

³³⁰ University of Michigan Author's Addendum, <http://www.copyright.umich.edu/addendum.html> accessed on 25 March 2008; see also Jim Till, "How to select and Author Addendum?", *Be openly accessible or be obscure* (blog), 21 June 2007, <http://tillje.wordpress.com/2007/06/21/how-to-select-an-author-addendum> accessed on 25 March 2008.

³³¹ See Jim Till, "How to select and Author Addendum?", *Be openly accessible or be obscure* (blog), June 2007, <http://tillje.wordpress.com/2007/06/21/how-to-select-an-author-addendum> accessed on 25 March 2008; see also Peter Suber, "FAQ on Minnesota's author addendum" *Open Access News* (blog), 19 June 2007, http://www.earlham.edu/~peters/fos/2007_06_17_fosblogarchive.html accessed on 25 March 2008.

agreement. Fortunately, most publishers will be quite willing to accept an author addendum once they understand that its purpose is to allow you to place a copy of your article in your institutional repository and not to publish the same article in a competitor's journal or elsewhere.³³²

If your publisher does decline the author addendum, the SPARC Author Rights website suggests you take the following steps:

- Explain to the publisher why it is important for you to retain these rights in your own work.
- Ask the publisher to articulate why the licence rights provided in the addendum are insufficient to allow publication.
- Evaluate the adequacy of the publisher's response in light of the reasonable and growing need for authors to retain certain key rights to their works.
- Consider publishing with an organisation that will facilitate the widest dissemination of their authors' work, to help them fulfill their personal and professional goals as scholars.³³³

9.5 Presenting licences

As discussed in Chapter 8, you may be a licensee or a licensor of a number of different licences:

- you issuing a Licence to Publish to your publisher;
- your publisher issuing a licence to you to use your work for certain purposes (where you have assigned copyright to the publisher);
- you licensing certain rights to your institution to make your work available in the institutional repository (IR), either through a University Licence or a Repository Deposit Licence; and/or
- you licensing to users accessing your work in the IR certain rights to deal with your work.

Licences to publish are discussed at 9.4: Using sample agreements. Licences issued by your publisher are also discussed at 9.4; these are essentially the sample clauses or the author addendum that you request your publisher to include in the publishing agreement to licence certain rights back to you.

Some of the author addendum and sample clauses make clear that in order to deposit your work in an institutional repository, you need to licence certain rights to your institution. However, it is a good idea to discuss this with your publisher. Explain the rights needed to be granted to the repository (see 8.2) and why they need to be granted. Ensure that any licence granted to you to permit self-archiving also gives you permission to grant the necessary rights to your institution.

You may want to grant additional rights to the general public to reproduce and use your work for certain purposes. One means of doing this is by applying a Creative Commons licence to your work.

³³² See Kerin Friedman, Alex Golub, Kambiz Kamrani and Christopher Kelty, "Author's rights agreements: how to make them work for you" *Open Access Anthropology* (blog), 2 December 2006, <http://blog.openaccessanthropology.org/2006/12/02/authors-right-agreements-how-to-make-them-work-for-you/> accessed on 25 March 2008. See also Margaret Markland and Peter Brophy, "SHERPA Project Evaluation Final Report" *Centre for Research in Library and Information Management (CERLIM)*, July 2005, <http://www.sherpa.ac.uk/projects/sherpa.html> accessed on 25 March 2008; Anthony Austin, Maree Heffernan and Nikki David, "Academic Authorship, Publishing Agreements & Open Access: Survey Results" OAK Law Project, March 2008, p28 (available on the OAK Law website at: <http://www.oaklaw.qut.edu.au>).

³³³ SPARC, "Author Rights: Using the SPARC Author Addendum to secure your rights as the author of a journal article", 2006, <http://www.arl.org/sparc/author/addendum.html> accessed on 25 February 2007.

Creative Commons licences are discussed in detail in section 8.3. If you have assigned copyright to your publisher, you will need to obtain permission from them before you can apply a Creative Commons licence to your article. Explain to your publisher which Creative Commons licence you wish to use and what uses it permits. You may need to negotiate with your publisher about the level of restriction imposed upon these uses (e.g. the publisher may consent to a Non-Commercial Use licence only). If you have not assigned copyright and have only granted your publisher a (non exclusive) Licence to Publish, you will usually not need to seek consent to apply a Creative Commons licence to your work.³³⁴

9.6 Copyright Toolkit

A Copyright Toolkit is provided in Appendix One. It is designed to assist you in understanding the copyright issues surrounding your work and in making key decisions about how you will deal with copyright so that you retain the rights you need for future use and to enable open access. You should work through the Copyright Toolkit before approaching your publisher.

³³⁴ However, take care where you have granted an exclusive licence to your publisher. Without varying the exclusive licence, you will not be able to grant the same rights covered under the exclusive licence to others under a Creative Commons licence.

Chapter 10: Conclusion

This guide has explained the many and varied benefits of open access, both to you personally, as a researcher and academic author, and to the wider community. However, the benefits of open access cannot be enjoyed unless you are prepared to take an active interest in managing your legal rights in your work.

Any article that reaches publication is the result of much research, labour and time invested by you. The resulting work and the ability to reproduce, reuse and control that work should not be given away lightly. This guide has sought to emphasise that copyright is first and foremost an author's right. A proper understanding of copyright law is fundamental to your ability to control your work and take full advantage of the open access benefits.

Proper rights management is essentially about understanding which rights are important to you to retain and which rights you are willing to grant to others (and on what basis), and then employing the best mechanism to grant those rights. Such mechanisms include open content licensing such as Creative Commons licensing, and licensing through sample agreements and author addenda.

As author rights and rights management gain focus in the open access movement, more resources become available to help academic authors in their open access mission. This guide is one such resource, and there are many others offered by organisations such as the Association of Research Libraries (ARL), the Scholarly Publishing and Academic Resources Coalition (SPARC) and the SURF Foundation.³³⁵

As you become more aware of the benefits of open access, you will also begin to discover the great number of organisations, resources and websites that are available to assist you in managing your rights so that you can take full advantage of the enormous opportunities that open access offers.

³³⁵ See, for example, the two-minute authors' rights video presentation, released by The Association of College and Research Libraries (ACRL), the Association of Research Libraries (ARL) and the Scholarly Publishing and Academic Resources Coalition (SPARC) on 17 March 2008, available at <http://blip.tv/file/743274>; the SPARC Author Rights initiative at <http://www.arl.org/sparc/author>; and the JISC/SURF Foundation Authors' Copyright Toolbox at <http://copyrighttoolbox.surf.nl/copyrighttoolbox/authors>.

Glossary of terms

Author addendum – A document that can be attached by an author to a publishing agreement to alter their rights under the contract (usually to allow self-archiving).

Citation – The listing of a previously published work in the reference section of a current work. This is usually taken to imply the relevance of the cited work to the current work.³³⁶

Copyright - A collection of legal rights that attach to an original work when it is created. Copyright allows the copyright owner to control certain acts to do with their work (e.g. copying) and to prevent others from using the protected material without permission.

Copyright assignment – The transfer of copyright ownership from one person to another, usually in exchange for payment or the provision of a service. An assignment must be in writing and signed by the person transferring copyright ownership (the assignor) to be effective at law.

Copyright licence – The means by which a copyright owner can grant permission to others to exercise one or more of the copyright owner’s exclusive rights in relation to a copyright work.

Creative Commons licence – A standard-form licence that gives end-users rights in relation to a work, subject to certain conditions as selected by the author. The rights given are to copy, distribute, display and perform the work. The conditions that may be imposed are: attributing the work to the author (this condition is present in all Creative Commons licences); non-commercial use only; non-derivative works only; or derivative works can be made but only if they are licensed under an identical Creative Commons Licence.

Deposit mandate - An institutional or department-level policy that requires faculty members to deposit their academic and research outputs into the institution’s open access repository.

E-prints or EPrints – E-prints are electronic copies of academic papers. EPrints is the name given to one type of digital repository and the software that runs it.

Embargo period - A period of time imposed by a publisher, during which the publisher restrains the author from making the published work available in an open access repository, but after which an author may provide open access to their work.

End-user licence – A copyright licence granted to users accessing a work in an institutional repository, which permits the users to deal with the work in certain ways and for certain purposes.

Fair dealing – The defences and exceptions to copyright infringement contained in the *Copyright Act 1968* (Cth), which permit a fair dealing of a copyright work to be made for certain specified purposes. Whether or not a dealing is fair will depend upon the circumstances of use, including how much of the copyright work is used and the nature and purpose of the use.

Hybrid journal – A toll access journal that makes some of its content available under open access at the election of the author and upon payment of a fee.

³³⁶ Ian D. Craig, Andrew M. Plume, Marie E. McVeigh, James Pringle and Mayur Amin, “Do Open Access Articles Have Greater Citation Impact?” 1(3) *Journal of Informetrics*, July 2007, 239-248, accessed the author's preprint (summary paper) at <http://www.publishingresearch.net/Citations.htm> on 25 March 2008.

Ingelfinger Rule – Named after a former editor at the *New England Journal of Medicine*, this is the rule historically followed by some publishers of refusing to publish work that is already available elsewhere.

Institutional repository (IR) – An online archive, based at an academic institution, in which academic authors can deposit their work with the intention that it will be openly available in a digital form.

Metadata – The information entered into the repository records to describe the material deposited, in order to enable users to search and locate the material online. Metadata includes the name of the article deposited, the name of the author and the date published.

OAI-compliant – A repository that is OAI-compliant is interoperable with multiple search engines and discovery tools, making it easier for end-users to search and locate material in the repository.

Open access (OA) – Open access aims to disseminate knowledge and materials broadly and freely across the internet, and in doing so remove most of the traditional access restrictions to these materials, such as economic and geographical barriers.

Open access journal – An electronic-based journal that makes its published content freely available to all immediately upon publication.

Open access repository – An online archive where authors can deposit their work to make the work freely available in digital form. This guide focuses on institutional repositories (IR), being open access repositories that are based at and operated by academic institutions.

Peer review - An author's work has been peer-reviewed when it has been subjected to the scrutiny of others who are experts in the field.

Permission mandate – An institutional or department-level policy that requires faculty members to grant permission to the institution or department to make their scholarly articles available in the institutional repository. The institution or department may then deposit the scholarly articles on behalf of the faculty member. The institution or department may also require or seek permission to engage in other uses of the scholarly articles. In many cases, a permission mandate will also constitute a University Licence.

Post-print – The final version of an academic paper, incorporating the revisions made as a result of the peer review process or as accepted for publication if no changes were made.

Pre-print – The version of an academic paper which is submitted by an author for peer review.

Public domain – In relation to copyright, “public domain” refers to the range of materials that are not owned or controlled by anyone and are therefore considered “public property” available for anyone to use for any purpose.³³⁷ These are usually materials for which the copyright term has expired or which have been dedicated to the public domain by the copyright owner.³³⁸

Publisher's version - Sometimes called the “definitive version” of an article, this is the final version as published. It includes the publisher's formatting and typesetting.

³³⁷ Wikipedia, “Public domain” http://en.wikipedia.org/wiki/Public_domain accessed on 21 April 2008.

³³⁸ See, for example, the Creative Commons Public Domain Dedication at <http://creativecommons.org/licenses/publicdomain/> accessed on 21 April 2008.

Refereed – This is also known as peer review. A refereed article is one in which the author’s work and ideas have been subject to the scrutiny of others who are experts in the field

Repository Deposit Licence (RDL) – A copyright licence granted to a repository institution. This licence grants the institution the necessary rights and permissions to be able to deal with the copyright work in question and to make the work available through the institutional repository.

Research Impact - The degree to which findings are read, used, applied, built-upon, and cited by users in their own further research and applications. Research impact is a measure of the progress and productivity of research.³³⁹

Self-archive – The process of depositing one’s own material in an online repository.

University Licence – A grant of permission by a faculty member to his or her employing academic institution to use his or her peer-reviewed scholarly articles for certain purposes, such as depositing the article in an institutional repository and making the article publicly available.³⁴⁰

Unrefereed – A work that has not been subjected to peer review, commonly referred to as a pre-print.

³³⁹ Stevan Harnad, Tim Brody, Francois Vallieres, Les Carr, Steve Hitchcock, Yves Gingras, Charles Oppenheim, Heinrich Stamerjohanns and Eberhard R. Hilf, “The Access/Impact Problem and the Green and Gold Roads to Open Access” 30(4) *Serials Review*, 2004 , <http://users.ecs.soton.ac.uk/harnad/Temp/impact.html> accessed on 25 March 2008.

³⁴⁰ Thinh Nguyen and others, *Open Doors and Open Minds: What Faculty Authors Can Do To Ensure Open Access To Their Work Through Their Institution*, A SPARC/Science Commons White Paper, April 2008, p4 http://www.arl.org/sparc/publications/guides/opendoors_v1.shtml accessed on 8 May 2008.

Abbreviations

AAA – American Anthropological Association

AAP – Association of American Publishers

AAP/PSP – Association of American Publishers division of Professional/Scholarly Publishing

ACRL – Association of College and Research Libraries

ADT – Australian Digital Theses

AGORA – Access to Global Online Research in Agriculture

AHRC – Arts & Humanities Research Council (in the United Kingdom)

ANU – Australian National University

APSR – Australian Partnership for Sustainable Repositories

ARC – Australian Research Council

ARIIC – Australian Research Information Infrastructure Committee

ARL – Association of Research Libraries

ASCB – American Society for Cell Biology

BBB – (Collectively) the Budapest, Bethesda and Berlin definition of open access

BOAI – Budapest Open Access Initiative

BRII – Berkeley (University of California) Research Impact Initiative

CERLIM – Centre for Research in Library and Information Management

CERN – The European Organisation for Nuclear Research

CIC – Committee on Institutional Cooperation

CIHR – Canadian Institutes of Health Research

CNRI – Corporation for National Research Initiatives

Cth - Commonwealth

CV – Curriculum Vitae

DEEWR – Department of Education, Employment and Workplace Relations

DOAJ – Directory of Open Access Journals

EISSN – Electronic International Standard Serial Number

ERC – European Research Council

EU – European Union

FAIR – Focus of Access to Institutional Repositories programme

FAQ – Frequently Asked Questions

FAS – Faculty of Arts and Sciences (at Harvard University)

HHMI – Howard Hughes Medical Institute

HINARI – Health InterNetwork Access to Research Initiative

IFETS – International Forum of Educational Technology & Society

IEEE – Originally an acronym for Institute of Electrical and Electronic Engineers, Inc. Now the name of the organisation.

INASP – International Network for the Availability of Scientific Publications

IR - Institutional repository

ISI – Institute for Scientific Information

ISSN – International Standard Serial Number

JISC – Joint Information Systems Committee

MIT – Massachusetts Institute of Technology

MLA – Museums, Libraries and Archives Council

MPS – Max Planck Society

NHMRC – National Health and Medical Research Council

NIH – National Institutes of Health

NPG – Nature Publishing Group

OA – Open Access

OAI – Open Archives Initiative

OAK – Open Access to Knowledge

OARE – Online Access to Research in the Environment

OpenDOAR – Directory of Open Access Repositories

ORCA – Online Research Collections Australia

OSI – Open Society Institute

OUP – Oxford University Press

QUT – Queensland University Technology

PLoS – Public Library of Science

PMC – PubMed Central

PRISM – Partnership for Research Integrity in Science and Medicine

RCUK – Research Councils UK

RDL – Repository Deposit Licence

ROAR – Registry of Open Access Repositories

ROARMAP – Registry of Open Access Repositories Material Archiving Policies

RoMEO – Rights METadata for Open archiving

RS – Royal Society

RUP – Rockefeller University Press

SHERPA – Securing a Hybrid Environment for Research Preservation and Access

SPARC – Scholarly Publishing and Academic Resources Coalition

SSI – Systemic Infrastructure Initiative

SSRN – Social Science Research Network

UK – United Kingdom

UKOLN – UK Office for Library and Information Networking

UKPMC – UK PubMed Central

UMER – University of Melbourne E-Prints Repository

UOLTJ – University of Ottawa Law & Technology Journal

U.S. or USA – United States of America

UTS – University of Technology, Sydney

VERSIONS – Versions of Eprints – user Requirements Study and Investigation Of the Need for Standards

APPENDIX ONE:

Copyright Toolkit For Academic Authors

This toolkit is designed to assist you in understanding the copyright issues surrounding your work. It helps you to clarify what legal interests all the different parties – yourself, your co-authors, your funding body, your institution and your publisher – have in your work. The toolkit is designed to provide a clear picture of the flow of rights and interests in your work as it travels from conception to publication to dissemination. The toolkit can therefore assist you in making key decisions about how you will deal with copyright in your work so that you retain the rights you need for future use and to enable open access. This toolkit is intended to be read in conjunction with *Understanding Open Access in the Academic Environment: A Guide for Authors*.

SECTION 1: Your work and copyright basics

Complete this section for each new work that you create (i.e. every journal article that you write).

1.a. Work: *[Insert Title here]*

1.b. Author(s): *[Insert Author(s) name(s) here in order of priority]*

Inserting the title of the work will help you to keep clear in your mind what is the “copyright work”.

Inserting the author's(s') name(s) will help you to determine who owns copyright *at first instance*.

Copyright -

Remember that as copyright owner(s), you (and your co-authors) have the exclusive rights to:

- reproduce the work in a material form;
- publish the work;
- perform the work;
- communicate the work to the public (includes online communications); and
- make an adaptation of the work (e.g. a translation).

While you remain the copyright owner, no one else can exercise any of these rights without your permission, subject to exceptions in the *Copyright Act 1968* (Cth).

SECTION 2: Assignment

Even though the author of a work owns copyright in that work at first instance, they may transfer copyright ownership to another person through an assignment.

Usually, a person will assign copyright in return for something else, such as payment or the provision of a service.

The assignment clause that you are most likely to see is that contained in a publishing agreement. Publishers have traditionally required an author to assign copyright in their work, in exchange for having the work published.

The important thing to remember is that **once you assign copyright, you have given up all of your rights in that work**. This means that without the permission of the new copyright owner you cannot:

- print the work and make multiple copies of the work to distribute to your colleagues; or
- post the work online on your personal website or in a repository.

It does not matter that you are the author of the work – you are no longer the copyright owner.

It is therefore important to consider whether assigning copyright in your work is the best thing to do. You may prefer to grant a licence instead (see Section 3).

It is also important to recognise when an assignment has occurred.

An assignment must:

- be in writing; and
- be signed by the person who is transferring the copyright (often called an “assignor”) - i.e. you.

Before signing any contracts that require you to assign your copyright, work through this toolkit carefully. Section 7 is particularly relevant. That way, you can ensure that any decision you make regarding your copyright is an informed decision.

SECTION 3: Licensing

Licences - general

A licence is a way for a copyright owner (“licensor”) to give permission to another person (“licensee”) to exercise one or more of the copyright owner's exclusive rights (see Section 1) in relation to a work. For example, a copyright owner may give a person a licence to make photocopies of their work, which is an exercise of the exclusive right to reproduce. Unlike assignment, a licence does not need to be in writing to be valid unless it is an exclusive licence (see below). However, it is advisable to keep written records of all licences given.

A licence can be limited as to:

- which rights/actions are permitted to be exercised;
- where the rights can be exercised (geographical location);
- when the rights can be exercised; and/or
- how long the licence is given for.

A licence can be:

- exclusive – the right is granted to the licensee exclusively, meaning that the same right cannot be granted to anyone else and can no longer be exercised by the licensor; or
- non-exclusive – the same right can be granted to others. This is the more common form of licence and is generally preferable for the copyright owner.

A licence can be:

- contractual – in exchange for permission to exercise the right, the licensee promises to do or give something in return; or
- non-contractual – a bare permission.

Whether a licence can be revoked (taken back) once it is given will depend on:

- whether the licence is a bare permission (usually revocable);
- whether the licence is exclusive (usually irrevocable unless there is an express statement to the contrary);
- the terms of a contractual licence; and
- any express or implied statements made by the copyright owner.

Open content licences

A modern form of copyright licensing is the open content licence. This is a licence that is placed on a copyright work to provide free and easy access for all potential users worldwide. It is particularly useful in the context of the internet, where a work may be exposed to any number of people in any number of locations. The work is usually “badged” with the licence so that users can easily see how they may use the work and what conditions apply to their use. The most common form of open content licence for academic works is the Creative Commons licence. The application of Creative Commons licences is explained in Section 8.

How are licences relevant to you?

You will encounter a range of different copyright licences as your work travels from conception to publication to dissemination. These licences may include:

- you licensing the right to publish your work to a publisher (if you do not assign copyright);
- a publisher licensing back to you certain rights to deal with your work (if you do assign copyright);
- you granting a licence to your academic institution to host your work in the institutional repository;
- you granting a licence to people accessing your work in the institutional repository to print a copy of your work or to use your work for certain purposes; and
- you licensing certain rights in regard to your work to other parties, e.g. your colleagues or your funding body.

It is therefore important to understand how copyright licences work. The different licences listed above and your legal relationship with parties such as your funding body, your academic institution and your publisher will be addressed in the remaining sections of this Copyright Toolkit. The questions asked in Sections 4, 5 and 6 in particular are designed to assist you in clearly understanding where your copyright interests lie in relation to these other parties.

SECTION 4: Your funding body

Complete this section if your work is the result of funded research.

Keep the completed section on file – it may help if you receive funding from the same body again.

4.a. Who is your funding body? *[Insert name here] Your funding body may be your academic institution or a separate body. Note: relevant contact details can be inserted into Section 10 and kept on file.*

4.b. Does your funding body have an open access policy?

- Yes – *Continue to next question.*
- No – *Are you sure? If so, proceed to Section 5.*
- I don't know – *Check all correspondence sent to you by the funding body – is their policy included? Is there someone from the funding body that you can ask? Also check the SHERPA-JULIET online database of research funders' open access policies (see Section 10 for more information).*

Note: the funding body's policy may apply to a range of different issues. The part relevant to open access will usually contain language such as “dissemination of research results”.

4.c. Does your funding body recommend or mandate the deposit of funded research output into a repository?

- Yes, it recommends – *Consider whether you want to accept this recommendation. Consider any ramifications if you don't deposit – could refusing to deposit affect your chances of receiving future funding? Are you required to explain why you are not making your research results openly available?*
- Yes, it mandates - **Remember** that any transfer of copyright to another party will need to be subject to this mandate. *You may need to inform your publisher that you have this pre-existing obligation to deposit your work in a repository.*
- No, it neither mandates nor recommends – *Are you sure? If so, proceed to question 4.f.*

4.d. Does your funding body recommend or mandate *when* research output should be deposited?

- Yes
 - When? *[Insert timeframe here]*
- No

4.e. Does your funding body recommend or mandate *where* your research output should be deposited?

- Yes – in a specific repository.
 - Which one? *[Insert name of repository here]*
 - Consider whether you would also like to deposit your work in your institution's repository – *see Section 5.*
- Yes – in an institutional repository.
 - *[Insert name of your institution's repository here]*
- Yes – in an appropriate subject-based repository.
 - Consider your options. See the Registry of Open Access Repositories (ROAR) and the Directory of Open Access Repositories (OpenDOAR) for ideas (*see Section 10*). Where would you like to deposit your work?
 - *[Insert name of subject repository here]*
 - Consider whether you would also like to deposit your work in your institution's repository – *see Section 5.*
- No
 - Consider whether you would like to deposit your work in a repository, and if so, where. See the Registry of Open Access Repositories (ROAR) and the Directory of Open Access Repositories (OpenDOAR) for ideas (*see Section 10*).
 - *[Insert name of repository here]*

4.f. Does your funding body allow a portion of funding to be spent on the cost of open access publishing (i.e. author fees in open access journals)?

- Yes
 - How much? *[Insert amount or calculation here]*
- No
 - Is this something that could be negotiated?

4.g. Other relevant information

[Insert any other relevant information about your funding body here]

SECTION 5: Your academic institution

Complete this section and keep it on file – you can use it to assist you when depositing future works in your institutional repository.

5.a. Does your institution have a repository?

- Yes – *You should familiarize yourself with the repository. Where is it located? Complete these details in Section 10 and keep them on file for future reference.*
- No – *You should consider whether you want to deposit your work in another repository, such as a subject-based repository. Check the Registry of Open Access Repositories (ROAR) or the Directory of Open Access Repositories (OpenDOAR) for ideas (see Section 10). If you do decide to deposit in another repository, make sure you understand their policy/conditions before depositing.*
- I don't know – *Check with your institution's library staff, or check the Registry of Open Access Repositories (ROAR) or the Directory of Open Access Repositories (OpenDOAR) to find out (see Section 10).*

5.b. Does your institution have an open access policy?

- Yes – *Read this policy and ensure that you understand its terms. Consider questions 5.c., 5.d., 5.e. and 5.f.*
- No – *Are you sure? If so, proceed to question 5.g.*
- I don't know – *Ask your institution's library staff, or check the Registry of Open Access Repository Material Archiving Policies (ROARMAP) online (see Section 10).*

5.c. Does your institution mandate that you deposit your research and academic work into the institution's repository (Deposit Mandate) or that you give the institution permission to make your work available in the institution's repository (Permission Mandate)?

- Yes – *Proceed to next question.*
- No – *Even if your institution only requests that you deposit your work, consider the benefits of open access and whether you would like to deposit your work. Proceed to question 5.e.*

5.d. Is the mandate subject to your publisher giving you permission to deposit?

- Yes – *Even though the mandate is subject to your publisher granting permission, you should consider the benefits of open access and seek a licence from your publisher. This is addressed further in Section 6 and Section 8.*

- No – *You must ensure that your publisher is aware of your prior obligation to your institution. For Deposit Mandates, this will generally require you to either (a) retain copyright in your work; or (b) obtain a licence from your publisher allowing deposit. See further, Sections 6, 7 and 8. For Permission Mandates, you may simply need to inform your publisher that you have already issued a licence to your academic institution and that any transfer of copyright to your publisher will be subject to this licence.*

5.e. Does your institution request or require a grant of rights from you prior to depositing your work into the institutional repository (via a University Licence) or at the time of depositing your work into the repository (via a Repository Deposit Licence)?

- Yes – *What rights?*

- To the institution/repository: *[Insert the rights requested or required to be granted to the institution/repository here. For example, does your institution require/request the right(s) to:*

- *reproduce your work?*
- *(electronically) communicate your work?*
- *make your work available online to end-users?*
- *distribute your work on the internet?*
- *adapt or modify your work for preservation purposes?*
- *keep a copy of your work for security and preservation?*
- *other(s)?*

- To end-users: *[Insert the rights requested or required to be granted to end-users (people accessing your work in the repository) here. For example, are you requested/required to grant end-users the right(s) to:*

- *access and view your work?*
- *download your work and keep a copy?*
- *print your work?*
- *reuse your work?*
- *share and further distribute your work?*
- *other(s)?*

Ensure that you understand what granting these rights means for you. If you are unsure or confused, speak to your institution's copyright officer or repository manager. Keep their contact details on file (see Section 10) in case you have any other questions in the future.]

Note: You should consider what mechanisms you want to use to grant these rights. For assistance, see Section 8.

- No – even if your institution has not specified what rights they require/request to be granted to them in order to make your work available in the institution's repository, they will nonetheless require certain rights to do so. Usually, these will include the right to reproduce your work and the right to communicate your work to the public. You should consider what rights you will need/want to grant to your institution and to end-users (see examples above at “Yes”) and speak to your institution's repository manager. For more on granting rights through licences, see Section 3, and for mechanisms to assist in granting rights, see Section 8.

5.f. Does your institution's open access policy contain any other conditions?

- Yes – What conditions?
 - [Insert other conditions here. For example, conditions as to the type of material that can or should be deposited (pre-print (not peer-reviewed), post-print (peer reviewed), author's final copy or publisher's PDF?) or conditions as to when work should be deposited (immediately upon publication, prior to publication or subject to publisher-imposed embargo periods?)]
- No – Are you sure? If so, proceed to next question.

5.g. Does your institution offer any other services to assist you in using and understanding the repository?

- Instruction in how to use the repository?
- Assistance in managing your copyright?
- Storage and preservation services for your work?
- Helping you to organise and access different versions of your work?
- Citation counts and impact assessment?
- Personal webpages to promote your publications?
- CV services with links to your publications in the repository?
- Bibliographic records with links to your publications in the repository?
- Assistance in negotiating with publishers?
- Access to and help with some of the mechanisms described in Section 8?
- Research assistance in locating other useful publications in the repository?
- Other services?

Even if you are unaware of any or all of these services that your institution may provide, it is worthwhile speaking to your institution's copyright officer or repository manager – you may be surprised at what help they can offer you. Keep the contact details of the copyright officer and repository manager on file (see Section 10) so that you can easily contact them if you have any questions or wish to take advantage of any of the services offered.

SECTION 6: Your publisher

This section is designed to help you to deconstruct and understand your publishing agreement. It will assist you in understanding how your publisher deals with copyright and whether your publisher allows self-archiving. This will place you in a better position to negotiate with your publisher and retain the rights that are most important to you.

Complete this section for each new journal that you choose to publish in. Be aware that one publisher may publish many different journals, each with their own publishing agreement and copyright arrangements. Remember too that publisher's policies may change, and there are new open access journals appearing all the time. Keep up-to-date by checking the OAKList or SHERPA/RoMEO List (which list publishers' policies on self-archiving) and the Directory of Open Access (and hybrid) Journals (DOAJ) online (see Section 10).

Read your publishing agreement carefully, and consider the issues addressed in this toolkit *before* signing anything.

6.a. Which journal are you seeking to publish in? *[Insert journal's name here]*

6.b. Who is the publisher of the journal? *[Insert publisher's name here. Further details can be inserted in Section 10.]*

6.c. Have you published with this publisher before?

- Yes - *[Insert details here. For example, when you published with them, what article you published and in what journal you published. If you do have a pre-existing relationship with the publisher, then you should highlight this in any negotiations regarding rights].*
- No – *Proceed to next question.*

6.c. Is the journal open access, toll access (subscription fees are charged for access) or a hybrid model?

- Open access – *Proceed to question 6.d.*
- Toll access – *Proceed to question 6.j.*
- Hybrid – *Proceed to question 6.h.*
- I don't know – *Check the Directory of Open Access (and hybrid) Journals (DOAJ) to see if your journal is listed. See Section 10 for further information.*

Open Access

6.d. What rights are you required to grant to the publisher?

Note: usually the grant of rights will be set out in the publishing agreement and with an open access journal, this should take the form of a copyright licence (NOT an assignment of copyright).

[Insert grant of rights here. For example, you grant the publisher the right of first publication and the non-exclusive right to disseminate your work online.]

6.e. Are there any other relevant conditions or terms in the publishing agreement?

- Yes – *[Insert the terms/conditions here that are most important to you. These may relate to limitations that are placed on you or placed on your publisher, further services offered by your publisher etc.]*
- No – *Are you sure? If so, proceed to next question.*

6.f. Does the journal charge you a fee to cover their costs?

- Yes – how much? *[Insert amount here]*
- No – *Proceed to Section 7.*

6.g. Will your funding body or institution contribute to paying the fee, or does the journal offer any other payment schemes that you can take advantage of?

- Funding body will contribute: *[How much?]*
- Institution will contribute: *[How much?]*
- Institution pays journal a subsidy to cover fees of all academics at the institution
- Journal offers waiver of fee for financial hardship/low economic status
- Other: *[Insert details]*

Hybrid

6.h. What benefits does the hybrid journal offer to you? *[Insert here]*

Note: it is important to be careful that publishing in a hybrid journal offers the same benefits as publishing in an open access journal. Often it will – you have the opportunity to publish with what is usually a more established and recognised publisher (e.g. Springer or Oxford University journals) and also the opportunity to make your work available for open access. Many hybrid journals will not only make the open access articles available for free online, but will also lower their subscription price to take into account the open access content included in the edition (Oxford University journals are a good example). However, some journals do not do this. If your journal does not, it is important to consider whether the journal you have chosen to publish with is really advancing your interests and your open access motivations.

6.i. Other information

If you are publishing in hybrid journal and choosing open access, then the questions asked under “Open Access” above (questions 6.d. to 6.g.) will also be relevant to you. Go back and answer these questions.

If you are publishing in a hybrid journal and *not* choosing open access, you should:

- Consider whether this is really the best option for you; and
- Consider the questions asked under “Toll Access” below (questions 6.j. to 6.m.)

Toll Access

6.j. Does the publishing agreement require you to assign (transfer) full copyright to the publisher?

Yes

- *[Insert assignment clause here]*
- *Proceed to question 6.k.*

No

- What rights are you required to grant (licence) to your publisher?
[Insert licence clause here]
- What rights do you retain?
[Insert rights here]
- *Proceed to question 6.l.*

6.k. Are any rights licensed back to you in the publishing agreement?

[Note: for rights to self-archive your work in an institutional repository specifically, see question 6.m.]

Yes

- *[Insert licence clause here]*

No

- *Consider what rights you would like to retain (e.g. the right to self-archive your work in an institutional repository). Consider asking your publisher for these rights. For assistance, see the mechanisms in Section 8.*

I don't know

- *Read your publishing agreement carefully – does it state that you have permission to do certain things with your work? It is acceptable to ask your publisher questions if you are confused about anything in the agreement. Your institution's copyright officer may also be able to assist with any questions.*

6.l. Are there any other relevant terms or conditions in your publishing agreement?

[Insert relevant terms and conditions here]

6.m. Are you permitted to self-archive your work in your institutional repository?

- Yes
 - *[Insert permission here]*
- Yes, but only after an embargo period
 - How long is the embargo period? *[Insert length]*
 - *Speak to your publisher and institutional repository manager about your options. You may be able to do a “dark deposit”, which means that your work is deposited into the repository at the time of publication, but it only becomes accessible to others at the conclusion of the embargo period.*
- Yes, but subject to other conditions
 - *[Insert conditions here]*
 - Are these conditions reasonable to you? If not, consider negotiating with your publisher for a more acceptable licence. The mechanisms in Section 8 may assist in this regard.
- No, but I am permitted to self-archive the work in a different repository
 - Which repository? *[Insert repository name here]*
 - *See comments under “No” below*
- No, but I am permitted to post the work on my personal website
 - *See comments under “No” below*
- No
 - Consider asking permission to deposit your work in your institutional repository. Explain to your publisher why you want to do this (e.g. helps with promotion/tenure applications, is a more stable repository etc.). If necessary, use the mechanisms in Section 8 to assist you in approaching your publisher.
- I don't know
 - Read your publishing agreement carefully. If it is silent about repositories, ask your publisher about its policy on self-archiving or check the OAKList or SHERPA-RoMEO List (see Section 10) to find your publisher's self-archiving policy. You can also seek permission to deposit on an individual basis. The mechanisms in Section 8 can assist with this.

SECTION 7: Stop! Before you sign that publishing agreement...

7.a. Who owns copyright in your work?

- You
- You and your co-author(s)/another person
 - You will need your co-author(s) to agree to (and also sign) any assignment of copyright.
- Another person
 - You cannot deal with the work without the permission of the copyright owner.

7.b. Do you have any of the following prior obligations:

- You have granted a copyright licence(s) to other parties?
 - *[Insert details of licence(s) here]*
- Obligations contained in a funding agreement?
 - *[Insert obligations here]*
- Funding body's mandate that funded research be deposited in a repository?
- Institutional mandate that research of the institution's academics be made available in the institutional repository?
- You have already deposited a pre-publication version of your work into a repository?
- Any other contractual obligations?
 - *[Insert details here]*

You will need to inform your publisher of these prior obligations. In some cases, any publishing agreement that you enter will need to be subject to these prior obligations. This will usually be the case with any obligations contained in your funding agreement or imposed by your funding body mandate that your research be deposited in a repository. In other cases, the publisher may require you to modify or revoke these prior obligations or actions. For example, they may ask you to revoke or modify any prior copyright licences (where that is possible) or they may require you to withdraw your previously deposited work from a repository.

Some institutional mandates will be subject to publisher permission, whereas others may require that publishing agreements be subject to the institutional mandate. It is important to check with your institution's repository manager which position is taken at your institution.

Where a publisher requests that you modify or revoke any prior obligations, you should consider whether you really want to do this. The mechanisms set out in Section 8 can help in any negotiations with your publisher.

7.c. Have you carefully considered your rights?

- Recall the exclusive rights of a copyright owner, as set out in Section 1.
- Consider what rights are important to you, especially for your own personal or professional use of the work.
 - *[Insert the rights that are important to you here]*
- Consider what rights you need to be able to grant open access to your work
 - *[Insert the necessary rights here. For example, you will need to be able to grant to your institution the right to make your work available online in the institutional repository – see 5.c.]*
- Consider what rights the publisher really needs to be able to publish your work
 - *A full assignment of copyright is often not necessary. Usually, a publisher will only require exclusive control of the right of first publication and a licence to reproduce, publish, communicate and adapt the work.*

7.d. Do you understand the publishing agreement?

Ensure that you have read the publishing agreement carefully and fully understand:

- What rights the publisher seeks;
- What rights you retain;
- Whether you are allowed to self-archive your work; and
- Any other conditions that are placed on you or the publisher.

7.e. Are you satisfied with the terms of the publishing agreement?

Yes

- Remember to only enter into a publishing agreement if you are happy with its terms. Do not feel as though you have to sign something that you are unhappy with. There is usually room for negotiation.

No

- Identify the terms that you are unhappy with, and what changes would make these terms acceptable to you.
- Talk to your publisher about what terms you are unhappy with. You may be able to negotiate a more satisfactory outcome.
- The mechanisms in Section 8 may be able to help you with negotiations.
- If you are confused, speak to your institution's copyright officer and/or repository manager – they may be able to assist.

SECTION 8: Mechanisms

This section sets out a range of mechanisms that can be used in negotiations with publishers and/or for licensing your work generally.

Reference to “publishers” in this section relates primarily to publishers of toll access journals. It will not usually be necessary to negotiate with open access journal publishers, as these publishers rarely seek an assignment of copyright. In contrast, the traditional toll access journal publishing model requires authors to assign copyright to the publisher. The mechanisms outlined below are designed to assist you in retaining your right to use the copyright material at least to some degree, by either granting a licence to a publisher instead of an assignment or by seeking a licence from a publisher to whom you have assigned copyright.

Even if you do not intend to present the following documents/licences to your publisher, they will help you to understand what rights you should be seeking to retain for your own use of your work and to enable open access.

These documents and mechanisms can improve negotiations with your publisher by helping you to:

- be clear about what rights you want;
- know how to raise issues with your publisher and ask for what you want;
- know whether a publishing agreement suits your needs;
- know where you may want to make changes to a publishing agreement when it does not suit your needs; and
- understand the licensing arrangements that will enable you to retain your rights.

Anecdotal evidence suggests that most publishers are actually quite willing to make changes to their publishing agreements or to accept author addenda (see below), especially when they understand that an author wants to retain the requested rights for non-commercial and non-competitive purposes and/or to fulfil obligations to their funding body or academic institution. It is therefore helpful to clearly explain to your publisher your reasons for making your requests.

8.a. Sample agreements, clauses and wording

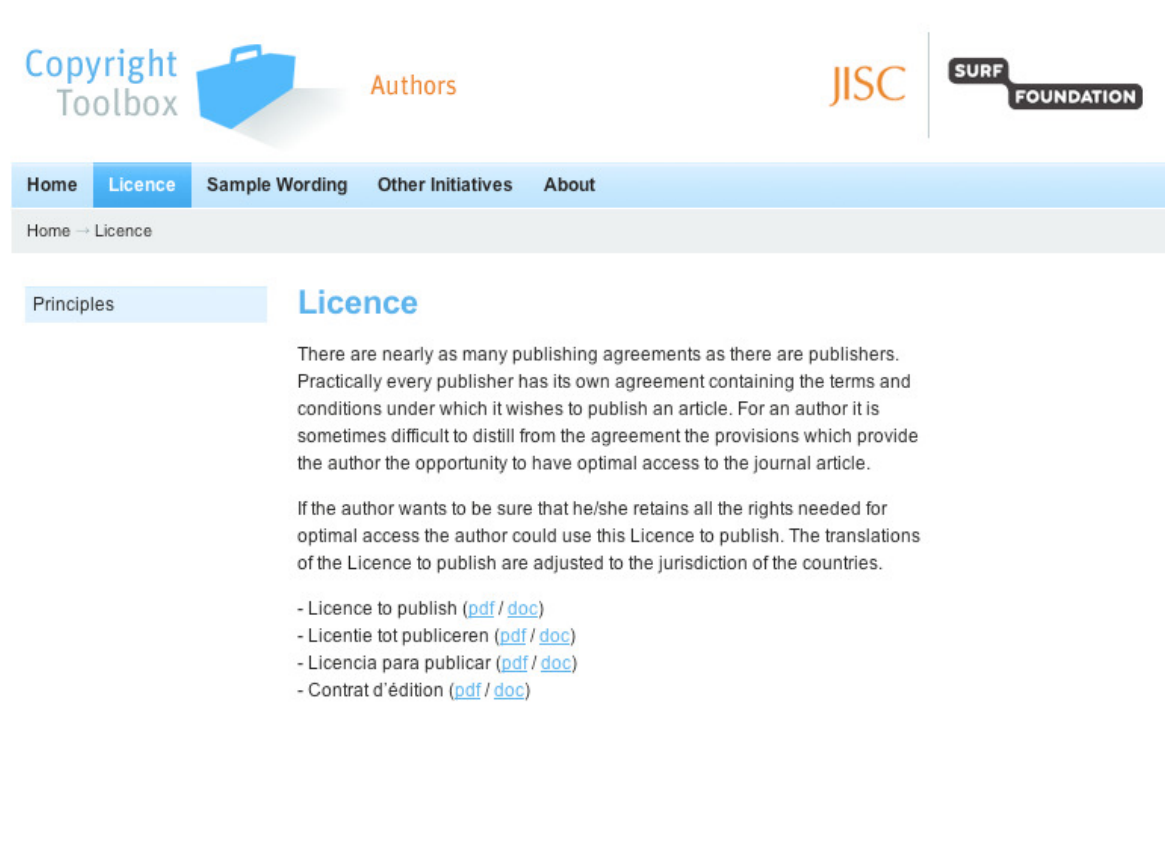
Read your publishing agreement carefully. If you are not completely satisfied with the agreement presented by your publisher, decide whether you would prefer to request an entirely new publishing agreement or whether you would be satisfied with amending the publisher's existing agreement. If your choice is the former, you may wish to present a sample publishing agreement to your publisher. The OAK Law Project is currently drafting a sample publishing agreement, which will soon be available for download and use on the project website at <http://www.oaklaw.qut.edu.au/> If your choice is the latter, highlight the clauses in your existing agreement that you are dissatisfied with. Assess whether any of the sample clauses provided in the JISC/SURF Copyright Toolbox (<http://copyrighttoolbox.surf.nl/copyrighttoolbox/authors>) would be useful in replacing or modifying the unsatisfactory clauses in your existing agreement (see further information below). Suggest these changes to your publisher.

Alternatively, your funding body may advise on wording to present to your publisher. For example, the Wellcome Trust, a major UK funder of research, states in its grant conditions that the following text should be added to publishing agreements:

“notwithstanding any other provisions of this agreement the journal acknowledges that the researcher will be entitled to deposit an electronic copy of the final peer-reviewed manuscript in PubMed Central (PMC) or UK PubMed Central (UKPMC) once established. Manuscripts deposited with PMC (or UKPMC) may be made freely available to the public, via the internet, within six months of the official publication in the journal.”

[\(http://copyrighttoolbox.surf.nl/copyrighttoolbox/authors/sample-wording/addenda/provisions/\)](http://copyrighttoolbox.surf.nl/copyrighttoolbox/authors/sample-wording/addenda/provisions/)

The Joint Information Systems Committee (JISC) and the SURF Foundation provide sample wording and a sample Licence to Publish in their Authors' Copyright Toolbox (<http://copyrighttoolbox.surf.nl/copyrighttoolbox/authors>). The sample Licence to Publish – as the name suggests – grants to a publisher a licence to publish, rather than a full assignment of copyright. The sample wording is useful for amending a publishing agreement to allow use of your work (by you or others) in a variety of different situations, including educational use, personal use and research uses.



The screenshot shows the 'Copyright Toolbox Authors' website. The header includes the 'Copyright Toolbox Authors' logo, the JISC logo, and the SURF FOUNDATION logo. A navigation bar contains links for 'Home', 'Licence', 'Sample Wording', 'Other Initiatives', and 'About'. Below the navigation bar, the 'Licence' section is active, with a sub-menu for 'Principles'. The main content area is titled 'Licence' and contains the following text:

There are nearly as many publishing agreements as there are publishers. Practically every publisher has its own agreement containing the terms and conditions under which it wishes to publish an article. For an author it is sometimes difficult to distill from the agreement the provisions which provide the author the opportunity to have optimal access to the journal article.

If the author wants to be sure that he/she retains all the rights needed for optimal access the author could use this Licence to publish. The translations of the Licence to publish are adjusted to the jurisdiction of the countries.

- Licence to publish ([pdf](#) / [doc](#))
- Licentie tot publiceren ([pdf](#) / [doc](#))
- Licencia para publicar ([pdf](#) / [doc](#))
- Contrat d'édition ([pdf](#) / [doc](#))

8.b. Author addenda

An author addendum is a document that authors can use to change the terms of a publisher's standard form publishing agreement to ensure that the author retains certain rights to use their work and to post it online.

On 17 May 2007, the Scholarly Publishing and Academic Resources Coalition (SPARC) and Science Commons released the Scholar's Copyright Addendum Engine, an online tool to simplify the process of choosing an author addenda. The engine brings together four of the most popular author addenda so that authors can easily selected which addendum best suits their needs.

As explained on the Sciences Commons website (<http://scholars.sciencecommons.org/>), each addendum gives an author non-exclusive rights to create derivative works from their article and to reproduce, distribute, publicly perform and publicly display their article in connection with their teaching, conference presentations, lectures and other scholarly works, and professional activities. The addendum differ in how soon an author can make the final published version of their article available and in whether an author can allow others to re-use their work in various ways.

The different addendum are:

- Science Commons/SPARC Access-Reuse Addendum – the author retains sufficient rights to grant to the public a licence to reuse or repost the article, provided the reuse is non-commercial;
- Science Commons Immediate Access Addendum – the author retains sufficient rights to post a copy of the published version of the article online immediately to a site that does not charge for access to the article;
- Science Commons Delayed Access Addendum – the author may immediately post a final version of the article (as edited after peer-review) to a site that does not charge for access to the article, but must not make the published version of the article available to the public until six months after the date of publication; and
- MIT Copyright Amendment – developed at the Massachusetts Institute of Technology, this addendum allows authors to continue using their article in their academic work, to deposit their article into an institutional repository and to deposit any National Institutes of Health (NIH) funded manuscripts on the National Library of Medicine's PubMed Central database.

The Scholar's Copyright Addendum Engine can be accessed at <http://www.arl.org/sparc/author/completeonline.html> and is remarkably easy to use. I used it to generate an example Science Commons/SPARC Access-Reuse Addendum:

ADDENDUM TO PUBLICATION AGREEMENT

1. THIS ADDENDUM hereby modifies and supplements the attached Publication Agreement concerning the following Article:

Test journal article

(manuscript title)

Peer-review subscription based journal

(journal name)

2. The parties to the Publication Agreement as modified and supplemented by this Addendum are:

Kylie Pappalardo

(corresponding author)

(Individually or, if one than more author, collectively, Author)

A Publisher

(Publisher)

3. This Addendum and the Publication Agreement, taken together, allocate all rights under copyright with respect to all versions of the Article. The parties agree that wherever there is any conflict between this Addendum and the Publication Agreement, the provisions of this Addendum are paramount and the Publication Agreement shall be construed accordingly.

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AUTHOR

PUBLISHER

(corresponding author on behalf of all authors)

Date

Date

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For more information on author addenda and for different author addenda options, see Jim Till, “How to select an Author Addendum?” *Be openly accessible or be obscure* (blog) <http://tillje.wordpress.com/2007/06/21/how-to-select-an-author-addendum>.

8.c. Creative Commons licences

Creative Commons licences are relevant where you want to licence your work not only to your publisher but also to the world at large. For example, where you are depositing your work into an institutional repository and you want to grant end-users (people accessing your work in the repository) certain rights to use your work. If you assign copyright to your publisher you will need to seek their permission to apply a Creative Commons licence to your work. Additionally, you cannot grant under a Creative Commons licence any rights that you have exclusively licensed to your publisher. Before approaching your publisher, you should consider whether you are interested in applying a Creative Commons licence to your work. If you are interested, then you may need to discuss this possibility with your publisher during the negotiation process.

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- Share Alike – users may create and distribute derivative works, but only under a licence identical to the one that governs the original work.

The purpose of the Share Alike condition is to ensure that access to the work and its derivatives always remains open to others. An author can choose to impose more than one condition, and the conditions may be combined in multiple different ways. The only conditions that are incompatible are the No Derivatives and the Share Alike conditions, as the Share Alike condition only applies to derivative works. The different licence options are:

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- **Attribution Non-commercial (BY-NC)** - This licence lets others copy, publish, communicate to the public, display, perform and build upon the work, as long as it is not for commercial purposes and they credit the original author.
- **Attribution Share Alike (BY-SA)** - This licence lets others copy, publish, communicate to the public, display, perform and build upon the work even for commercial purposes, as long as they credit the author and license any derivative works under identical terms.

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Creative Commons licences are a useful mechanism for granting rights to users who may access your work in an institutional repository. However, it is important to remember two things: (1) a Creative Commons licence will licence your work to the entire world; and (2) Creative Commons licences are *irrevocable*. For these reasons, if you intend to assign copyright in your article to a publisher or if you enter into a restrictive publishing agreement, you will need to obtain permission from your publisher before licensing your work under a Creative Commons licence.

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choose license

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Allow commercial uses of your work?

Yes ([more info](#))

No ([more info](#))

Allow modifications of your work?

Yes ([more info](#))

Yes, as long as others share alike ([more info](#))

No ([more info](#))

Jurisdiction of your license ([more info](#))

Australia ▾

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to Remix — to adapt the work

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SECTION 9: Summary

Useful information to have on file about your work:

9.a. Work:	<i>[Insert Title here]</i>
9.b. Journal:	<i>[Insert name of journal in which the work is published]</i>
9.c. Author(s):	<i>[Insert Author(s) name(s) here in order of priority]</i>
9.d. Publisher:	<i>[Insert name of Publisher here]</i>
9.e. Copyright owner(s):	<i>[Insert copyright owner(s) name(s) here]</i>
9.f. Funding arrangements:	<i>[Work was completed under [Name] Project, funded by [Insert name of Funding Body here]]</i>
9.g. Important dates:	
● Date created:	<i>[When was the writing of the manuscript completed? - Insert date.]</i>
● Date of peer review:	<i>[Insert date here]</i>
● Date of publishing agreement:	<i>[Insert date that you signed the agreement here]</i>
● Date of publication:	<i>[Insert publication date here]</i>
● Date of deposit into institutional repository:	<i>[Insert deposit date here]</i>
9.h. Have you fulfilled all obligations under your funding agreement?	
<input type="checkbox"/> Yes	
<input type="checkbox"/> No	<i>[Insert remaining obligations]</i>
9.i. Have you fulfilled all other legal obligations?	
<i>E.g. any relevant obligations to your employing institution (which may be contained in your employment contract)</i>	
<input type="checkbox"/> Yes	
<input type="checkbox"/> No	<i>[Insert remaining obligations]</i>

9.j. What rights do you have in the work? *[Insert rights here]*

9.k. Is the work subject to any licences? *[Insert details of licence(s) here]*

9.l. What mechanisms (see Section 8) have you used? *[Insert mechanisms here]*

9.m. Are there any important terms in your publishing agreement that you would like to highlight?

[Insert terms here]

9.n. Are there any important things about your institutional repository that you would like to highlight?

[Insert here]

SECTION 10: Helpful contacts and links

FUNDING BODY

Name of funding body: *[Insert name here]*

Contact: *[Insert name of the person you are in contact with from the funding body]*

Telephone: *[Insert telephone number – where possible, the direct number to your contact]*

Email: *[Insert your contact's email address]*

Postal address: *[Insert your funding body's postal address]*

Website: *[Insert URL of funding body's website]*

Open access policy: *[Insert URL to direct link to your funding body's open access policy, or state where you have stored/saved the open access policy in your files]*

Where have I saved/stored my funding agreement and correspondence with my funding body?

This is an important thing to keep track of ! Keep a note of where your files are stored in physical copy and in electronic copy on your hard-drive - *[here]*

PUBLISHER

Name of publisher: *[Insert company name here]*

Journal: *[Insert the name of the relevant journal here]*

Contact: *[Insert the name of the person you are in contact with at the publisher]*

Editor: *[Insert name of editor]*

Telephone: *[Insert telephone number – where possible, the direct number to your contact]*

Email: *[Insert your contact's email address]*

Postal address: *[Insert the postal address of your publisher]*

Website: *[Insert URL of publisher's website (where relevant)]*

Where have I saved/stored my publishing agreement and correspondence from my publisher?

This is an important thing to keep track of ! Keep a note of where your files are stored in physical copy and in electronic copy on your hard-drive - *[here]*

INSTITUTION

Name of institution: *[Insert institution's name here]*

Period at institution: *[Insert: From (date) - (date)]*

Copyright officer: *[Insert name of institution's copyright officer]*

Telephone: *[Insert copyright officer's direct telephone number]*

Email: *[Insert copyright officer's email address]*

Repository manager: *[Insert name of institution's repository manager]*

Telephone: *[Insert repository manager's direct telephone number]*

Email: *[Insert repository manager's email address]*

Repository website: *[Insert URL of institution's repository]*

Open access policy: *[Insert where open access policy can be found (usually online)]*

Your personal page: *[Insert URL of your personal webpage, where relevant. This may be the page in the repository where all your publications can be found, or may be a separate "CV"-style webpage. Note that some institutions may not offer these services]*

Other: *[Insert any other relevant websites, contacts or information for your institution. For example, contact details of other library staff, URL for citation-tracker etc.]*

Note: it may be helpful to include the period of time you have spent at each institution. That way, if ever needed, you will be able to determine which of your publications is housed in which repository, according to the date published and archived.

OTHER USEFUL WEBSITES

Australasian Open Access Repositories and Contacts:

<http://www.oaklist.qut.edu.au/resources/contacts.jsp>

Australian Research Council (ARC) – peak Australian funding body:

<http://www.arc.gov.au/>

Funding rules for discovery projects:

http://www.arc.gov.au/ncgp/dp/dp_fundingrules.htm

Funding rules for linkage projects:

http://www.arc.gov.au/ncgp/lp/lp_fundingrules.htm

AuseAccess – a wiki devoted to open access repositories in the Australasian region:

<http://leven.comp.utas.edu.au/AuseAccess/>

Creative Commons and Creative Commons Australia – open content copyright licensing:

<http://creativecommons.org/>

<http://creativecommons.org.au>

Directory of Open Access (and Hybrid) Journals (DOAJ):

<http://www.doaj.org>

Joint Information Systems Committee (JISC) and SURF Foundation Copyright Toolbox:

<http://copyrighttoolbox.surf.nl/copyrighttoolbox/>

National Health and Medical Research Council (NHMRC) – peak Australian funding body:

<http://www.nhmrc.gov.au/>

OAKList – Australian database of publisher's copyright agreements and open access policies (both Australian and international publishers):

<http://www.oaklist.qut.edu.au/>

OTHER USEFUL WEBSITES (continued)

OpenDOAR – Directory of Open Access Repositories:

<http://www.opendoar.org/>

Registry of Open Access Repositories (ROAR):

<http://roar.eprints.org/>

Registry of Open Access Repository Material Archiving Policies (ROARMAP):

<http://www.eprints.org/openaccess/policysignup/>

Scholarly Publishing and Academic Resources Coalition (SPARC) Resources for Authors:

<http://www.arl.org/sparc/author/>

Science Commons/SPARC – The Scholars Copyright Addendum Engine:

<http://www.arl.org/sparc/author/completeonline.html>

Securing a Hybrid Environment for Research Preservation and Access (SHERPA):

<http://www.sherpa.ac.uk/index.html>

SHERPA – JULIET – a database of research funders' open access policies, archiving mandates and guidelines:

<http://www.sherpa.ac.uk/juliet/index.php>

SHERPA/RoMEO – a database of publisher's copyright and self-archiving policies:

<http://www.sherpa.ac.uk/romeo.php>

Other:

[Insert any other websites that you find helpful here]