

Emerging Issues: Open Access and Scholarship

UNC Faculty Council

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1. Open Access is

“...free availability on the public internet, permitting any users to read, download, copy, distribute, print, search or link to the full text of these articles, crawl them for indexing, pass them as data to software or use them for any other lawful purpose...” – from the Budapest Open Access Initiative (2002) [1].

An important class of users includes authors themselves, who have an interest in reusing and disseminating their own content.

2. Scope under discussion here

The proposal from the Administrative Board of the Library specifically concerns research articles published in peer-reviewed journals.

3. Types of Open Access [2]

- *Gold*: through journal, independent of business model, embargo, license, etc. Common in biomedicine, rare elsewhere.
- *Green*: through repository, be it institutional or disciplinary, e.g. PubMedCentral [3]. Authors may publish in any journal provided a version is archived in a repository. This is the focus of nearly every institutional policy.
- *Gratis*: Free to read. Sometimes referred to as “public” rather than “open” access.
- *Libre*: Free to read plus some additional usage rights, e.g., free to reuse (often equated with the Creative Commons Attribution, or CC-BY, license [4]).

4. Current UNC policy

Faculty Council passed a resolution in March 2005 stating, “Be it resolved that UNC-CH faculty are the owners of their research and should retain ownership and use open access publication venues whenever possible” [5]. To accomplish this requires deliberate action on the part of authors, generally by requesting that the publisher agrees to an Addendum to the standard publishing contract that transfers copyright to the publisher [see examples at 14]. The need to make such a request in order to retain copyright poses a significant barrier to authors [6].

5. Developments since 2005: Federal open/public access policy landscape

4a. The NIH Public Access Policy (in effect since 2008) [7]: “All investigators funded by the NIH submit or have submitted for them to the National Library of Medicine’s PubMedCentral an electronic version of their final, peer-reviewed manuscripts upon acceptance for publication, to be made publicly available no later than 12 months after the official date of publication.”

4b. *The Fair Access to Science and Technology Research (FASTR) Act* [8] would extend the NIH policy to all 11 federal research agencies with budgets over \$100M. It has been introduced to both the House and Senate is still under consideration. A weaker version of FASTR, call the Public Access to Public Science Act (PAPS), has been introduced in the House only.

4c. *The White House Office of Science and Technology Policy (OSTP)* issued a memorandum in February 2013 calling on all federal agencies with R&D budgets over \$100M “to develop a plan to support increased public access to the results of research funded by the Federal Government [9]. This includes any results published in peer-reviewed scholarly publications that are based on research that directly arises from Federal funds”. The responses were submitted in August for review by OSTP and their contents are not yet publicly known.

4d. Two technical initiatives, one led by publishers & scientific societies (*CHORUS*) [10] and one led by the Association of Research Libraries (*SHARE*) [11] have been launched to offer compliance with the likely-to-be-forthcoming federal mandate through journals and institutional repositories, respectively.

6. Developments since 2005

6a. Developments in institutional open access policies

Over 200 institutions have adopted open access policies for their faculty [12] including CalTech as recently as this week. Such policies usually, but not always, succeed when brought to a vote by faculty. The adoption of such policies is in response to a variety of pressures, including a recognition that the serials crisis has limited the distribution of some journals [13], and increasingly aggressive use by publishers to limit fair use rights for copyrighted material (a case in point being an onerous lawsuit by several academic publishers against Georgia State University [14]).

Many institutional policies in recent years have been modeled after the strong rights-retention policy first adopted by Harvard’s College of Arts and Sciences in 2008 [15]. Excerpts from the 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 Dean or the Dean’s designate will waive application of the policy for a particular article upon written request by a Faculty member explaining the need.

...Each Faculty member will provide an electronic copy of the final version of the article at no charge to the [repository]”

What does a Harvard-style policy achieve?

1. Ensures that works from scholars at that institution get the widest possible distribution.
2. Ensures that authors retain the rights to their own work, so they may further distribute them, use them in teaching, publish derivative works, and so on.
3. Does so *without* reducing the choice of publication outlet, and without precluding the option to monetize some works.
4. Gives authors the power to respect publisher wishes regarding embargoes, versions of record, etc. out of *choice*, not *compulsion*.
5. Raises awareness around issues of access, ownership, fair use, etc. of scholarly works.

6b. Developments in OA more broadly

As a result of the successful introduction of many new gold OA journals (e.g. those of the Public Library of Science) and green OA policies at the institutional and funding agency level, it has been estimated that more than 50% of newly published articles are available for free in some countries (including the USA) and certain research fields (e.g. biomedicine, mathematics and statistics) [16]. Access to other kinds of works, such as educational materials, monographs, and research data, have also been gaining policy attention.

7. Is it time to update UNC's policy?

While this session is purely informational, the Administrative Board of the Library resolved at its November meeting to propose that the Faculty Council appoint a cross-campus study group to consider an institutional rights-retention-with-opt-out policy.

Such a study group could include faculty from a diversity of academic units to consider both the policy and implementation details (including repository costs, compliance mechanisms, etc.). The group could invite the involvement of the library and administration and also reach out to expertise outside UNC. The group could be charged to draft both a policy and a separate implementation plan, and to make sure there is awareness and buy-in from faculty leadership before bringing the actual policy proposal to a vote.

Some key policy decisions & recommendations to be considered, from [17]:

- *What to cover.* Recommendation: only journal articles and only by faculty. Allow but do not require deposit other outputs (e.g. book chapters, etc.). Leave student and staff outputs for separate policies.
- *What not to cover.* Recommendation: classified, unpublished and patentable, works.
- *What version to deposit:* Recommendation: the final version of the peer reviewed manuscript, to be replaced by the published version *only* when the reuse rights on published version are not diminished.
- *When to deposit.* Recommendation: between the time of acceptance and publication.
- *What to make optional:* Allow author to set embargo, and allow author to opt-out of open availability, but not out of the requirement to deposit.

The following actions go beyond what the faculty can approve in the way of a resolution, but

could be part of a broader effort to support Open Access at UNC more generally:

- *Advocate*, e.g. by encouraging the Provost to sign the open letter in support of FASTR [18].
- *Educate*, e.g. after finding themselves in the legal crosshairs over fair use rights, Georgia Tech gave all incoming faculty a copy of Peter Suber's book on Open Access. UNC's Scholarly Communications Officer is available to talk to your department or group about open access and your rights as authors. She will also work with individual faculty members who have questions about their publishing contracts.
- *Incentivize*, e.g. by requiring either a green or gold identifier for articles as part of annual reporting mechanism; consider financial incentives for departments with high rates of compliance.
- *Invest* in repository staff who can carry out the policy; separately, invest in open access funds for researchers lacking grant funds to pay for Article Processing Charges and disburse them according to best practice, e.g. the Compact for Open-access Publishing Equity, COPE [19]; UNC's current funds have been exhausted.
- *Support* efforts to host open access journals at UNC.

8. Copyright and legal considerations

UNC does not claim copyright in faculty members' traditional works of scholarship, such as journal articles, and, under the current copyright law, an author has a copyright in a work as soon as it is created. In the standard academic publishing agreement, the author transfers that copyright to the publisher and retains little or none of those rights. In today's environment, this sharply curtails most faculty members' ability to make full use of works and to allow colleagues to do the same. For example, it is common for an author to have contracted away the right to control the dissemination an article. Departments may wish to showcase articles written by their own faculty members on websites, but may not be able to obtain the rights to do so.

As the *Chronicle of Higher Education* recently reported, Elsevier has issued a large number of takedown notices in cases where faculty have posted copies of their own articles on Academia.edu. Elsevier had the right to do this because of the agreements the authors had signed. This action caught many faculty members by surprise, either because they did not recall the details of the agreements they had made, or because they had not believed that Elsevier would enforce those agreements.

What are the legal implications of a rights-retention policy?

The institution's policy is in force *prior* to the author entering into any publication arrangement with the publisher. The author has the institution's legal backing to retain copyright, while granting the institutional repository a non-exclusive license for distribution. The publisher may either choose to publish the work under the institution's terms, or request that the author opt out of the policy and transfer copyright. It is up to the author to decide which course of action to take. The University Copyright Committee has been following academic copyright litigation and rights retention issues for a number of years. They will discuss the present resolution and its ramifications at their next meeting in January 2014.

Does the university take my copyright away when a rights-retention policy is in force?

No. Faculty would grant a nonexclusive license to UNC, but they would still retain their copyrights. They would have the option to keep them or transfer them to publishers.

How does joint authorship work under such a policy?

Optimally, a faculty member working under a rights-retention policy should alert co-authors from other institutions about the policy early in the collaboration and solicit their agreement to it.

Otherwise, the faculty member might need to seek a waiver.

References

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11. SHared Access Research Ecosystem (SHARE): <http://www.arl.org/share>
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17. Good practices for university open access policies, from the Harvard Open Access Project: http://cyber.law.harvard.edu/hoap/Good_practices_for_university_open-access_policies
18. Provosts’ letter in support of FASTR <http://www.sparc.arl.org/blog/opportunity-your-campus-support-open-access-encourage-your-pr>

[ovosts-sign-open-letter-support](#)

19. Compact for Open-access Publishing Equity at Duke U.

<http://library.duke.edu/openaccess/cope.html>

* links accessed Nov 11, 2013

Other useful resources

- Open Access Scholarly Information Sourcebook: <http://www.openoasis.org>
- Sherpa/Romeo database of publisher policies <http://www.sherpa.ac.uk/romeo/>
- Suber P (2013) Open Access: Six myths to put to rest.
<http://www.theguardian.com/higher-education-network/blog/2013/oct/21/open-access-myths-peter-suber-harvard>
- SPARC: <http://www.sparc.arl.org/advocacy/on-campus/considering-a-policy>