Report of the UNC Chapel Hill Faculty Open Access Task Force

March 20, 2015

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Executive Summary

The Open Access Task Force recommends a change in University Policy to improve the accessibility and visibility of scholarly research publications authored by faculty at University of North Carolina at Chapel Hill. Specifically, the recommendation is for a rights-retention policy that gives the University a nonexclusive and noncommercial license in the works of its faculty. Such a license gives the University the legal rights to preserve and distribute works via the Carolina Digital Repository (CDR)[1]. Over a hundred US universities have implemented policies such as the one we propose here, including institutions such as Harvard, Duke, Princeton, MIT, Kansas University and the University of California.

By granting this license to the University, faculty authors have greater leverage when entering into publication agreements to protect their own interest - and the University's interest - in seeing their works reach their full potential readership. This expanded readership, in North Carolina and beyond, includes, among others: students and teachers; scholars in developing countries and at many small colleges and universities in the US; health care and legal professionals; private industry researchers; independent scholars; alumni; donors; government employees; policy makers; writers and journalists.

The Task Force recognizes that such a policy will have varying application in different disciplines, and has worked diligently to craft a policy that will do no harm in cases where it is not needed (e.g. works for which authors receive revenues). In order to

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[1] https://cdr.lib.unc.edu/

accommodate the diversity of cases, faculty are responsible for judging whether a work qualifies under the policy and, in even in cases where work does qualify, may opt out of the license at their own discretion. The implementation of the policy must also respect the fact that in some disciplines, open access journals and repositories are already in widespread use and dissemination via the Carolina Digital Repository would in those instances be redundant. Importantly, the policy preserves the prerogative of faculty to publish in the outlets of their choice, and puts no financial burden on faculty to pay publication fees.

Background

On the recommendation of two faculty committees, the University Committee on Copyright and the Administrative Board of the Library, the Chair of the Faculty appointed an *ad hoc* Task Force in March 2014. The charge of the Task Force was "to investigate how a university-wide open access policy would affect different disciplines at Carolina, and then make a recommendation on an institutional policy to the Chair of the Faculty".

To meet its charge, a large Task Force was appointed with members spanning the disciplinary diversity of the university, including faculty from many departments within the College of Arts and Sciences; the majority of other Schools; multiple representatives from the Libraries, two graduate students, *ex officio* liaisons to the Offices of Faculty Governance, the University Counsel, and the Provost; as well as facilitation support from the Center for Faculty Excellence (Appendix 1).

While Open Access is a complex and multi-faceted issue[2], the Task Force focused its attention narrowly on "rights-retention" style policies such as those that have been adopted by many other universities in the past seven years[3] and that are stronger than the existing policy endorsed by UNC Faculty Council[4]. Under US copyright law, an author holds copyright in a work as soon as it is created, and UNC generally does not

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[2] Open Access is defined as the "…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…" (http://www.budapestopenaccessinitiative.org/).

[3] http://cyber.law.harvard.edu/hoap/Additional_resources

[4] Faculty Council passed a Resolution 2005-7 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". 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, a request that is seldom granted.

claim copyright in faculty members' works[5]. However, in many academic publishing agreements, the author is asked to transfer ownership of copyright to the publisher and the author has very little leverage to negotiate a license for retention of rights. The custom of copyright transfer has become increasingly problematic due to aggressive use by some scholarly publishers to limit fair use of copyrighted material, a case in point being an onerous lawsuit by several academic publishers against Georgia State University[6].

Rights-retention policies enable the scholarly works of the faculty to be made publicly available under a noncommercial license, either through the university repository or a disciplinary repository of the author's choosing. This is achieved by the faculty granting a nonexclusive, noncommercial license to the university as a condition of employment, so that this license exists prior to the point in time at which a manuscript is created. Such policies (i) preserve the right for authors to publish in whatever outlets they wish, (ii) do not require authors to pay for public access through the publisher (although they are free to do so) and (iii) enable authors to opt out of the policy for any individual work based on their own judgement. To quote from Princeton's Open Access policy[7], "university support for open access is a form of service to the faculty intended to expand the beneficiaries of the university's research mission." At the same time, such a policy serves the University's educational mission by raising awareness around issues of access, intellectual property rights, and fair use of scholarly works.

The Task Force held four meetings in 2014. Members discussed the rationale for such policies and came up with a list of key concerns and questions, many of which are addressed in the FAQ (Appendix 2). The variation in scholarly communication practices among disciplines was discussed at length. The Task Force pursued the goal of crafting a policy that would realize the benefits above when faculty lack any other means of making a work available while not harming those that already have such means (e.g. authors that use disciplinary repositories such as PubMedCentral, SSRN, or arXiv) or when free availability is undesirable for other reasons (e.g. for commercial textbooks and monographs). Deposit in the CDR, with its ability to support a variety of embargo periods, would give authors the power to respect the wishes of the publisher regarding embargoes, versions of record, *etc.* out of choice, rather than compulsion.

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[5] Directed works, which are not covered by this policy, are an exception in which the University is the copyright holder.
[6] Educause Resources on "Cambridge University Press vs. Patton et al." http://www.educause.edu/focus-areas-and-initiatives/policy-and-security/educause-policy/issues-and-positions/intellectual-property/georgia-state-copy
[7] http://www.princeton.edu/dof/policies/publ/fac/open-access-policy/open-access-report.pdf

Two guest speakers from Duke University and UCLA addressed an open informational session in which the Task Force asked questions about the experience implementing rights-retention policies at their institutions. Desk research was conducted over the summer of 2014 to catalog the variation among institutional policies and do further fact-gathering. A smaller committee met over the fall to draft a recommendation, and it was adopted by the entire Task Force in December by a unanimous vote.

The following policy, presented to Faculty Council as Resolution 2015-9, reflects the wording adopted by the Task Force with subsequent modifications recommended by the Office of University Counsel. The Task Force recommends the following to be considered as a University Policy, which ultimately requires approval not just by Faculty Council, but also by a Responsible University Officer, the University Counsel, and the Vice Chancellors. We anticipate that the Scholarly Communications Office of the University Library would be responsible for implementing and interpreting this policy, resolving disputes concerning its interpretation and application, and recommending changes. Library staff offer a proposal in Appendix 3 regarding the resources and that would be needed to implement the policy, and describe the infrastructure already available.

Policy Recommendation

Resolution 2015-9. On Endorsing a University Open Access Policy.

The Faculty Council resolves:
1.1 The Faculty of the University of North Carolina at Chapel Hill is committed to disseminating the fruits of its research and scholarship as widely as possible.
1.2 In keeping with that commitment, the Faculty Council endorses the following University policy applicable to all scholarly articles authored or coauthored by persons while a member of the Faculty and whose copyright is held by the Faculty member under University policy.
1.3 This policy shall not apply to any articles completed before the adoption of this policy or to any articles for which the Faculty member entered into an incompatible licensing or assignment agreement before the adoption of this policy.
2.1 Each Faculty member grants to the University a nonexclusive, noncommercial, irrevocable, worldwide license to exercise, and to authorize others to exercise, any and all rights under copyright relating to each of his or her scholarly articles, in any medium, for the purpose of making their articles freely and widely available in an open access repository.
2.2 The Provost or Provost's designate will waive application of the license for a particular article or delay access for a specified period of time upon express direction by

a Faculty member.

3.1 Each Faculty member will provide an electronic copy of each article so licensed, ordinarily the author's final edited version, at no charge, as directed by the Provost's Office, to be made available to the public in an open-access repository.

3.2 The Scholarly Communications Office of the University Library or other office designated by the Provost will be responsible for interpreting this policy, resolving disputes concerning its interpretation and application, and recommending changes from time to time.

3.3. The Chair of the Faculty will appoint a committee to review this policy no later than three years after its adoption and present a report to the Faculty.

4.1. The Faculty Council is hopeful that the foregoing policy will be adopted and implemented by the University by January 1, 2016.

Appendix 1: Members of the Open Access Task Force

1. Baumgartner, Frank - Political Science
2. Bohlman, Andrea - Music
3. Bollinger, Lee - Office of University Counsel
4. Brice, Jane - Emergency Medicine
5. Brophy, Al - Law School
6. Caren, Neal - Sociology
7. Colacito, Ric - School of Business
8. Curtain, Tyler - English and Comparative Literature
9. Degener, Christie - Health Sciences Library
10. Elia, Jean Morton - Office of the Provost (ex officio)
11. Fraser, Mark - School Social Work
12. Gilliland, Anne - University Library
13. Hall, Leigh - School of Education
14. Heitsch, Dorothea - Romance Languages
15. Hemminger, Brad - Information and Library Science
16. Hunter, Carol - Deputy University Librarian
17. Jones, Paul - Journalism / Information and Library Science
18. Kiel, David - Center for Faculty Excellence (ex officio)
19. Kimbrough, Julie - Law Library (co-chair)
20. Knafl, Kathleen - Nursing
21. Lin, Wei-Cheng - Art
22. Linz, Brandon - Microbiology and Immunology (graduate rep)
23. McGowan, John - English and Comparative Literature
24. Neta, Ram - Philosophy
25. Porto, Jim - School of Public Health
26. Robin, Will - Music (grad rep)
27. Rubinstein, Michael - Chemistry
28. Shearer, Tim - Library Information Technology
29. Sherer, John - University of North Carolina Press
30. Singleton, Scott - School of Pharmacy
31. Thornburg, Tom - School of Government
32. Vision, Todd - Biology (co-chair)
33. Wahl, Jonathan - Math
34. Watson, Harry - History
35. Whisnant, Anne - Faculty Governance (ex officio)

Appendix 2: Frequently Asked Questions

What is the purpose of the proposed policy?

To quote from the policy: "The Faculty of the University of North Carolina at Chapel Hill is committed to disseminating the fruits of its research and scholarship as widely as possible, and to protecting the intellectual property rights of its faculty."

Who benefits from the open access policy?

First, the faculty member retains a license to use their work noncommercially even if they subsequently transfer copyright to a publisher. Second, making the results of faculty research freely available online increases the visibility of scholarship not only to academics at elite institutions such as UNC but also to high school and community college students, scholars in the developing world and at small institutions, alumni, independent scholars, writers, journalists, researchers in private industry, policy makers, health care and legal professionals, and so on. Although such potential readers are often invisible to us as faculty authors, JSTOR reports that they turn away 150 million attempts to access their content from readers who lack subscription access[8].

Do other universities have similar open access policies?

Yes, many universities both in the U.S. and other countries have adopted campus open access policies including Harvard, the University of California system, Duke, and the University of Kansas[9].

What will members of the faculty have to do to comply with the new policy?

The policy automatically applies to scholarly articles created by UNC faculty after the policy is implemented. To realize the full benefits of the policy, faculty will be asked to deposit a copy of their scholarly article in the Carolina Digital Repository (CDR) if it is not already publicly available through another source. It is recommended that deposit be made upon acceptance, but works may be deposited at any time before or after publication.

What version of the article should I submit?

Typically, what is submitted will be the author's final manuscript, post peer-review, but prior to the inclusion of any specific formatting created by the publisher. However, some

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[8] http://theatln.tc/18xB7UG

[9] For a list of institutions with similar rights-retention policies, see: http://cyber.law.harvard.edu/hoap/Additional_resources; for a searchable index of all institutions with open access policies, see http://roarmap.eprints.org/

publishers permit posting of the final typeset article (irrespective of the institution's policy); authors can look up their publisher's policy using SHERPA/RoMEO service[10].

What kinds of scholarship are covered under the policy?

The policy applies to "scholarly articles." The definition of scholarly articles varies among the different disciplines and is left to the discretion of each faculty member[11]. Carolina Digital Repository[12] welcomes all works that faculty see fit to submit and are suitably licensed. The policy is *not* intended to cover classroom materials or books for profit.

Does the policy apply to articles written before the policy was implemented?

No, articles written prior to the policy are not covered. However, CDR welcomes submissions of works written prior provided the submission does not violate publisher policy. Authors may consult SHERPA/RoMEO (see above) to learn whether a given publisher permits articles to be posted to an institutional repository. Many publishers do, but details vary, such as which copy, and whether there is an embargo period. Faculty members may also consult with the Scholarly Communications Office for guidance.

How do I opt out?

The policy allows faculty authors to opt out of the license for any individual scholarly article without the need for administrative approval.

Would the policy apply to co-authored papers?

Yes, joint authors each hold copyright in an article, and legally each author can grant a nonexclusive, noncommercial license to copy and distribute the work. However, it is strongly recommended to discuss your intentions for complying with the policy with your co-authors.

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[10] http://www.sherpa.ac.uk/romeo/

[11] The term "scholarly article" is recommended by Stuart Schieber in his Model Open Access Policy: "What constitutes a scholarly article is purposefully left vague. Clearly falling within the scope of the term are (using terms from the Budapest Open Access Initiative) articles that describe the fruits of scholars' research and that they give to the world for the sake of inquiry and knowledge without expectation of payment. Such articles are typically presented in peer-reviewed scholarly journals and conference proceedings. Clearly falling outside of the scope are a wide variety of other scholarly writings such as books and commissioned articles, as well as popular writings, fiction and poetry, and pedagogical materials (lecture notes, lecture videos, case studies). Often, faculty express concern that the term is not (and cannot be) precisely defined. The concern is typically about whether one or another particular case falls within the scope of the term or not. However, the exact delineation of every case is neither possible nor necessary. In particular, if the concern is that a particular article inappropriately falls within the purview of the policy, a waiver can always be obtained." http://osc.hul.harvard.edu/sites/default/files/model-policy-annotated_0.pdf

[12] https://cdr.lib.unc.edu/

My article is already available in an open access repository (e.g. PubMed Central, arXiv, SSRN) or in an open access journal. Do I need to deposit it with UNC?

If your article is already publicly available because you posted it to a preprint repository, or the publisher deposited it in a federal repository (e.g. PubMedCentral) or it is already available for free on the publisher's website, great! It is our intention that faculty authors may comply with the policy by providing a link to the article rather than depositing it yet again. The primary goal of the policy is to make UNC faculty scholarship widely available, and this achieves that end.

Is financial support available if a faculty member wishes to publish in an open access journal that charges a fee for publication of articles?

The University has, in the past, had an Open Access fund for this purpose. However, this recommended policy focuses on rights retention and is silent on the matter of whether and how the University should subsidize Article Processing Charges. The CDR is provided as a free service of the University. Use of the CDR does not require you to pay publication fees, nor does it exempt you from any such fees that are levied.

What if a journal publisher refuses to publish my article because of the prior permission given to UNC under the policy?

You have the freedom to opt out for any individual scholarly article if you still wish to use that publisher. The policy simply changes the default relationship with the publisher so that they must ask you for exclusive rights rather than you having to request rights back from them.

What is the effect of the policy on small publishers, scholarly societies, journals or peer review?

The policy provides access to those who would not otherwise have institutional or personal subscriptions and only allows non-commercial use. Evidence suggests that this means it has a negligible effect on publisher revenue. To quote from the FAQ page of the MIT open access policy[13]: "There is no empirical evidence that even when all articles are freely available, journals are canceled. The major societies in physics have not seen any impact on their publishing programs despite the fact that for more than 10 years, an open access repository (arXiv) has been making available nearly all of the High Energy Physics literature written during that period. If there is downward pressure on journal prices over time, publishers with the most inflated prices – which tend to be the commercial publishers – will feel the effects sooner. Journals will still be needed for

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[13] http://bit.ly/1GdNJeX

their value-added services, such as peer review logistics, copy editing, type setting, and maintaining web sites." The Task Force has contacted a number of scholarly society journals in the humanities and, similarly, no concerns about this policy have been raised. If the copy made available to the repository is the author's final copy or later, it will still reflect the improvements made during peer review.

What is the Carolina Digital Repository?

The Carolina Digital Repository (CDR)[14], a service of the University Libraries, provides long-term access and safekeeping for scholarly works, datasets, research materials, records, and audiovisual materials produced by the UNC-Chapel Hill community. The CDR ensures that your work is accessible and searchable on its website and indexed in search engines. The CDR offers a range of access controls including embargoes and granting access to specific groups on campus. See Appendix 3 for how the CDR would be used to support the proposed policy.

Will I be able to embargo access to my article?

The CDR can give authors the option of complying with the journal's embargo policy or choosing a different embargo period.

Will this apply to staff and students?

This policy applies only to faculty. However, since staff and students often coauthor works with faculty, it is important for this issue to be discussed along with the other issues of coauthorship. We encourage the UNC Graduate and Professional Student Federation and the UNC Postdoc Association to bring these issues to the attention of their members.

Will this affect tenure and promotion, or my ability to publish in prestigious journals?

The policy does not limit the journals in which you publish, nor does it have any effect on how those publications are assessed during promotion and tenure review. However, the policy does offer scholars the opportunity of enhancing their public reputation by reaching audiences that would not otherwise have access their work.

What resources are available to me to answer my questions about the policy or deal with disputes with publishers?

The UNC Scholarly Communications Office is available to assist should questions or disputes arise.

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[14] https://cdr.lib.unc.edu/

How will this policy apply to third party content (such as images that I received special permission to reprint)?

If you have signed a separate agreement to use content or images that precludes redistribution, then that content cannot be included in the version of the article submitted to the CDR.

Will this policy create extra work for me?

The policy encourages faculty to deposit their works in the CDR if the works are not otherwise openly available, but compliance is voluntary. The policy is intended to provide a service that you have the legal right to take advantage of and nothing more.

What does rights retention have to do with Open Access?

There are many flavours of Open Access. The current policy achieves what is called "Green" and "Gratis" access[15], in which you reserve the right to noncommercial distribution of your work through the CDR or other repository of your choice.

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[15] "Green": In "Green" OA, access is provided through a repository, be it institutional or disciplinary, and the article is still made available to subscribers via the publisher. Green OA is the focus of nearly every institutional policy, as it is here. In contrast, in "Gold" OA, access would be provided via the publisher, independent of their business model, embargo period, license, *etc*. (examples include the Public Library of Science and the Open LIbrary of Humanties).

"Gratis": The second dimension ("Gratis" vs "Libre") has to do with the rights granted to the reader. Gratis OA works are free to read, but not free to reuse, and is sometimes called "public" rather than "open" access. Libre works are not only free to but also grant some additional reuse rights, often achieved through granting a Creative Commons Attribution, or CC-BY, license#. Since the recommended policy specifies a noncommercial license, the reuse rights are Gratis but not Libre.

Appendix 3: The UNC-CH Libraries and the Carolina Digital Repository

The University Libraries endorse and would support an Open Access policy that would change the default relationship between authors and publishers to reserve open access rights on behalf of UNC authors. Below is an overview of resources that are now available from the Libraries to support an Open Access policy. That is followed by a list of resources that the Libraries would need to develop should the faculty adopt an Open Access policy.

The University Libraries has among its resources:

The Carolina Digital Repository (CDR)[16]. The CDR provides long-term access and safekeeping for scholarly works, datasets, research materials, records, and audiovisual materials produced by the UNC-Chapel Hill community. The CDR currently supports:

- Self-submission. Users may upload documents for preservation by logging into a website.
- Relationships with other repositories. UNC has built a relationship with BioMed Central to automatically ingest content authored by UNC researchers into the CDR. UNC authors therefore only have to deposit their works once into their discipline's main repository.
- Embargo. The CDR supports the attachment of an embargo to a work with any future date. Visitors can see that the document exists but cannot download it until the embargo has passed. (For the purposes of an Open Access policy, the embargo should not exceed the copyright term.)
- Preservation. The CDR creates multiple copies of an object and monitors them over time to ensure long-term health.
- Indexing/discovery. The CDR promotes discovery of works both within the software and via external indexing sites such as Google, Yahoo, and Bing.   A Network of Librarian Liaisons
- Discipline focused. The University Libraries hire, train, and make available information specialists with subject strengths who understand and support scholarly work across the humanities, social sciences, STEM, and professional schools.
- Departmental relationships. These liaisons are assigned to and build relationships with UNC departments, centers and schools.   The Scholarly Communications Office. The Scholarly Communications Officer provides guidance, policy development, and advocacy to faculty, students, and staff on the following issues that are relevant to

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[16] https://cdr.lib.unc.edu/

implementing an Open Access policy, such as copyright, licensing, authors' rights, and other scholarly communications policy issues.

Upon Adoption by UNC faculty of an Open Access Policy the University Libraries would need to provide:

- Help understanding the policy and navigating relationships with publishers.
- Departmental and one-on-one support and training.
- Using the repository to house, provide access to, and preserve the Open Access works of the UNC community
- A customized self-submission form for Open Access authors to add their works to the CDR which would offer optional support for embargos and creative commons licensing.
- Library will bring its licensing experience to bear to work towards making an OA policy as effective as possible. The University library is ready and eager to work with campus partners should an Open Access policy be formulated and adopted by the UNC faculty. With interest from stakeholders and as resources permit we would enthusiastically extend and expand support for Open Access. Examples of additional efforts could include:
- Support for ORCID[17], which: "...provides a persistent digital identifier that distinguishes you from every other researcher and, through integration in key research workflows such as manuscript and grant submission, supports automated linkages between you and your professional activities ensuring that your work is recognized."
- Working with additional Open Access Repositories to set up automated ingest relationships. As with the BioMed Central model, authors who already submit to a regional or discipline based repository could continue to do so and their works could be included in the CDR with no additional effort on their part.
- The integration of Creative Commons licensing into the self submission form and the CDR.

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[17] http://orcid.org