Managing Copyright for Open Access

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The Open Access to Knowledge (OAK) Law Project

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The OAK Law Project
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• **Chapter 5 – Implementation:**

• **A Guide to Developing Open Access Through Your Digital Repository**
  • A practical guide for repository managers to assist in copyright management
  • Contains ‘Repository Deposit Licences: A Guide’ and sample repository deposit licences

• **OAKList**
  • An online, searchable database of information about Publishing Agreements and publisher’s open access policies and practices, accessible by authors, copyright administrators and repository managers in Australia and overseas.
A Guide to Developing Open Access Through Your Digital Repository

A practical guide for repository managers to assist in copyright management
A Guide to Developing Open Access Through Your Digital Repository

Assistance in:

• Explaining open access concepts and terms
• Effectively establishing and managing your repository
• Determining the extent of open access that your repository will provide
• Defining the extent of your obligations in relation to your repository
• Addressing the legal rights of copyright owners, depositors and users of the repository
A Guide to Developing Open Access Through Your Digital Repository

Practical tools:

• Sample Open Access Policy

• Checklists for organising and managing your repository

• List of Australian digital repositories

• Sample Repository Deposit Licence for Publications
Why Should you Have a Digital Repository?

- Enables easy access to scholarly and research material generated by members of your institution
- Stable, long-term archiving of information and research output
- Information is widely and quickly disseminated so that it achieves the highest impact
- Facilitates greater citation of deposited articles and increasing the profile of your institution and contributing authors
Why Have an Open Access Policy?

An Open Access policy:

• Establishes the scope of materials that may be deposited into the repository, and the conditions on which they can be accessed and used

• Sets out the repository’s obligations in managing and maintaining the materials that are deposited into it
Sample Open Access Policy and Principles

- We support the principle of open access to and the wide dissemination of knowledge

- We recognise the importance of access to the results of publically funded research

- We believe that sharing work should not be prevented by restrictive laws, practices or contracts

- We support publishing in open access journals and depositing in digital repositories

- We encourage authors to retain copyright where possible
Draws on international statements –

• Bermuda Principles – 1996

• Budapest Open Access Initiative – 2002

• Bethesda Statement on Open Access Publishing – 2003

• Berlin Declaration – 2003

• Statements of research funding organisations such as ARC and NHMRC
Setting up and managing your digital repository

There will be many things to consider, including:

• Who can deposit in your digital repository?
  – Staff
  – Students?
  – Visiting academics?
Setting up and managing your digital repository

• What material may be deposited in your repository?
  – Books and book chapters
  – Journal articles
  – Research papers
  – Conference papers?
  – Data sets?
  – Multimedia objects?
Setting up and managing your digital repository

• Will deposit be mandatory or voluntary?

• Will you always require the full text of the material to be deposited, or will you accept abstracts only?

• At what “stage” must the material be at?
  – Pre-print
  – Post-print
  – Publisher’s version
Setting up and managing your digital repository

• What format will the material take (e.g. PDF)?

• What other requirements or restrictions may be imposed?

• What metadata records will you require to be submitted?
Copyright Issues

• Where copyright is assigned to a publisher or other party
• Where third party material is included in a submission

• Permission must be obtained from the copyright owner to:
  – Deposit the submission in the repository
  – Grant to the repository the right to allow end-users to access and reuse the submission (this can be subject to some restrictions)
Copyright Issues

If depositor does not own copyright or has permission to deposit:

- Material cannot be deposited at all; or

- Material cannot be deposited in full; or

- Material may still be deposited, but access will be restricted (usually in the case of embargo periods).
Repository Deposit Licence

• Depositors must enter into a Repository Deposit Licence before depositing material into repository

• Defines what repository can and cannot do with material

• Informs authors about the purpose of the repository

• Reassures authors that repository does not take copyright ownership in deposited material

• Establishes legal relationship between repository and depositors
Establishing a legal relationship - power to enter into the Repository Deposit Licence

Depositors must:

– own copyright or be authorised by the copyright owner (which may be the publisher) to deposit the material into the digital repository and

– have the authority to grant to the repository the rights necessary to make the material available for access by end users in the digital repository
Establishing a legal relationship - power to enter into the Repository Deposit Licence

Repository managers should:

− be very careful about checking that authors actually do have permission to deposit their material in the repository and enter into a Repository Deposit Licence

− encourage authors to be more proactive in asserting their rights when dealing with publishers
What can authors do to assert their rights?

• Where possible, resist assigning copyright to a publisher

• Publish in an open access journal

• Obtain a licence from the publisher to allow depositing of the material into a repository
End-Users

• Who should have access to your repository?
  – General public
  – Anyone within the institution (e.g. all staff and students)
  – A select group within the institution
  – Only people “signed up” to the repository, which may include people from other approved institutions
End-Users

• What will be the scope of the end-user’s access?
  – The same access rights apply to all material in the repository and to all end-users
  – Some material will be widely accessible to end-users, but access to other material will be limited depending on the status of the end-user
  – The scope of access to the material will be decided in agreement with the depositor.
End-Users

• What rights may be given to end-users?
  For example:
  – View and use deposited material for specified (limited) purposes
  – View, use, and further distribute deposited material (usually non-commercially)

• How are these rights granted?
  – Author to repository to end-user – governed by the Repository Deposit Licence
  – Author direct to end-user – governed by an Author Distribution Agreement (one example is a Creative Commons licence)
Author to End-User:

- The author licenses directly to end-users under an Author Distribution Agreement
- The author must be the copyright owner or have permission from the copyright owner to grant the licence
- The terms of the licence to end-users must be consistent with the copyright owner’s permission
- The repository merely makes the material available to end-users
Creative Commons Licence

A licence which allows open access to material but which may impose restrictions on how that material is used:
- Non-Commercial
- No Derivatives
- Share Alike
Author to Repository; Repository to End-User:

- The author gives a licence to the repository to make the material available in the digital repository and to licence the material to end-users.

- The author must be the copyright owner or have permission from the copyright owner to grant these rights to the repository.

- The repository licenses the material to end-users on terms consistent with the author’s grant of rights.

- The repository may attach a Creative Commons licence to the material, if this is within the scope of the rights granted to the repository.
Technical Considerations

• What software package do I use?

• Managing the repository:
  – Technical maintenance of the repository
  – Assisting authors to deposit their work into the repository
  – Helping authors convert their files to PDF or other accepted digital formats
  – Checking that documents are uploaded to the repository correctly
  – Checking (or even entering) metadata
  – Performing copyright checks
  – Removing any unauthorised material for the repository
  – Helping end-users access material in the repository
Advocacy

• Making authors aware of the repository and your Open Access Policy
  – Seminars; hand outs; engaging with academics

• Addressing authors’ concerns:
  – Concerns about the repository itself
  – Concerns about their copyright and other rights
  – Concerns about the deposit process
Overview - Management Frameworks

Defining the limits, including:

- Depositors – who can and cannot deposit and what authority the repository has to compel deposit

- Material – what should and should not be included in the repository, the appropriate format of material, and whether material should be peer reviewed

- Access rights – who can have access to the repository and what they can do with the material they have accessed

- Metadata – what metadata fields are necessary to ensure that material is searchable and that a record is retained of the material in the event that it must be removed from the repository for copyright or other reasons. There should also be in place a system for checking the accuracy of metadata entered by depositors
Overview – Legal Frameworks

Establishing the legal rights, including:

• Ensuring depositors have necessary rights to deposit material into repository

• Implementing a comprehensive Repository Deposit Licence

• Considering the access rights that are granted to end-users and ensuring that these are consistent with the rights granted by the author in the Repository Deposit Licence

• Providing facilities to authors to place Creative Commons licences, or other end-user licences, on their work (with permission from the copyright owner where necessary)
Repository Deposit Licences : A Guide

• A further short guide which explains the importance of having a Repository Deposit licence
• Provides a range of options for determining scope and application of Repository Deposit Licence
• Structuring the Deposit Licence
• Criteria for Depositing material into repository
• End-User Access Rights
• Licensing Options:
  – Repository Distribution (End-User) Agreements
  – Author Distribution Agreement – Creative Commons Licences
**Some Aspects of the Sample Repository Deposit Licence**

- Depositors Rights – not transfer copyright to the repository
- Right to use current and future versions
- Reassurance to publishers that published version is recognised and cited
- Depositor declaration of copyright ownership or permission from copyright owner to deposit material into the repository
- Grant of rights to the repository – non-exclusive right to reproduce material for the purposes of making material available to end-users through the repository
- End-User access Rights - what rights an End-User has to use and deal with the deposited material. For example:
  - View and Use for a Specified Purpose
  - View, Use and further Distribute (usually Non-Commercially)
OAK Law Sample Repository Deposit Licence for Publication

- Comprehensive Licence Agreement
- Designed for Academics to deposit work into Digital Repositories
- Covers issues such as Ownership, Depositor’s Rights, Moral Rights and the Rights of End-Users
- Intended to be used as an online digital document
- Accompanying notes that explains the use and effect of major licence clauses in Plain English
- Optional Clauses – can be used or deleted as you choose
- Allows End-User Agreements to be attached
- Six Creative Commons Licence Options to choose from
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