Constructing Open Access by Effective Copyright Management

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What is “open access” in the context of open access publishing?

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.

Alma Swan, “Open Access: Why should we have it?” Key Perspectives (2006):
OAK Law Project

• Various bodies of law are relevant to open access publishing:
  – Intellectual property – mainly copyright;
  – Contract (eg in publishing contracts and agreements with digital (e-prints) repositories);
  – Privacy/confidentiality/defamation etc…

• Our focus is on the **strategic management** of legal rights to enable Open Access to Knowledge (OAK) – creating legal framework to manage the interests of funding bodies, authors, publishers, users, reusers of information/knowledge
Why? What’s New?

• Internet ⇒ proliferation of authors, publications (formats) and publication channels
• Dealing with legal issues is “part and parcel” of traditional publishing/media industries
• Universities, research organisations, governments, individuals are increasingly involved in publishing
  ➢ need to take on tasks/”know how” long familiar to traditional publishers
  ➢ in particular, need to manage legal issues involved in publishing so they are able to do what they want to – and avoid incurring liabilities (unintended/unexpected)
Some challenges....

• Taking on role of publisher requires universities, governments etc to pay attention to legal and other issues
  – requires a shift in approach of university copyright administrators:
    • until recently, main focus was on licensing-in of external materials (eg hard copy publications, digital databases) and negotiation of payments under statutory copyright licences (eg to CAL, Screenrights)
    • now, online publication turns the focus onto management (licensing-out) of copyright material produced by the university/research institution
      – diverse range of authors and materials
Managing rights for open access publishing

• As content producers (responsible for licensing-out), universities need to deal with
  – ownership of rights in material produced by academics, researchers etc
  – rights to be granted to others
    • publishers
    • users and re-users

• But, the flow-through from traditional publication models means that some legal interests (notably, copyright) need to be addressed and actively managed for OA
Copyright and open access

• copyright is a collection of legal rights that attach to an original work when it is created
• for literary works, the copyright owner has the exclusive rights to:
  – reproduce the work in a material form (i.e. copy); publish the work; perform the work; communicate the work to the public (e.g. online); make an adaptation of a work (e.g. a translation).
• before the internet
  – information was scarce; publishing and distribution was expensive; distance was a communication and time barrier;
  – publisher was editor, printer, disseminator, publicist, agent
• traditionally, authors of academic publications (journal articles/books etc) invariably transferred copyright entirely to the publisher in the publishing contract
  – enabled publisher to exercise all the exclusive rights, freely, in order to do what was needed to disseminate the work to an audience
Copyright and open access

• From late 1990s, increasing awareness of problems caused by assignment of copyright to publishers, while demands for open access were growing

• OA to academic materials has been provided in two main ways:
  – Gold publication - publishing in an open access journal;
  – Green publication – depositing/self-archiving in a subject-based or institutional repository, or posting the work on the author’s personal website

• Can the author publish via OA if copyright has been assigned to publishers? Publisher has the exclusive rights to control and charge fees for
  – access
  – use and reuse (including copying)
Copyright and open access

• In OA context, focus has been on publisher-author relationship
  – If publisher holds copyright, what can the author do with the pre-/post-print or publisher’s version? Self-archive, deposit in a repository?

• But, in OA systems, a broader range of relationships needs to be understood and managed
  – role of funding bodies, universities, authors, publishers, users and reusers need to be understood and dealt with
Copyright and open access

• To manage copyright for OA
  – define what kind of OA you want (who can do what with the material)
  – understand the roles of the different stakeholders (rights holders)
  – structure the system to ensure that you have the legal rights to be able to provide the desired OA
Our surveys of publishers/authors/researchers

  - **authors**: published 2008; survey conducted Oct-Nov 2007 - “Academic authorship, publishing agreements and open access: survey results”
  - **publishers**: 2007/2008 – “A review and analysis of academic publishing agreements and open access policies”
  - **e-Research**: published 2007; survey conducted April-May 2007 - “Legal and project agreement issues in collaboration and e-research: survey results”

- Provide information about knowledge, attitudes and practices
- Implications for institutions and how they respond to the demand for solutions/strategies to foster innovation
- Findings inform development of legal frameworks for managing access to/reuse of research publications and data
Author Survey

- published May 2008
- available at http://www.oaklaw.qut.edu.au
- released under an Australian Creative Commons BY-NC-ND 2.5 Licence
Author Survey

• nationwide survey of attitudes and practices of Australian academic authors towards the publication and dissemination of their research
• sought information about:
  – authors’ experiences with publishing agreements
  – perceptions of open access and commercial publishing
  – understanding of copyright ownership in published articles
  – involvement with online repositories and open access journals
• 509 participants - from universities, government, industry and other research bodies
• From a range of disciplines:
  – 57% from Science and Technology
    • 25% from medical, health and epidemiology; 19% from biology, chemistry and physics
  – 43% from Arts and Social Sciences
    • 14% from education; 12 % from humanities
Author Survey

• broad support for key elements of open access
  – wide dissemination of knowledge (63% - extremely important; 28% - very important)
  – encouragement of scientific, social and cultural advancement (60% - extremely important; 27% - very important)
  – broader access to the results of publicly funded research (57% - extremely important; 30% - very important)
  – 92% of authors see repositories as “fairly”, “very” or “extremely” important as an element of open access (bottom line)

• found broad agreement on the benefits of open access
  – increased accessibility to research outputs (61% - strongly agree)
  – easier access to material (56% - strongly agree)
  – Improved dissemination (52% - strongly agree)
Important elements of OA

- Wide dissemination of knowledge
- Encouragement of scientific, social and cultural advancement
- Broader access to the results of publicly funded research
- Distribution of information freely and without cost
- Making information available for reuse
- Making information available under Open Content Licences
- Allows better understanding of how many people access the Item
- Establishing institutional or other repositories

- Not Important
- Of Little Importance
- Fairly Important
- Very Important
- Extremely Important
Benefits of OA

- Increased accessibility to research outputs
- Easier access to material
- Improved dissemination
- Timely access to current research outputs
- Allows researchers to build on existing knowledge
- Improved research outcomes or impact
- Increased research citation
- Allows others to circulate the Item
- Encourages others to continuously add value to the Item
- Better archiving
- Increased community engagement with research
- Reduced subscription fees
- Reducing duplicative research
- Enhanced reputation of researcher, funding agency and/or institution
- Enables new forms of research
- Enhanced career advancement
- Enhanced funding opportunities
Authors’ preference for open access in repositories

The great majority of authors (93%) are in favour of institutions having a limited, non-exclusive licence to make academic publications available in a non-commercial, publicly accessible, online institutional repository.
Author Suggestions for Repositories

- In favour of academics granting institutions a limited non-exclusive license to place Items in a non-commercial, publicly accessible, on-line institutional repository: 93%
- University or institution promote or facilitate open access: 53%
- Deposited an Item in an institutional or other repository to make it freely available online: 45%
- Search for Items within institutional repositories: 42%
- Direct students to use institutional repository or repositories of another institution: 40%
- Institutional repository provide information on number of times item has been viewed or downloaded: 22%
Authors’ decisions about where to publish

• In making a decision about publishing, reputation of the publication, impact and quality of peer review rank more highly than that the publication is an open access journal or permits deposit of the item into an open access (institutional) repository

• Timely publication is also an important factor (50% say it is extremely important or very important)
## Authors Decision to Publish

<table>
<thead>
<tr>
<th>Factor</th>
<th>Very Important</th>
<th>Extremely Important</th>
<th>Fairly Important</th>
<th>Very Important</th>
<th>Of Little Importance</th>
<th>Not Important</th>
<th>Unsure</th>
</tr>
</thead>
<tbody>
<tr>
<td>High reputation of the publication</td>
<td>37%</td>
<td>37%</td>
<td>15%</td>
<td>2%</td>
<td>1%</td>
<td>2%</td>
<td>0%</td>
</tr>
<tr>
<td>Quality of peer review</td>
<td>43%</td>
<td>19%</td>
<td>18%</td>
<td>15%</td>
<td>11%</td>
<td>4%</td>
<td>0%</td>
</tr>
<tr>
<td>No fee payable by author</td>
<td>19%</td>
<td>16%</td>
<td>15%</td>
<td>11%</td>
<td>6%</td>
<td>4%</td>
<td>0%</td>
</tr>
<tr>
<td>Your desire for timely publication</td>
<td>14%</td>
<td>12%</td>
<td>12%</td>
<td>11%</td>
<td>6%</td>
<td>5%</td>
<td>0%</td>
</tr>
<tr>
<td>Publication’s ability to publish in a timely fashion</td>
<td>12%</td>
<td>10%</td>
<td>10%</td>
<td>9%</td>
<td>6%</td>
<td>5%</td>
<td>0%</td>
</tr>
<tr>
<td>Comments or feedback from peer reviewers</td>
<td>10%</td>
<td>8%</td>
<td>8%</td>
<td>6%</td>
<td>5%</td>
<td>5%</td>
<td>0%</td>
</tr>
<tr>
<td>Circulation and marketing</td>
<td>8%</td>
<td>6%</td>
<td>6%</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>0%</td>
</tr>
<tr>
<td>Item was commissioned</td>
<td>11%</td>
<td>5%</td>
<td>6%</td>
<td>5%</td>
<td>4%</td>
<td>3%</td>
<td>0%</td>
</tr>
<tr>
<td>Open Access Journal</td>
<td>9%</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>4%</td>
<td>4%</td>
<td>0%</td>
</tr>
<tr>
<td>Supports deposit to institutional repository</td>
<td>10%</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>4%</td>
<td>4%</td>
<td>0%</td>
</tr>
<tr>
<td>Journal published conference proceedings</td>
<td>16%</td>
<td>3%</td>
<td>3%</td>
<td>3%</td>
<td>3%</td>
<td>3%</td>
<td>0%</td>
</tr>
<tr>
<td>Faculty or Departmental preference</td>
<td>9%</td>
<td>2%</td>
<td>2%</td>
<td>2%</td>
<td>2%</td>
<td>2%</td>
<td>0%</td>
</tr>
<tr>
<td>Copy editing assistance</td>
<td>16%</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>4%</td>
<td>4%</td>
<td>0%</td>
</tr>
<tr>
<td>Payment to author (non-commissioned)</td>
<td>4%</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
<td>0%</td>
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</tbody>
</table>
Assignments and licences

- The majority of authors (63%) enter into publishing agreements that assign copyright to the publisher [Note – survey of publishing agreements puts assignment at over 90%]

- What do authors prefer?
  - 8% prefer assignment
  - 32% prefer to retain rights to make their works available by open access, by means of a licence with the publisher
  - 54% had no preference between assignment and licence
Preferences – Assignment or Licence

Assign copyright: 8%

Licence copyright: 32%

No Preference: 54%
Uncertainty about rights to deposit in repository

• Over 50% of authors were unsure whether they were permitted to deposit into a repository under
  – their past publishing agreements; or
  – their most recent publishing agreements

• Uncertainty found for all versions: pre-/post-print and publisher’s version
Publishing Agreements – Right to Deposit

- **Pre-print**: 15% (Most Recent), 14% (Previous)
- **Post-print**: 12% (Most Recent), 11% (Previous)
- **Publisher version**: 17% (Most Recent), 14% (Previous)
- **Unsure**: 54% (Most Recent), 56% (Previous)
Authors’ rights

• majority of authors do not insist on a licence with publisher – over 50% think it is too much trouble to negotiate with publishers
• almost 50 % do not understand the terms of a publishing agreement but sign it anyway – many do not understand the difference between an assignment and a licence
• comments indicated that authors are prepared to assign copyright in order to get published
• authors regard the retention of rights to make and distribute copies for teaching and learning as being of greatest relevance to them (85% - extremely or very important)
• BUT, 63 – 73 % of authors regard it as “fairly”, “very” or “extremely” important for authors to retain rights to deposit into repositories or to make it freely available online (pre-print/post-print/publisher’s version); 53% said it was “very” or “extremely” important to be able to deal with it in any manner
Reasons for not depositing

• author’s lack of knowledge about where to deposit their work (29%)
• concern about publisher’s attitude towards deposit of work into repository (15%)
• concern about author’s copyright position (17%)
• authors unsure how depositing promotes their work, profile, employment or career (11%)
Reasons for Not Depositing

- Unaware of any repository to deposit Item: 29%
- Uncertainty over copyright position: 17%
- Uncertainty over publisher’s attitudes regarding depositing the Item in a repository: 15%
- Activity is not recognised or acknowledged for promotion purposes: 11%
- Deposit process is too difficult or time-consuming: 10%
- Institution does not have a repository: 9%
- Prefer to place Items on personal website: 3%
- Don’t agree with open access principles: 2%
What academic authors want

• access to and support from their institution’s copyright or research office on copyright issues
  – for 72% this is “very useful” to “extremely useful”

• template clauses, publishing agreements and addenda to publishing agreements
  – 65 to 70% regard these as “very useful” to “extremely useful”

• copyright toolkit
  – for 62% this is “very useful” to “extremely useful”

• online advocacy centre
  – for 52% this is “very useful” to “extremely useful”
## What Academic Authors Want

<table>
<thead>
<tr>
<th>Service</th>
<th>Of No Use</th>
<th>Of Limited Use</th>
<th>Of Moderate Use</th>
<th>Very Useful</th>
<th>Extremely Useful</th>
</tr>
</thead>
<tbody>
<tr>
<td>Access to and support from</td>
<td>3%</td>
<td>7%</td>
<td>18%</td>
<td>35%</td>
<td>37%</td>
</tr>
<tr>
<td>institutional copyright or research office</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Template clauses</td>
<td>3%</td>
<td>8%</td>
<td>19%</td>
<td>36%</td>
<td>34%</td>
</tr>
<tr>
<td>Template publishing agreements</td>
<td>4%</td>
<td>8%</td>
<td>23%</td>
<td>34%</td>
<td>31%</td>
</tr>
<tr>
<td>Template author addenda</td>
<td>3%</td>
<td>10%</td>
<td>22%</td>
<td>34%</td>
<td>31%</td>
</tr>
<tr>
<td>Copyright toolkit</td>
<td>4%</td>
<td>10%</td>
<td>23%</td>
<td>35%</td>
<td>27%</td>
</tr>
<tr>
<td>Online advocacy centre</td>
<td>4%</td>
<td>16%</td>
<td>28%</td>
<td>25%</td>
<td>27%</td>
</tr>
</tbody>
</table>

*Of No Use, Of Limited Use, Of Moderate Use, Very Useful, Extremely Useful*
Institutional support

• Institutions should provide authors with clear information on
  – open access policy and principles
  – rights of academic authors, repositories and end users
  – how repositories will disseminate their works
  – types of works which can be deposited into repositories
  – differences between pre-print, post-print and publisher versions

• Institutions should assist authors in
  – identifying rights and open access issues in publishing agreements
  – negotiating with publishers about the retention of rights to deposit and make article available in repository
Support from Institutions

- Provide guidelines instructing authors how to deposit Items
- Promote repositories and open access policies
- Explain position on open access
- Explain the rights of the repository and end-users
- Establish repositories for disseminating research outputs
- Explain the benefits of depositing Items
- Explain the author’s rights in relation to the repository
- Explain how the repository operates and is organised
- Provide policies on disseminating research outputs
- Provide assistance with cataloguing metadata and the capability of the item to be searched in the repository
- Promote repositories outside of university or institution
- Provide examples of items which can be deposited
- Provide a service to answer author queries about the repository
- Conduct workshops for both depositors and users
- Link the depositing of items to career advancement

Strongly Disagree | Somewhat Disagree | Neutral | Somewhat Agree | Strongly Agree
---|---|---|---|---
0% | 10% | 20% | 30% | 40% | 50% | 60% | 70% | 80% | 90% | 100%
Practical Guides

• 54% of authors strongly agreed that Institutions should provide guidelines instructing authors how to deposit into repository

  – guides for both authors and publishers are required, covering issues of copyright ownership, open access, rights involved in depositing into an open access repository

  – institutions must still provide practical assistance and support to authors
Practical Guides

- Provide guidelines instructing authors how to deposit Items
- Promote repositories and open access policies
- Explain position on open access
- Explain the rights of the repository and end-users
- Establish repositories for disseminating research outputs
- Explain the benefits of depositing Items
- Explain the author’s rights in relation to the repository
- Explain how the repository operates and is organised
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- Promote repositories outside of university or institution
- Provide examples of Items which can be deposited
- Provide a service to answer author queries about the repository
- Conduct workshops for both depositors and users
- Link the depositing of Items to career advancement

Strongly Disagree   Somewhat Disagree   Neutral   Somewhat Agree   Strongly Agree
End-user rights

• majority of authors want end users to have rights to
  – view, print and download a copy (72%)
  – reuse the work for academic and non-commercial purposes (57%)
  – be able to distribute it to others on a non-commercial (research) basis (55%)
  – link to the item from another website (54%)  [SEE NEXT SLIDE]
Conclusions

• many authors do not understand the difference between copyright assignment/ exclusive licences/ non-exclusive licences

• publishing agreements are more closely scrutinised by those in Arts & Social Sciences than those in Science & Technology

• Authors with less than 10 years publishing experience would be encouraged to deposit if it was linked to career advancement

• Authors with more than 10 years publishing experience are not concerned about depositing being linked to career advancement

• Need for different strategies to promote depositing into repositories to different author groups
The Issues...

- there is a lack of understanding about legal rights - copyright in particular

- many authors sign publishing agreements without understanding them

- many authors do not understand the difference between assigning and licensing copyright

- authors want continued rights in their own work and are willing to allow others to share and use their work, but they do not understand that their own mismanagement of their copyright may preclude this
The Solution?

Effective copyright management

- by authors
- by publishers [both open access and closed access journals]
Copyright Management

Publishers:
• take copyright licence, not assignment
• work with the interests of authors/users – not against them
• consider open licensing your journal contents [i.e. Creative Commons]

Authors:
• retain copyright where possible, grant a licence to publish
• understand your rights and be proactive about managing them
• consider open licensing your work [i.e. Creative Commons]
Creative Commons

http://www.creativecommons.org.au

A licence which allows open access to material but which may impose restrictions on how that material is used: [Can have different combinations]

Non-Commercial  No Derivatives  Share Alike

All licences require attribution of creator/author:

Work is “badged” with pictorial licence – eg:

[Expressed in 3 ways – (1) “Human readable” terms; (2) Legalese; (3) Machine readable code]
Our materials

• The OAK Law Project has developed a series of tools and guides to respond to the concerns of authors and to assist institutions and publishers in supporting their authors:
  – OAK List
  – *Understanding Open Access in the Academic Environment: A Guide for Authors*
  – Copyright toolkit
  – Sample Publishing Agreement (licence to publish)
OAK List

- http://www.oaklist.qut.edu.au
- online collaboration tool that tracks and manages publishers’ stated positions on open access and digital repositories
- fully interoperable with the SHERPA RoMEO List
- searchable by authors, publishers and repository managers
“Understanding Open Access in the Academic Environment: A Guide for Authors”

- OAK Law Project
- published June 2008
- available online at: http://www.oaklaw.qut.edu.au
- licensed under an Australian Creative Commons BY-NC-SA 2.5 licence
Author Guide

• explains:
  – what is OA?
    • institutional repositories
    • OA journals
  – funding bodies and their role in OA
  – what do publishers think about OA? – publisher/author relationship
  – copyright law basics
  – using copyright law to enable OA
  – granting rights to end-users
    • Creative Commons licences
Copyright Toolkit for Academic Authors

• designed to:
  – assist authors in understanding the copyright issues surrounding their work;
  – help authors to clarify what legal interests all the different parties – the author, their co-authors, their funding body, their institution and their publisher – have in the work;
  – provide a clear picture of the flow of rights and interests in the work as it travels from conception to publication to dissemination
  – assist authors in making key decisions about how to deal with copyright in their work so that they retain the rights they want for future use
(draft) Sample Publishing Agreement

http://www.oaklist.qut.edu.au/copyright/

- based on a retention of copyright by author – can be adapted for different situations
- author grants to publisher an exclusive licence to publish the work and a non-exclusive licence to do other things (eg copy the work)
- author retains the right to post the work online, re-use the work for other purposes, etc
- publishers can adopt this sample agreement (with appropriate changes)
- authors can present the sample agreement to publishers as an alternative to the publisher’s standard agreement (with usually requires full assignment of copyright to publisher)
OAK LAW PROJECT REPORT NO. 1

CREATING A LEGAL FRAMEWORK FOR COPYRIGHT MANAGEMENT OF OPEN ACCESS WITHIN THE AUSTRALIAN ACADEMIC AND RESEARCH SECTOR

Professor Brian Fitzgerald
Dr Anna Fitzgerald
Professor Mark Perry
Scott Val-Civardi
Eric Drakul
Elena Tzaporoulidou
Jennifer Currie
Copyright Guide for Research Students: What you need to know about copyright before depositing your electronic thesis in an online repository

Damien O'Brien and Dr Anne Fitzgerald with the assistance of Professor Brian Fitzgerald, Scott Neil Chisholm, Jessica Coates and Kyle Pappalardo

Open Access to Knowledge (OAK) Law Project
http://www.oaklaw.qut.edu.au

Faculty of Law
Queensland University of Technology

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May 2007

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http://creativecommons.org/licenses/by-nc-sa/3.0/au/
BUILDING THE INFRASTRUCTURE FOR DATA ACCESS AND REUSE IN COLLABORATIVE RESEARCH:

AN ANALYSIS OF THE LEGAL CONTEXT.

Dr Anne Fitzgerald and Myria Peppasanto. Assisted by Professor Brian Fitzgerald, Anthony Austin, Dr John Abbott, Brendan Cosgrove, Damien O'Brien and Bill Singleton (Allianz Arthur Robinson).
• To access these resources and for more information, visit our website:
  http://www.oaklaw.qut.edu.au/reports
• For hard copies, email Kylie Pappalardo at:
  k.pappalardo@qut.edu.au
OAK Law – Legal Framework for e-Research publications
http://www.oaklaw.qut.edu.au/reports

- **OAK Law Project**
  - Review of Publishing Agreements and Open Access Policies
  - Copyright Guide for Research Students (2007)
  - OAK List (2007)
  - Building the Infrastructure for Data Access and Reuse in Collaborative Research: A Legal Analysis (2007)

- **Legal Framework for e-Research Project**
  - Building the Infrastructure for Data Access and Reuse in Collaborative Research: A Legal Analysis (2007)
  - Practical Data Management: A policy and legal guide (2008)

- **“Legal Framework for e-Research: Realising the Potential” (2008)**