



**OhioLINK Library Community Recommendations on  
Retention of Intellectual Property Rights  
For Works Produced by Ohio Faculty and Students  
*Approved by OhioLINK Governing Board May 2006***

It is recommended that the Ohio higher education community adopt a policy of intellectual rights retention that will provide a basis for expanded access to Ohio scholarship.

**Why is it important for the Ohio academic community to exercise control of their scholarship?**

The recent advent of electronic information technologies enables virtually instantaneous sharing of scholarly works via the Internet. These technologies create the capacity for the higher education community to expand avenues of knowledge dissemination beyond traditional publishing models. Knowledge assets in electronic form can be made widely accessible in a manner that greatly increases their use and utility for readers. If the higher education community manages intellectual property rights properly, it can facilitate wide dissemination of scholarship in ways that significantly enhance the growth and development of knowledge.

The traditional publishing model remains a vital avenue for publication and access, but with it come roles and interests that do not necessarily provide the broadest access possible. The traditional model has proven increasingly unaffordable as the singular means to expand access to an increasing body of published works. There is a growing national and international movement for authors of peer-reviewed journal articles to self-archive their work in repositories that are openly accessible. Open access archiving has major advantages over sole reliance on the traditional publishing model. It substantially increases all researchers' access to the research literature. There is strong evidence that articles that are made openly accessible have substantially more research impact than articles that are available only through subscriptions and licenses (see <http://opcit.eprints.org/oacitation-biblio.html>).

Throughout the academic community, including Ohio, open access vehicles are being created. These self-archiving systems are called a variety of names - such as institutional repositories, digital libraries, and knowledge banks. OhioLINK is building the Digital Resource Commons (DRC) for this purpose. Several Ohio universities are experimenting with similar locally based systems. Depositing works in digital repositories, such as the DRC, also insures long-term preservation of an author's work. Self-archiving enables an author to bring together his/her body of work over a scholarly career – and make it openly available.

If traditional publication policies are followed, Ohio authors will not retain the rights to disseminate their own works in electronic form. Simply said, more often than not authors give away to publishers their rights to self-archive and to make openly accessible their own intellectual property as well as rights to use their own work for scholarly and educational purposes. If this continues, the academic community foregoes the ability to maximize access and to control the economic costs of an expanding knowledge base which under the current system is increasingly unaffordable.

It is incumbent on the Ohio higher education academic community that it adopt policies for its own intellectual property (called variously, intellectual or knowledge assets or simply information) that are consistent with the goal of maximizing accessibility while recognizing the economic interests of authors and publishers. There are two broad categories of knowledge to consider.

1. Published works – typically these mean the works of faculty and students such as dissertations, papers, articles, novels, textbooks, poems, musical compositions, and other artistic forms of personal expression that make their way into the traditional publishing channels.
2. Unpublished works – typically these mean works that do not enter the traditional publishing channels, but are created in the course of the specific job responsibilities of institutional employees or in the completion of coursework by students. Also included could be pre-prints, working papers, or other supplementary materials not specifically covered as a published work.

In the Publication category, depending on the specific work involved, there maybe author royalties or revenue that preclude the desire for complete open accessibility. The critical goal at this point is to retain rights that the author then can choose to execute, or not, or to modify execution of over time. In both categories, depending on the specific work involved, there may questions of who is the copyright holder, the author or institution. Resolution of these ownership policies can vary by institution.

### **What actions can the Ohio academic community take to ensure wide dissemination of scholarship for education and research?**

1. Faculty are encouraged to publish in journals that have responsible assignment of rights policies. In instances where faculty have a choice among journals, access to scholarship will improve if they choose publishers that, as a matter of practice, have favorable policies towards author self-archiving in open access vehicles. In addition, new journals are emerging that publish according to full open access models. Traditional journals can choose to adopt an open access model or adopt favorable self-archiving policies under the existing subscription model.
2. Whether as allowed by a publisher's standard author agreement or by amendment, authors/copyright holders must retain the NON-EXCUSIVE right to make their work openly accessible and to use it for their own non-commercial educational and research purposes. This can best be accomplished by retaining copyright and only granting the publisher first publication rights. It can also be accomplished within current common practice where copyright transfers to the publisher by the proper retention of self-archiving and use rights.

As explained by the Scholarly Publishing and Resources Coalition, when an author submits an article for publication in a scholarly or scientific journal, he/she is typically asked by the publisher to sign a "Copyright Transfer Agreement," "Publication Agreement," "License to Publish," or a similarly titled document. The document's purpose is to transfer to the publisher ownership of copyright in the work or otherwise convey to the publisher a bundle of rights, one of which is the right to publish the article.

While some journal publishers already utilize author-friendly agreements, many do not. Even the best-intentioned publishers may not take into account all the uses an author is likely to have for the article, such as the deposit now requested by the National Institutes of Health in their Public Access Policy. Fortunately, most publishers will consent to changes in their standard agreement or have stated policies that allow authors to self-archive their final peer reviewed manuscripts or the final published version of their articles. A site that keeps track of publisher policies for this is SHERPA/ROMEO (see <http://www.sherpa.ac.uk/romeo.php>). By altering an author's agreement

with a publisher certain key rights can be secured that will be advantageous for the author, the institution, and potential readers without harming the publisher.

One means of retaining selected rights is to mark-up the publisher's standard agreement, initialing each change. However, as an easy and practical alternative, an Author's Addendum to the publisher's agreement can be used to ensure the author has retained a bundle of key rights. A template to do so from which a final addendum can be created is attached. It can be applied or modified to any form of published work not just published articles. It can be applied to all works in the Published Works category. This broader perspective is recommended even though the execution of the retained rights may vary by the type of work (e.g. journal article versus monograph or text book) depending on the best interests of the author/copyright holder. But without retaining author rights in the first place, one cannot choose not to use them.

We recommend that faculty members, if the copyright owner, and institutions, if the copyright holder, retain author self-archiving and access rights in one form or another. The template illustrates the basic rights that should be retained. Several optional provisions are suggested which the author or institution can elect to incorporate. As noted below, a great number of publishers are receptive to author self-archiving rights and so a basic addendum may suffice in most cases. The template provided conforms to the basic rights recommended by other library and academic groups, but it is an author decision, with possible assistance from his/her institution as to the final form of the addendum.

We recommend that institutions provide direction and assistance to faculty members in retaining dissemination rights by recommending specific versions of the template to its faculty. This may be effectively done through the formation of a campus task force to recommend policies and templates for faculty members to use. It would be most advantageous if the contract vehicles and rights sought across the state be as consistent as possible.

Whenever an addendum to a publisher's agreement is used to retain rights by an author, the author should indicate under his or her signature on the publication agreement that the signature is "subject to the attached addendum."

3. In parallel with individual author action, OhioLINK will seek to add a clause to its licenses with publishers in its Electronic Journal Center. This clause will seek to automatically provide the recommended self archiving and access rights to all personnel of Ohio higher education institutions.

4. With the retention of rights, we strongly recommend that works in both Published and Unpublished works categories be deposited in the OhioLINK DRC or a campus repository that links to it. The goal of this system of repositories is shared access and utility in an efficient manner. The Ohio library community recognizes this goal does not always mean unrestricted global access and that access levels may change over time. Authors may control the level of access allowed for each specific work. The goal is to maximize the appropriate access and provide as much as possible. Our ability to build and access these combined resources starts with the necessary rights retention policies.

### **Are the actions recommended realistic for the Ohio community?**

The actions recommended are forward thinking, but also realistic and productive. What is being recommended is consistent with policies being adopted by a growing majority of publishers and recommended as national governmental policy in the US and Europe. But an author cannot be sure self-archiving rights are always granted automatically or granted in a way preferred by the author. And there are publishers whose policies are not yet conducive to self-archiving. We must

actively and systematically address these rights. Based on similar actions by many other academic groups Ohio would not be alone in seeking the organized retention of distribution rights.

Most recently in May 2006, US Senators Joe Lieberman (D-CT) and John Cornyn (R-TX) introduced the "Federal Research Public Access Act of 2006" (bill text at [http://cornyn.senate.gov/doc\\_archive/05-02-2006\\_COE06461\\_xml.pdf](http://cornyn.senate.gov/doc_archive/05-02-2006_COE06461_xml.pdf) ). It would require that federal agencies with substantial extramural research budgets provide free taxpayer access to peer-reviewed articles stemming from agency funding.

The Alliance for Taxpayer Access (ATA), of which OhioLINK is a member, is a coalition of patient, academic, research, and publishing entities that support expanded access to the results of federally funded research. ATA has endorsed this bill. In July, the provosts of 25 top universities released an open letter that strongly backs the bill and just one week later more than two dozen additional leading universities declared their strong support for the Federal Research Public Access Act of 2006.

The Consumers Union, the non-profit publisher of Consumer Reports, and Consumer Project on Technology (CPTech), were joined by the Electronic Frontier Foundation, Essential Action, IP Justice, Public Knowledge, U.S. Public Interest Research Group, and Union for the Public Domain in pledging their support of the legislation.

A January 2006 report by economists funded by the European Commission concludes taxpayer funded research should be freely available to everyone over the internet. The European Commission report is available at

[http://ec.europa.eu/research/science-society/pdf/scientific-publication-study\\_en.pdf](http://ec.europa.eu/research/science-society/pdf/scientific-publication-study_en.pdf)

The UK has announced a draft policy. See

<http://www.earlham.edu/~peters/fos/newsletter/07-02-05.htm>

The German Research Foundation recently announced a new policy that encourages self-archiving. See <http://www.earlham.edu/~peters/fos/newsletter/04-02-06.htm>

Another example of an internationally based initiative from the Netherlands, is SURF, the higher education and research partnership organization for network services and information and communications technology. SURF's Copyright Management for Scholarship web site has been created to educate authors on copyright matters.

[www.surf.nl/copyright/](http://www.surf.nl/copyright/)

EPrints ([www.EPrints.org](http://www.EPrints.org)) demonstrates the wide acceptance of some level of author self-archiving rights by publishers. EPrints, developed at the School of Electronics and Computer Science, University of Southampton, UK, is a web site that promotes open archiving and tracks the author self-archiving policies of publishers. Currently 144 publishers covering 9034 journals are registered with EPrints. Of these journals, 69.5%, the so-called "green" policy publishers, allow author self-archiving of the refereed post print. Another 23.8% allow self-archiving of the pre-refereed pre-print. Only 6.7% as yet allow neither. Included in the Green category are most major commercial publishers such as Elsevier Science, Wiley, and Springer. Also included are many major society publishers such as the American Chemical Society, American Geophysical Union, American Institute of Physics, American Mathematical Society, and American Physical Society.

A similar effort of a consortium of United Kingdom institutions is SHERPA. Its list of publisher policies is consistent with EPrints (see <http://www.sherpa.ac.uk/romeo.php>). SHERPA investigates issues in the future of scholarly communication. It is developing open-access institutional repositories in a number of research universities to facilitate the rapid and efficient worldwide dissemination of research.

Actions in the academic community in support of open access and author self-archives are so numerous that a complete listing or discussion here is impractical. This summary illustrates the breadth of actions primarily in the US, but also some with international overtones.

SPARC, the Scholarly Publishing and Academic Resources Coalition, is an alliance of universities, research libraries, and organizations. The coalition was an initiative of the Association of Research Libraries (ARL) started in 1997 to be a constructive response to market dysfunctions in the scholarly communication system. It has prepared "Copyright Resources for Authors - Practical guidance when submitting journal articles" found at <http://www.arl.org/sparc/resources/copy.html>. It includes an authors publishing addendum on which the attached recommended template is based in large part.

Major biomedical funding agencies are moving toward requiring or encouraging their funded authors to deposit their work in open access repositories. NIH encourages deposit of final peer reviewed manuscripts in PubMed Central and allows grant funds to be used for publication in open access journals; recent developments (recommendations of their Public Access Working Group and the NLM Board of Regents) are leading toward an NIH requirement. Wellcome Trust (the largest private funding agency in the UK) requires funded authors to deposit their work and also funds author fees for OA journals. US agencies such as NSF also allow grant funds to be applied to open access author fees.

Peter Suber, the editor of The SPARC Open Access Newsletter, maintains a web site (<http://www.earlham.edu/~peters/fos/lists.htm#actions>) with numerous references to resources related to the Open Access movement. He lists various actions and resolutions by 26 US universities since 2003 that in one way or the other urge authors or the adoption of university policies to include the retention of self-archiving rights and the deposit of articles in pre or post print repositories. To name just a few, this list includes various activities at the University of California, Case Western Reserve University, University of North Carolina, Columbia University, Indiana University, and Cornell University.

Library Consortia are active as well. The Boston Library Consortium, consisting of 19 academic and research libraries, has approved unanimously the adoption of the "Agreement to Extend Author's Rights," a document that gives authors and their employing institutions non-exclusive rights to use, distribute, and reproduce material in electronic digital or print form in activities connected with the author's academic and professional activities. The amendment also supports placement of material in institutional repositories. The agreement, initially developed by MIT, a Consortium member, is available for downloading at the BLC web site - <http://www.blc.org/authorsrights.html>.

Some countries are moving toward requiring their government-funded research to be made openly accessible through institutional or disciplinary repositories.

There are numerous other projects to promote open archives, put pressure on publishers to allow it and to encourage authors to require it. Examples include:

CiteBase (<http://citebase.eprints.org/>) is part of an effort to improve online services for the research community. These resources will provide a rich information source and navigation system (based on impact and other metrics) to the self-archiving movement (<http://www.earlham.edu/%7Epeters/fos/guide.htm#self-archiving>).

The Open Citation Project (<http://opcit.eprints.org>) developed reference Linking and Citation Analysis for Open Archives.

OAI: The Open Archives Initiative (<http://www.openarchives.org/>) is making all OAI-compliant Archives interoperable. The EPrints software creates OAI-Compliant Archives.

BOAI: Budapest Open Access Initiative is a worldwide coordinated movement to make full-text online access to all peer-reviewed research free for all.  
<http://www.soros.org/openaccess>

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**TEMPLATE FOR**

**AMENDMENT TO PUBLICATION AGREEMENT**

1 THIS Amendment hereby modifies the attached Publication Agreement concerning the following Intellectual Asset (Check that which applies)

\_\_\_ Article \_\_\_ Book \_\_\_ Book chapter \_\_\_ Poem \_\_\_ Music composition

\_\_\_ Other – specify \_\_\_\_\_

\_\_\_\_\_  
( title of submitted article, book, etc. as specified above)

\_\_\_\_\_  
(name of publication vehicle - journal, book in which article, book chapter, poem, composition ,etc will be published)

2. The parties to the Publication Agreement and to this Amendment are:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (corresponding author),  
,  
,  
,

(individually, or if more than one author, collectively, the Author), and

\_\_\_\_\_, (the Publisher).

3. The parties agree that wherever there is any conflict between this Amendment and the Publication Agreement, the provisions of this Amendment supersede those of the Publication Agreement.

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AUTHOR

PUBLISHER

\_\_\_\_\_  
(corresponding author on behalf of all authors)

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

#### OPTIONAL PROVISIONS FOR CONSIDERATION

5. Publisher agrees to provide to the author within 14 days of first publication and at no charge an electronic copy of the Intellectual asset in \_\_\_\_\_ format (example: publisher article in Adobe Acrobat Portable Document Format). The security settings for such copy shall be "No Security."

6. Publisher's Acceptance of this Addendum. Publisher's acceptance of this Amendment shall be manifested by executing a copy of this Amendment and returning it to the Author. Alternatively, Publisher assents to the terms of this Amendment if Publisher publishes the Intellectual Asset in the publication vehicle identified herein or in any other form without execution of this Amendment.