

Executive summary

Open Access has always had at its heart the pursuit of unrestricted access, and free and unhindered reuse of the outputs of research.

In this context, Project Retain¹ was established as a part of the Knowledge Rights 21² programme to review non-legislative practices in Europe affecting researchers and authors in the domain of authors rights and licensing, that will enable open access and reuse. The project's focus has been to understand the landscape of institutional, funder and publisher policies affecting author rights in Europe, the motivations behind changes, and to develop awareness and sharing good practice. In particular, it has considered Rights Retention policies - those promoting the practice of retaining sufficient rights for academic works of institutions' employees to make the work immediately openly accessible and reusable.

“What do researchers need? Is there need for a mandate given that funders / governments have done this? Strengthen the focus on making it easier for researchers, strengthen the idea that they will retain their copyright.”

We have used a range of methods to achieve this including a survey of European institutions, focus groups, workshops and interviews, as well as desk-based research of literature and policy documents.

European research institutions are exploring and increasingly implementing policies which retain rights over the outputs of research for researchers and the institutions themselves. They should continue to do so, working closely with their researchers to ensure policies have support and that the benefits to authors are clear.

There is no one size fits all approach - different policies are more appropriate and stronger in different contexts dependent on legislation, publishing culture, funding requirements and other factors. However, generally, policies are stronger where the institution itself retains and exerts certain rights for achieving more openness and not just the researcher if a clear legal basis for such a policy exists. According to legal advice received by institutions in the UK, British copyright law recognises earlier licences where prior knowledge of the licence can be demonstrated, and thus a carve out in contract law is applicable to publishing contracts. Advice suggests that such a mechanism does not apply in continental legal jurisdictions, and so alternative mechanisms or legislative reform may be required to achieve the same effect, whether that is at national level or as part of broader EU consideration of copyright harmonisation.

Policies from which researchers must opt-out and are communicated to publishers by institutions are less bureaucratic and ensure researchers can more readily make their work Open Access with minimal effort. All policies require resources in place to develop, implement and to support researchers, and institutions have made more progress when working in small networks or groups of peers. This removes the perception of risk that some institutions have if they are the first mover.

“Be brave - being too risk averse will prevent the world moving forward. Don't just leave it to funders or governments.”

Policies adopted by funding organisations have raised awareness of the importance of rights retention and have accelerated its adoption and have incentivised similar policy development at institutions. However, funder policies can only go so far: in particular in relation to equity, as they only address researchers in receipt of funding. While some provide general guidance and materials, their policies place the responsibility for implementation on the author, as funders not part of the agreements between researchers and publishers and lack the resources to intervene or respond to individual requests for support from authors. Where funders work across international jurisdictions, it is also difficult for them to take account of differences in national context or legislation. It is important that funders consider the limitations and implications of their policies and seek routes to support institutional policy development since this will translate into the successful implementation of rights retention.

" Explaining what is being done to mitigate risk or why it isn't a risk makes a huge difference."

"Something magical happens when you get lawyers and librarians sitting together."

Publishers' ability to work within the policy framework which institutions are establishing is clear from the willingness of some publishers to do so. All publishers should ensure that researchers (and institutions) can retain all the rights they need over their creations - to be able to reuse them for their own purposes or to share and grant others the right to reuse freely. It is important that publishers provide clearer and more consistent responses to authors and institutions seeking to assert their rights and that they help them comply with Open Access policy requirements be they from nations, funders or institutions.

All parties should seek more understanding of the effects of open licensing, and in particular the additional benefits that CC BY licences offer over other more restrictive CC licences and adjust their advocacy activities accordingly. Some institutions are not yet willing to mandate open licencing or more specifically CC BY use; and some publishers are unwilling to permit CC BY licences for Author Accepted Manuscripts or as a default publishing license on the Version of Record. The value for authors and how rights retention and open licensing supports the change in research dissemination practices needs to be advocated to mobilise change.

We encourage open discussions and dialogue between all groups and parties, to ensure they fully understand each other's motivations and concerns. Stakeholder groups are not monolithic, and there is value in dialogue on rights retention and open licensing within and across them to seek to overcome fears, misunderstandings, and disagreement.

" Some publishers are less helpful than others. The first response is always a 'sausage machine' response, but persistence and escalation can have an impact."

Recommendations

Institutional policymakers

- Research and higher education institutions should augment their existing policies with elements calling for rights retention to support immediate Open Access to all types of research scholarly outputs. In order to do this, they should:
 - Seek expert legal advice to ensure that appropriate rights are retained by institution and employee/author under local copyright and contract law.
 - Consider how to make an approach most effective given the prevailing Open Access models and publishing cultures; the *Good practices for University Open Access policies*³ is a valuable resource for doing this.
 - Design strategies to ensure approval from researchers, including involvement in policy-making, awareness-raising campaigns and training.
 - Provide resources to support researchers who are being required to retain rights; at minimum this should be specific guidance on how to meet the requirements being placed on them. Ideally it should be staff with responsibility to provide advice and support communications and negotiations with publishers.
 - Work with networks of institutions that they consider peers to pool expertise and capacity.
 - Showcase policies and approaches locally, regionally and nationally to build awareness and understanding.

Funders and legislators

- Design policies as much as possible to accommodate the different contexts and jurisdictions in which institutions and researchers are working.
- Support institutions seeking to develop rights retention policies and, for national funders and legislators, in particular, seek common frameworks to accommodate retention of rights.
- Gain understanding of funder good practices and showcase them.
- Maintain dialogue with publishers who are seeking to support authors, advocating changed practices relating to author rights retention, copyright transfer and open licensing.
- Continue to advocate for the value of open licences, and in particular value of CC BY over more restrictive licences.
- Introducing a requirement for rights retention and open licensing on a European level could be further ensured if a new European Knowledge Act be introduced to protect and support the work of Higher Education institutions if rights retention and open licensing cannot be regulated on a national or local level. Such an Act needs to be introduced to make legislation – which has often been directed at the for-profit market – to come in line with the needs of today's university.

Publishers

- More publishers should help authors and their institutions to retain sufficient rights over their creations for immediate OA and reuse.
- Support the right of authors to make at least the Author Accepted Manuscripts (AAMs) openly available as default, whether they are mandated to do so under a rights retention policy or not.
- Provide clearer and more consistent response to authors and institutions seeking to assert and retain their rights, articulating specific concerns rather than blanket objections.
- When licences other than CC-BY are used, ensure that any derivatives and commercial uses have author approval.
- In addition, this report repeats the following recommendations for publishers from the 2020 SPARC Europe report *Open Access: An Analysis of Publisher Copyright and Licensing Policies in Europe*⁴ remain appropriate:
 - Provide more succinct information with as little jargon as possible on copyright ownership, embargo policies and licensing of journal articles in a consistent format at title level
 - Replace the exclusive licence assignment to publish, only asking for a non-exclusive licence to publish the Version of Record of the article to enable authors further publishing rights in online venues that bring them greater visibility.
 - Set zero embargoes for all self-archived journal articles.
 - When publishing OA, licence material with CC BY making this licence the default to all authors, regardless who funds their work; requiring a more restrictive licence in exceptional circumstances rather than making this the preferred choice.
- Discuss the topic of rights retention and open licensing with the goal to innovate and support immediate OA in the coming years within the sector and with funders and institutions.