

## **Journal Publishers Approaches to Self-Archiving and Open Access: ZIM Briefing Paper**

by Gerhard Beier and Ulla Tschida

The following document has been written in the context of the Conference on Open Access to Knowledge in the Sciences and Humanities (20 - 22 Oct 2003, Berlin)

<http://www.zim.mpg.de/openaccess-berlin/index.html>

It was prepared as an internal briefing paper to inform the president of the Max-Planck-Society about current approaches of journal publishers with regard to copyright agreements. The document is merely a summary of the excellent study done by the RoMEO project in the UK, "An analysis of Journal publishers' Copyright Agreements" (<http://www.lboro.ac.uk/departments/ls/disresearch/romeo/>) and contributes an analysis of several copyright transfer agreements and licences of some important commercial publishers and learned societies.

We hope that this paper might help anyone interested in conducting similar analyses and serves as an entry point for the complex issue of copyright in the context of open access publishing. Please be aware that this paper is a summary of the RoMEO study and does not provide a complete analysis of all publishers nor is it meant to provide a profound analysis.

Munich, 2004-01-23



## **JOURNAL PUBLISHERS APPROACHES TO SELF ARCHIVING AND OPEN ACCESS**

Gerhard Beier, Ulla Tschida

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### **Summary**

A survey has shown that 54.6% of 7,135 journals formally allow either to archive a preprint or postprint version of a paper or both resulting also in a number of 3,897 journals or 34 publishers (out of 80) supporting open access. In contrast only 18.8% (1,345 journals) allow to self-archive the postprint version of an article, but the conditions for it vary to a great extent resp. are not clearly specified. Elsevier as one of the major science publisher allows the self-archiving of preprint versions as do Nature and Science (after publication), whereas e.g. Kluwer and a lot of others do not allow self-archiving.

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## Overview

Examining the journal publishers approaches to self-archiving is a very complex issue, which was recently undertaken by the RoMeO project<sup>1</sup> - see below – doing pioneer work. In the following, the quantitative conclusions drawn in this document are from studies delivered from this project whereas as qualitative remarks reflect the research of the ZIM in this field.

The pressure for scientist and scholars to publish in high impact journals has led to a dependency on the copyright policies of leading publishers where they have to assign in most cases the copyright to the publisher or signing an exclusive license for their work. In addition to the copyright assignment or licence statement, agreements between authors and publishers show that authors have to make certain warranties. Most of the agreements (72.5%), examined by RoMEO, ask the author to warrant that the work was not previously published – this is known as the Ingelfinger rule<sup>2</sup>. There seems to be no consensus what prior publication means and if archiving of a preprint version on an eprint-Server already constitutes a publication, only two policies explicitly state that. Furthermore, the copyright agreements are vague in specifying the conditions of self-archiving, especially, whether self-archiving is only allowed on a personal website, or on the website of an institution or in a disciplinary archive, most of them do not take into account that OAI-integration would make it visible to the public in all three cases. The examined Copyright Transfer Agreements (CTAs) are very unclear about the conditions of self-archiving a postprint version or the update of a manuscript version in the sense that it equals the refereed version (postprint) which is copyrighted by the publisher. In most cases it is required to get in contact with the editorial staff.

Furthermore, it cannot be assumed per se that all journals of the same publisher apply the same rules.

### Definition of used terms:

*preprint* = article or version of a document before it is refereed and published in a renowned journal;

*postprint* = article or version of a document after review and publication in a renowned journal

*self-archiving* = "To self-archive is to deposit a digital document in a publicly accessible website, preferably an OAI-compliant Eprint Archive."<sup>3</sup>

*copyright transfer vs. license* = If the author as the copyright owner transfers all or some of his rights (with or without particular conditions), it is generally termed an "*assignment*". A "*license*" means that the copyright remains with the author (the licensor), who grants the (or some of the) rights of use to the licensee. An exclusive license exists when the rights of use can be exercised only by one particular licensee. If the licensor can allow other licensees to exercise the same rights of use, the license is non-exclusive. Whether the licensor himself keeps the (or some of the) rights of use depends on the particular agreement; if this is the case, the license sometimes is called "*sole license*".<sup>4</sup>

## Analysis of 80 scholarly publishers' copyright agreements (CTAs)

A recent study from the RoMEO project<sup>5</sup> has examined the copyright agreements of 80 journal publishers.

### Scope of Inquiry

29 were publishers of the top 100 ISI journals (produced by 48 publishers) by impact factor. 17 of the top 20 publishers of the largest numbers of ISI-rated titles were represented, and 21 were on the Ulrich's list of the 53 publishers of the largest number of academic refereed titles generally.

The publishers represented in the survey collectively published over 7,000 titles. Out of 80, 42 publishers were Learned Societies (52.5%), 29 Commercial (36.2%) and nine university presses.

This analysis was based only on what was explicitly written in the agreement documents. Sometimes publishers have different agreements for different journals. In this case either the agreement for a high impact journal or the general agreement for a group of journals was taken into account.

### Results

90% of the examined agreements ask for copyright transfer. Regarding the time of assignment or licence, which has a significant effect on the self-archiving process, 69% ask for copyright transfer even prior to refereeing the paper. 75% of the analyzed CTAs ask the authors to warrant that their paper was not previously published. Only two stated explicitly that they regard self-archiving as prior publishing.

There seems to be no consensus about the conditions of self-archiving, resp. if pre- and postprints are separate copyright works, even though 42.5% allow self-archiving in some format – representing approximately 3,590 journal titles. Conditions on self-archiving are various ranging from acknowledgement of the published source (22 of 31) to allowing only self-archiving on the personal and/or institutional website (public or with access restriction) (15 of 31)<sup>6</sup>. Only one copyright agreement explicitly allowed the self-archiving of the postprint in the version and format produced by the publisher. Five specified explicitly that the publisher version (i.e. publisher's pdf) must not be used for self-archiving. A lot of agreements do not deal explicitly with postprints and focus, if at all, mainly on preprints.

<b>RUNNING TOTAL:</b>	<b>Journal titles</b>	<b>%</b>	<b>Publishers</b>	<b>%</b>
<b>Total listed:</b>	<b>7,135</b>		<b>80</b>	
<b>Formally supporting self-archiving of EITHER preprint, post-print or both:</b>	<b>3,897</b>	<b>54.6%</b>	<b>34</b>	<b>42.5%</b>
...both:	<b>1,209</b>	<b>16.9%</b>	<b>20</b>	<b>25%</b>
...preprint-only:	<b>2,552</b>	<b>35.7%</b>	<b>7</b>	<b>8.7%</b>
...postprint-only:	<b>136</b>	<b>1.9%</b>	<b>7</b>	<b>8.7%</b>
<b>Not yet formally supporting self-archiving:</b>	<b>3,238</b>	<b>45.3%</b>	<b>46</b>	<b>57.5%</b>

Table 1: Copyright transfer agreement listing – Facts & Figures<sup>7</sup>

## **Selected examples from major publishers regarding self-archiving**

(see more detailed extracts from CTAs in Appendix A – this list only gives a brief summary and therefore might lose some details of legal aspects)

### **Science:**

- copyright transfer agreement
- no pre-prints on the web allowed prior to publication in science
- manuscript copies of the work can be disseminated online immediately upon publication

URL: <http://www.sciencemag.org/feature/contribinfo/home.shtml>

### **Nature:**

- author grants exclusive license – ownership of copyright retains with the author
- no pre-prints on the web allowed with the exception of “recognized preprint servers where this is community practice” (details have to be specified in cover letter accompanying submission of paper)
- copies on the “authors’ own website” or on their “own not-for-profit websites” allowed as long as full reference to Nature publication is given – only after publication in Nature

URL: [http://npg.nature.com/pdf/05\\_news.pdf](http://npg.nature.com/pdf/05_news.pdf)

### **Elsevier Science**

- copyright transfer agreement
- preprints are not regarded as “prior publication, which would disqualify the work from consideration for re-publication in a journal”
- preprints are allowed on publicly accessible servers (must differ from version published by Elsevier)

URL: <http://www.elsevier.com/homepage/authors/?main=/homepage/about/ita/copyright.shtml>

### **Kluwer:**

- copyright transfer agreement
- article must not be published “before in any form (excluding conference proceedings and journal articles)”
- no self-archiving allowed – permission has to be granted by Kluwer

URL: <http://www.comp.polyu.edu.hk/CIC2002/KAPcopyright.pdf>

### **Springer:**

- copyright transfer agreement
- self-archiving of published version on “his/her home page”, source and copyright by Springer must be specified

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- preprint prior to publication possible, but notice to be given “This is a preprint of an article accepted for publication in ...”
- preprints can be posted on “internal university or corporate networks/intranet”, but not “for any systematic external distribution by a third party (e.g., a listserve or database connected to a public access server)”

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## Selected Reading

Economic analysis of scientific research publishing. A report commissioned by the Wellcome Trust (2003). Online available: <http://www.wellcome.ac.uk/en/1/awtpubrepeas.html>

Gadd, E., C. Oppenheim and S.Probets (2003d). „RoMEO Studies 4: The author-publisher bargain: an analysis of journal publisher copyright transfer agreements.“ *Learned Publishing* (16)4: [inPress] Preprint online available: <http://www.lboro.ac.uk/departments/ls/disresearch/romeo/RoMEO%20Studies%204.pdf>

Seizing the Moment. Scientists' Authorship Rights in the Digital Age. Report of a study by the American Association for the Advancement of Science. Prepared by Mark S. Frankel. (July 2002). Online available: <http://www.aaas.org/spp/sfrl/projects/epub/>

## Selected Web Sites

- RoMEO Project: Rights METadata for Open archiving – particularly relevant the studies/deliverables.  
<http://www.lboro.ac.uk/departments/ls/disresearch/romeo/index.html>
- Surf Foundation: Guidelines and policies, agreements and models, and the underlying principles in scholarly communication  
<http://www.surf.nl/copyright/>
- Academic Journal Policy Database: links to policies of journals provided (approx. 1700 journals covered – mainly Elsevier)  
<http://www.etd.uc.edu/journal/>

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<sup>1</sup> <http://www.lboro.ac.uk/departments/ls/disresearch/romeo/index.html>

<sup>2</sup> Reiman, A. S. (1981). „The Ingelfinger Rule“. *New England Journal of Medicine* 305 (Oct1, 1981):824-826 and Angell, M., J.P. Kassirer (1991). „The Ingelfinger rule revisited“. *New England Journal of Medicine* 325 (Nov.7, 1991): 1371-1373.

<sup>3</sup> <http://www.eprints.org/self-faq/>

<sup>4</sup> Definition provided by Reto Hilty (MPI for Intellectual Property Rights in email from 15<sup>th</sup> Oct 2003) based on initial proposal drawn from: <http://nolo.com/lawcenter/ency/article.cfm/objectid/BABFA71E-97C9-479F-8A9D4C3DB2498663/catID/2EB060FE-5A4B-4D81-883B0E540CC4CB1E>

<sup>5</sup> Gadd, E., C. Oppenheim and S.Probets (2003d). „RoMEO Studies 4: The author-publisher bargain: an analysis of journal publisher copyright transfer agreements.“ *Learned Publishing* (16)4: [inPress] Preprint also available online: <http://www.lboro.ac.uk/departments/ls/disresearch/romeo/RoMEO%20Studies%204.pdf>; see also more information on the project website: <http://www.lboro.ac.uk/departments/ls/disresearch/romeo/index.html>

<sup>6</sup> see details: Gadd, E., C. Oppenheim and S.Probets (2003d). „RoMEO Studies 4: The author-publisher bargain: an analysis of journal publisher copyright transfer agreements.“ *Learned Publishing* (16)4: [inPress] Preprint also available online: <http://www.lboro.ac.uk/departments/ls/disresearch/romeo/RoMEO%20Studies%204.pdf>, p.14-16.

<sup>7</sup> <http://www.lboro.ac.uk/departments/ls/disresearch/romeo/Romeo%20Publisher%20Policies.htm>

## Analysis of Copyright Transfer Agreements (CTA) and/or Licences of commercial Publishers and Learned Societies

In the context of the analysis of Copyright Transfer Agreements for which the RoMEO study was the main source, we also had a detailed look into the copyright transfer agreements and licences of some important commercial publishers and Learned Societies. Following you find cited passages out of the relevant documents. Please be aware that in some cases, publishers offer different licences for different journals. As consequence, the given examples refer to the general CTA of a publisher or to a specific journal where stated. *Emphases* are made by ZIM. Last Revision: 2003-10-13

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