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## Copyright Issues Related to the Implementation of Open Access Policies<sup>†</sup>

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**Abstract:** The presentation will provide an overview of the copyright issues related with the implementation of Open Access policies. It will focus on the need to obtain permission to reproduce and disseminate a copy of any published paper taking into account any copyright transfer signed by authors. This permission is needed to implement Green Open Access policies through repositories. Moreover it will explore the use of open content licenses in repositories and journals to move to the Gold Open Access model that offers not only free access to full text but full reuse of contributions.

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### Open Access

By “open access” to this literature, we mean its free availability on the public internet, permitting any users to read, download, copy, distribute, print, search, or link to the full texts of these articles, crawl them for indexing, pass them as data to software, or use them for any other lawful purpose, without financial, legal, or technical barriers other than those inseparable from gaining access to the internet itself. – *Budapest Open Access Initiative*, February 2002

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<sup>†</sup> Editor’s Note: This article is an edited transcription of a slide presentation.

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**Green Road: Self-archiving**

Scholars need the tools and assistance to deposit their refereed journal articles in open electronic archives, a practice commonly called, self-archiving.

**Repository:** a facility where things can be deposited for storage or Safekeeping

**Institutional Repository:** intellectual output of an institution

**Subject based or Thematic Repository:** research output from a research domain

**Harvester:** a repository collecting metadata from repositories.

**Golden Road: Open Access Journals**

- Scholars need the means to launch a new generation of journals committed to open access, and to help existing journals that elect to make the transition to open access ...
- These new journals will no longer invoke copyright to restrict access to and use of the material they publish. Instead they will use copyright and other tools to ensure permanent open access to all the articles they publish ...
- These new journals will not charge subscription or access fees, and will turn to other methods for covering their expenses...
- There is no need to favor one of these solutions over the others for all disciplines or nations, and no need to stop looking for other, creative alternatives.

**Main Differences**

Green Road:

- Public Access
- Publisher holds Copyright
- Access to previous versions before published Golden Road:
- Open Access
- Author holds Copyright
- Access to final published version

### **Traditional Scholarly Publication**

- Researcher achieves some results
- Researcher sends a paper to be submitted for publication in a journal (preprint or submitted version)
- Referees review the paper and suggest changes
- Researcher sends a modified paper (postprint, accepted version or author's manuscript)
- Editor accepts publication. Researcher transfers copyright
- Journal publishes the paper (published version)

### **Open Access Policies**

- Institutional Policies
- Funders Policies
- National Policies
- International Policies

### **Institutional Policies**

Queensland University of Technology, 2004: Material which represents the total publicly available research and scholarly output of the University is to be located in the QUT ePrints institutional repository, subject to the exclusions noted below. In this way it contributes to a growing international corpus of refereed literature and other research outputs available on open access, a process occurring in universities worldwide. The following materials must be included in QUT ePrints:

- refereed research articles and conference papers at the post-peer review stage (author's accepted manuscript)
- digital theses

QUT's preference is to make materials available at the time of publication. Publisher requests for embargos of more than twelve months must be referred to the Deputy Vice-Chancellor.

Harvard Law School, 2008: The Faculty of the Harvard Law School is committed to disseminating the fruits of its research and scholarship as widely as possible. In keeping with that commitment, the Faculty adopts the following policy: Each Faculty member grants to the President and Fellows of Harvard College permission to make available his or her scholarly articles and to exercise the copyright in those articles. More specifically, each Faculty member grants to the President and Fellows a nonexclusive, irrevocable, worldwide license to exercise any and all rights under copyright relating to each of his or

her scholarly articles, in any medium, and to authorize others to do the same, provided that the articles are not sold for a profit. The policy will apply to all scholarly articles authored or co-authored while the person is a member of the Faculty except for any articles completed before the adoption of this policy and any articles for which the Faculty member entered into an incompatible licensing or assignment agreement before the adoption of this policy. The Dean or the Dean's designate will waive application of the policy to a particular article upon written request by a Faculty member explaining the need.

### **Funders Policies**

Wellcome Trust, 2006: Expect authors of research papers to maximise the opportunities to make their results freely available and, where possible, to retain their copyright. Will provide grantholders with additional funding to cover the open access charges levied by publishers who support the open access model. Require electronic copies of any research papers that have been accepted for publication in a peer-reviewed journal, and are supported in whole or in part by Wellcome Trust funding, to be made freely available from PubMed Central and any other PMC International (PMCI) sites, such as Europe PMC, as soon as possible, and in any event within six months of the journal publisher's official date of final publication.

### **National Policies**

Spanish Law of Science, 2011: Art. 37 Dissemination in open access. Researchers, mainly funded by the General State Budget, must make public a digital version of the final content accepted for publication in a serial or a periodical research publication, as soon as possible, but no later than 12 months after the official date of publication. The electronic version will be published in an open access subject based repository or institutional repository ... without prejudice to agreements under which publication rights have been attributed or transfer to third parties.

### **International Policies**

European Commission, 2008: It aims to ensure that research results funded by the EU citizen are made available to the population at large for free. In this way, Open Access is considered a way to improve the EU's return on research and development (R&D) investment. Under the Open Access pilot, FP7 grant recipients in seven areas (energy, environment, health, information and communication technologies, research infrastructures, science in society, and socioeconomic sciences and humanities) are expected to:

- deposit peer-reviewed research articles or final manuscripts resulting from their FP7 projects into an online repository;
- make their best effort to ensure open access to these articles within either 6 months (health, energy, environment, information and communication technologies, research infrastructures) or 12 months (science in society, socioeconomic sciences and humanities) after publication.

The foreseen embargo period of 6 or 12 months allows scientific publishers to ensure a profit on their investment (by charging for journal subscription), while then providing open access to research articles once the embargo period has lapsed.

### **Summarizing Policies**

- Accepted manuscript
- Subject based or institutional repository
- Embargo periods
- “Open Access” Green Road

### **IP rights needed**

- Reproduction
- Public display

Who owns those rights?

Author, Institution, Publisher?

Who can use those rights?

Author, Institution, Publisher, Public?

### **Posting in a repository**

- dc.contributor.author
- dc.publisher
- dc.relation.isformatof
- dc.identifier.doi
- dc.relation.ispartof
- dc.rights
- dc.rights.uri
- dc.rights.accessrights
- dc.type

### **... And What About OA Journals?**

Pure Open Access Journal: The author(s) and right holder(s) of such contributions grant(s) to all users a free, irrevocable, worldwide, right of access to, and a license to copy, use, distribute, transmit and display the work publicly and to make and distribute derivative works, in any digital medium for any responsible purpose, subject to proper attribution of authorship (community standards, will continue to provide the mechanism for enforcement of proper attribution and responsible use of the published work, as they do now), as well as the right to make small numbers of printed copies for their personal use. – Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities, 2003

### **Other “Open Access” Journals**

- Public access journals with “© All rights reserved”
- Subscription Access Journals with Open Access Options: Hybrid model
- Open Access Journals with some restrictions/conditions

### **New Policies in the UK**

- Finch Report, 2012: Recommendations to adopt Golden Road
- Changes in Open Access Policies:
  - Wellcome Trust
  - RCUK