



Memorandum on Scholarly Publications and Author's Rights

To: Brian Pusser, Chair, Faculty Senate Task Force on Scholarly Publications & Authors' Rights

Edmund Kitch, Chair, Faculty Senate

From: Madelyn Wessel, Special Advisor/Liaison to the General Counsel
University of Virginia Library

Date: March 24, 2009¹

I. Introduction:

Ed Kitch appointed the Task Force on Scholarly Publications and Authors' Rights to develop a resolution on scholarly publications and authors' rights that could be considered by the Faculty Senate in 2009. Similar resolutions have been adopted or are under consideration at institutions such as Harvard, the University of Wisconsin, and the University of California.²

A vast amount has been written about the challenges and opportunities of scholarly communications in a digital age.³ This topic generally is viewed to encompass copyright, authors' rights, open-access, the economics of scholarly publishing, and the

¹ This memorandum was originally submitted to the Faculty Senate Task Force on Scholarly Publications and Authors' Rights on February 20, 2009 (Brian Pusser, Susan MacKinnon, Richard Steeves, Robert Bryant, and Ivan Login.) The memorandum has been revised to include material recommended by the Task Force on February 27, 2009 and by the Executive Committee of the Senate on March 17, 2009.

² Since the Task Force completed its work on these issues, the Massachusetts Institute of Technology Faculty unanimously approved a resolution on March 18, 2009 granting the university the right to host their scholarly articles in an open-access repository. <http://web.mit.edu/newsoffice/2009/open-access-0320.html>; <http://www.efytimes.com/efytimes/33324/news.htm>

³ The Scholarly Electronic Publishing Bibliography: 2008 Annual Edition, by Charles W. Bailey, Jr., presents over 3,350 articles, books, and other printed and electronic sources that are useful in understanding scholarly communications, journal pricing, and the web. The bibliography offers links to many works that are freely available on the Internet, including e-prints in disciplinary archives and institutional repositories. <http://www.digital-scholarship.org/sepb/annual/sepb2008.pdf>

technological challenges facing libraries and repositories. Factors specifically driving faculty consideration of authors' rights and open-access include:

- The routine loss of control over the intellectual property produced by faculty as researchers and scholars in a copyright regime controlled by publishers.
- The sorry fate of many scholarly imprints and university presses which have played such a central role in promotion and tenure processes through their peer review and publication of academic scholarship.
- The enormous price paid by research libraries to buy back scholarship that is produced in great part within the academy itself.
- The preservation and dissemination requirements of born-digital scholarship and the general opportunities posed by new technologies.
- A changing philosophy of intellectual property ownership, especially where public agencies and private philanthropies have provided core research funding.
- Growth of new open-access and open-source licensing mechanisms.

That the faculty stands at the center of any discussion of authors' rights is the result of both University policy and significant academic tradition. The "work-for-hire" doctrine in the 1976 U.S. Copyright Act gives the University ownership of the copyright to works produced by its employees within the scope of their employment. See 17 U.S.C. § 201 (b). However, the University explicitly returns the rights to scholarly and academic works to academic and research faculty by official policy:

By operation of the copyright law, the University owns in the name of The Rector and Visitors of the University of Virginia (the University's corporate name) all rights, title and interest in copyrightable works created by University employees while acting within the scope of their employment. The University cedes copyright ownership to the author(s) of scholarly and academic works (such as journal articles, books and papers) created by academic and research faculty who use generally available University resources.⁴

Because this policy (as is typical at most U.S. institutions of higher education) explicitly anchors copyright ownership of scholarly and academic works with the faculty, individual authors have the legal capacity to agree to license or transfer their copyrights

⁴ "Ownership of Rights in Copyrightable Material" ID RES-001:<https://policy.itc.virginia.edu/policy/policydisplay?id=RES-001> This policy goes on to state that "The University retains a non-exclusive, royalty-free right to use for non-commercial purposes works produced by its employees while acting within the scope of employment even if copyright ownership is ceded to the author(s)." This restriction has not been understood historically to require that faculty retain specific copyrights in their scholarly works, but the language makes clear that University policy already asserts certain non-commercial usage rights even where ownership is ceded back to an individual.

to a publisher. As is discussed further below, most publishers insist on exclusive transfer or assignment of all the rights included in the bundle of “copyrights” held by the author as part of the publications process. The resolutions adopted at Harvard and Wisconsin⁵ interrupt this typical process by asking faculty to hold on to some of their copyrights.

The form such resolutions take is variable. Harvard has adopted a mandatory⁶ approach requiring faculty to grant a non-exclusive institutional right to host their scholarly articles. Wisconsin has endorsed a more permissive policy encouraging faculty to bargain with publishers to retain more rights to their works. Although this memorandum suggests serious consideration of a mandatory policy consistent with Harvard’s, virtually any action taken by the Senate that would raise awareness of these issues and encourage faculty to take more control of their scholarly work would be a very positive development.

The world of scholarly communications is in the process of immense change. New technologies mean that numerous post-publication uses of a scholarly work are easy and feasible and much more important than in the past. The old contractual provisions did not address such uses because inexpensive copying, PowerPoint, web sites, course web pages, did not exist in that world. Individual faculty can work today with author’s addenda and other tools to obtain greater control over their scholarly works and ensure that uses now possible with technology are not given away, but few appear aware of this potential. The benefits of asserting such control can be immediate and important - whether enabling electronic distribution of articles to students and colleagues without fearing violation of a publication agreement, submittal of such works to a departmental or scholarly repository, or maintaining control over a revised edition of a scholarly monograph. The potential impact of any single individual attempting to negotiate alone is dwarfed, however, by the possibilities inherent in coherent and collective action by the country’s important institutions of higher education. It is that leverage which has been endorsed by the UVa Faculty Senate Task Force on Scholarly Publications and Author’s Rights through its submittal of the Resolution attached as Exhibit A.

II. Discussion:

Faculty members routinely surrender their copyrights to academic publishers in exchange for the scholarly publications that are core to academic promotion and tenure. The mode of surrender varies depending on the type of publication (books versus journals) and publisher policy and practice. While variations abound, it is typical to find journal publishers requiring authors to exclusively assign away all copyrights. Most book/monograph agreements allow the author to retain formal copyright ownership but also require assignment or transfer of all effective rights to exploit the copyright to the publisher. With the loss of the copyrights in their own scholarship, faculty and their institutions face disadvantageous scenarios ranging from an inability freely to use books

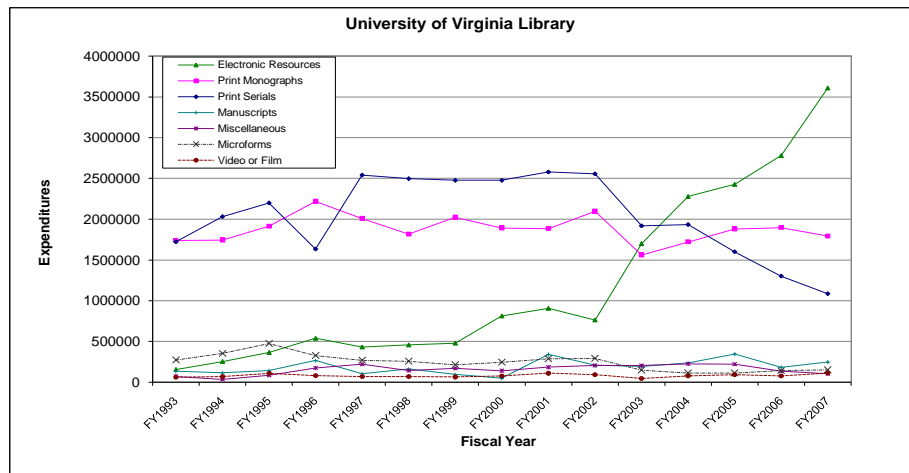
⁵ As has MIT as of March 18, 2009.

⁶ As is discussed below, the Harvard policy does offer faculty an opt-out provision with administrative approval in individual cases.

and journal articles authored on campus for teaching and research activities, to the orphaning of faculty works that are out-of-print but not out of copyright control.

With the exclusive rights to sell, digitize, translate, market, and reproduce academic scholarship, many journal publishers and some scholarly societies have thrived. Increasingly, many academic imprints producing scholarly monographs such as university presses have not done well under this regime.⁷ From the academic library perspective at least, there is a relationship between journal gains and academic imprint losses, although certainly not a causally absolute or linear one. Research libraries face well-documented financial challenges in their purchase back of scholarly materials, especially journals, for their campus communities. Many of these journals have fallen into the hands of major commercial publishers with virtually monopolistic control over much of the research and scholarship generated within higher education. Journal price escalation, publisher bundling practices, and campus expectations of ubiquitous online access to electronic journals, have placed unsupportable pressures on library budgets. As journal prices have increased, the percentages of library budgets available to purchase books/monographs and other materials have been reduced, in turn fueling the financial crises at many academic imprints. This is true both at UVa and nationally, where dramatic increases in expenditures for electronic materials (mainly but not exclusively journals) parallel substantial reductions in book purchases.⁸

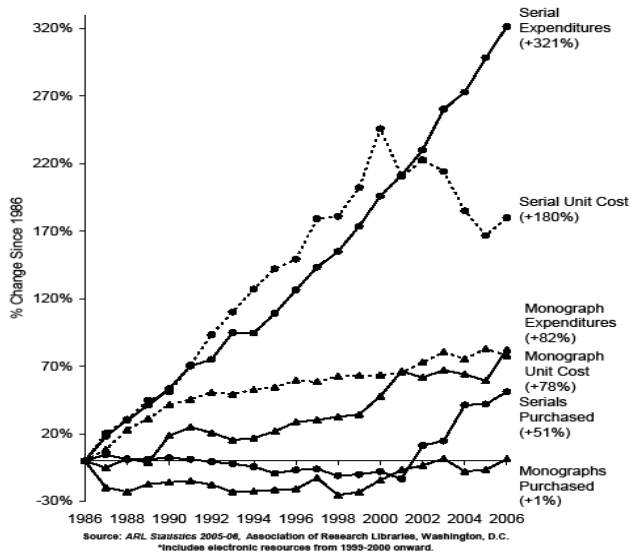
A Quick look at Journal Costs



⁷ The economics here are admittedly complex and definitional lines murky. Some academic presses also publish scholarly journals; some journal publishers sell monographs/books, especially E-books.

⁸For additional information about the ‘crisis’ in scholarly communications and the impact of journal price increases, see http://www.lib.berkeley.edu/scholarlycommunication/the_crisis.html

Graph 2
**Monograph and Serial Expenditures
 in ARL Libraries, 1986-2006***



Awareness of the level of public and private investment in research and resultant scholarship has also led to new open-access expectations by such entities as the National Institutes of Health, Howard Hughes Medical Institute, Mellon Foundation, Wellcome Trust, and others. Last year, the NIH adopted new rules requiring all grant recipients to deposit a final author's draft of all peer-reviewed articles resulting from NIH funding in PubMed Central, a federal open-access repository⁹, within twelve months of publication.¹⁰ Such open-access requirements are forcing faculty to pay attention to the publishing agreements they sign and to ensure that they retain rights sufficient to comply with grantor expectations. Since ultimate responsibility rests with the receiving institution, research universities are also paying attention to intellectual property and open access issues as a regulatory compliance concern.

New technologies now allow us to preserve and disseminate vast amounts of faculty scholarship and data to a campus or world community via web and campus repositories. As faculty move towards born-digital projects that may never experience

⁹ <http://www.pubmedcentral.nih.gov/>

¹⁰ <http://publicaccess.nih.gov/>

conventional publication, the need for such repository structures is critically important.¹¹ Again, a considerable amount of work has been done on the technology and policy issues surrounding repositories and cyber -infrastructure generally.¹² Legal rights and responsibilities arising out of web-based collaborations are being addressed through new online licensing tools offered by entities such as Creative Commons¹³ and Open Source Org¹⁴ that are deliberately changing the copyright landscape in a progressive direction.

In sum, copyright constraints and countering strategies, economic pressures, funder requirements, new scholarship and new technologies, have all created powerful incentives for faculty at institutions of higher education to rethink the way they handle the important bundle of legal interests subsumed under the term “copyright.”¹⁵

A. Example - Harvard:

On February 12, 2008, the Faculty of Arts and Sciences at Harvard enacted a strong open- access policy, granting Harvard a non-exclusive¹⁶, non-commercial¹⁷ license to host and make accessible all scholarly articles produced by the faculty.¹⁸ The policy provides as follows:

*The Faculty of Arts and Sciences of Harvard University 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***

¹¹ See, “Our Cultural Commonwealth: Report of the American Council of Learned Societies Commission on Cyberinfrastructure for Humanities and Social Sciences” at http://www.acls.org/uploadedFiles/Publications/Programs/Our_Cultural_Commonwealth.pdf

¹² See, “The Research Library’s Role in Digital Repository Services - Final Report of the ARL Digital Repository Issues Task Force,” January 2009, Association of Research Libraries at <http://www.arl.org/bm~doc/repository-services-report.pdf>

¹³ <http://creativecommons.org/>

¹⁴ <http://www.opensource.org/>.

¹⁵ See Robert C. Denicola, *Copyright and Open Access: Reconsidering University Ownership of Faculty Research*, 85 Neb. L. Rev. 351 (2006) for a thoughtful plea to rethink how institutions of higher education handle faculty IP given the potential of open-access .

¹⁶ A “non-exclusive” license is one in which the author shares rights with another entity (e.g., Harvard), and retains full rights to license or share the work with others.

¹⁷ The “non-commercial” license granted Harvard means that the faculty member retains sole commercial rights to the work including the ability to license those commercial rights to another entity such as a publisher.

¹⁸ The Harvard Law School faculty followed suit on May 1, 2008. <http://osc.hul.harvard.edu/OpenAccess/policytexts.php>

copyright in those articles. In legal terms, the permission granted by each Faculty member is a nonexclusive, irrevocable, paid-up, 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 written 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 for a particular article upon written request by a Faculty member explaining the need.

To assist the University in distributing the articles, each Faculty member will provide an electronic copy of the final version of the article at no charge to the appropriate representative of the Provost's Office in an appropriate format (such as PDF) specified by the Provost's Office. The Provost's Office may make the article available to the public in an open-access repository.

The Office of the Dean will be responsible for interpreting this policy, resolving disputes concerning its interpretation and application, and recommending changes to the Faculty from time to time. The policy will be reviewed after three years and a report presented to the Faculty.

(Emphasis added)

The Harvard University Library has been charged with assisting in implementation of this new policy and has created a new Office of Scholarly Communications with rich web resources available to faculty.¹⁹ The Harvard policy is a decisive statement whose default option requires submittal of faculty work to Harvard's open-access repository. If a faculty member has been unable to secure rights sufficient to comply with the policy in a negotiation with a journal publisher, he or she must submit a request to the Dean to be exempted from the policy. The great benefit of Harvard's policy is its relative simplicity and the institutional backbone it affords individual faculty in potentially contentious negotiations with a publisher. It appears likely that the policy will ensure that the vast majority of scholarly articles produced by Harvard faculty will enter the new DASH repository now under beta-testing at Harvard Library.

B. Example - University of California:

On May 10, 2007, the UC Assembly of the Academic Senate unanimously adopted a "Proposal for UC Faculty – Scholarly Work Copyright Rights Policy" for consideration by UC system faculty. The Proposal states in part:

¹⁹ See, e.g. <http://osc.hul.harvard.edu/OpenAccess/policy.php>;
<http://osc.hul.harvard.edu/OpenAccess/procedures.php>

A faculty member's ownership of copyright is controlled by the University of California Policy on Ownership of Copyright [<http://www.universityofcalifornia.edu/copyright/>]. University of California faculty shall routinely grant to The Regents of the University of California a limited, irrevocable, perpetual, worldwide, non-exclusive license to place in a non-commercial open-access online repository the faculty member's scholarly work published in a scholarly journal or conference proceedings. In the event a faculty member assigns all or a part of his or her copyright rights to a publisher as part of a publication agreement, the faculty member must retain the right to grant this license to the Regents. Faculty may opt out of this requirement for any specific work or invoke a specified delay before such work appears in an open-access repository. Such a license would preserve copyright ownership in the faculty-author, thereby enabling him or her to control subsequent uses of the work."

The Regents will direct the Academic Senate, in collaboration with UC Administration, to establish support and control mechanisms for the use of scholarly work covered by this policy. The University, including assistance, as appropriate, from the Office of the General Counsel, will support faculty in their efforts to retain copyright with attention to maintaining a broad spectrum of publication venues. No income will accrue to the Regents, the University or the Academic Council by this non-exclusive copyright license.

(Emphasis added)

On February 7, 2007, Wyatt Hume, UC Provost and Executive Vice President sent the Proposal and its accompanying implementation report out to the UC system chancellors, requesting review on each campus. Responses from the individual UC campuses can only be characterized as heterogeneous. Problems were seen in the timing (some faculty objected to a six month versus 12 month embargo on the grounds that six months would not be consistent with the new NIH policy), anticipated bureaucratic costs and individual administrative burdens, the University's intrusion in academic freedom, the impact on non-profit professional societies, and other issues. A summary of the responses was provided by John Oakley, a Professor of Law at UC Davis to Wyatt Hume on July 9, 2007. The proposal appears stalled.²⁰

C. Example - University of Wisconsin:

On May 7, 2007, the Faculty Senate of University of Wisconsin - Madison, approved a resolution submitted by the University libraries committee endorsing open access and faculty rights retention.²¹ The resolution provides in pertinent part:

²⁰Both the summary and the individual campus letters can be found at: <http://www.universityofcalifornia.edu/senate/reports/ac.open.access.07.07.pdf>

²¹See <http://www.secfac.wisc.edu/senate/2007/0507/1994.pdf>

***WHEREAS** current publishing methods encourage authors to assign publishers all of the rights to their works which may limit the ability of authors to incorporate their work into future articles, books, web sites, teaching materials, or repositories; and*
***WHEREAS** it is incumbent upon faculty, campus administrators and librarians to ensure the free flow of scholarly information in fulfillment of the campus missions to advance the public good through research and education; and*
***WHEREAS** the university administration supports a sustainable publication process and a healthy publishing industry, and suitable publishing partners that encourage the widest possible dissemination of the academy's work; and*
***WHEREAS** the management of copyright should be directed to encourage scholarly output rather than unnecessarily fettering its access and use; and*
***WHEREAS** the goal of publication should be to encourage widespread dissemination and impact of the authors' works; and*
***WHEREAS** we encourage authors to consider publishing strategies that will optimize short and long-term access to their work taking into account such factors as affordability, efficient means for distribution, a secure third-party archiving strategy, and flexible management of rights; and*
***WHEREAS** we encourage widespread access to the creative output of our campus and want to protect the intellectual property rights of our authors;*

***THEREFORE, BE IT RESOLVED** that the University of Wisconsin-Madison Faculty Senate supports the CIC Provosts' Statement on Publishing Agreements and encourages the use of the Addendum to Publication Agreements for CIC Authors to ensure that academic authors retain certain intellectual property rights that facilitate archiving, instructional use, and sharing with colleagues to advance discourse and discovery.*

(Emphasis added)

Among the rights retained by the CIC Author's Addendum referenced in the senate resolution are: *"After a period of six (6) months from the date of publication of the article, the author shall also have all the non-exclusive rights necessary to make, or to authorize others to make, the final published version of the article available in digital form over the internet, including but not limited to a website under the control of the author or the author's employer or through digital repositories including, but not limited to, those maintained by CIC institutions, scholarly societies or funding agencies."* However, the University of Wisconsin resolution is exhortatory and not binding.

III. Components of a Resolution/Policy:

As the efforts at Harvard, California and Wisconsin make clear, a resolution on scholarly communications and authors' rights should address the following questions:

A. Who is Covered?

Most approaches have centered on full-time research/academic faculty, although the UC debates highlight questions about inclusion of part-time faculty and adjuncts. Since the copyright policy at UVA explicitly speaks to the rights of academic and research faculty, and the Faculty Senate speaks for such faculty, it seems sensible to focus any resolution similarly. However, to the extent the University extends authorship rights to General Faculty and other employees otherwise subject to work-for-hire principles, it makes sense for a similar reservation of open access rights to be integrated in such policies and/or procedures as well.

B. What Should be Included?

The institutional policies discussed in this memorandum have focused on scholarly (typically peer-reviewed) articles published in academic journals. These policies do not include books or monographs. The decision to include scholarly articles and exclude books and other materials would appear to be protective of faculty interests in a few important respects.

First, the publication of a scholarly article does not produce personal income for faculty.²² In contrast, authors of books and monographs typically receive some form of financial compensation through an advance, royalties or both.²³ Thus, asking faculty to wrest sufficient rights back from journal publishers to allow deposit of scholarly articles in an institutional repository does not interfere with personal economic interests whereas the issue becomes much more complex in the case of books and monographs. Second, the impact of open-access requirements on the precarious economics of today's academic presses seems far more severe, especially given the longer commercial "shelf life" of scholarly books. Requiring faculty to commit scholarly books to an open-access repository (at least if the open access embargo were identical to the twelve months afforded journal articles) would put them in a very difficult position in trying to place such works with academic publishers.

Finally, as noted above, journal agreements typically divest faculty of all copyrights to their work, whereas book agreements tend to be nominally more author friendly, often affirming copyright in the author and including a rights restoration clause should the publisher allow the book to go out of print. Interposing institutional requirements between the scholar and the book publisher (at least in today's scholarly communications environment) raises potential issues of academic freedom that seem avoidable through a more incremental approach. For these reasons and more, my advice

²² Indeed, it is increasingly common for authors to be asked to subsidize the costs of publishing articles in scientific journals by paying for image reproductions and other "special" services.

²³ Most faculty I have spoken with note the typically nominal amount of compensation involved, but the occasional academic "best seller" should not be discounted, and textbooks can be a very different matter altogether.

would be to start with a policy focused on scholarly articles, as Harvard, Wisconsin, and MIT have done.²⁴

C. Is Open-Access²⁵ Mandatory (“Opt-Out”) or Recommended (“Opt-In”)?

As noted above, Harvard’s policy is an “opt-out” whereby the default option requires faculty to deposit, and Wisconsin’s can be viewed as an “opt-in,” with faculty strongly recommended to bargain with publisher for such rights. In practice, both approaches incorporate flexibility in cases where a faculty member simply cannot get a publisher to agree to open-access. But the tone set in negotiation is very different if a faculty member can say he or she is implementing a clear university policy mandate versus attempting to “work” something out along the lines of Wisconsin’s addendum. Scholarly communications officers and lawyers who work with faculty on copyright issues know that faculty as individuals have little time for protracted negotiations.

The Association of Research Libraries (“ARL”) has helped to sponsor an important multi-year program entitled SPARC²⁶ which provides author’s addenda (including the one adopted in the Wisconsin resolution) and other valuable tools to assist faculty in negotiations with publishers. On an anecdotal level, however, it has proven difficult to get journal publishers to accept the SPARC model addendum. This contrasts with substantially greater success changing specific contract terms including obtaining rights to post in institutional repositories or on personal websites. Implementation of the new NIH policy has been relatively smooth because it is unequivocal and uncomplicated. This experience suggests that a clear policy like Harvard’s might be the easiest to implement at UVa and would have the most decisive impact on the publishing arena.

D. What Time Frame Should Be Set For Open-Access?

Harvard’s policy is silent on this issue, whereas Wisconsin and California proposed potential time frames of six months. The new NIH policy sets a twelve month embargo period to protect publishers and societies concerned about loss of journal subscriptions. Publishers continue to attack the NIH policy on the grounds, *inter alia*, that the policy involves “theft” of “their” intellectual property.²⁷ The outcome of this political

²⁴ Of course individual faculty might still decide to provide the University with the rights to host other scholarly materials such as books, monographs, works of poetry, music or art.

²⁵ Some Task Force members asked about the difference between the terms “open-access” and “open-source.” “Open-access” is used here to define a decision to make intellectual property (for example scholarly, research, or literary materials) available via the web for non-profit research, teaching, and scholarship purposes. “Open-source” is a term used to describe the sharing of software for shared development, generally through a specific licensing mechanism such as those under the auspices of the Open Source initiative, <http://www.opensource.org/>.

²⁶ <http://www.arl.org/sparc/author/index.shtml>

²⁷ A fine rebuttal to this argument was signed by 46 professors of law last year. <http://carrollogos.blogspot.com/2008/10/law-professors-defend-nih-policy.html>

struggle remains unclear.²⁸ I see little to commend an embargo period shorter than what the NIH's nuanced juggling of interests produced, and much to commend a time-frame with which UVa faculty are already familiar as NIH funded investigators.

E. What Version Of An Article Should Be Covered Under The Policy?

The final version of a scholarly article is the one committed to "print" by the publisher. This version may include minor modifications (editorial, stylistic, etc) beyond the author's final submittal. It is understandably desirable to capture this final version at an institutional level, but enacting a policy requiring this sets up an argument that the publisher's final contributions are being "appropriated" without compensation. To bypass such claims, the NIH policy states clearly that it is the author's final submittal that must be placed in PubMed Central, not the publisher's final print. Harvard's policy similarly targets the author's final version.

Seemingly in an attempt to highlight publisher editorial contributions (and certainly to make money), a number of scientific publishers responded to the new NIH policy by offering up an "option" for the publisher to handle NIH submittal and to deposit the publisher's final PDF of an article for the author, typically for a fee costing several thousand dollars. Such options have been advertised to NIH investigators as costs that can be passed through to their grants. Establishing a requirement that the author wrest control of the publisher's final print during the contracting process will create additional tensions by running counter to such publisher financial strategies. I therefore recommend the NIH/Harvard model instead.

IV. Conclusion:

Adoption of a strong open-access resolution by the Faculty Senate would place the University in a leadership position on scholarly communications without having to reinvent the wheel on every point of implementation. It would make a significant difference both locally and nationally to have a faculty of the University's caliber adopt a strong statement on author's rights. If implemented by the Provost, the University would host and preserve a significant amount of scholarly work for non-commercial research, teaching, and learning activities. Obtaining greater control over their copyrights as a matter of formal policy would enable all UVa faculty members to put their scholarly articles up on personal or departmental websites, to maintain other forms of control over the scholarship they produce, and to know that their work would be preserved and made accessible to future generations of students and scholars.

²⁸ U.S. Rep. John Conyers has recently reintroduced a bill, HR 801 that would invalidate the NIH's new open-access policy. See <http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.801>:

Exhibit A
Draft Resolution on Open Access and Scholarship 3.24.09

Adapted from the resolution passed on February 12, 2008, by the Faculty of Arts and Sciences at Harvard University

WHEREAS: According to the constitution and by-laws of the Faculty Senate of the University of Virginia: “The Faculty Senate represents all faculties of the University with respect to all academic functions such as the establishment and termination of degree programs, major modifications of requirements for existing degrees, and action affecting all faculties, or more than one faculty, of the University;” and

WHEREAS: In the interest of preserving its historical commitment to producing and disseminating knowledge in the public interest, the Faculty Senate of the University of Virginia is dedicated to making the research and scholarship of the faculty of the University of Virginia as widely available as possible.

NOW THEREFORE the Faculty Senate of the University of Virginia hereby adopts and endorses the following policy to govern copyrights in scholarly articles authored by the faculty and respectfully asks the Provost to implement this grant of copyrights and to develop an Open Access Program for the University of Virginia as provided below:

Each Faculty member at the University of Virginia will grant to the Rector and Visitors of the University of Virginia a nonexclusive, irrevocable, non-commercial, global license to exercise any and all rights under copyright relating to each of her or his scholarly articles, in any medium, and to authorize others to do the same, provided that the articles are not sold for a profit. This policy will be applied to all scholarly articles written 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 Provost or the Provost’s designee will waive application of the policy for a particular article upon written request by a Faculty member.

To assist the University in making the articles widely available, each faculty member will provide an electronic version of the final peer-reviewed manuscript version of the article at no charge to a designated representative of the Provost’s Office. The Provost’s Office or the Provost’s designee shall make the article available to the public in an open-access electronic repository no sooner than twelve months (12 months), from the date of publication of the article, such public access to be accomplished as soon as reasonably possible thereafter.

The Office of the Provost of the University of Virginia will be responsible for implementing this policy and for resolving - in consultation with the Faculty Senate or its designee, disputes concerning its interpretation and implementation. The policy will be reviewed after two years and a report prepared by the Faculty Senate for distribution to the University Faculty and the Office of the Provost.