

UVa Faculty Senate Resolution on Faculty Publications and Author's Rights

April 2009 Meeting - Questions and Answers ¹

Q: What's the definition of "scholarly article"?

A: The draft Resolution intentionally employs the same term, "scholarly article" used in the resolutions adopted by Harvard and MIT faculty. The intent is to cover peer-reviewed, scholarly articles published in journals and conference proceedings, not books, book chapters, poetry, commissioned articles, popular articles, or other writings or works. Faculty who might wish to negotiate the rights with their publisher to deposit such works into the University repository would be allowed but not required to do so. Harvard's Q & A provides additional background information on this issue:

What kinds of writings does this apply to?

Only scholarly articles. Using terms from the [Budapest Open Access Initiative](#), faculty's scholarly articles are articles that describe the fruits of their research and that they give to the world for the sake of inquiry and knowledge without expectation of payment. Such articles are typically presented in peer-reviewed scholarly journals and conference proceedings. Many of the written products of faculty effort are not encompassed under this notion of scholarly article: books, popular articles, commissioned articles, fiction and poetry, encyclopedia entries, ephemeral writings, lecture notes, lecture videos, or other copyrighted works. This is not to denigrate such writings. Rather, they are generated as part of separate publishing or distribution mechanisms that function in different ways and whose shortcomings, if any, the present motion does not and is not meant to address.

Q. Why doesn't the proposed resolution cover students, should it?

A: University policy affords students rights to their intellectual property unless the IP is the result of significant University resources or the student has developed the IP as part of an

¹ **GENERAL NOTE:** The Harvard University Office of Scholarly Communications was created to assist in implementation of the Faculty Senate Resolutions on Open Access adopted there in 2008. That office has developed detailed guidelines, Q and A documents, and other resources available at: <http://osc.hul.harvard.edu/OpenAccess/overview.php> The Q & A documents provide useful information about Harvard's implementation strategies, many of which might be mirrored at UVA. Harvard has now opened its DASH repository: <http://www.librarytechnology.org/litg-displaytext.pl?RC=14195>. Public search is possible at: <http://dash.harvard.edu/> Of course, implementation of a UVa Faculty Senate Resolution on Open Access would require close collaboration between the Faculty Senate, the Office of the Provost, and the University of Virginia Library to achieve results consistent with UVA's culture and traditions.

employment relationship with the University. In such cases (employee relationship, significant investment of University resources through a laboratory, etc.), students are often listed as co-authors on an article, but a faculty author will handle publication rights as senior author or lab supervisor and would be subject to the resolution and implementing policies. A work *solely* authored by a student that did not result from significant investment of University resources would be outside the scope of the Senate's authority under current copyright policy.

Q: Why does the policy suggest a twelve month embargo period?

A: Because this time frame is consistent with the new NIH policy on open access and reflects a reasonable balancing of the publishers' interests in exclusive distribution and sale of subscriptions to scholarly journals, while also ensuring that publically-supported scholarship is accessible to the public within a reasonable period of time at no cost.

Q: What about when images or other third-party intellectual property has been included with permission in a scholarly article? If the article will be put into open access by the University, will the faculty member be forced to negotiate open-access rights to the images and pay additional associated fees?

A: The intent is not to require faculty to incur additional costs or impose special permissions responsibilities for third-party materials such as images or photographs that are included with an author's submitted work. Scholarly articles that include third-party illustrative material could be deposited with campus-IP restrictions on the images, with thumbnail or other size restrictions that bring the reproductions within fair use parameters, or with elimination of images for which open access posting would be problematic. The University repository would provide faculty with the legal and technical resources necessary to accomplish deposit with a minimum of complications or trouble.

Q: What happens if a journal refuses to allow deposit with the University? Won't this hurt junior faculty? Would faculty be on their own in negotiating with publishers?

A: The Resolution requires a waiver process to be administered by the Office of the Provost or the Provost's designee. The anticipation is that this waiver process be simple. The intent is to ensure that a faculty author would not be barred from publishing in the journal of his or her choice because of the policy. Further, the University Library has already begun preliminary discussions with a few major publishers about this issue. The hope is that the Library would be able to negotiate advance permissions from many major journal publishers covering deposit rights for faculty authors. Authors publishing in such journals would not have to do anything other than reference the existing agreement. The Library would also provide templates and guidance to faculty assisting them in the rights negotiation process.

Q: Who will build the University repository? How do we know it will be capable of the kind of preservation and search functionalities required to make this effort worthwhile?

A: The University Library has been working for years on sophisticated repository technologies and options in collaboration with ITC and other external partners such as Stanford, Michigan, and Cornell. The Library has committed to bringing a beta repository online by the end of 2009,

and is confident it will be able to offer the infrastructure to host and preserve faculty scholarship as needed to implement the draft Resolution.

Q: Does this interfere with the University's policies on patents?

A: No. The resolution only asks that peer-reviewed, published articles be deposited, not non-public research or proprietary materials that might be subject to patent exploitation by the University or the individual researcher.

Q: How will the resolution be implemented? Why aren't all details known?

A: The Resolution makes clear that implementation will require collaboration between the Office of the Provost, the Faculty Senate, and the University Library (assisted of course as appropriate by the Office of General Counsel). The Resolution is intended to set a policy framework that will guide practical implementation steps. While many aspects will mirror actions take at Harvard and MIT, each institution must establish its own Open Access program, policies and procedures consistent with its culture of governance and technologies. The Senate should be an active partner in all such implementing discussions.