

Harvard-style rights-retention open-access policies

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This is a handout to accompany Zoom talks. I continue to update it.

Suggested short link = bit.ly/rightsretention

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The Harvard rights-retention OA policies

- The Harvard school-level OA policies were adopted by faculty votes.
 - Harvard is highly decentralized and could not adopt a single university-wide policy. Each of our schools adopted a separate policy in a separate vote (2008-2014). In substance, all the school-level policies are the same.
 - A handful of research centers adopted center-level policies using their own governance procedures. Here I'll focus on the school-level policies.
- By adopting the policies, faculty grant a wide set of nonexclusive rights to the university. This is what makes rights-retention work.
 - Harvard grants the same set of nonexclusive rights back to authors. The grant-back ensures that authors hold these nonexclusive rights over their own work even after they sign their publishing contracts.
 - When faculty affirm the policy in writing, this prior grant of nonexclusive rights (to Harvard) prevails over a subsequent grant of exclusive rights (e.g. to a publisher). See [17 USC §205\(e\)](#).
 - The set of rights granted to Harvard goes beyond those needed to authorize OA. The reason is to widen the set of rights authors hold over their own work. That wider set enables authors to reuse their articles in

anthologies or books, publish revised or expanded editions, and authorize translations, text-mining, and the copying needed for long-term preservation.

- The rights-retention aspect of the policies depends on this grant of nonexclusive rights, not the [work-for-hire doctrine](#).
 - To make this clear, [we exempted librarian-scholars](#) from the work-for-hire doctrine before we adopted a version of the policy for them. (Faculty were already exempt.) This underlined the fact that librarians taking advantage of the policy made their scholarship OA by choice rather than by an institutional exercise of the work-for-hire doctrine.
- The school-level policies only apply to faculty.
 - To extend the benefits of rights retention to non-faculty scholars, we launched the [Individual Open-Access License](#) in 2018.
- The policies only apply to scholarly articles.
 - We have separate OA policies for electronic theses and dissertations (ETDs). Here I'll focus on the policies for articles.
- The policies are all repository-based ("green"), not journal-based ("gold"). They call on faculty to deposit in our OA repository, [DASH](#) (Digital Access to Scholarship at Harvard), not to publish in OA journals.
 - We support and encourage journal-based OA but not through the policies.
- The scope of our repository is wider than the scope of our policies.
 - DASH will accept works of scholarship by any Harvard affiliates (not just faculty) and in any genre (not just articles).
- Implementing a green OA policy has roughly two parts: the *gathering problem* (gathering articles for deposit in the repository) and the *copyright problem* (obtaining permission to make the articles OA). The rights-retention part of our OA policy solves the copyright problem.
 - A rights-retention policy does not make the gathering problem any easier or harder to solve.
 - But when articles arrive at the repository, a rights-retention policy makes deposit and OA much easier. Nobody has to look up the publisher's green policy in [Sherpa Romeo](#). Nobody has to ask the publisher for special permission. Authors don't have to negotiate with publishers. Rights retention is automatic and uniform for all faculty and all their new articles. We don't have to check to see which rights authors might have

succeeded in retaining (e.g. by request, negotiation, or publisher policy). We don't have to spend staff time on these methods of obtaining or confirming permission and we don't have to risk getting 'no' for an answer.

- When authors don't want Harvard to exercise the OA license for a given work, they can get a waiver for that work.
 - The waiver option allows authors to publish in the journals of their choice, including those that don't want their versions to co-exist with OA versions.
 - Authors who want waivers for separate works must get separate waivers. We don't offer "standing waivers" that would cover all of the author's future articles.
 - Harvard grants waiver requests no-questions-asked. It takes 30 seconds on a web form.
 - Our waiver rate is below 5%. (The same is true at MIT and UC, the only two institutions with our kind of policy that have shared their waiver rates.)
 - In general, our faculty don't obtain waivers for personal reasons. They obtain waivers only when their publishers require them to do so. Very few publishers (fewer than 5) systematically require waivers.
- There is no penalty for non-deposit in the repository.
 - Hence, there are two ways authors could avoid making their work OA, if that's what they want: through a waiver or through non-deposit.
- For published articles, we aim to deposit the accepted author manuscript (AAM), not the version of record (VOR).
 - But we reserve the right to deposit the VOR in the right circumstances.
- The policies are implemented by Open Scholarship and Research Data Services. (OSRDS is the new incarnation of the [Office for Scholarly Communication](#). Its web site is still under construction.)
- Historical footnote: Harvard was the first university in the US to adopt an OA policy. It was the first in the world to adopt an OA policy by faculty vote rather than administrative edict. It was the first in the world where the faculty vote was unanimous (there have been [about 60 others](#) since then). It was the first in the world to implement rights retention. And it was the first in the world to include an opt-out or waiver option to preserve academic freedom. Today [more than 90](#)

[university OA policies](#) around the world (North America, Europe, Africa, Asia, and Australia) are based on the Harvard model.

Variations on the theme

- At Harvard, faculty grant the university a certain set of nonexclusive rights to their future articles, and the university grants the same set of rights back to faculty. (This ensures that faculty hold those rights even after signing their publishing contracts.) Some institutions adopt the first step but not the second step.
- Rights-retention policies allow universities to disregard publisher requests for embargoes on green OA. Harvard takes advantage of this but some schools with the same policies do not.
- At Harvard, waivers only apply to the OA license, not to the deposit expectation. (When an author gets a waiver for a given paper, we still want the paper in DASH as a closed deposit.) At some schools, waivers apply to both the license and the deposit expectation.
- Harvard does not offer standing waivers (for all future articles). Some institutions do.
- Harvard grants waivers no-questions-asked. Some institutions ask authors to justify their requests for waivers and might in principle deny some of them.
- The Harvard policies only apply to faculty. (Non-faculty scholars can get the same benefits by signing the voluntary [Individual Open-Access License](#).) Some university policies cover different sets of affiliated scholars.
- The Harvard policies only apply to articles, book chapters, and conference presentations. At some institutions, they also apply to books or other categories of scholarship.
- The Harvard repository accepts preprints as well as postprints. (But most of our deposits are postprints). Some institutional repositories do not accept preprints.
- The Harvard policies were adopted by faculty votes. At some institutions they were (apparently) adopted by administrators.
- The Harvard policy combines rights retention with a commitment to deposit in the institutional repository. Some universities have a stronger deposit expectation (positive requirement) and some have a weaker one (mere encouragement).

- Some institutions ask authors to deposit policy-covered works on their own, perhaps with the assistance of the policy-implementation office. Others do all they can to arrange deposits without expecting any steps from authors.
- Some universities combine the Harvard-style method of rights retention (faculty granting nonexclusive rights to the institution) with the [Plan S method](#) (alerting publishers in the submission letter that the author has already applied an open license to any accepted manuscript arising from the submission).
- Some universities retain rights by asserting the work-for-hire doctrine over faculty publications. Hence, they dispense with the Harvard-style method of rights retention even if they use other aspects of Harvard-style policies. Some blend the Harvard approach with work-for-hire.
- The set of nonexclusive rights granted to Harvard does not include the right to sell policy-covered works for a profit. Some schools include that right.
- Harvard is willing to make “closed” (non-OA) deposits in its repository, when it doesn’t have permission to make them OA. This makes it easy to open them up later when we do get permission. It also lets us share the metadata to enhance discoverability. Some institutions do not make closed deposits.
- Harvard does not make metadata-only deposits in its repository, but many other institutions are willing to do so.
- When a work in the Harvard repository has already been published, we always cite and link to the published edition. Some repositories don’t.
- Harvard takes steps to get faculty to affirm the policies in writing, even if we haven’t reached 100%. The written affirmation [solves a copyright problem](#), at least in the US. Some institutions don’t take these steps, even in the US.

Resources

- [The Harvard OA policies](#). We have 9 school-level policies, 5 center-level policies, and the [Individual Open-Access License](#).
- [Overview of Harvard’s Open-Access Policies](#). I wrote this overview for Harvard departments and research centers. When I ask them to take extra steps to implement their OA policies, they often ask for the kinds of details and background spelled out here.
- [Good practices for university open-access policies](#). This guide (by me and Stuart Shieber) focuses on Harvard-style rights-retention policies.

- The guide includes [a list](#) of universities with rights-retention policies we consider worth recommending. Note that the list includes policies in North America, Europe, Africa, Asia, and Australasia. It includes large and small institutions, public and private institutions, affluent and indigent institutions.
 - In November 2020, Patrick Alexander published [several criticisms](#) of Harvard-style rights-retention OA policies. In April 2021, I published [a response](#).
 - I've written two more general pieces on rights retention.
 - [Rights retention and open access](#), *European Research Council Magazine*, October 28, 2021.
 - [Publishing Without Exclusive Rights](#), *Journal of Electronic Publishing*, April 26, 2022.
 - [Methods of Rights Retention](#). This is a piece I started in May 2023 and released to the public in July 2023. I'm still updating it.
 - For news and comment on rights-retention OA policies (from universities and funders), see the [items tagged with oa.rights-retention](#) by the [Open Access Tracking Project](#).
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If you're interested, [here's why](#) I like to use Google docs more than slides on Zoom calls.

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