

Methods of Rights Retention

[Peter Suber](#)

Note that this is still a work in progress.

Suggested short URL = bit.ly/MethodsRightsRetention (case sensitive)

[1. Early funder method \(Wellcome Trust, NIH\)](#)

[2. Harvard method](#)

[3. Plan S method \(cOAlition S\)](#)

[4. Work-for-hire](#)

[5. US federal purpose license](#)

[6. Secondary publishing rights](#)

[7. Author addenda](#)

[8. Journal publishing contracts](#)

[9. Author negotiations with publisher](#)

[10. Blended methods](#)

[Blending the Harvard and Plan S methods](#)

[Blending the Harvard and work-for-hire methods](#)

[Blending the Harvard method and secondary publishing rights](#)

[Blending the work-for-hire and Plan S methods](#)

[Benefits of rights retention](#)

[Caveat](#)

[Other resources](#)

1. Early funder method (Wellcome Trust, NIH)

- This section covers the first funder-based rights-retention open-access policies.
- The [earliest version of the Wellcome policy \(2004\)](#) encouraged but did not require rights retention. The [Wellcome policy of October 2005](#) and the US [National Institutes of Health policy of April 2008](#) both made mandatory rights retention implicit in their policies and explicit in their FAQs. See the [Wellcome](#)

[FAQ](#) from 2005, especially [Question 18](#), and the [NIH FAQ](#), especially [Question III.A.1](#) and [Question III.A.5](#).

- Both Wellcome and NIH required grantees to retain the rights needed to authorize OA, and to exercise those rights to authorize OA through PubMed Central (or Europe PubMed Central). When journals didn't allow OA on these terms, grantees had to look for another journal.
- The Wellcome and NIH policies have no opt-outs for authors. Yet as far as we can tell, all publishers have accommodated themselves to the NIH policy, despite strenuous lobbying against its adoption. Since August 2008, the [Open Access Directory](#) has crowd-sourced a collection of [publisher policies on NIH-funded authors](#) and has not yet found a single publisher unwilling to comply with the NIH's terms.
- In January 2021, [Wellcome changed](#) the way it implements rights retention from its 2005 method to the Plan S method. See how it [currently describes](#) its method of rights retention.
- In February 2023, the NIH [announced that it's developing a new method](#) for rights retention as part of its compliance with the [2022 OSTP/Nelson memo](#). See section III.C.1: "NIH will continue to require NIH-supported investigators to retain the rights necessary to comply with the requirements of the NIH Public Access Policy, and NIH proposes to clarify how this may be accomplished. To assist with this process, NIH proposes to develop language that NIH-supported investigators may use for submission with their peer-reviewed manuscripts to journals to retain rights to make the peer-reviewed manuscript available post-publication in PMC as soon as processing is complete, without an embargo period."
- Here are some details on the 2008 NIH method, still in effect. The [NIH policy of 2008](#) asks authors to retain the rights needed to allow NIH to make a version of articles arising from NIH funds "public access" in [PubMed Central](#). It spells out the details in three sections of its FAQ.
 - [FAQ, Question II.B.3](#): NIH suggests language for authors to propose as an addendum to the publishing contract: "Journal acknowledges that Author retains the right to provide a copy of the final peer-reviewed manuscript to the NIH upon acceptance for Journal publication, for public archiving in PubMed Central as soon as possible but no later than 12 months after publication by Journal."

- [FAQ, Question III.A.1](#): “The NIH Public Access Policy does not affect the ability of the author, the author's institution, or the publisher to assert ownership in the work's copyright. Authors, consistent with their employment arrangements, may assign these rights to journals (as is the current practice), subject to the limited right that must be retained by the funding recipient to post the works in accordance with the Policy, or the provision that the journal submits the works in accordance with the Policy on the author's behalf.”
- [FAQ, Question III.A.5](#): “Authors can meet their Public Access responsibilities if they retain a small strand of the worldwide rights; the right to allow display of their final peer-reviewed manuscripts on PubMed Central.”

2. Harvard method

- This section covers the first university-based rights-retention open-access policies.
- Harvard faculty voted to give the university nonexclusive rights to their future journal articles. The university granted the same rights back to faculty. Faculty may waive the Harvard license for any work, no-questions-asked. This kind of policy was adopted at each Harvard school between 2008 and 2014.
- The set of nonexclusive rights faculty grant to the institution goes well beyond the right to make articles OA. As I described it in a [2021 article](#), “The reason for enlarging the set of rights granted to Harvard, beyond those needed to make the work OA, is to enlarge the set of rights granted back to authors and thereby give authors as much freedom as possible to use and reuse their own work after publication. Among other things, this frees authors to release revised or expanded editions, to reuse articles in anthologies or monographs, and to authorize translations, text mining, and the copying needed for long-term preservation.”
- The method combines institutional rights retention and author rights retention.
- The policies don't directly apply open licenses to policy-covered work by policy-covered authors. But they commit authors to deposit those works in [DASH](#), the institutional repository, and the DASH terms of use are roughly

equivalent to CC-BY-NC. (The NC is for historical reasons; I encourage other universities to use CC-BY.)

- Since Harvard's first rights-retention OA policy was adopted in 2008, Harvard has not been sued or threatened with suits for implementing the policies. Its authors have not been sued or threatened with suits for complying with these policies. The Harvard institutional repository has received no takedown notices. Speaking for myself (as director of the office implementing these policies for nine years), I know of no cases in which a policy-covered work was rejected by a journal because it was subject to our policy. As far as I know, the same is true for other institutions with Harvard-style policies.
- See the [Harvard OA policies](#) themselves. See Harvard's list of [other institutions with Harvard-style OA policies](#). See the [Open Access Directory](#) list of [university rights-retention OA policies](#) (combining Harvard-style policies with non-Harvard-style policies).
- The Harvard school-level policies only apply to faculty. But Harvard also has an [Individual Open-Access License](#) (Feb 2018) giving nonfaculty scholars the same kind of rights retention that the school-level policies give faculty.
- See my overview of [Harvard-style rights-retention open-access policies](#). It includes a section of [variations on the theme](#) — policies that start with the Harvard model and make a few tweaks.
- Also see [Good practices for university open-access policies](#) that I maintain with Stuart Shieber. It offers detailed, practical guidance on adopting and implementing Harvard-style policies.

3. Plan S method (cOAlition S)

- This method was [first announced July 15, 2020](#). It combines two funder steps and one grantee/author step.
 - The funder includes language like this in the grant agreement: “You hereby grant a CC BY Public Copyright Licence to all future Author Accepted Manuscripts (AAMs) arising from this grant. If you allow others to own copyright in AAMs, you must ensure they grant such a licence.”
 - The funder also requires the author to include language like this in all submissions of grant-funded research to journals: “This research was funded in whole or in part by [Funder, grant number]. For the purpose of

Open Access, the author has applied a CC BY public copyright licence to any Author Accepted Manuscript (AAM) version arising from this submission.”

- The author step is to add the funder language to their letters submitting new works to publishers.
- See the [funder-members of cOAlition S](#).
- A [small number](#) of publishers say they will desk-reject papers submitted with the Plan-S language on rights retention. See this [downloadable spreadsheet](#).

4. Work-for-hire

- Under the [work-for-hire doctrine](#), employers own the copyrights in works written by employees within the scope of their employment. Most universities do not assert work-for-hire over faculty scholarship. But some do. When they do, there’s no need for faculty to grant the university any rights (as in the Harvard method). If universities hold rights in faculty scholarship, they can exercise those rights to make the works OA, for example in the institutional repository.
- At Harvard, faculty were already exempt from the work-for-hire doctrine. But when Harvard Library wanted to adopt a version of the rights-retention OA policy for librarian-scholars, it first [exempted them](#) from work-for-hire, making clear that, when they took advantage of the policy, they made their scholarship OA by choice, not by an institutional exercise of work-for-hire.
- I don’t know a pure example of a university asserting work-for-hire in order to make faculty scholarship OA. I include it here to help explain some of the blended models below.

5. US federal purpose license

- US federal agencies automatically regain nonexclusive rights in the works they fund through grants or awards.
- See [2 CFR §200.315](#), especially 315(b): “The Federal awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.”
 - In 2024, the license was revised to add this sentence to 315(b): “This includes the right to require recipients and subrecipients to make such

works available through agency-designated public access repositories.”

The revision was [released on April 22, 2024](#) and will take effect October 1, 2024.

- This is a provision of US law. There may be equivalents in many other countries.
- Note that this license allows the funding agencies to retain rights, not the authors.
- See the April 2024 [public statement](#) (and its [follow-up](#)) recommending that US federal research funding agencies rest their OA policies (under the 2022 OSTP/Nelson memo) on the federal purpose license. Also see the many [signatures](#) by institutions and individuals.
- Not all federal research funding agencies already use the federal-purpose license in their OA policies. One that does is the Department of Energy. See its [policy](#) from July 2014.

6. Secondary publishing rights

- Several European countries have amended their copyright statutes to give scholarly authors the right to make their works OA through repositories (green OA) without regard to the terms of the contracts the authors might have signed with publishers. These amendments create what are now called secondary publishing rights. (They are sometimes called Taverne amendments, after the MP who proposed the Dutch amendment.)
- The current examples only apply to publicly-funded works, require embargoes to protect publishers, and bar the application of open licenses. But just as we work for strong rights-retention policies at funders and universities, we should work to strengthen secondary publishing rights where they already exist, and to spread them to other jurisdictions.
- In chronological order, there are adopted SPR amendments in Spain (2011), Germany (2013, proposed as early as 2006), Italy (2013), the Netherlands (2015), Austria (2015), France (2016), and Belgium (2018), Netherlands (2018), and Bulgaria (2024), with amendments pending in Switzerland (2019), Poland, and the UK.
- I haven’t seen an up-to-date list of these amendments. A crowd-sourced [spreadsheet](#) needs updating.
- Also see the October 2015 [endorsement of SPR](#) ([perma.cc link](#)) by [ALLEA](#).

- Also see the February 2020 [joint statement](#) by several research organizations calling on the European Commission to make SPR amendments uniform throughout Europe ([perma.cc link](#)). Also see the February 25, 2020 [call by the Conference of European Schools for Advanced Engineering Education and Research \(CESAER\)](#) for similar legislation ([perma.cc link](#)).
- Also see [Liber's Draft \[Model\] Law for the Use of Publicly Funded Scholarly Publications](#) ([perma.cc link](#)) to remove embargoes and make the stronger form of secondary publishing rights uniform across Europe (undated but apparently Spring 2021).
- The [2022 analysis by Christina Angelopoulos](#) is very thorough, both on the existing amendments and the prospects for strengthening them.
- Also see the positive October 2022 [position statement](#) ([perma.cc link](#)) on secondary publishing rights from [Knowledge Rights 21](#). Also see the KR21 [page devoted to SPR](#).
- In May 2023 the [European Council recommended](#) the spread of secondary publishing rights to all the EU member states. See §12. (The same doc made several other important recommendations to advance OA and open science.) [10 Ten major European research organizations](#) quickly lent their weight to the Council's recommendations.
- Also see Giannis Tsakonas, [Secondary Publishing Rights in Europe: status, challenges & opportunities](#), October 10, 2023.
- Also see Faith O. Majekolagbe, [A Right to Republish: Redesigning Copyright Law for Research Works](#), June 23, 2024.
- Also see the [statement](#) from All European Academies ([ALLEA](#)) calling upon “the European Union (EU) to initiate harmonising legislation that would accord SPRs to scientific researchers in all 27 Member States of the EU,” October 21, 2024.
- These amendments are rare examples of amending copyright laws to enhance access to research. They stand almost alone against examples of amending copyright law to restrict access.
- Note that SPR might not be considered a kind of rights retention. But at least it serves the same goal of ensuring that authors hold the rights needed to make their work OA. It can save authors from the *lack* of rights retention. Authors hold the rights to their work until or unless they transfer them away, for example, through a publishing contract. Under true rights retention, authors don't transfer away all their rights and retain at least some. Under SPR, authors can

sign contracts that do transfer away all their rights, and retain none. But when they do, national copyright law overrides those contracts to ensure that the authors still hold a certain set of key rights.

7. Author addenda

- An author addendum is a proposed modification to a publisher's standard copyright transfer agreement. If the publisher accepts it, it changes the contract to allow the author to retain key rights, especially the right to authorize OA. Because an addendum is merely a proposed contract modification, publishers can take them or leave them, and they usually leave or reject them. Addenda were first introduced around 2004.
- When they work, they enable authors to retain rights, and they don't require authors to negotiate with publishers. (More on author negotiations with publishers below.) They were designed to help authors who are uncomfortable negotiating with publishers or who don't have the legal knowledge to know exactly what to request in a negotiation.
- Because publishers usually reject them, and because other, more effective methods of rights retention now exist, author addenda are little-used today.
- Also see the [Open Access Directory](#) list of [author addenda](#).

8. Journal publishing contracts

- Journals can decide on their own to let authors retain copyright. All journals that use CC-BY licenses do this. To different degrees, journals that use more restrictive licenses (like CC-BY-NC) also do it.
- I argued in a [2022 article](#) that publishers don't need exclusive rights to publish, and cited the CC-BY publishers as evidence. I urged publishers to drop their demands for exclusive rights, and urged authors to favor publishers that do so. In the same piece, I argued that "authors hold all rights in their work before they transfer rights to others....If publishing contracts didn't ask for exclusive rights, then authors would continue to hold these rights and publishers would not acquire them. This would make author rights retention as easy as possible, both to understand and to implement."

- In March 2023 the [Directory of Open Access Journals](#) (DOAJ) [added a feature](#) allowing users to identify journals allowing authors to retain all rights.
- In January 2024, the [U of California announced](#) a new agreement with Wiley in which Wiley promised “a good faith effort to develop a new global license to publish agreement over the next six months. The goal, except for limited use-cases, is for authors to retain unrestricted rights to their own work.”

9. Author negotiations with publisher

- When a journal doesn’t already allow authors to retain copyright, authors can try to negotiate to retain rights in their own case. While this is difficult and success unlikely, it remains a possibility.
- In the age of printed agreements, and even digital agreements exchanged as email attachments, authors could cross out paragraphs or submit proposed revisions. But more and more publishers are using click-through agreements with no option for authors to propose changes.
- Note that OA policies asking authors to retain rights, without telling them how to do it, or without making rights retention a direct effect of signing a contract, accepting a grant, or falling under a policy, are in effect asking authors to negotiate with publishers.
- The Harvard good-practices guide [recommends](#) rights-retention OA policies in part to make it unnecessary for authors to negotiate with publishers. “We do not recommend [asking or requiring] faculty to negotiate with publishers in order to retain the needed rights. That [negotiation] is difficult to do. Many faculty are intimidated by the prospect and will not do it. Even if all tried it, some will succeed and some will fail. Some will get one set of rights and some will get another. That will make access uneven and multiply implementation headaches.”

10. Blended methods

Blending the Harvard and Plan S methods

- On this model, faculty grant nonexclusive rights to their institution *and* put Plan-S-style language in their submission letters.
- Examples:

- The [University of Edinburgh adopted a blended policy](#) in January 2022.
- The [University of Cambridge adopted a blended policy as a pilot](#) in April 2022. In April 2023, it converted the pilot to a [full policy](#).

Blending the Harvard and work-for-hire methods

- The [University of St. Andrews adopted](#) this type of [policy](#) in December 2022. While the university asserts work-for-hire over faculty scholarship, it explicitly waives its rights and says that this waiver “comes with the obligation [by faculty] to grant to the University a non-exclusive, irrevocable, royalty-free licence including the right for the University to sub-licence to third parties.” See sections 11.1 and 11.2 of the policy.
- The [University of Glasgow adopted](#) a similar blend in June 2023.

Blending the Harvard method and secondary publishing rights

- [Eindhoven University of Technology adopted](#) a policy to take effect in July 2023. It takes advantage of the secondary publishing rights under Dutch law. At the same time it says, “The pilot [policy]...showed that the efficiency of the administrative procedures for researchers to grant permission (by two-way paper licence) is an obstacle to scaling up. The solution was found in converting the so-called opt-in approach into a tacit licence procedure with the possibility to opt-out....The University requires a tacit, non-exclusive licence from its staff members for the purpose” of making faculty articles OA.

Blending the work-for-hire and Plan S methods

- The [University of New South Wales adopted](#) this type of policy in December 2021. “The University asserts legal and beneficial ownership over Research Outputs created by academic, professional, technical or administrative Staff and Affiliates. The University asserts a non-exclusive licence to Research Outputs including books and journal articles, for the University’s teaching and research purposes. Consequently, for all outputs that fall within the scope of the UNSW Intellectual Property policy, UNSW researchers must retain all necessary rights to enable them to publish and share their publications in any format at any time and may not grant an exclusive copyright license in the Research Output to any

other person or organisation....If a UNSW researcher is submitting a manuscript to a journal that does not yet by default allow the author to make the Version of Record immediately openly accessible with a CC-BY licence the researcher must either: [1] At the time of submitting the manuscript, inform the journal of the rights retained in the Author Accepted Manuscript (for example, by outlining this in the manuscript or cover letter): [2] Or, if this is not possible at the time of submission, amend the publishing agreement.” It then suggests language, modeled on the Plan S language, for authors to include in their submission letters.

Benefits of rights retention

Here are six benefits, elaborating on a list I wrote for a [2021 article](#).

1. When publishers hold the key rights, publishers get to make the OA decision. When authors hold them, authors get to make the OA decision. The same goes for decisions on reuse, mining, and so on.

(This benefit assumes that authors want OA and reuse rights more often than publishers do. That’s true today and likely to remain true. But not all authors want OA and reuse rights. See the [caveat](#) below.)

2. When authors want OA, then holding the key rights frees them from the effort and delay of seeking permission. It also frees them from the risk of a ‘no’ answer. In these circumstances, rights retention makes OA faster, less complicated, and more assured.

3. Rights retention makes green or repository-based OA faster and more frictionless. Many publishers already permit green OA, though often with restrictive terms and conditions. Some don’t permit it at all. Rights retention overcomes these obstacles. Authors who retain rights don’t need publisher permission for green OA, and need not respect publisher restrictions on that permission.

4. Rights-retention *policies* have certain benefits above and beyond rights retention itself. In the absence of these policies, authors who want to retain rights must negotiate with their publisher. Many authors find this intimidating and won’t do it. Even when

they try, they may not know exactly what to request. Some will succeed and some will fail. Some will get one set of rights and some will get another, making access uneven and increasing the difficulty of sharing faculty work through an institutional repository. Rights-retention policies by universities, funders, and publishers solve these problems, and make author rights retention more effective, more certain, and more uniform.

5. A common myth about green OA is that it must be embargoed and cannot carry open licenses. This was often (but never wholly) true in the early days when rights retention was rare and even many OA advocates accepted embargoes and all-rights-reserved copyrights. But when authors hold key rights, they can make their work green OA with open licenses and no embargoes. They can often do this even for the version of record (VOR) and not just the accepted author manuscript (AAM).

6. By streamlining green OA, rights retention saves early-career researchers (ECRs) from a painful dilemma. When their funders require OA, and their promotion and tenure committees favor certain non-OA journals, green OA lets ECRs satisfy both at the same time. They can publish in the favored journals to satisfy their promotion and tenure committees, and they can use green OA to satisfy their funders.

Caveat

Author rights retention is a means, not an end in itself. To me, it's desirable primarily as a means to the end of OA under open licenses. But there are several ways to get open licenses without author rights retention, and I support open licenses even when we don't get them by way of author rights retention. In fact, if authors do retain rights, do not use them to make their work OA under open licenses, and by their acts or omissions, deliberately or inadvertently, prevent others from making the same works OA under open licenses, then author rights retention will be undesirable. Instead of facilitating OA and reuse rights, it will obstruct them. It doesn't follow that rights retention is unimportant. On the contrary, it's still one of the best ways to get OA under open licenses.

On the one hand, author rights retention is desirable more often than not. On the other, open licenses guarantee what author rights retention merely makes likely.

Other resources

For discussions, analyses, and more examples, see these tag libraries from the [Open Access Tracking Project](#):

- [rights-retention OA policies in general](#)
- [rights-retention OA policies from funders](#)
- [rights-retention OA policies from universities](#)
- [rights retention under Plan S](#)
- [secondary publishing rights](#)
- [author addenda](#)

See the [Open Access Directory](#) list of [university rights-retention OA policies](#) and the Harvard list of [institutions with Harvard-style rights-retention OA policies](#).

See my other main pieces on rights retention:

- [Harvard-style rights-retention open-access policies](#). Online handout, updated as needed.
- [Publishing Without Exclusive Rights](#), *Journal of Electronic Publishing*, April 2022.
- [Rights retention and open access](#), *European Research Council Magazine*, October 2021.
- [Author rights and the Harvard open access policies: a response to Patrick Alexander](#), *UKSG Insights*, April 2021.
- [Good practices for university open-access policies](#), first released October 2012, regularly updated. Focuses on rights-retention policies.

See the report from SPARC Europe and Knowledge Rights 21, [Opening Knowledge: Retaining Rights and Open Licensing in Europe](#), June 2023. Focuses on rights-retention policies from universities, funders, and publishers.

See the EIFL guide to [Rights Retention and Secondary Publishing Rights](#), June 27, 2024.

Last revised October 22, 2024.

[First released](#) to the public, July 23, 2023.

[Methods of Rights Retention](#) © 2023, 2024 by [Peter Suber](#) is licensed under CC BY 4.0.  