

OAKList Brief Guide to Understanding Publishing Agreements and Publishing Policies

Introduction

This guide is designed to explain the legal terms used in publishing agreements and the publisher policies that affect authors of scholarly journal articles. The guide will be useful for authors who need to know if an agreement will impose unacceptable limits on their right to use their own work. It will also be useful for institutional repository managers who often consult publishing agreements and publisher policies when determining whether or not a deposited journal article can be made openly accessible. The guide may also help journal publishers (or editors) to determine if the wording of their existing publishing agreement could be deterring authors from submitting scholarly articles for publication in their journal.

Note: This guide should not be relied upon as legal advice

Publishing Agreements & Publisher Policies

Publishers may have a written agreement which the author is asked to sign. It may also be referred to as a copyright agreement or copyright transfer form. This document forms a contract between the author and the publisher.

Journal publishers may have a policy which describes their position on ownership of articles (copyright) and on the extent to which authors can make their articles openly available online (t.i.e 'Open Access') once they have been accepted for publication. These policies can often be found on the publisher's website under headings such as; 'Copyright Notice', 'Notes to Contributors', 'Author Guidelines' or 'Open Access Policy'.

Note: 'Open Access' in this context means that a full-text version of an article published in a scholarly journal is publicly accessible online free of charge. It may be that the entire contents of the journal are free to readers or that the author has been allowed to disseminate an 'open access' copy of the article online via his/her personal web page, institutional repository or subject repository.

Terminology for Different Versions of Journal Articles

Publishing agreements and publishing policies may include permissions or restrictions that apply to specific versions of a journal article. These versions are:

- The **preprint** (also referred to as the '**submitted version**' or the 'submitted manuscript'). This is the version of an article as first submitted to a publisher or publication for peer review.
- The **postprint** (also referred to as the '**accepted version**' or the 'accepted manuscript'). This is the version of an article that is accepted for publication, including revisions suggested by referees, but without copy-editing and

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formatting supplied by a publisher.

- The **published version** (also referred to as the ‘**version of record**’ or ‘publisher PDF’) This is the formatted, paginated version of an article ‘as published’ in the journal.

Understanding Publishing Agreements:

Publishing Agreements generally fall within three categories:

- Assignment/Transfer
- Exclusive Licence to Publish
- Non-Exclusive Licence to Publish.

Assignment/Transfer:

Author agrees to assign (transfer) ownership of the copyright in an article to the publisher. If the agreement involves a ‘full’ assignment/transfer, then the publisher has full control over further use of the article. However, an agreement which involves a full assignment/transfer of the copyright will sometimes expressly permit an author to use the work in specified ways. ***The terms of the agreement will dictate whether or not the pre-print, post-print and publisher versions can be made available in Open Access.***

Examples of language that indicate the agreement involves assignment or transfer of copyright.

‘I assign copyright in the article to Acme Publishing’

‘Acme Publishing is the owner of all rights in the article’

‘Copyright to the above-listed unpublished and original article submitted by the above author(s), the abstract forming part thereof, and any subsequent errata (collectively, the “Article”) is hereby transferred to Acme Publishing for the full term thereof throughout the world’

‘If Acme Publishing accepts the article for publication in Journal of Poetic language, then from the date of that acceptance I/we assign all copyright throughout the world in the Article. I/we understand this means that from that date I/we will no longer own any copyright in the Article, and Acme Publishing may, among other things, edit and publish the Article anywhere in any form, including electronic form’

‘In consideration of the publication of the Article and other considerations, the Author (s) hereby transfer and assign to Acme Publishing all of their entire, full and undivided rights, title to and interests and interests in the ownership of the Work and the copyright thereon’

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Non-Exclusive Licence to Publish:

Under a non-exclusive licence, the author retains copyright ownership. Generally, this means that whilst the publisher can publish the article, the author can also grant others the same right. A non-exclusive licence does not have to be in writing to be legally valid although they are often in the form of a written agreement. If a publishing agreement involves a non-exclusive licence, ***control over if and where pre-print, post-print and publisher versions can be made available in Open Access resides with the author.***

Examples of language that indicate the agreement involves a non-exclusive licence to publish:

‘The author is the owner of copyright in the article’

‘Authors grants to Acme Publishing an irrevocable and non exclusive right to publish reproduce and communicate the work’

‘The Author grants to Acme Publishing the worldwide nonexclusive right to produce, reproduce, publish, distribute, communicate to the public by telecommunication, translate, adapt and use the Article in any form whatever (including print or electronic media), and by any technology now known or hereafter developed, either separately or as part of a collective work’

‘The author/s retain copyright in the Work and may publish or authorise others to publish the entire work or any part thereof, provided always that due acknowledgment is made in any further publication that the Work was originally published in Journal of Poetic language’

Exclusive Licence:

Under an exclusive licence, the author retains copyright ownership in the article but the publisher has the exclusive right to publish the article during the period of the licence. This means that even the author will not be allowed to publish (i.e make publicly available) the article during this time, ***unless the author is expressly permitted to do so under the terms of the licence.***

An exclusive licence does not have to be in writing to be legally valid although they are often in the form of a written agreement. Although the author retains ownership of the copyright in the article, control over if and where the preprint, postprint and publisher versions can be made available online in Open Access will reside with the publisher.

Examples of language that may indicate an agreement involves an exclusive licence to publish:

‘The author is the owner of copyright in the article’

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‘Author grants Acme Publishing an exclusive licence for a 3 year period to print, publish sell reproduce, communicate to the public or otherwise deal with the work’

‘Upon Acceptance, the Author grants to Acme Publishing a sole licence for the full term of the copyright in the Article to reproduce (or authorise others to do so) the Article, in whole or in part, and to communicate the Article to the public (or authorise others to do) in print and/or digital form, whether or not in combination with the works of others’

‘Upon Acceptance, the Author grants to Acme Publishing an exclusive licence to exploit the rights listed in clause 2 of this agreement in the Article throughout the world for the full term of the copyright’

‘ By this deed, the author/s grants to the publisher an Exclusive Licence for a period of Three years from the date of this Deed to print, publish, sell, reproduce, communicate to the public and otherwise deal with the Work’

‘In consideration of Acme publishing agreeing to publish the Work, the Author grants Acme Publishing the exclusive licence to publish and distribute the Work in electronic and digital form worldwide for the full period of the copyright’

Retained Rights

Under the terms of some publishing agreements and policies, authors are expressly permitted to use their work in various ways. These are known as ‘retained rights’.

Examples of language used to describe retained rights:

‘The Author retains among others, the following rights with respect to the Article’

‘To reproduce the Article, in whole or in part, and to communicate it to the public, whether in print and/or digital form, whether as part of a reader or a compilation, for use in education or research within the Author’s own institution, provided this use pursues no direct or indirect economic or commercial advantage’

‘To grant the Author’s own institution the authorisation to upload the Article onto a publicly accessible institutional and/or centrally organized repository after an embargo period of a maximum of six (6) months from the date of publication of the journal in which the Article is published, provided that this is not for direct or indirect economic or commercial advantage and that a link is inserted to the Article on the publisher’s website’

Publishing Policies:

Sometimes a publisher will have a documented policy or information on their website that explains whether or not an author assigns or licences their copyright in their article to the publisher. Many publishers believe that a policy statement has the same legally binding effect as a signed publishing agreement. A policy is not a binding agreement like a publishing agreement. However, it is a good indication of a

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publisher's position towards copyright ownership and Open Access and, if a publisher does not use a publishing agreement, then their policy will act as their agreement for an exclusive or non-exclusive licence. That is, they will assume that authors agree to the conditions specified in the policy.

Example of language used in a publishing policy to explain who will own the copyright in the work.

The copyright for articles in this journal is retained by the author(s), with first publication rights granted to the journal. By virtue of their appearance in this open access journal, articles are free to use with proper attribution in educational and other non-commercial sectors.

Notes for OAKList Contributors and Peer Reviewers:

Author assigns copyright or grants an exclusive licence to publish:

If the author is required to assign copyright or grant an exclusive licence to publish, then the author can only archive a copy of their journal if this is expressly permitted in the *retained rights* section of the agreement or policy (if there is one). If there is no mention of authors retaining the right to place a specified version (or versions) of the article on a personal website or deposit a copy in a digital repository, then it must be assumed that this is **not** permitted.

Author owns copyright:

If there is no indication in the publishing agreement or policy that the author is required to assign copyright or grant an exclusive licence to publish, it can be assumed that the author can archive the preprint (submitted) version and/or the postprint (accepted) version of their articles.

Similarly, if the author retains copyright and is only required to grant the publisher a non-exclusive licence to publish, it can be assumed that the author can archive the preprint (submitted) version and/or the postprint (accepted) version of their article.

Embargoes and restrictions:

Even if the author retains copyright or only grants a non-exclusive licence to publish, the agreement or policy may bind authors to observing a specified embargo period before a version of the article is made openly available online. If this is the case, the information will be included in the wording. Some agreements and policies may include permission to archive only a specified version of the article or may place restrictions on the type of website via which the article can be made available. For example, it may be permissible to place a copy in the author's institutional repository but not a central/subject repository.

For more detailed information on this topic, see:

"Guide to Developing Open Access Through Your Digital Repository" by Kylie Pappalardo and Anne Fitzgerald. <http://eprints.qut.edu.au/9671/1/9671.pdf> and/or

"Understanding open access in the academic environment: A guide for authors" <http://eprints.qut.edu.au/13935/2/13935.pdf>