



OAK Law Project

A REVIEW AND ANALYSIS OF ACADEMIC PUBLISHING AGREEMENTS AND OPEN ACCESS POLICIES

by

Dr Anne Fitzgerald and Amanda Long

Assisted by Professor Brian Fitzgerald, Scott Kiel-Chisholm, Helen Demack and Jill Rogers

Open Access to Knowledge Law Project (OAK Law Project)
a Department of Education Science and Training (DEST) funded project

A Systemic Infrastructure Initiative (SII) funded project and part of the Commonwealth
Government's *Backing Australia's Ability –
An Innovation Action Plan for the Future*

Version 1.
February 2008



This work is licensed under an Australian [Creative Commons Attribution-NonCommercial-NoDerivatives 2.5 License](https://creativecommons.org/licenses/by-nc-nd/2.5/au/)

Contents

Acronyms and Abbreviations.....	5
1. AIM AND PURPOSE OF THIS REPORT	6
2. PUBLISHING AGREEMENTS AND COPYRIGHT.....	10
3. PHASE ONE – COLLECT AND REVIEW PUBLISHING AGREEMENTS	12
4. METHODOLOGY FOR ANALYSIS OF PUBLISHING AGREEMENTS.....	14
Constructing the target list of publishers and collecting the sample of publishing agreements	15
Formulating the questions for analysis of the publishing agreements	16
5. KEY FEATURES OF PUBLISHING AGREEMENTS.....	18
Statement of reasons for entering into the publishing agreement.....	18
Assignment of copyright to publisher.....	18
Grant of “licence back” to the author/s.....	19
Self-archiving.....	19
Granting of a licence by the author/s (or copyright owner/s) to the publisher	20
Copyright notice on licensed works.....	21
Publisher’s obligation to publish.....	21
Publisher’s performance standards	22
Author’s warranties and indemnification of publisher	22
Research Quality Assessment	23
Moral rights.....	23
6. PHASE TWO – REVIEW OF PUBLISHERS’ OPEN ACCESS POLICIES AND PRACTICES.....	26
7. METHODOLOGY FOR ANALYSIS OF OPEN ACCESS POLICIES AND PRACTICES.....	27
Managing the data collated	29
8. RESULTS OF PUBLISHER REQUESTS REGARDING OPEN ACCESS/ARCHIVING	30
9. CONCLUSION AND NEXT STEPS	35
APPENDIX 1	37
Publishers from whom publishing agreements were obtained.....	37
APPENDIX 2	41

Questions - Publishing Agreement Analysis	41
APPENDIX 3	45
Table of Proposed Actions in Chapter 5, OAK Law Project Report No. 1, “Creating a Legal Framework for Copyright Management of Open Access Within the Australian Academic and Research Sector” (2006).....	45
APPENDIX 4	50
Statements on, and Definitions of, Open Access	50
Open Access Journal	52

Acronyms and Abbreviations

ACEL	Australian Council for Educational Leaders
BOAI	Budapest Open Access Initiative
<i>Copyright Act</i>	<i>Copyright Act 1968 (Cth)</i>
CSIRO	Australian Commonwealth Scientific and Research Organization
Cth	Commonwealth of Australia
DEST	Australian Department of Education, Science and Training
DOAJ	Directory of Open Access Journals
IP	Intellectual Property
JISC	Joint Information Systems Committee
OAK	Open Access to Knowledge
OAK Law	Open Access to Knowledge Project
RoMEO	Rights METadata for Open Archiving
s	Section
SHERPA	Securing a Hybrid Environment for Research Preservation and Access
SII	Systemic Infrastructure Initiative
UK	United Kingdom
US	United States of America

1. AIM AND PURPOSE OF THIS REPORT

- 1.1 It is increasingly accepted, in Australia and internationally, that access to knowledge is a key driver of social, cultural and economic development and that publicly funded research should be openly accessible.¹ The Open Access to Knowledge (OAK) Law project, funded by the Australian Government's Department of Education, Science and Training (DEST) aims to promote the sharing of knowledge across domains, through a range of strategies including the development of legal protocols for managing copying in an open access environment.
- 1.2 The OAK Law Project Report No. 1, *Creating a Legal Framework for Copyright Management of Open Access Within the Australian Academic and Research Sector* ("OAK Law Project – Legal Framework Report") emphasized the importance of actively managing copyright in academic publications if open access is to be effectively achieved in the academic and research sector. The Legal Framework Report proposed that a range of actions be taken to assist academic institutions and funding organizations in developing and implementing copyright management systems designed to ensure open access to academic and research output. Specific actions proposed in the Legal Framework Report included: conducting a survey of academic authors, reviewing a sample of academic journal publishing agreements and publishers' open access policies, developing a database of information about publishing agreements and publishers' open access policies, and drafting a range of practical materials such as guidelines and toolkits for use by academic authors in managing their copyright. A select list of the actions proposed in Chapter 5 of the Legal Framework Report is set out in **Appendix 3** to this report.
- 1.3 A staged approach has been adopted in implementing the actions proposed in the Legal Framework Report. The five implementation stages (referred to in this report as "Phases") together with the key actions to be undertaken at each stage are as follows:

- ***Phase 1:***

- Collect and review a sample of publishing agreements used by the major publishers of Australian academic and research materials, in order to ascertain the principal models for dealing with the copyright interests of authors and publishers, and conduct a detailed analysis of the terms of these agreements.

¹ OAK Law Report No. 1, *Creating a Legal Framework for Copyright Management of Open Access Within the Australian Academic and Research Sector*, 2006, Executive Summary, p ii. (hereinafter OAK Law Project, *Legal Framework Report*).

- ***Phase 2:***

- Conduct a survey of academic journal publishers to obtain information about their policies and practices relating to open access to the academic and research material they publish.

- ***Phase 3:***

- Conduct a survey of academic authors to obtain information about matters including: authors' awareness of the different models of dealing with copyright in publishing agreements; authors' understanding of the legal implications of the different kinds of publishing agreements; whether authors have a preference for particular models of publishing agreements; and authors' experience in negotiating the terms of publishing agreements.

- ***Phase 4:***

- Develop the OAK List, based on the findings of the review of publishing agreements (Phase 1) and the survey of academic journal publishers (Phase 2). The OAK List is an online, web-based, searchable database of information about publishing agreements and publishers' open access policies and practices which can be accessed by authors, copyright administrators and repository managers in Australia and overseas.²

- ***Phase 5:***

- Develop the materials described below, based on the findings of the review of a sample of publishing agreements (Phase 1) and information obtained about publishers' open access policies and practices (Phase 2):
 - a) a set of model publishing agreements reflecting the various models of allocating copyright interests between authors and publishers, designed for use by Australian

² Refer to paragraph 5.2.5 of Appendix 3 for a detailed listing of items the OAK List will include.

academic authors, copyright administrators, repository managers and researchers, with the objective of facilitating the adoption of open access practices;

b) a set of standard clauses to be used by authors and publishers, in conjunction with standard publishing agreements, to allocate copyright interests between authors and publishers in a manner consistent with the objective of facilitating open access to published academic and research materials;

c) lists of the rights held by authors and publishers respectively in open access systems, according to the extent to which open access to the materials is provided.

d) a web-based copyright toolkit designed for use as a practical tool for the management of copyright in materials produced by Australian academic authors. consisting of:

- the model publishing agreements and standard clauses;
- checklists; and
- user-friendly documentation explaining the use of the model publishing agreements and standard clauses.

- 1.4 This report deals with Phases 1 and 2 of the implementation of the action points proposed in Chapter 5 of the Legal Framework Report. Phase 1 involved a detailed analysis of the terms of publishing agreements that are currently used for the publication of journal articles submitted to publishers by Australian academic authors. Phase 2 involved a survey of academic journal publishers to obtain information about their policies and practices in relation to open access to the academic and research works they publish.
- 1.5 A central concern of the OAK Law Project is to assist the management of copyright in academic materials in line with open access principles, by producing a range of practical materials including guidelines, model policies and template publishing agreements and clauses.³
- 1.6 The results of the review of publishing agreements and publishers' open access policies and practices conducted in Phases 1 and 2 were applied in Phase 4 to develop the OAK List, an online, web-based, searchable database of information about publishing agreements and publishers' open access policies and practices, accessible by authors, copyright administrators and repository managers in Australia and overseas.

³ OAK Law Project, *Legal Framework Report* – Preface p i.

- 1.7 The information obtained from Phases 1 and 2 also provides a basis from which to carry out the actions proposed for Phase 5, that is, the drafting of model publishing agreements, a set of standard clauses, guidelines and toolkits designed for use by authors, publishers, copyright administrators and repository managers to facilitate open access to academic journal publications.

2. PUBLISHING AGREEMENTS AND COPYRIGHT

- 2.1 Publishing agreements (for journal articles and similar publications such as conference papers) are contractual arrangements between authors and publishers. They define the relationship between author and publisher and, if properly drafted and executed, are legally binding and enforceable. They are entered into during the publication process - typically at the time the work is submitted to the publisher or when it is accepted for publication.
- 2.2 Of primary importance among the matters dealt with in publishing agreements is the ownership of copyright in the work and the rights of the parties to deal with the work, for example, by making copies of it or communicating it electronically to the public. As well as dealing with ownership and exercise of copyright, publishing agreements contain other terms and conditions which define the legal relationship between the author and the publisher.
- 2.3 There is growing support for ensuring that the output of publicly funded academic and research work is accessible and available for widespread dissemination through open access channels. However, as emphasized in the Legal Framework Report:
- It ... is not possible to establish any kind of open access system simply by default. Rather, development of an open access system can only successfully occur through deliberate construction and active management.⁴
- 2.4 Since publishing agreements establish the legal relationship between authors and publishers, their detailed terms are of central importance to the development of systems to provide open access in the Australian research and academic sector. In establishing the legal framework for a system of open access to academic and research materials, it is necessary to:
- determine the degree of “openness” required in relation to those materials,
 - understand the roles of, and relationships among, the relevant parties involved in funding, creating, publishing, distributing and using academic and research materials; and
 - consider how best to manage the often complex inter-relationships among the various parties, especially with respect to their copyright interests in the materials, so that the relationships and copyright interests can be effectively managed to achieve the desired degree of open access in the system.⁵
- 2.5 Publishing agreements routinely provide for copyright in the published work to be assigned (transferred) or licensed to the publisher. Copyright is commonly dealt with by assignment and, to a lesser extent, by the granting of a licence to the publisher. Where the author assigns copyright to a publisher, it is often in return for an up-front fee or periodic payments based on the volume or value of sales, a “royalty”.

⁴ OAK Law Project, *Legal Framework Report*, p 113.

⁵ *Ibid.*

2.6 Copyright may be assigned either entirely or in part. As personal property, copyright can be dealt with in the same way as other forms of property. It can be given away, licensed, assigned, sold, included in a will or pass under laws of intestacy or bankruptcy.⁶ Assignment involves the transfer of rights to another person. To be legally enforceable the assignment (transfer) requires an agreement in written form which is signed (or at least intended to be signed) by the assignor (the person who owns and is assigning the rights), or on behalf of that assignor.⁷

2.7 When a licence is granted, the copyright owner gives the licensee permission to exercise some or all of his exclusive rights, but does not permanently part with ownership of copyright. A copyright licence may be exclusive, sole or non-exclusive.

- An **exclusive licence** is one that authorizes the licensee, to the exclusion of all other persons, to do an act that, by virtue of the *Copyright Act 1968 Cth* (*Copyright Act*), the owner of the copyright would, but for the licence, have the exclusive right to do. The grant of an exclusive licence must satisfy the same requirements as those for an effective assignment, that is, it must be in writing and signed by the copyright owner.
- A **sole licence** is one that authorises the Licensee, and no other licensees, to do certain acts. The Licensor, however, can still exercise the rights granted under the licence.⁸
- Under a **non-exclusive licence**, the copyright owner grants other persons the right to exercise some or all of the exclusive rights while retaining ownership of the copyright material and the right to exercise the exclusive rights or to license them to another person or persons. Non-exclusive licences may be granted in express terms or may be implied from the circumstances.⁹

2.8 Publishing agreements under which copyright is assigned or licensed typically form a contract between the author and publisher. For a contractual agreement to be binding, an essential element is “consideration”, or, in other words, something of value (“a promise for a promise”) which passes between the parties. Where copyright is assigned or licensed, generally no issue about consideration arises. The person or entity to which the copyright is transferred (the assignee) or licensed (the licensee) is considered to have received something of value because they have the benefit of being able to exercise the exclusive rights which are the subject of the grant while the assignor or licensor (usually the author) is receiving the value of refereed publication and in some cases a payment.

⁶ Section 196(1) of the *Copyright Act 1968* (Cth) (hereinafter *Copyright Act*).

⁷ Section 196(3) of the *Copyright Act*.

⁸ The Arts Law Centre of Australia “Licence” available at

<http://www.artslaw.com.au/LegalInformation/Indigenous/Licence.asp> at 28 September 2007.

The Arts Law Centre of Australia available at <http://www.artslaw.com.au/LegalInformation/Indigenous/Licence.asp> at 28 September 2007.

⁹ Fitzgerald, A and Fitzgerald, B, *Intellectual Property in Principle*, Thomson Lawbook Company, 1st ed, 2004, p 197.

3. PHASE ONE – COLLECT AND REVIEW PUBLISHING AGREEMENTS

- 3.1 A key action proposed in the OAK Law Project Report No. 1, *Creating a Legal Framework for Copyright Management of Open Access Within the Australian Academic and Research Sector* (“Legal Framework Report”) was the analysis of a sample of publishing agreements in order to better understand the legal relationships they establish between academic authors and publishers and, in particular, how they deal with the parties’ copyright interests.
- 3.2 This task, undertaken in Phase 1 of the implementation of the Legal Framework Report’s proposed actions, required the collection and examination of a sample of publishing agreements used by publishers of Australian academic and research output. The publishing agreements collected and analysed for the purpose of this exercise were agreements relating to publication in journals. There will obviously be differences between the publishing agreements for journal articles and for books. However, the nature and extent of such differences as may exist do not need to be considered for present purposes as only publishing agreements relating to publication in journals were collected and reviewed in this phase.
- 3.3 As a general observation, the agreements were found to be narrow in scope in terms of the matters with which they deal and to lack consistency and comprehensiveness. The analysis of the core sample of publishing agreements confirmed that the agreements are overwhelmingly based on a model in which copyright is assigned to the publisher (rather than simply granting the publisher a licence to publish the article). Further, the agreements do not as a rule expressly permit the author to archive the article, whether on the author’s own web page (“self-archiving”) or in an open access repository.
- 3.4 The principal findings of the analysis of the terms of the publishing agreements reviewed in Phase 1 may be summarized as follows:

- Approximately 85% of the agreements sought to assign copyright from the author to the publisher. In most cases, copyright was assigned in its entirety to the publisher. In those agreements which did not assign copyright, the author granted a licence (usually an exclusive licence) to the publisher to publish the work.
- Few agreements dealt with the exercise of the author’s moral rights to any significant extent.
- Only around 5% of the agreements stated why it was necessary to assign copyright to the publisher.

- In about 85% of the sample, authors were provided with no, or minimal, usage rights. The balance of the agreements provided authors with rights to use the article in specified circumstances, primarily for scholarly purposes.
- Self-archiving was not expressly permitted in many of the agreements. Some agreements permitted the author to archive the work in a repository, but the terms of these agreements lacked clarity.
- Of the agreements that provided for the granting of a licence by the author to the publisher, approximately 90% required a copyright notice to be included in all copies of the published work identifying the copyright owner.
- Approximately 70% of the agreements sought warranties from the authors, most frequently in relation to whether the article had previously been published.
- 65% of the agreements sought a warranty from the author about the inclusion of third party copyright material. Of those agreements, all sought an indemnity from the author should any third party intellectual property rights be infringed.
- Few agreements mentioned the use of the published article for purposes of Research Quality assessment.

4. METHODOLOGY FOR ANALYSIS OF PUBLISHING AGREEMENTS

- 4.1 The methodology and questions used in analyzing the publishing agreements were formulated in the context of the OAK Law project's overall objective of improving access to knowledge in the Australian academic and research sector through the development of legal models to facilitate open access.
- 4.2 It was considered that the most effective approach towards understanding the legal relationships between academic authors and publishers would be to collect and examine a sample of publishing agreements that are currently used for articles submitted for publication by Australian academics. By this means, a snapshot view could be obtained of existing practices and the issues that need to be addressed in establishing open access systems in the Australian academic and research environment could be identified.
- 4.3 In developing the methodology for the survey of publishing agreements, regard was had to the methodology developed by RoMEO and adopted by SHERPA, as described in the report, *RoMEO Studies 4: An Analysis of Journal Publishers' Copyright Agreements*.¹⁰ Like the RoMEO study, the OAK Law Project's analysis of publishing agreements was based on the express terms of the agreements.¹¹
- 4.4 While the RoMEO study was influential for the OAK Law Project, several differences emerged between the approach taken in the OAK Law Project's analysis of publishing agreements and that adopted in the RoMEO study:
- The RoMEO study used two complementary approaches in selecting journals for analysis: a targeted approach and a self-selecting approach.¹² In the former, selected high-impact, refereed academic journals (as opposed to popular titles) were emailed advising of the project and asking for copies of their copyright agreements or licences.¹³ In addition to this targeted approach, the project issued a "general call for agreements via two professional bodies for academic journal publishers", one in the United Kingdom and the other in the United States.¹⁴ The OAK Law Project did not put out a general call for copies of publishing agreements, opting only for the targeted approach.
 - In examining publishing agreements, the RoMEO study considered the distinction between pre- and post-prints to be an important issue, explaining:

¹⁰ Elizabeth Gadd, Charles Oppenheim, and Steve Proberts, *RoMEO Studies 4: An Analysis of Journal Publishers' Copyright Agreements*, Appendix A, available at <http://www.lboro.ac.uk/departments/lis/disresearch/romeo/RoMEO%20Studies%204.pdf> at 15 January 2007 (hereinafter RoMEO Project, *RoMEO Studies 4*).

¹¹ *Ibid* at p 2.

¹² *Ibid* at p 1.

¹³ *Ibid* at p 2.

¹⁴ *Ibid*.

An important issue relating to the time of assignment is whether the preprint and the postprint are actually separate copyright works. If they are, publishers requiring copyright transfer pre-refereeing may only have obtained rights in the preprint, and the author is free to do what s/he likes with the postprint.....¹⁵

While not discounting this point entirely, in the Australian context, it is usually the case that the pre- and post-prints cannot be regarded as distinct and separate copyright works. Consequently, in the OAK Law project, this was not considered to be an issue requiring detailed examination during the analysis of publishing agreements.

- The RoMEO project initially undertook a review of a small number of agreements to assist in the development of the criteria against which the agreements were to be analysed. The OAK Law Project instead proceeded directly with the formulation of a list of questions to be used in analyzing the publishing agreements, based on the researchers' knowledge of copyright issues relevant to the publication of academic and research materials.
- In cases where publishers provided more than one agreement, the approach taken by the RoMEO project in undertaking the analysis was as follows:

Where a publisher had different agreements for different journals, an agreement from a high-impact journal was taken where possible for analysis. If a publisher had a general agreement for a group of journals, and specific agreements for others, the general agreement was used for this analysis.¹⁶

By contrast, the OAK Law project analysed all available agreements, both general and specific, and did not restrict the analysis to agreements from high impact journals. Five of the publishers provided several agreements (namely BC Decker Journals, CSIRO Journals, Slack Journals Inc., Pavilion Publishing Journals and Early Childhood Australia). In most instances those publishers used a general agreement for a group of journals. In cases where specific agreements were used for different journals, each of those specific agreements was also analysed.

Constructing the target list of publishers and collecting the sample of publishing agreements

- 4.5 Early in Phase 1, a target list of relevant publishers was developed. This was done by consulting the Thompson ISI database which lists details of all QUT-authored publications in the ISI databases including citation counts. The database was sorted by journal name to establish which journals frequently publish articles by QUT

¹⁵ Ibid at p 7.

¹⁶ Ibid at p 2.

authors. This list was then checked against the SHERPA/RoMEO database and entries for publishers that were already included in the SHERPA/RoMEO database were deleted.

The sample was derived from a listing of publishers of major importance to authors at the Queensland University of Technology, Brisbane. It provides a starting point from which publishers important to authors and researchers at other Australian universities can be identified.

- 4.6 A search of the publishers' websites was conducted to find copies of their standard publishing agreements. If copies of the agreements were not available on the publishers' websites, the listed publishers were contacted by email, with a request for a copy of the publishing agreement/s they use for journal articles.
- 4.7 Only publishing agreements used by publishers that were not already included in the RoMEO/SHERPA database were collected and analysed.¹⁷ After contacting approximately 107 academic publishers in Australia, Canada, the United Kingdom and the United States, a core sample of approximately 95 publishing agreements was obtained. **Appendix 1** provides the list of publishers from whom publishing agreements were obtained. In the aggregate, the publishing agreements related to a total of 669 journals. The analysis of publishing agreements used by publishers of major importance in the Australian academic environment was carried out from September 2006 to January 2007.
- 4.8 While it was not possible to obtain access to all publishing agreements used by academic publishers identified in the target group, for reasons canvassed in the Legal Framework Report it was considered that the sample studied needed to be sufficiently large and representative if conclusions were to be drawn with an adequate degree of reliability.

Formulating the questions for analysis of the publishing agreements

- 4.9 A set of criteria was developed for the analysis of the publishing agreements, based on issues which had been identified as relevant in the context of journal publication of academic and research materials. The criteria used to analyse the sample of publishing agreements were as follows:

¹⁷ The RoMEO Project (Rights METadata for Open Archiving) was funded by the JISC for one year (1 August 2002–31 July 2003) to investigate the rights issues surrounding the 'self-archiving' of research in the United Kingdom academic community under the Open Archives Initiative Protocol for Metadata Harvesting (OAI-PMH): <http://www.lboro.ac.uk/departments/lis/disresearch/romeo> The SHERPA project (Securing a Hybrid Environment for Research Preservation and Access) followed on from the RoMEO project and sought to establish institutional open access ePrint repositories in 20 partner institutions: <http://www.sherpa.ac.uk> A list of publishers and their archive policies has been created to assist digital repository managers in complying with publisher requirements (SHERPA/RoMEO database).

- is there a written agreement signed by the author/s or other copyright owner/s¹⁸ relating to the rights granted to the publisher?
- is copyright assigned to the publisher and, if so, is copyright assigned wholly or partially?
- if there is a partial assignment of copyright, what rights are retained by the assignor/s (for example in respect to time or territory)?
- if copyright is not assigned, is the publisher granted a licence by the author/s (or other copyright owner/s)? If so, is the licence exclusive, sole or non-exclusive?
- in instances where the copyright is assigned (wholly or partially), does the publisher grant a licence back to the author/s (or other copyright owner/s)? If so:
 - a)* does the licence contain express provisions relating to self-archiving of the work by the author or deposit of the work in a digital repository?
 - b)* does the licence grant any additional rights to the author/s to use the article? If so, describe the rights granted by the publisher to the author/s; and describe the conditions applying to the licence granted by the publisher to the author/s.
- in instances where copyright is assigned (wholly or partially), is there a statement in the written agreement or in the publisher's policy explaining why assignment is required (rather than obtaining a licence)?
- how does the publishing agreement deal with the author's moral rights?
- what are the publisher's obligations/undertakings to the author/s in the agreement?
- what warranties, representations and undertakings are made by the author/s to the publisher in the agreement?
- is there provision for use of the article for purposes of Research Quality Assessment under the Research Quality Framework?

4.10 The criteria described in paragraph 4.9 above were used to develop a set of questions to be followed in undertaking the analysis of the publishing agreements. The full set of questions used to analyse the agreements is set out in **Appendix 2** to this report.

¹⁸ Hereinafter identified as the "assignor/s".

5. KEY FEATURES OF PUBLISHING AGREEMENTS

- 5.1 This chapter provides an overview of the key features of publishing agreements that were identified upon detailed examination. Illustrative examples of actual clauses used in the core sample of publishing agreements are reproduced in the coloured boxes.
- 5.2 The brevity of agreements was a notable feature of the sample. Only a few of the publishing agreements examined were lengthy or detailed, dealing in a comprehensive way with the issues raised by the questions used for analysis. The less detailed agreements differed in their generality: some simply assigned copyright to the publisher, while others contained additional clauses such as author warranties and indemnities.

Statement of reasons for entering into the publishing agreement

- 5.3 The majority of publishing agreements in the core sample did not include a statement in the preamble or recitals setting out the aim and effect of the agreement or explaining why the parties were entering into it.
- 5.4 In cases where copyright was assigned, the agreements rarely included a statement explaining why it was necessary to transfer copyright in the work being published rather than merely granting a license to the publisher.
- 5.5 It would be of assistance to include a preamble or recitals in publishing agreements, providing a brief description of the reasons for entering into the agreement, the nature of the transaction and the relationship between the parties. Inclusion of such a statement would be particularly helpful for authors, many of whom have only a sketchy understanding of their legal rights and obligations under publishing agreements.

Example Statement of Reasons for the Agreement

It is the policy of the [...] to acquire copyright in all the material published in the e-journal. Assignment assures that requests for permission to reproduce your article in printed or electronic media are handled systematically and in accordance with a general policy which is aware of the market and any relevant changes in international copyright legislation, and ensures the widest possible dissemination of the journals, while protecting against possible infringements of the rights of both the author and the publisher.

Assignment of copyright to publisher

- 5.6 The publishing agreements in this sample predominantly required authors to assign to the publisher the entire copyright in the work being published. Many agreements

expressly stated that the assignment would be for the full term of the copyright plus any extensions or renewals.

- 5.7 Occasionally, clauses dealing with the assignment of copyright were very detailed, seemingly to ensure clarity about the extent of the assignment. For example, the American Educational Research Association agreement was comprehensive, dealing not only with assignment but also addressing the right to prepare a derivative work based upon the work.¹⁹
- 5.8 Another comprehensive agreement which sought to assign the whole of the author's copyright to the publisher also provided that, if the assignment was found to be ineffective, the author granted to the publisher a sole, exclusive and irrevocable licence.²⁰
- 5.9 No agreements in the core sample provided for a partial assignment of copyright.

Grant of "licence back" to the author/s

- 5.10 In a large proportion (about 85%) of the publishing agreements in which copyright was assigned to the publisher, authors were granted no or minimal usage rights. The remaining agreements granted rights to authors to use the article in specified circumstances, although there was variation in the extent to which rights were granted. In most cases where usage rights were granted to the authors, it was clear that the publishers favoured the author being able to use the work for scholarly or teaching purposes. The agreements confirmed the authors' rights to use the work for these purposes provided appropriate acknowledgement was made of the journal in which the article was published. However it is not clear from the agreements whether the grant of a licence to the author permitting use of the work for scholarly or research purposes also extends to permit the author to make the article available by means of self-archiving on a web site or in a digital repository.

Self-archiving

- 5.11 There was little by way of express statements in the publishing agreements addressing the issue of whether the authors are permitted to self-archive the work submitted for publication on a personal web site or to deposit it into a disciplinary or institutional repository.
- 5.12 As noted in the RoMEO study, failure to expressly address the position with respect to self-archiving of published works produces uncertainty for authors:

Surveys of self-archivers show that two of their key concerns are that self-archiving works will break existing agreements with publishers, or that

¹⁹ The American Educational Research Association, Paragraph 3.

²⁰ Australian Society of Anaesthetists Terms and Conditions, Clause f.

*publishers will refuse to publish their work if they know it has been self-archived.*²¹

- 5.13 Clearly, in the interests of promoting open access to academic and research publications it would be advisable to reduce the uncertainty faced by authors by the inclusion in publishing agreements of express provisions addressing whether, and how, published works may be self-archived or deposited into a digital repository.

Granting of a licence by the author/s (or copyright owner/s) to the publisher

- 5.14 Those agreements in the core sample that did not assign copyright instead granted a licence from the author/s (or other copyright owner/s) to the publisher. Examples of such agreements are those provided by Early Childhood Australia Incorporated and Adult Learning Australia. Publication in these journals requires the author to grant an exclusive licence to the publisher.
- 5.15 In most of the agreements which granted a licence to the publisher, the licence was an exclusive one, with only a few instances found of licences being granted as non-exclusive or sole licences.
- 5.16 Some agreements granted the licence for a specified duration. In the Early Childhood Australia agreement, for example, the author grants the publisher a licence for a three year term.
- 5.17 Generally, in this sample, publishers were granted quite extensive rights under the licence, typically granting rights to publish, print, sell, reproduce, communicate to the public or otherwise deal with the work for the term of the licence²².
- 5.18 In addition to the usage rights licensed to the publishers, the publishing agreements which licensed copyright in the work to the publisher dealt extensively with other key aspects of the author-publisher legal relationship, including:
- a warrant by the author/s regarding ownership of copyright (see paragraph 5.25 below);
 - author warranties that did not differ greatly from those in agreements to assign copyright (namely originality, no prior publication in any form, nothing which to the author's knowledge is libelous) (See paragraph 5.25 below);
 - indemnification by the author of the publisher for loss, injury or damage incurred as a result of the author's breach of warranty (see paragraph 5.28 below);

²¹ RoMEO Project, *RoMEO Studies 4*, p 1.

²² Early Childhood Australia Inc, Author Licence Agreement – AJEC Journal Series, Paragraph 1.

- obligation to display a copyright notice (See paragraph 5.21 below); and
- inclusion of third party copyright material (See paragraph 5.27 below).

5.19 The licence agreements in the core sample also expressly granted the publisher the right to sub-license the work.²³

5.20 The core sample licence agreements generally stated whether the licence could be revoked or was irrevocable. For example, the agreements issued by Early Childhood Australia Incorporated, contain a clause which clearly states that the licence is revocable in certain circumstances, primarily involving a breach of the licence terms. That agreement allows for termination or reversion of rights in the following circumstances:

Either party may by one month's notice in writing to the other party terminate this Deed without prejudice to any claims outstanding or any sub-licenses properly granted in the event of:

- i) *Any breach of non-observance by the other Party of any terms and conditions in this Deed.*
- ii) *If the Work being out of print and ECA does not within six (6) months of written inquiry notify the author/s that it will reprint the Work within twelve (12) months.*²⁴

Copyright notice on licensed works

5.21 The agreements which licensed the publisher to publish the work (but did not assign copyright) contained provisions about a copyright notice, obliging the publisher “to put the copyright notice in all copies of the Work published”²⁵. The imposition of an obligation on the publisher to include a copyright notice on copies of the published work providing information about the copyright owner is an appropriate way of ensuring that the author’s economic and moral rights are recognized.

Publisher’s obligation to publish

5.22 A number of the agreements impose obligations on the publisher to proceed with publication of the work within a specified time frame, expressly providing that the consequence of the publisher’s failure to comply with this undertaking is that copyright will revert to the author/s.

²³ Ibid.

²⁴ Ibid at Paragraph 13.

²⁵ Early Childhood Australia Inc, Author Licence Agreement – AJEC Journal Series, Clause 8.

5.23 However, many of the agreements which assign copyright in its entirety to the publisher do not impose any obligation on the publisher to proceed with publication or provide for consequences of failure to publish (see, for example, the American Educational Research Association agreement).

Publisher's performance standards

5.24 In general, the core sample agreements did not comprehensively specify minimum performance standards to be met by the publisher. In those agreements which included minimum performance standards, none contained a clear statement of the consequences of the publisher's failure to meet those standards.

Author's warranties and indemnification of publisher

5.25 The majority of agreements sought to protect the publishers' interests, frequently through author warranties and indemnities. The agreements generally sought warranties from the authors that:

- the author has obtained written permission for the inclusion of any third party copyright material into the author's work;
- the work is the author's original work and has not plagiarized another author's work;
- the work has neither been previously published, nor submitted for publication elsewhere;
- the work does not contain any statements that are or could be construed as abusive, libelous, defamatory, obscene or fraudulent – typically with an all encompassing, broad 'catch-all' statement that the work does not infringe the rights of others, nor is it unlawful in any aspect;
- where works have been prepared by more than one author, that all authors have authorised the author signing the agreement to do so on their behalf.

5.26 Unusually, the AAEGT Agreement for transfer of copyright includes a clause that the author, where signing on behalf of co-authors, warrants that he/she agrees on the co-author's behalf the order of names in the publication.

5.27 Numerous agreements require the author/s to warrant that, if their work includes third party copyright material, they have obtained all necessary permissions from the third party to incorporate that material into the author/s' work. One agreement went a step further, seeking a written explanation from the author if the author had included third party copyright material in the work but had failed to request permission for this use

of the material.²⁶ The reason for this requirement was to enable the publisher to obtain sufficient information about the situation to enable proper consideration to be given to whether the third party material could be published.

5.28 Most of the agreements also required the author to indemnify the publisher for loss or damage suffered as a consequence of a breach of warranty by the author.

5.29 It was anticipated that where copyright is assigned or a “strong” exclusive licence is granted to the publisher, more comprehensive warranties and indemnities would be sought from the author/s. Examination of the agreements found this to be the case, particularly in circumstances where there is some degree of commerciality to the agreement, for example, payment of royalties to the author/s.

Research Quality Assessment

5.30 For the most part, the agreements did not contain express provisions addressing how the published work may be dealt with for purposes of Research Quality assessment review processes. While some clauses alluded to the possibility of research quality assessment being undertaken, the extent to which the published work can be used for academic quality assessment purposes is an issue that needs to be further clarified in the publishing agreements.

Moral rights

5.31 Moral rights were rarely touched upon in the sample agreements. Moral rights are personal rights belonging to authors and creators of copyright materials, which exist independently of the economic rights comprised within copyright (such as the right to reproduce or communicate in electronic form). The key moral rights recognised in Australian law are:

- the right of attribution of authorship, that is, the right to be identified as the author of the work if certain acts are done in respect of the work²⁷;
- the right not to have authorship of the work falsely attributed, that is, the right not to have a person do an act of false attribution such as inserting or affixing a person’s name to the work, or using a person’s name in connection with the work, so as to imply falsely that the person is an author of the work²⁸; and
- the right of integrity of authorship, that is, the right not to have the work subjected to derogatory treatment.²⁹

²⁶ Australian Council for Educational Leaders, *Leading and Managing Journal Contributor’s Publishing Agreement*, Paragraph 1.

²⁷ Section 193 *Copyright Act*.

²⁸ Section 195AC *Copyright Act*.

²⁹ Section 195AI *Copyright Act*.

As rights which are personal to the copyright creator, moral rights cannot be assigned and continue to exist even after the economic rights have been transferred. Although moral rights cannot be assigned, the creator of a copyright work may give their consent for the work to be dealt with in ways that would otherwise infringe their moral rights.³⁰ In the case of literary and artistic works, moral rights will not be infringed by an act or omission within the scope of a written consent by the author.³¹ A consent by an author for an act or omission is ineffective unless it is given in relation to specified acts or omissions, or specified classes or types of acts or omissions (whether occurring before or after the consent is given) and in relation to either a specified work or works existing at the time the consent is given or a specified work or works of a particular description which are yet to be completed at the time the consent is given.³² An employee may give a consent in favour of their employer in relation to all or any acts or omissions (whether occurring before or after the time the consent is given) and in relation to all works made or to be made by the employee in the course of their employment.³³ Where consent for an act or omission within the scope of the copyright creator's moral rights is given in favour of the owner or prospective owner of copyright in the work/s to which it relates is presumed (unless a contrary intention appears in the consent instrument) to extend to their licensees and successors in title and to any persons who are authorized by the copyright owner or prospective owner or by such a licensee or successor in title, to do acts comprised in the copyright.³⁴

5.32 In determining whether an author's moral rights of integrity and attribution have been infringed, a "reasonableness" test is applied.³⁵ For example, an author's moral right of integrity may be infringed if a publisher reproduces a literary work written by the author in an anthology or derivative work in circumstances that the author regards as amounting to "derogatory treatment" because it is prejudicial to their honour or reputation.³⁶ However, even where the work has been subjected to derogatory treatment, the author's moral right of integrity of authorship will not be infringed if it is established that it was reasonable in all the circumstances to subject the work to such treatment.³⁷ The matters to be taken into account in determining whether it was reasonable in particular circumstances to subject a literary or artistic work to derogatory treatment include the nature of the work, the purpose for which it is used, the manner and context in which it is used, any relevant industry practice or practice contained in a voluntary industry code of practice and whether the work was made in the course of the author's employment or under a contract for the performance of services for another person.³⁸

5.33 Few of the agreements contained provisions expressly permitting the publisher to deal with the copyright work by acts or omissions within the scope of the author/s'

³⁰ Sections 195AW, 195AWA *Copyright Act*.

³¹ Section 195AWA(2) *Copyright Act*.

³² Section 195AWA(3) *Copyright Act*.

³³ Section 195AWA(4) *Copyright Act*.

³⁴ Section 195AWA(5) *Copyright Act*.

³⁵ Sections 195AR and 195AS *Copyright Act*.

³⁶ Section 195AJ *Copyright Act*.

³⁷ Section 196AS(1) *Copyright Act*.

³⁸ Section 196AS(2) *Copyright Act*.

moral rights, as envisaged by s 195AWA of the *Copyright Act*.³⁹ One agreement expressly asserted the author/s' moral rights, although such an assertion is not required under Australian law.⁴⁰ There is a requirement for an author to assert his/her moral rights under the United Kingdom copyright legislation (*Copyright, Designs and Patent Act* 1988, s 78) but no equivalent provision exists in the Australian *Copyright Act*. Since moral rights come into existence automatically without the need for an express assertion by the author, clauses that seek to assert moral rights are not needed if the publishing agreement is governed by the Australian statute. Nevertheless, for the sake of clarity, particularly where Australian works are being distributed or accessed in other countries, it may be advisable to include an express statement drawing attention to the existence of the author's moral rights and the author's intention to assert them.

5.34 Particularly in cases where copyright is assigned, it is important that the issue of moral rights is addressed at the time the publishing agreement is entered into. The publishing agreement should contain an express statement that the publisher recognizes that the author has moral rights in the work. Further, if the publisher is authorized to deal with the work in ways that would otherwise infringe the author's moral rights, the scope of the publisher's authority to deal with the work should be spelled out. For example, if the publisher is permitted to make material alterations to the work, the purpose/s for which alterations can be made should be set out in the agreement. Such purposes may include the correction of factual errors and to ensure that the work meets legal requirements or avoids any breach of law.

5.35 In respect of academic articles published in refereed journals, it would be unlikely that an academic author would consent to acts or omissions that would infringe their moral rights, apart from a relatively limited range of acts that are necessary to enable publication to occur. Consequently, the moral rights clause could be expected to simply state that the publication agreement does not affect the moral rights of the author in the article. To the extent that clarification is required, the clause may also expressly state that the author has the right to be identified as the article's author and to object to derogatory treatment of the article.⁴¹

³⁹ For example, Clause f of the Australian Society of Anaesthetists Terms and Conditions, which states that "all moral rights in the manuscript are waived".

⁴⁰ Clause 3 of the Australian Association for the Education of the Gifted and Talented *Agreement for the Transfer of Copyright* states: "You [the author] hereby assert your moral rights to be identified as the author of the Article according to the Australian Copyright Act 1968."

⁴¹ See for example, Clause 4 of the SURF Licence to publish which states: "This agreement does not affect the moral rights of the Author in or to the Article. More specifically, the Author asserts his right to be identified as the Author and the right to object to derogatory treatment."

6. PHASE TWO – REVIEW OF PUBLISHERS’ OPEN ACCESS POLICIES AND PRACTICES

- 6.1 The aim of Phase 2 of the implementation of the Legal Framework Report was to obtain a better understanding of publishers’ attitudes towards academic authors’ archiving of published journal articles in institutional or disciplinary digital repositories or on personal web sites.
- 6.2 Phase 2 involved a survey of academic journal publishers to obtain information about their policies and practices relating to open access to the academic and research material they publish.
- 6.3 The results of the analysis of academic journal publishing agreements conducted in Phase 1 and publishers’ open access policies and practices conducted in Phase 2 have been applied in Phase 4 to develop the OAK List. Phase 4 is based on the action item proposed in the Legal Framework Report to:
- develop an online, searchable data base of information about publishing agreements and publishers’ open access policies and practices (the OAK List)...⁴²
- 6.4 The OAK List is an online, web-based, searchable database of information about publishing agreements and publishers’ open access policies and practices, accessible by authors, copyright administrators and repository managers in Australia and overseas. It has been designed to be interoperable with the SHERPA/RoMEO database⁴³ developed by JISC in the United Kingdom.
- 6.5 The information obtained in Phase 2, together with that from Phase 1, provides a basis for proceeding with the actions proposed for Phase 5, that is, the development of materials including a set of model publishing agreements, a set of standard clauses, guidelines and toolkits designed for use by authors, publishers, copyright administrators and repository managers to facilitate open access to academic journal publications.

⁴² OAK Law Project, *Legal Framework Report*, Chapter 5, p 157.

⁴³ See <http://www.sherpa.ac.uk>

7. METHODOLOGY FOR ANALYSIS OF OPEN ACCESS POLICIES AND PRACTICES

- 7.1 During Phase 1 of the implementation of the Legal Framework Report, publishers were contacted and, where possible, copies of their publishing agreements were obtained. Approximately 95 publishing agreements, relating to 669 journals, were collected and analysed.⁴⁴ As noted at paragraph 5.12, the detailed analysis of the core sample of publishing agreements found that they contained little by way of express statements on matters relevant to open access such as the rights of authors to self-archive the work on a personal website or to deposit it into a disciplinary or institutional repository.
- 7.2 The absence of provisions relating to open access, self-archiving or repository deposit in the sample of publishing agreements analysed in Phase 1 meant that further information needed to be obtained from publishers as part of Phase 2 of the implementation of the Legal Framework Report's proposed actions. The action proposed for Phase 2 involved the collection of information from academic journal publishers about their policies and practices relating to open access to the academic and research material they publish.⁴⁵ The aim of Phase 2 was to obtain a better understanding of publishers' attitudes towards academic authors' archiving of published journal articles in institutional or disciplinary digital repositories or on personal web sites. Phase 2 commenced with negotiations with a sub-set of the publishers who had provided the 95 agreements that were analysed in Phase 1. Of the 95 publishers identified in Phase 1, 72 were surveyed in Phase 2.

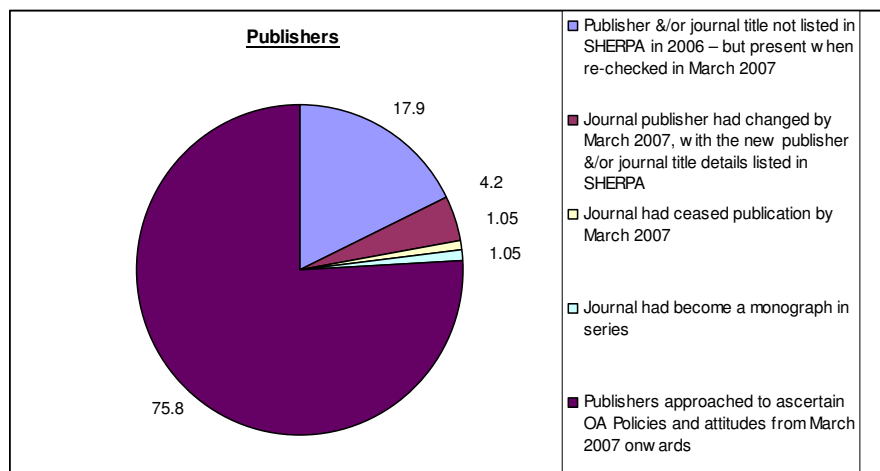
Table 1 Phase One Publishers Carried Forward to Phase Two Investigations

Outcomes of Investigation	Publishers	%
Publisher &/or journal title not listed in the SHERPA/RoMEO database in 2006 – but present when re-checked in March 2007	17	17.9
Journal publisher had changed by March 2007, with the new publisher &/or journal title details listed in the SHERPA/RoMEO database	4	4.2
Journal had ceased publication by March 2007	1	1.05
Journal had become a monograph in series	1	1.05
Publishers approached to ascertain OA Policies and attitudes from March 2007 onwards	72	75.8
TOTAL	95	100%

⁴⁴ See Appendix 1.

⁴⁵ Chapter 4 of the Legal Framework Report discusses open access and open content licensing. What commenced at the Budapest Open Access Initiative and was addressed through the Bethesda Statement and Berlin Declaration is continuing to evolve. Appendix 4 of this report extracts some key statements on open access.

Figure 1 Phase One Publishers Carried Forward to Phase Two Investigations



7.3 Advanced searches were performed via the Ulrich’s Periodicals database⁴⁶ to determine the correct journal title and ISSN, publisher details and the publisher contact person. This information was entered into an Access Database, to enable tracking of emails and other communications to and from publishers.

7.4 Once an apparently appropriate contact person for each of the 72 publishers was identified from the Ulrich’s Periodicals database, an initial email was sent to them. This initial email requested information on whether the publisher had an open access policy or other document that provided guidance on whether authors can deposit their articles in a digital repository. Approximately three weeks later, a follow-up email, containing identical text, was sent to those publishers who had not yet responded to the initial email. Of a total of 72 publishers contacted, 20 did not respond to either communication.

7.5 The 52 publishers who responded were contacted a second time to ascertain their views on self-archiving of pre-print and post-print versions of articles. For the purposes of this analysis, the definitions of “pre-print” and “post-print” proposed by Peter Suber in his 2006 article “Open Access Overview”⁴⁷ were adopted. Suber defines “pre-print” as “any version of an article prior to peer review and publication, and is therefore usually the version submitted to a journal”. He explains that it is important to distinguish two kinds of “post-print”: “(a) those that have been peer reviewed but not copy-edited and (b) those that have been both peer reviewed and

⁴⁶ See <http://www.ulrichsweb.com/ulrichsweb/>.

⁴⁷ Peter Suber, *Open Access Overview* available at <http://www.earlham.edu/~peters/fos/overview.htm> at 15 January 2007. These definitions have been used by the European Research Advisory Board in its December 2006 Final Report, *Scientific Publication: Policy on Open Access* pp 6 and 7 available at http://ec.europa.eu/research/eurab/pdf/eurab_scipub_report_recomm_dec06_en.pdf at 15 January 2007.

copy-edited. Some journals give authors permission to deposit the first kind of postprint but not the second kind in an OA repository”⁴⁸

Managing the data collated

- 7.6 To store and manage the data about publishers and journal titles that was obtained in the course of the analysis of academic journal publishing agreements in Phase 1 and the review of publishers’ open access policies and practices in Phase 2, an Access Database was developed. This Access Database formed the basis for modeling an online database interoperable with the SHERPA/RoMEO database to achieve the goals of Phase 4 of the implementation of the Legal Framework Report. The Access Database provided an interim step in collecting the data required to populate the OAK List.

⁴⁸ Ibid at 15 January 2007.

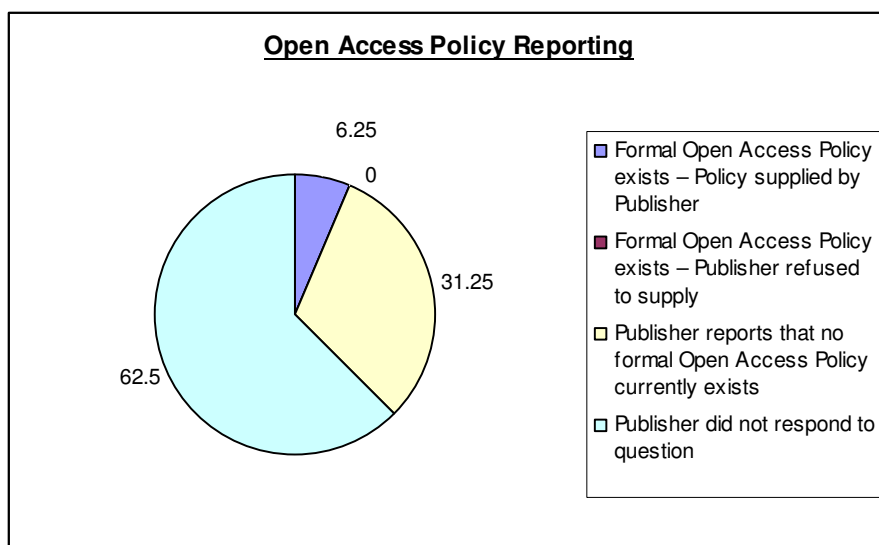
8. RESULTS OF PUBLISHER REQUESTS REGARDING OPEN ACCESS/ARCHIVING

- 8.1 Phase 2 provided a great deal of insight into the potential complexities of the relationship between professional or academic societies, and commercial publishers. Some societies reported that they retained publication responsibilities, while using a commercial publisher to print, assemble and distribute their journals. Other societies had handed publication responsibilities entirely to an external commercial publisher, and a small number of societies reported a hybrid model. These revelations in March 2007 had the effect of reducing the original set of 72 publishers under investigation down to a reporting group comprising 64 publishers.
- 8.2 Records in the Access Database for the 64 publishers were analysed to assess the conditions and restrictions on open access applied by those publishers.

Table 2 Publishers Reporting Formal Open Access Policies

Open Access Policy Reporting	Publishers	%
Formal Open Access Policy exists – Policy supplied by Publisher	4	6.25
Formal Open Access Policy exists – Publisher refused to supply	0	0
Publisher reports that no formal Open Access Policy currently exists	20	31.25
Publisher did not respond to question	40	62.5
TOTAL	64	100.0

Figure 2 Publishers Reporting Formal Open Access Policies



- 8.3 As the OAK List is intended to be interoperable with the SHERPA/RoMEO database of publishers, a crucial step in the Phase 2 assessment of publishers was to describe and analyse them using exactly the same methodology and criteria as SHERPA and RoMEO Projects.
- 8.4 Publishers' practices in relation to open access and self-archiving were first surveyed by Project RoMEO, a United Kingdom project funded by the Joint Information Systems Committee (JISC). Initially, colours were assigned to indicate publishers' open access practices (whether based on the terms of their publishing agreements and/or published policy statements), according to a very simple categorization. Green was assigned to publishers that permitted self-archiving, while publishers that did not permit authors to self-archive were not designated green. Subsequently, the RoMEO project team drew a further differentiation between publishers that permitted authors to self-archive post-prints and those that permitted only the pre-print to be self-archived. Publishers in the latter group were designated as "pale green" i.e. almost green.⁴⁹
- 8.5 When the RoMEO project ended and SHERPA took over the maintenance of the list, it was decided that there were, in fact, other categories which should be recognised. Some publishers only allowed self-archiving of pre-prints, some only allowed post-prints, some allowed both pre-prints and post-prints to be archived, some allowed the published version, and some did not allow self-archiving of any version.
- 8.6 SHERPA continued the convention developed in the RoMEO project of using different colours to designate the publishers' archiving policies. The four broad

⁴⁹ See <http://romeo.eprints.org/publishers.html>.

categories of archiving rights are designated by the colours green, blue, yellow and white.

Green	Authors can archive both pre-print and post-print version of articles.
Blue	Authors can archive post-print (ie. final draft post-refereeing) versions of articles.
Yellow	Authors can archive pre-print (ie. pre-refereeing) versions of articles.
White	Archiving of any version of an article is not formally supported by publisher. ⁵⁰

8.7 The final outcome of the Phase 2 analysis was to code publishers by colour, to indicate their open access and archiving policies and practices.

8.8 There are often additional conditions and restrictions imposed by a publisher when permitting the different versions of articles to be archived to enable open access. Conditions are taken as terms which can be easily accommodated and which do not hinder an author in archiving their work eg. “acknowledge the publisher’s copyright in the work”. Restrictions are more prohibitive and often mean that an article has an embargo period before it can be considered open access; this often means that archiving is not formally supported and therefore, the colour categorisation is determined as being white.

8.9 The results of Phase 2 were as follows:

Table 3 Publisher Responses Regarding Open Access

Outcomes of Analysis	Publishers	%
Publisher provided sufficient detail to allow Open Access analysis using SHERPA/RoMEO colours	40	62.5
Publisher currently revising and/or writing and/or re-writing OA Policies, and has agreed to supply these when finalised	4	6.25
No response received from publisher	20	31.25
TOTAL	64	100

⁵⁰ Ibid.

Figure 3 Publisher Responses Regarding Open Access

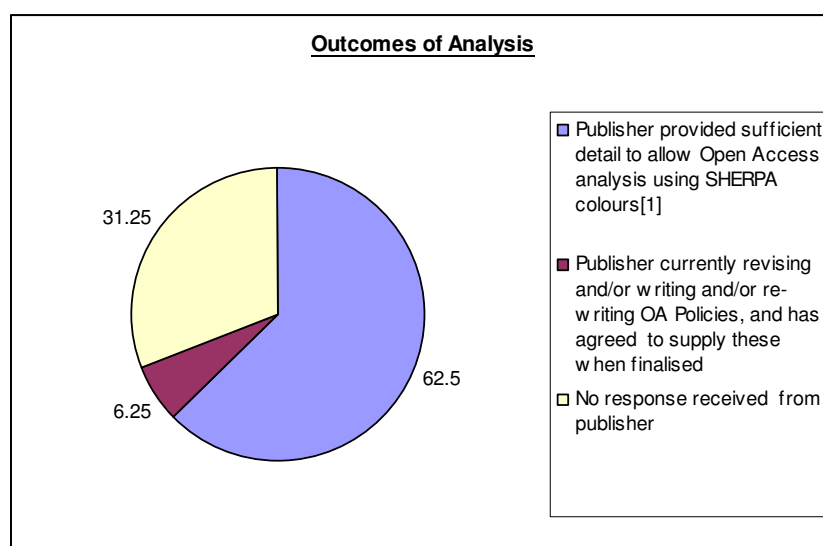


Table 4 Preliminary Analysis of Publisher Responses to Open Access as at November 2007

SHERPA/RoMEO Colour	Definition / Archiving Policy	Publishers	%
Green	Can archive pre-print and post-print	16	25
Blue	Can archive post-print (i.e. final draft post-refereeing)	3	4.7
Yellow	Can archive pre-print (i.e. pre-refereeing)	4	6.25
White	Archiving not formally supported	17	26.6
Awaiting Reponse (conceded white)	Response from Publishers delayed / No response received	24	37.5
TOTAL		64	100.0

Figure 4 Preliminary Analysis of Publisher Responses to Open Access as at November 2007

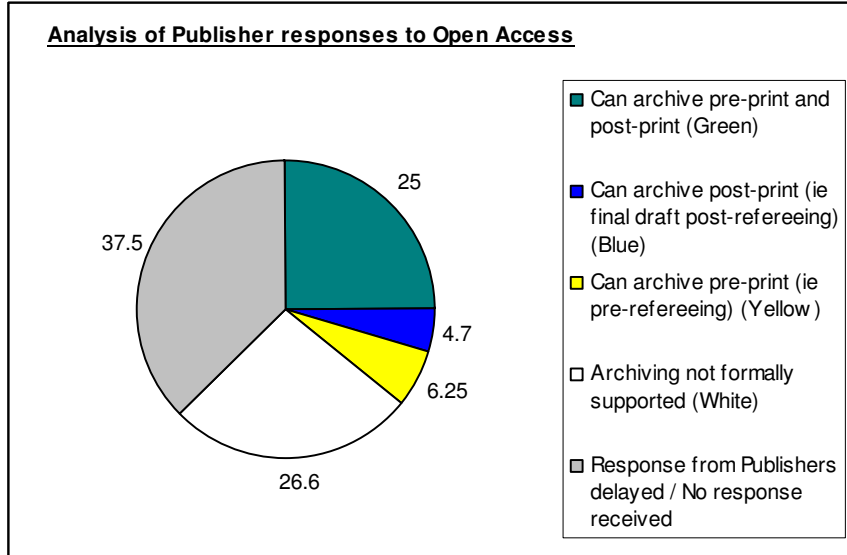


Table 5 Some Interesting Variations Discovered from the Preliminary Analysis of Publisher Responses to Open Access as at November 2007

Analysis Issue	Publishers	%
Publisher allows self-archiving into organizational repository, but specifically excludes self-archiving onto personal websites	2	5
Publisher version may not be stored in either an institutional repository, a disciplinary repository or on a personal website – but repositories may link directly to an online, full-text copy on the publishers’ website	2	5
A full-text copy may be placed on an institutional repository for use only by staff and students of that institution	1	2.5
Publishers who would have been categorised “Green, Blue or Yellow”, except that they insist on individual requests before each post-print article is placed in a repository. Some have indicated that this policy is under review, and may change. (Categorisation is in line with SHERPA) (11 records out of 17)	11	64.7

9. CONCLUSION AND NEXT STEPS

- 9.1 The OAK Law Project Report No. 1, *Creating a Legal Framework for Copyright Management of Open Access Within the Australian Academic and Research Sector* (“OAK Law Project – Legal Framework Report”) proposed that a range of actions be taken to promote the development of copyright management systems designed to ensure open access to academic publications. This report deals with the first two stages - **Phases 1 and 2** - of the implementation of the action points in Chapter 5 of the Legal Framework Report. (The full list of the actions proposed in the Legal Framework Report is set out at **Appendix 3** to this report.)
- 9.2 In **Phase 1**, the OAK Law project collected, reviewed and analysed a sample of publishing agreements used by major publishers of Australian academic and research output, in order to ascertain the principal models adopted to allocate copyright interests between authors and publishers. The analysis of publishing agreements found that they predominantly:
- seek to assign copyright from the author to the publisher; and
 - do not expressly authorize authors to archive their academic publications in a digital repository or a personal web site.
- 9.3 A survey of academic journal publishers was undertaken, in **Phase 2**, to obtain information on their policies and practices relating to open access to academic and research material. The review of publishers’ open access policies and practices found that:
- the majority of publishers did not have a formal open access policy;
 - only four of the total sample of 64 publishers surveyed had a formal open access policy;
 - 62.5% of the publishers were able to provide sufficient information to enable them to be “colour classified” using the SHERPA/RoMEO colour classification system to denote levels of open access;
 - using the SHERPA/RoMEO colour classifications:
 - 25% of the surveyed publishers were “green” (permitting archiving of the pre-print and post-print versions of published articles);
 - 4.7% were “blue” (permitting archiving of the post-print version);
 - 6.25% were “yellow” (permitting archiving of the pre-print version);
 - 26.6% were “white” (archiving not formally supported).
- 9.4 The OAK Law project has subsequently proceeded to the latter stages - **Phases 3, 4 and 5** - of the implementation of the actions proposed in the Legal Framework Report, as described in Clause 1.3.

9.5 The actions that have been, or are being taken, in these phases are:

- **Phase 3:** a survey of academics and scholarly authors in Australia to ascertain:
 - their knowledge of publishing agreements;
 - their experience in dealing with publishers;
 - their understanding of open access; and
 - what terms and conditions they consider should be included in publishing agreements;

 - **Phase 4:** development of the OAK List, an online, web-based database of information about academic publishers, in close consultation with SHERPA to ensure that a consistent approach towards the classification of publishers' open access practices is adopted across both projects; and

 - **Phase 5:** development of:
 - template/model publishing agreements to cover all aspects of copyright assignment (that is, where the parties to an agreement seek to assign copyright either in its entirety or partially) or alternatively the granting of licences (either sole, exclusive or non-exclusive); and
 - a Copyright Toolkit to assist in the preparation and execution of publishing agreements and, more broadly, to assist both publishers and authors to manage intellectual property rights.
-
-

APPENDIX 1

Publishers from whom publishing agreements were obtained

Publisher	URL
ACER	http://www.acer.edu.au/publications/acerpress/journals.html
Adult Learning Australia	http://www.ala.asn.au/#pubs
ALIA	http://alia.org.au/publishing/aarl/
Allen & Unwin	http://coombs.anu.edu.au/SpecialProj/ASAA/women-in-asia.html
AltaMira Press	http://www.altamirapress.com/RLA/journals/Curator/Index.shtml
American Educational Research Association	http://www.aera.net/publications/?id=308
American Podiatric Medical Association	http://www.japmaonline.org
American Society for Biochemistry and Molecular Biology	http://www.asbmb.org/asbmb/site.nsf/main/publications?opendocument
ANZAME	http://www.anzame.unsw.edu.au/journal.htm
Arena Printing and Publications Pty. Ltd.	http://www.arena.org.au/
Art & Australia Pty Ltd.	www.artandaustralia.com.au
Asian Studies Association of Australia (ASAA)	http://coombs.anu.edu.au/ASAA/#Publications
Asia-Pacific Academic Consortium for Public Health (APACPH)	http://www.apacph.org/site/pages/Asia-Pacific_Journal_of_Public_Health
Ashgate	http://www.ashgate.com/journals.htm
Australian Association of Rehabilitation Counsellors (ASORC)	http://www.asorc.org.au/
Association for the Advancement of Computing in Education (AACE)	http://www.aace.org/dl/index.cfm/fuseaction/currentjournal/journal/JC_MST
Association of Management and the International Association of Management (AoM/IAoM)	http://www.aom-iaom.org/5-journals.html
Australasian College of Physical Scientists and Engineers in Medicine	http://www.acpsem.org.au/journal/index_journal.html
Australian Academic Press	http://www.australianacademicpress.com.au/publishingwAAP.htm
Australian Council for Education Leaders (ACEL)	http://www.ancel.org.au/publications.html
Australasian Drama Studies Association (ADSA)	http://www.uq.edu.au/emsah/drama/australasiandramastudiesjournal.htm
Australasian Medical Publishing Company	http://www.ampc.com.au/
Australasian Rehabilitation Nurses Association (ARNA)	http://www.arna.com.au/

ASCILITE	http://www.ascilite.org.au/journal.html
Australia and New Zealand Education Law Association (Inc.)	
Australian and New Zealand Academy of Management	http://www.anzam.uts.edu.au/
Australian and New Zealand Association for Leisure Studies (ANZALS)	http://www.staff.vu.edu.au/anzals/ANZALS-Leisure-journal.htm
Australian and New Zealand Journal of family Therapy Inc	http://www.anzjft.com
Australian Association for Research in Education	http://www.aare.edu.au/aer/aer.htm
Australian Association for the Education of the Gifted and Talented (AAEGT)	http://www.aaegt.net.au/whatwedo.html
Australian Association for the Teaching of English (AATE)	http://www.aate.org.au/
Australian Clearinghouse for Youth Studies (ACYS)	http://www.acys.utas.edu.au/
Australian College of Critical Care Nurses (ACCCN)	http://www.acccn.com.au/index.php?option=content&task=view&id=40&Itemid=72
Australian Dance Council - Ausdance National Secretariat	http://www.ausdance.org.au/outside/resources/journals.html
Australian Federation of Modern Language Teachers Associations	http://www.afmlta.asn.au/afmlta/babel.htm
Australian Health Promotion Association	http://www.healthpromotion.org.au/
Australian Historical Association	http://www.theaha.org.au/bulletin.html
Australian Institute for Primary Care, La Trobe University	http://www.latrobe.edu.au/aipc/ajph/
Australian Institute of Political Science (AIPS)	http://www.aips.net.au/aqjournal/index.php
Australian Institute of Quantity Surveyors	http://www.aiqs.com.au/
Australian Literacy Educators' Association (ALEA)	http://www.alea.edu.au/
Australian Mathematical Society	http://www.austms.org.au/Publ/Bulletin/
Australian Nursing Federation	http://www.anf.org.au/
Australian Psychological Society	http://www.psychology.org.au/publications/journals/Default.aspx
Australian Road Research Board - Transport Research Ltd	http://www.arrb.com.au/index.php?option=content&task=view&id=142&Itemid=157
Australian Science Teachers Association	http://www.asta.edu.au/resources/journal
Australian Society of Anaesthetists	http://www.asa.org.au/
Australian Veterinary Association	http://www.ava.com.au/avjintro.php
B.C. Decker Inc.	http://www.bcdecker.com/searchResults.aspx?listing=journals
Canadian Psychological Association	http://www.cpa.ca/cpsite/showPage.asp?id=1052&fr=

Canadian Society for the Study of Education	http://www.csse.ca/
Cancer Nurses Society of Australia	http://www.cnsa.org.au/
Combinatorial Mathematics Society of Australasia (Inc.)	http://ajc.math.auckland.ac.nz
CPA Australia	http://www.cpaaustralia.com.au/cps/rde/xchg/SID-3F57FEDF-3B1B4417/cpa/hs.xsl/724_ENA_HTML.htm
CSIRO	http://www.publish.csiro.au/nid/17.htm
Curriculum Corporation	http://www.curriculum.edu.au/
Curtin University	http://www.cbs.curtin.edu.au/journals/apjeb/
Duke University Press	http://www.dukeupress.edu
E. Schweizerbart'sche Verlagsbuchhandlung	www.schweizerbart.de
Early Childhood Australia Inc.	http://www.earlychildhood.org.au/pubs_subs_ajec.htm
eContent Management Pty Ltd	www.e-contentmanagement.com
Educational Publishing Company	http://www.educationpublishing.com
EDUCAUSE	http://www.educause.edu
Entomological Society of America	http://www.entsoc.org/pubs/periodicals/ee/index.htm
FIZ Karlsruhe	http://www.fiz-karlsruhe.de/
Grace Publications / Medwell Online	http://www.medwellonline.net/ijmmas/1(3)05/1(3)2005.html
Heldref Publications	http://www.heldref.org/jgeneticp.php
Idea Group Publishing	http://www.idea-group.com
Informing Science Institute	http://informingscience.org/
Institution of Engineers Australia	http://www.engaust.com.au/
Jannetti Publications, Inc.	http://www.aji.com/services/pblshng/pnj/
John Benjamins Publishing Co.	http://www.benjamins.nl/
Learning Difficulties Australia	http://www.ldaustralia.org/
MA Healthcare Ltd	http://www.ijtr.co.uk/
Manchester University Press	http://www.manchesteruniversitypress.co.uk/information_areas/journals/res_in_ed/Res_in_Ed.htm
Maney Publishing	http://www.maney.co.uk/
MERGA	http://www.deakin.edu.au/education/numeracy_and_merino/merga/
Mineralogical Association of Canada	http://www.mineralogicalassociation.ca/
Monash University	http://elecpress.monash.edu.au/french/index.html
Murdoch University	http://wwwsoc.murdoch.edu.au/cfis/journal.html
National Association for Humanities Education	http://www.nahe.org/nahe_journal.htm
Pavilion Press	www.pavpub.com
PRO-ED, Inc.	http://www.proedinc.com/journals.html
Prufrock Press Inc.	http://www.prufrock.com/client/client_pages/prufrock_jm_giftchild.cfm
Public Health Association of Australia	http://www.phaa.net.au/anzjph/anzjph.htm
Research Council on Mathematics Learning	http://www.unlv.edu/RCML/focus.html
Royal College of Nursing Australia	http://www.rcna.org.au/pages/collinfo.php
SLACK Inc.	http://www.slackinc.com/
Society for Applied Spectroscopy	http://www.s-a-s.org/journal/journal.htm

Symposium Journals	http://www.symposium-journals.co.uk/
The McDougall Trust	http://www.mcdougall.org.uk/
Triangle Journals Ltd.	http://www.triangle.co.uk/tde/index.htm
Uni Melbourne	http://www.law.unimelb.edu.au/cmcl/malr
University of Wollongong	http://www.aaisnet.org/ajis/ajis.html
World Scientific Publishing	www.worldscientific.com

APPENDIX 2

Questions - Publishing Agreement Analysis

Name of Publishing Agreement: _____

QUESTION	
1.	Is there a written agreement signed by the author/s (or other copyright owner/s) relating to the rights granted to the publisher?
2.	Is copyright assigned? a. No – copyright is not assigned [go to question 3] b. Yes – copyright is assigned: i. Is assignment of entire or part of copyright? 1. entire copyright [go to question 4] 2. part of copyright – Describe what is retained/granted by the author/s: a. time b. extent of rights retained i. SPARC Addendum ii. Others c. territory
3.	In cases where copyright is not assigned, is the publisher granted a licence by the author/s (or other copyright owner/s)? a. No b. Yes - i. Describe the kind of licence: 1. Sole 2. Exclusive 3. Non-exclusive
4.	In cases where the copyright is assigned (wholly or partially), does the publisher grant a licence back to the author/s (or other copyright owner/s)? a. No

b. Yes -

i. Are there express provisions relating to self-archiving of article or deposit in a digital repository?

1. No [**go to question 4((b)(ii))**]

2. Yes – Describe self-archiving or repository conditions, for example:

- a. Can be deposited in a publicly accessible e-print repository
- b. Can be deposited in a non-profit e-print repository
- c. Cannot appear prior to the print
- d. The accepted version only must appear
- e. Copyright notice or published source is acknowledged
- f. Cannot use the publisher version
- g. May appear on the author(s)'s and/or employer(s)'s own website
- h. May appear on an intranet
- i. May only appear prior to publication – thereafter it must be removed
- j. There must be a link to the publisher version

ii. Are there other rights granted by the publisher to the author/s to use the article?

1. No [**go to question 5**]

2. Yes – Describe the rights granted by the publisher to the author/s, for example:

- a. For scholarly or academic purposes
- b. Teaching purposes
- c. May be reproduced
- d. Rights to specific chapters only
- e. May revise and adapt
- f. May be used in derivative works
- g. May be presented orally
- h. May be distributed to colleagues
- i. May be self-archived
- j. May be published in a collection of the author(s)'s own writings
- k. May be published in a dissertation or thesis
- l. There are unlimited exceptions

3. Describe the conditions applying to the licence granted by the publisher to the author/s, for example:

- a. Copyright notice must be made (or acknowledge published

- source)
- b. The type of media is restricted
- c. The number of copies is limited
- d. May only be used for personal/non-commercial purposes
- e. May only be used in print format
- f. May not distributed systematically (for example, by email)
- g. May only be distributed internally
- h. Cannot use the publisher version
- i. Usage is subject to “fair use” provisions
- j. The work may only be partially used – not wholly

5. In cases where copyright is assigned (wholly or partially), is there a statement in the written agreement, or in the publisher’s policy, as to why assignment is required?

- a. No [go to question 6]
- b. Yes – List reasons stated

6. How are moral rights dealt with?

- a. Not mentioned, or
- b. Statutory moral rights expressly recognized, or
- c. Contractual waiver of exercise of moral rights in the article by the author/s

7. Publisher’s obligations – Describe the publisher’s undertakings to the author/s in the agreement, for example:

- a. Review (peer review), edit and publish the article
- b. License other parties to publish
- c. Provide author/s with a published copy/copies of the article (for example, copy of journal and off prints)
- d. Provide the author/s with the publisher’s copy of the article as published (for example, in pdf form)
- e. Pay the author/s, by way of:
 - i. Lump sum
 - ii. Royalty

8. Author(s)’s warranties and undertakings – Describe the warranties, representations and undertakings made by the author/s to the publisher in the agreement, for example:

- a. They are the author/s
- b. They are the owner/s of copyright
- c. The article is original
- d. The article has not previously been published
- e. The article does not infringe any third party rights
- f. All third party rights have been cleared

- g. The article does not contain any unlawful or defamatory material
- h. The article has not been submitted for review elsewhere
- i. They have the authority to sign the assignment or license of copyright
- j. The rights have not previously been transferred to another party
- k. The author will pay a fee for publication

9. Is there provision for Research Quality Assessment?

- a. Yes,
 - b. Ambiguous, or
 - c. Not mentioned.
-

APPENDIX 3

Table of Proposed Actions in Chapter 5, OAK Law Project Report No. 1, “Creating a Legal Framework for Copyright Management of Open Access Within the Australian Academic and Research Sector” (2006)

ACTION	REFER REPORT PARA.
5. Author – Publisher (Publishing Agreement)	5.50
<p>5.1 Assist funding organisations and academic institutions to:</p> <p>5.1.1 Engage in advocacy about:</p> <ul style="list-style-type: none"> a) the need to actively manage copyright in order to achieve open access objectives b) The importance of ensuring that appropriate structures are in place to enable copyright to be appropriately managed. <p>5.1.2 Develop and implement systems designed to raise awareness and understanding among academic authors, research offices and repository administrators of:</p> <ul style="list-style-type: none"> a) copyright principles in general (i.e. ownership, assignment and licensing) b) the various models of copyright management c) requirements of funding organisations in relation to enabling open access to academic and research output produced under a funding arrangement d) requirements of the author’s employer institution (under the author’s employment contract or the institutional IP policy) in relation to enabling open access to academic and research output produced in the course of the author’s employment e) the relationship between allocation of copyright interests in publishing agreements and enabling open access rights (access and re-use) to published academic and research materials f) how the various models of copyright management can be used to achieve an appropriate allocation of rights 	5.64

ACTION	REFER REPORT PARA.
<p>between author and publisher, which is consistent with open access objectives</p> <p>g) how to negotiate an appropriate allocation of copyright interests with publishers</p> <p>h) How and where to obtain access to specialist advice and assistance about copyright allocation before publishing agreements are finalised.</p> <p>5.1.3 Develop information packages (toolkits) covering the matters listed above and provide practical and ongoing training to all relevant staff, including academics, research office staff and repository administrators.</p> <p>5.1.4 Each institution should develop or identify an entity (or entities) with responsibility for ensuring that the institution's open access objectives are achieved through the proper management of copyright so that an appropriate allocation of copyright is achieved in all publishing agreements.</p>	
<p>5.2 Undertake the following activities:</p> <p>5.2.1 Conduct a survey of academic authors to obtain information on matters including:</p> <p>a) authors' awareness of the different models of publishing agreements</p> <p>b) authors' understanding of the legal implications of different models of publishing agreements (specifically their impact on enabling open access to published materials)</p> <p>c) authors' experience with publishers when negotiating publishing agreements</p> <p>d) Whether they have a preference for certain kinds of publishing agreements.</p> <p>5.2.2 Conduct a review of academic journal publishers to obtain information on their policies and practices relating to open access to academic and research material. Such a review would involve:</p> <p>a) collecting copies of publishers' standard publishing agreements</p>	5.112

ACTION	REFER REPORT PARA.
<p>b) collecting any policy statements issued by publishers on open access to published materials</p> <p>c) Ascertaining publishers' attitudes towards and practices relating to variation of the terms of standard publishing agreements, in response to author requests, eg. By inclusion of clauses reserving rights to the author.</p> <p>5.2.3 Collect and review publishing agreements of major publishers of Australian academic and research output, in order to:</p> <p>a) ascertain the principal models adopted to allocate copyright interests between authors and publishers</p> <p>b) Undertake a detailed analysis of the rights of authors and publishers in relation to published academic and research materials.</p> <p>5.2.4 Based on the results of the survey of academic journal publishers and the survey of publishing agreements, develop an online, searchable database of information about publishing agreements and publishers' open access policies and practices (the OAK List), accessible by authors, copyright administrators and repository managers in Australia and overseas.</p> <p>5.2.5 Develop the OAK List to include:</p> <p>a) information on the particular copyright allocation model/s used by the major publishers of Australian academic and research output</p> <p>b) copies of publishers' standard publishing agreements (with publisher permission)</p> <p>c) information on whether publishers permit variation of standard publishing agreements upon author request</p> <p>d) summaries of rights allocations between authors and publishers in standard publishing agreements, covering matters such as:</p> <ul style="list-style-type: none"> ○ whether copyright is assigned (and if so, in whole or in part) to the publisher ○ whether copyright is retained by the author and publication occurs under a licence granted by the author (and if so, whether the licence is exclusive or 	

ACTION	REFER REPORT PARA.
<p>non-exclusive)</p> <ul style="list-style-type: none"> ○ what rights, if any, are expressly reserved by the author ○ The rights exercisable by the publisher, with specific descriptions of the publisher’s rights in relation to further reproduction, electronic communication, commercial use etc. ○ The rights exercisable by the author, with specific descriptions of the author’s rights in relation to further reproduction, electronic communication, non-commercial use etc. <p>5.2.6 Based on the results of the surveys of academic authors, academic and journal publishers and publishing agreements, develop the following materials:</p> <ol style="list-style-type: none"> a) lists of the rights held by authors and publishers respectively in open access systems, varying according to the extent to which open access to materials is provided b) A set of model publishing agreements based on the various models of allocation of copyright rights between author and publisher, designed to facilitate open access practices, for use by Australian academic authors, copyright administrators, repository managers etc. c) a set of standard clauses to be used by authors and publishers, in conjunction with standard publishing agreements, to achieve an appropriate allocation of rights to facilitate open access to published academic and research materials. <p>5.2.7 Liaise with, and review model publishing agreements and contractual clauses developed by, organisations in Australia and overseas, eg. Science Commons, JISC-SURF, Commonwealth and State government research bodies (eg. CSIRO and primary industries departments) to ensure compatibility with the set of model publishing agreements and clauses developed in the OAK Law project.</p> <p>5.2.8 Develop a web-based copyright toolkit consisting of the model publishing agreements and clauses, accompanied by checklists and user-friendly explanatory documentation, designed and tested to ensure suitability for use as a practical</p>	

ACTION	REFER REPORT PARA.
tool for the management of copyright in materials produced by Australian academic authors.	

APPENDIX 4

Statements on, and Definitions of, Open Access

SHERPA

Open Access is . . .

If an article is "Open Access" it means that it can be freely accessed by anyone in the world using an internet connection. This means that the potential readership of Open Access articles is far, far greater than that for articles where the full-text is restricted to subscribers. Evidence shows that making research material Open Access increases the number of readers and significantly increases citations to the article - in some fields increasing citations by 300%.

<http://www.sherpa.ac.uk/guidance/authors.html#whatoa>

Budapest Open Access Initiative

The literature that should be freely accessible online is that which scholars give to the world without expectation of payment. Primarily, this category encompasses their peer-reviewed journal articles, but it also includes any unreviewed preprints that they might wish to put online for comment or to alert colleagues to important research findings. There are many degrees and kinds of wider and easier access to this literature. By "open access" to this literature, we mean its free availability on the public internet, permitting any users to read, download, copy, distribute, print, search, or link to the full texts of these articles, crawl them for indexing, pass them as data to software, or use them for any other lawful purpose, without financial, legal, or technical barriers other than those inseparable from gaining access to the internet itself. The only constraint on reproduction and distribution, and the only role for copyright in this domain, should be to give authors control over the integrity of their work and the right to be properly acknowledged and cited.

To achieve open access to scholarly journal literature, we recommend two complementary strategies.

I. Self-Archiving: First, scholars need the [tools and assistance](#) to deposit their refereed journal articles in open electronic archives, a practice commonly called, self-archiving. When these archives conform to standards created by the [Open Archives Initiative](#), then search engines and other tools can treat the separate archives as one. Users then need not know which archives exist or where they are located in order to find and make use of their contents.

II. Open-access Journals: Second, scholars need the means to launch a new generation of journals committed to open access, and to help existing journals that elect to make the transition to open access. Because journal articles should be disseminated as widely as possible, these new journals will no longer invoke copyright to restrict access to and use of the material they publish. Instead they will use copyright and other tools to ensure permanent open access to all the articles they publish. Because price is a barrier to access, these new journals will not charge subscription or access fees, and will turn to other methods for covering their expenses. There are many alternative

sources of funds for this purpose, including the foundations and governments that fund research, the universities and laboratories that employ researchers, endowments set up by discipline or institution, friends of the cause of open access, profits from the sale of add-ons to the basic texts, funds freed up by the demise or cancellation of journals charging traditional subscription or access fees, or even contributions from the researchers themselves. There is no need to favour one of these solutions over the others for all disciplines or nations, and no need to stop looking for other, creative alternatives.

<http://www.soros.org/openaccess/index.shtml>

Bethesda Statement on Open Access Publishing

Definition of Open Access Publication

An Open Access Publication [1] is one that meets the following two conditions:

1. The author(s) and copyright holder(s) grant(s) to all users a free, irrevocable, worldwide, perpetual right of access to, and a license to copy, use, distribute, transmit and display the work publicly and to make and distribute derivative works, in any digital medium for any responsible purpose, subject to proper attribution of authorship[2], as well as the right to make small numbers of printed copies for their personal use.
2. A complete version of the work and all supplemental materials, including a copy of the permission as stated above, in a suitable standard electronic format is deposited immediately upon initial publication in at least one online repository that is supported by an academic institution, scholarly society, government agency, or other well-established organization that seeks to enable open access, unrestricted distribution, interoperability, and long-term archiving (for the biomedical sciences, PubMed Central is such a repository).

Notes:

1. Open access is a property of individual works, not necessarily journals or publishers.
2. Community standards, rather than copyright law, will continue to provide the mechanism for enforcement of proper attribution and responsible use of the published work, as they do now.

<http://www.earlham.edu/~peters/fos/bethesda.htm>

Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities

Written as a result of the conference on Open Access to Knowledge in the Sciences and Humanities in October 2003, is very similar to the Bethesda Statement, with only minor additions and word changes in its definition.

<http://oa.mpg.de/openaccess-berlin/berlindeclaration.html>

DOAJ - Directory of Open Access Journals

Open Access Journal

We define open access journals as journals that use a funding model that does not charge readers or their institutions for access. From the BOAI definition [1] of "open access" we take the right of users to "**read, download, copy, distribute, print, search, or link to the full texts of these articles**" as mandatory for a journal to be included in the directory.

<http://www.earlham.edu/~peters/fos/boaifaq.htm#openaccess>

Further useful reports and information

European Advisory Board, *Final Report – Scientific Publication: Policy on Open Access* available at http://ec.europa.eu/research/eurab/pdf/eurab_scipub_report_recomm_dec06_en.pdf.

Keith G Jeffery, *Open Access: An Introduction* available at http://www.ercim.org/publication/Ercim_News/enw64/jeffery.html.

Peter Suber, *Open Access Overview* available at <http://www.earlham.edu/~peters/fos/overview.htm>.

Alma Swan, *Open access self-archiving – an introduction* available at <http://eprints.ecs.soton.ac.uk/11006/01/jiscsum.pdf>.

Peter Suber, *Timeline of Open Access Movement* available at <http://www.earlham.edu/~peters/fos/timeline.htm>.

