



# Intellectual property rights retention in scholarly works at Australian universities

## Project Report

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## Briefing paper for Universities Australia Deputy Vice-Chancellors Research Committee<sup>1</sup>

This briefing paper provides an update on retention of intellectual property rights in scholarly works at Australian universities.

Rights retention in scholarly works ensures:

1. Scholarly work is more visible and discoverable, leveraging existing investment in institutional repositories
2. Authors or universities retain the right to make scholarly works open access and authors can benefit from a potential citation advantage
3. Increased compliance with institutional open access policies
4. Improved researcher compliance with funder open access policies
5. Clearer communication of reuse rights via consistent licensing

### Recommendations

1. Universities that already have a non-exclusive licence in their IP policy take measures to assert it such as through employment agreements
2. Universities where IP is owned by creators conditionally or unconditionally that do not have a non-exclusive licence consider implementation in both IP policy and employment agreements
3. Further guidance be provided through an institutional open access policy
4. All universities should develop means of raising awareness of, and assessing compliance with, their IP policies at their own institution, and potentially through a national researcher-led engagement approach
5. All universities should develop measures in policy and/or practice to discourage or prevent authors from assigning copyright to publishers
6. The preceding recommendations should be considered as an step towards developing a strengthened rights retention approach, ideally in national policy or in law

### Definitions

For the purposes of this briefing report, intellectual property (IP) rights retention refers to mechanisms for Australian universities or authors to **retain non-exclusive reuse rights** to the author accepted manuscript version of scholarly works. This facilitates reuse of works in teaching, learning, and research, and meets open access compliance requirements. This can be used to support the 'green' route to open access, in which authors publish in

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<sup>1</sup> Report prepared by Catherine Clark, CAUL Program Director, Advancing Open Scholarship (FAIR) with Retaining Rights in IP project members Fiona Bradley (Lead) UNSW Sydney, Alissa Sputore University of Western Australia, Tracey Quixley University of South Australia, Berenice Scott University of New England, Sarah Jansen University of Newcastle

subscription journals, and make a suitable version of their work available open access in their institutional repository.

## Current status of IP in scholarly works at Australian universities

As noted in CAUL’s previous briefing, a single national model licence approach is not possible due to varying IP ownership in scholarly works by universities and authors at different universities. Case studies in Australia and internationally informed the proposed wording for non-exclusive licences in **Appendix 1** and the recommendations in this report. Rights retention has been achieved in various ways internationally, including legislative changes and national policy mandates. Examples include:

Institution/country	Approach
Queensland University of Technology	<ul style="list-style-type: none"> <li>• QUT IP policy asserts ownership of all IP created by staff<sup>2</sup></li> <li>• QUT assigns a “right to publish” scholarly works to staff, with the granting of a non-exclusive licence in favour of QUT to use the work for educational, research, and commercialisation purposes, and to make it available in the institutional repository</li> <li>• A reciprocal non-exclusive licence is granted in favour of staff to use, adapt, or modify their scholarly works</li> <li>• Note: There is some ambiguity about how staff are bound by the IP Policy as it is not named in the Enterprise Agreement</li> </ul>
France	<ul style="list-style-type: none"> <li>• The French Digital Republic Act ("Loi n°2016-1321 pour une République numérique") provides a new publication right for authors</li> <li>• When 50% or more of research is publicly funded the author retains the right to deposit the work in an institutional repository either 6 or 12 months after publication, regardless of any agreement with publishers</li> </ul>
United Kingdom	<ul style="list-style-type: none"> <li>• If adopted, the revised UK Research and Innovation open access policy will require a non-exclusive licence for all funded research outputs with the open access version of those works having a Creative Commons Attribution licence (CC-BY)<sup>3</sup></li> <li>• UKRI are also considering a requirement for copyright retention by authors</li> </ul>
Harvard University, “Harvard Licence”	<ul style="list-style-type: none"> <li>• Adopted by the Faculty of Arts &amp; Sciences in 2008 and implemented across Harvard and 70 other universities worldwide</li> <li>• Rests on a non-exclusive licence in favour of the university</li> </ul>

<sup>2</sup> QUT, D/3.1 Intellectual property [https://www.mopp.qut.edu.au/D/D\\_03\\_01.jsp](https://www.mopp.qut.edu.au/D/D_03_01.jsp)

<sup>3</sup> <https://www.ukri.org/files/funding/oa/open-access-review-consultation/>

## Implications of Plan S

Plan S is not a model policy, but rather a set of principles adopted by a group of funders to facilitate open access. It is expected that each signatory funder will revise or adopt a complying open access policy. The Plan S principles include rights retention and licensing. Even if ARC and NHMRC do not join Plan S, approximately 5% of Australian research outputs will be subject to Plan S requirements as they are funded by or co-authored with researchers that are subject to the requirements. Whether the institution or author retains the copyright is not required for Plan S so long as 1. Copyright is not assigned to publishers and 2. Universities put in place a non-exclusive licence to facilitate deposit of open access works in institutional repositories.

Plan S has renewed momentum to rights retention and will require that authors or their universities retain copyright to their publications. However, this will only be applicable to authors or co-authors of publications funded by Plan S signatories and excludes other research outputs. It is desirable that Australian universities move towards a rights retention approach which is compatible with Plan S, to avoid greater confusion and complexity around rights.

## Copyright retention by universities and authors for future consideration

Rights retention in scholarly works can include a spectrum of copyright arrangements, reuse rights, and machine readability<sup>4</sup>. Copyright retention by authors or universities for scholarly works is becoming preferred by some funders and advocates. Ideally, these changes would take place on the national level. However, recommendations for legislative or national policy change are outside the scope of this report as they require extensive consultation with stakeholders and government. This briefing report has therefore focused on the potential to achieve **reuse** rights retention in institutional IP policies only.

## Discussion

There are diverse approaches to IP ownership at Australian universities, however most have established a non-exclusive licence for scholarly works. Issues arise from these rights not being effectively asserted either in employment agreements or practice. The non-exclusive licences generally lack clauses relating to communication, i.e. by making available appropriate versions of scholarly works in an institutional repository.

It is recommended that in addition to non-exclusive licences, additional clauses via an open access policy provide further guidance on licensing, embargoes, and supply of works to an institutional repository:

- Universities should adopt an Open Access policy if they do not already have one, including a statement about the choice of licence for research publications and other scholarly outputs. It is highly recommended that a Creative Commons Attribution v4.0

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<sup>4</sup> How open is it? PLoS [https://www.plos.org/files/HowOpenIsIt\\_English.pdf](https://www.plos.org/files/HowOpenIsIt_English.pdf)

licence (CC-BY) be adopted for maximum compliance however universities may wish to vary choice of licence where appropriate;

- Universities should establish the timeframe in which research outputs are deposited and available in their institutional repository, noting that funders such as the ARC and NHMRC require deposit no later than 12 months, however many other funders have a shorter or no embargo period;
- To facilitate access to works, authors or publishers provide an electronic copy of an appropriate version and format of their scholarly works for deposit in the institutional repository.

Authors of scholarly works generally lack awareness of their rights and IP policies. Awareness and engagement activities at the national and institutional level should be undertaken. Plain language guidance documents and IP policies may assist.

## Appendix 1: Suggested wording for non-exclusive licences in IP policies

**Note:** the text in this appendix is not legal advice and has not been reviewed. Universities that wish to pursue inclusion or revision of a non-exclusive licence in their IP policies should seek advice from institutional legal offices.

### ***Proposed non-exclusive licence for rights retention in scholarly works***

- The Creator grants to The University a perpetual, irrevocable, worldwide, royalty-free, non-exclusive licence in favour of INSTITUTION to allow INSTITUTION to use scholarly books, journal articles, and conference papers for educational, research and commercialisation purposes.
- The following clause only applies to universities that assert ownership over all IP including scholarly works: [INSTITUTION retains IP including the right to use scholarly books, journal articles, and conference papers for educational, research and commercialisation purposes and to make it available via its institutional repository and grants staff a non-exclusive, royalty free, perpetual, irrevocable, world-wide transferable right to use, adapt or modify their scholarly works.]
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