

SPECIAL REPORT
of the
RESEARCH COUNCIL
concerning a
POLICY FOR OPEN ACCESS TO FACULTY PUBLICATIONS

Presented at the
757th Regular Meeting of the Faculty Senate
April 7, 2016

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Policy for Open Access to Faculty Publications

The Faculty of the University of Massachusetts Amherst (hereafter “the University”) is committed to disseminating the fruits of its research and scholarship as widely as possible. In keeping with that commitment, the Faculty adopts the following policy: Each Faculty member grants to the University permission to make available his or her scholarly articles and to exercise the copyright in those articles. More specifically, each Faculty member grants to the University a nonexclusive, irrevocable, worldwide license to exercise any and all rights under copyright relating to each of his or her scholarly articles, in any medium, provided that the articles are not sold for a profit, and to authorize others to do the same. The policy applies to all scholarly articles authored or co-authored while the person is a member of the Faculty except for any articles completed before the adoption of this policy and any articles for which the Faculty member entered into an incompatible licensing or assignment agreement before the adoption of this policy. The University will waive application of the license for a particular article, or delay access for a specified period of time, upon express direction by a Faculty member. Each Faculty member will provide an electronic copy of the author’s final version (or better version, if possible) of each article no later than the date of its publication at no charge to the appropriate representative of the University in an appropriate format (such as PDF) specified by the University. The University may make the article available to the public in an open-access repository. The Office of the Provost will be responsible for interpreting this policy, resolving disputes concerning its interpretation and application, and recommending changes to the Faculty from time to time. In implementing this policy the University will strive for simplicity and minimal burden on the Faculty, using appropriate technology to ease the participation of the Faculty. The policy will be reviewed by the Provost (or designee) after three years and a report presented to the Faculty Senate.

MOTION: That the Faculty Senate endorse the Policy for Open Access to Faculty Publications, 22-16 as presented in Sen. Doc. No. 16-044.

Open Access Policy Proposal Overview

The Research Council has been asked by the Faculty Senate Rules Committee to take the lead in proposing a new policy concerning open access to faculty publications. This policy would apply to the Amherst campus of the University of Massachusetts, sometimes referred to below simply as “the University” or “UMass”. Here is a concise summary of the proposal, written in a “frequently asked questions” form:

What is the motivation for the proposal?

The goal is to improve and stand up for open access to scholarly articles published by academics, and to help address the unreasonable subscription costs of many journals, which challenges our libraries to provide the scholarly materials needed for research and teaching. An additional reason is to comply with mandates from funding agencies. Also, having more articles in a University repository will help improve the visibility of the authors and of the campus. Finally, and not least, such a policy helps protect faculty’s rights to use their own articles.

How does this benefit me?

The open access policy benefits faculty members directly, by protecting their rights to distribute and re-use their own scholarly publications. The non-exclusive license granted to the University (details given below), and the University’s ability to re-license the work back to the faculty member, mean that a faculty member will be able to re-use their own figures, text, etc., without having to separately negotiate with or pay a fee to a journal publisher. The policy benefits faculty members indirectly, because studies show that open access increases citations to and impact of publications.

What experience have other institutions had with open access policies?

Dozens of leading institutions, such as Harvard, Princeton, MIT, and the University of California system, have devoted considerable effort to devising and successfully implementing open access policies, and we benefit greatly from their experience. Policies similar to the one being proposed here work well for them and they have found that only a few publications consistently refuse the policy, and even those appear to be relenting in the face of evolving open access policies. Our policy slightly adapts a model policy proposed by open access advocates and librarians. In addition to the proposed policy, we make available an annotated version of the model policy that offers further explanation as to why the suggested policies have the form they do.

What will the new policy commit faculty to do?

Faculty will commit to providing an open access copy of scholarly articles to the University. If the publication venue will not accept this policy, the faculty member will be granted a waiver (by an automatic computer system) for the article in question.

What’s the “fine print”?

Specifically, faculty will submit their final author’s version (or better) to a University or open access repository, such as ScholarWorks, as or before sending it to the publisher. In legal terms, faculty grant to the University a non-exclusive royalty-free copyright license to these articles.

What is a non-exclusive license? Can I still use my work?

A “non-exclusive license” means that you still have full rights to your work. It is contrasted with an “exclusive license”, which is the same thing as a transfer of copyright, when you transfer some or all of the rights to your work.

Operationally, what steps will a faculty member need to follow when publishing an article?

When submitting the author’s final version of an article, submit it also to ScholarWorks. Attach a copy of the University policy to the publisher’s copyright assignment document, if the publisher’s policy does not already grant the right to make the author’s final version accessible. Note on the publisher’s agreement “subject to the attached.” If the publisher will not accept these terms, obtain a waiver. The University Libraries will provide notification to publishers about the policy, which is intended to help publishers accept the terms.

Do submissions have to go to ScholarWorks?

ScholarWorks is a straightforward option that already exists, but the University’s preferred repository may change over time, and there may be other repositories specific to a discipline or funding agency that may be preferable for some authors. As long as they provide similar access, such repositories are acceptable alternatives to the primary University repository. The point is to make scholarly work more accessible to more people. However, deposit to ScholarWorks offers some advantages to faculty in preserving their rights and providing a permanent repository.

How do waivers work?

For any individual article, a faculty member can obtain a waiver using a simple online system to be developed before the policy goes into effect. Granting of a waiver is *automatic* - you can always obtain one. At the same time, faculty are encouraged to try to get publishers to accede to the terms of the policy. A waiver is an exception to open access distribution of a particular article, not to the policy as a whole. This allows faculty still to claim rights even if waiving open access.

Can I waive all open access requirements?

You can waive the open access requirements of the UMass Open Access Policy. However, many funders now apply open access requirements, and waiving the UMass Open Access Policy does not affect your responsibilities under sponsored research agreements. For instance, if your article arises, in whole or in part, from NIH-funded research and was accepted for publication after April 7, 2008, you must retain sufficient rights to comply with NIH's Public Access Policy. NSF has similar requirements for grants funded from proposal due on or after January 25, 2016. Other funders may also apply open access requirements as a condition of their support, so you must retain sufficient rights to comply with their conditions.

Should I deposit my article in the repository even if I have obtained a waiver for it?

Yes. Even if your article cannot be made publicly available, you are encouraged to deposit a copy in the repository under the “metadata only” option, which stores a “dark” copy in the repository for archival purposes and provides bibliographic information that can be included in an online index of scholarly articles by UMass faculty members. The bibliographic information will be made available for broad indexing by search engines, in order to increase awareness of your article.

Sen. Doc. No. 16-044

In addition, your publisher's agreement may provide, or you may be able to negotiate, sufficient rights to allow copies of your article to be made publicly available in the UMass repository. The publisher may ask that certain conditions be met, some of which the repository can accommodate (for example, an embargo period during which the article will not be made publicly available). You can consult with the UMass Amherst Libraries' Scholarly Communication Office for help in the process of working with publishers and addressing their specific concerns.

What versions of a work are acceptable?

The policy mentions "author's final version". This is because many publishers already accede to open access to that version. However, if a publisher grants open access to the published version, that is even better!

If a publisher charges a fee for open access, do I have to choose that option?

No. There is no requirement to use open access publications, only to try to get *some* version into an open access repository, if possible.

What kinds of works are covered by the policy?

Scholarly articles (including book chapters) with faculty as authors. Non-scholarly publications are not included. Neither are books, works of art, or works none of whose authors are faculty. In particular, the policy does not apply to theses or dissertations. However, authors, including students, are encouraged to deposit all works in the repository, whether covered by the policy or not.

Does the policy apply to co-authored papers?

Yes. Each joint author of an article holds copyright in the article and, individually, has the authority to grant UMass a non-exclusive license. If you are one of multiple authors of your article, you should inform your co-authors about the non-exclusive license in the article that you have granted UMass under the Open Access Policy. You have the legal right to make this license, but if your co-authors object, you can request a waiver for the article. You may contact scholarworks@umass.edu if you have questions.

How does the policy apply to collections of articles?

Such an edited collection is not itself an article, so the policy does not apply to the collection as a whole. If you submit an article or chapter for such a collection, the policy applies, but if providing open access to your specific work is problematic, you can obtain a waiver.

Does the policy apply to articles I wrote before the policy was adopted?

No. The policy applies only to articles published or under agreement after **effective DATE of policy**. The policy also does not apply to any articles you publish not affiliated with UMass.

What about publishers that embargo new articles for a specific period of time?

ScholarWorks supports submitting an article and giving it a release date. From the standpoint of encouraging open access, this is better than obtaining a waiver and not entering the article into an open repository at all.

Does the grant of a non-exclusive license to the University interfere with a publisher or other organization's desire for an exclusive license?

If it does, the faculty member can request a waiver.

What if the article might describe an invention?

Be sure to disclose the possible invention to the Technology Transfer Office (TTO) *before* submitting the article under the Open Access Policy. If warranted, the TTO can file a provisional patent application prior to your submission, which will preserve any patent rights there may be. The TTO can then seek to license those patent rights to industry for commercialization. If an article is submitted and published before disclosure to the TTO, some or all of the patent rights in the invention may be irrevocably lost.

Will the University try to make money from articles in ScholarWorks or any future repository?

No. The University commits not to use the granted copyright for profit and will insure continued free access to deposited works.

Who decides if I need an interpretation of the policy in a particular case?

The Provost is the office designated to resolve difficult questions. At present it appears that most aspects of the policy will be implemented by the Libraries, so their staff should be able to answer most questions. You may email questions to scholarworks@umass.edu.

What is being done to minimize the impact on faculty?

This policy is being proposed *by* the faculty of the campus, and so we are very concerned about any extra work it requires. Every effort is being taken to minimize that work. What it boils down to is that a faculty member either obtains a waiver, which will be a very simple online process intended just to record the waiver and provide evidence to the faculty member that the University has waived provision of open access to this work, or the faculty member attaches a copy of the University's policy to the publisher's copyright transfer form and deposits the work in the repository (a straightforward online action). With many publishers, attaching the policy to the copyright transfer form will not be necessary since the publisher already allows putting authors' final versions into such a repository. The University Libraries will provide notice to publishers about the policy, making it less necessary for faculty to notify and try to gain publisher's agreement to the terms.

Does the policy restrict where articles are published?

No! The policy does not *require* publishing in an open access venue--only that faculty make reasonable effort to make a useful version of their work openly accessible via the institutional repository.

What happens if I fail to participate?

No enforcement actions are anticipated with respect to this policy *per se*. However, some funding agencies have requirements about open access, and it is anticipated that funder requirements for open access will only increase. The University *will* follow up concerning compliance with policies and regulations imposed by external agencies. The goal is to make participation as painless as possible so that there will be little reason not to participate.