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Breaking It Down: A Brief Exploration of Institutional Repository Submission Agreements

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ABSTRACT

Institutional repositories typically have a submission agreement that is meant to protect the institution hosting the repository and inform submitters of their rights and responsibilities. This article examines how various libraries have created submission agreements, enquires as to issues surrounding them, and identifies commonalities and unique statements. The authors deployed a survey to institutional repository administrators listed in OpenDOAR in the United States. Approximately 7% of the 304 potential institutional repository managers responded. Library administrators, institutional repositories managers/architects, and legal counsel were the most likely to have input into the creation of the submission agreement; scholarly communications librarians were involved only 20% of the time. Although submission agreements averaged 282 words arranged in 9 sentences, their reading complexity requires a university degree. Commonalities include characterizing the agreement as a non-exclusive license, indicating the submitter's responsibility for obtaining permissions for any content that they did not produce, and confirming the right of the submitter to enter into the agreement. Submission agreements are generally complex and do not accommodate the common practice of mediated submission. Sharing submission agreements publicly may lead to simplified and standardized language and reduce barriers to submitters.

1. INTRODUCTION

At the turn of the century, the initial experiments to implement institutional repositories (IRs) were actively ongoing. Crow (2002) differentiated IRs from other repository types as having four primary characteristics: institutionally defined, scholarly in nature, cumulative and perpetual, and open and interoperable. It was predicted that the institutional and open components would result in increased prestige, as well as capture new and emerging forms of digital scholarship (Crow, 2002; Lynch, 2003). The cumulative and perpetual component addressed concerns regarding the ephemeral nature of the digital world and the need to preserve it, while the open and interoperable component represented a welcome alternative to traditional, monopolistic and rigidly controlled commercial journals (Duranti, 2010; Robertson and Borchert, 2014; Crow, 2002; Bastos, Vidotti, and Oddone, 2011; Bergstrom, Courant, McAfee, and Williams, 2014). The advent of disruptive technologies allow the collection and distribution of material at a lower cost (Blythe and Chachra, 2005; Heath, 2009; Odlyzko, 1997) and the sheer increase in the overall volume of scholarly material (Budd, 2006; Rawls, 2015) made IRs an attractive addition to the academic library's suite of services.

In 2005 about 40% of research institutions in the US had IRs, a rate that rose to 62% in 2007 (Lynch and Lippincott, 2005; Markey and Council on Library and Information Resources, 2007). As of 2015, OpenDOAR listed 455 IRs in the US, which is an estimated 10% of degree-granting post-secondary Title IV institutions having an IR (University of Nottingham, 2015; U.S. Dept. of Education, 2013). This would indicate that the vast majority of higher educational institutions have either chosen not to implement an IR or may still be faced with that decision.

1.1. SUBMISSION AGREEMENTS

A key part of launching an IR is creating the submission agreement document. This is a formal legal agreement that "defines the relationship between the individual submitting the content and the institution that is operating the repository" and grants "the repository the necessary rights to disseminate an author's work while affording the institution a measure of protection against submitted content that may violate legal or ethical boundaries" (Gilman, 2013, section Repository Submission Agreements and Contracts and Licenses). It may be a paper copy, a check box on a 'click-through' agreement, or other digital signature mechanism (Jones, 2007). These submission agreements may also be referred to as a license or a deposit agreement. For simplification of

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language, the term 'submission agreement' or SA will be used for the remainder of this publication. As well, the term 'author' will refer solely to the generator of the material, while the term 'submitter' refers to the person that signs or approves the SA, regardless if they are the actual author.

The primary motivation for an IR SA is to minimize the legal risk to the host while maximizing the ability to re-use the material. The SA should "clearly indicate that the repository is not responsible for any mistakes, omissions or infringements in the deposited work" (Jones, Andrew, and MacColl, 2006, p. 150). In particular, it should state that:

> "In the event of a breach of intellectual property rights, or other laws … the repository … is not under any obligation to take legal action on behalf of the original author, or other rights holders, or to accept liability for any legal action arising from any such breaches" (British Library, n.d., section liability).

While protecting the institution, SAs may also address a number of other components, such as: submitters' rights and responsibilities, end-user permissions for both full-text and the metadata created during submission, and various policies and laws. Gilman (2013) recommends that the SA cover, at a minimum, the submitter's rights to enter into the agreement, granting of a license to the institution and assurances from the author of the legality of the content. However, many SAs include other submitter's rights and responsibilities, as well as end-user permissions. Although SAs are commonplace, the importance of them should not be underestimated. As early as 2002, a coalition of library organizations found that more "Work is needed on models for obtaining copyright clearance and models for contracts or agreements between rights owners/producers and archives/libraries" (RLG/OCLC Working Group on Digital Archive Attributes, Research Libraries Group, and OCLC, 2002). As well, the SA is mentioned six times in the Trustworthy Repositories Audit and Certification: Criteria and Checklist and is also a key part of the administrative function of the Open Archival Information System Reference Model (Center for Research Libraries and OCLC, 2007; Consultative Committee for Space Data Systems, 2002).

1.2. SUBMITTER RIGHTS

Submitters may have the right to determine when end-users may have access to the material (embargo period), the circumstances for removal, and the terms of any re-use (Jones et al., 2006). Since one hallmark of the IR is openness, a re-use license is necessary to delineate how end-users may access, re-use and distribute the material (Jones et al., 2006). This license is typically separate from the SA, and may range from the traditional 'All rights reserved' statement, which indicates that end-users cannot use the material for any purpose without permission from the owner, to more liberal Creative Commons licenses (Creative Commons, n.d.). While creative commons licenses have become more popular, there is some controversy over which one constitutes true Open Access (Andersen, 2015). Although the different re-use licenses allow for flexibility, they add to the number of new decisions that a submitter may be confronted with when agreeing to a SA.

1.3. SUBMITTER RESPONSIBILITIES

It is the intention that the SA be signed or approved by someone who holds the copyright to the work or has permission from the copyright holder. While authors initially hold the copyright to their works, they often transfer the copyright to a commercial company during the publication process. IR submitters "are expected to read the licence carefully and ensure that they have the right, as confirmed by the publishers of a paper that might have appeared in a journal, to deposit the item in the IR" (Tedd, 2006, p. 252). Most SAs then ask the submitter "to grant the institution a license to use the work in question…[and]…in all cases, the grant of rights should be *nonexclusive*" (Gilman, 2013, section Grant of License to the Institution; author's emphasis). By placing copyright clearance responsibilities on the submitter, the host of the IR is legally protected.

However, the already-complicated and confusing world of copyright gets even further so when dealing with various types of items: articles, books, raw research data, unpublished reports, works for hire, etc. Different types of material may be subject to other laws in place of, or in addition to, copyright law. A few examples include export control laws, the Federal Educational Rights and Privacy Act, Americans with Disabilities Act, and HIPPA (U.S. Department of State, n.d.; U.S. Department of Education, n.d.; U.S. Department of Health and Human Services, n.d.).

In addition, there may also be local policies that appear to be, or are, conflicting with the SA. It is common for higher education institutions to have an existing intellectual property policy that states what types of works can belong to an individual and which are the property of the institution. Often these intellectual property policies were created prior to the advent of technology that allows for easy distribution of digital material and without consideration to the diverse types of scholarship that now exist. Therefore, the intellectual property policy may need additional interpretation for researchers to understand when they must seek permissions from their employer prior to submission. Some SAs seek to remind the submitter of these additional obligations.

1.4. END-USER PERMISSIONS - METADATA

Metadata that makes the content discoverable is created during the submission process, by the submitter or the IR staff. There is growing interest in mining this metadata with automated computer scripts (Swanson and Rinehart, 2016). As such, "The host repository may, or may not, wish to claim copyright in any additional data created during the submission and subsequent archiving of the work" (Jones et al., 2006, p. 150).

> "It is advisable to state an explicit re-use policy for metadata, otherwise people will have to make assumptions – the failsafe being that they do not have permission … OpenDOAR goes further in recommending that you even allow your metadata to be reused commercially. This is because any loss of potential revenue is far outweighed by the benefits accrued from the additional exposure of your material." (JISC, n.d.a, section re-use of metadata).

As interest grows in bibliometrics and meta-analysis, metadata ownership and automated access is becoming more important (Dollar, King, Knight, and Leonard, 2014). However, specifying who may access and re-use metadata, particularly when it is created by multiple people, adds to the complexity to the SA.

1.5. END-USER PERMISSIONS - FULL-TEXT

In addition to metadata mining, web robots are increasingly used to harvest full texts for various purposes. Some of these purposes are beneficial to the IR - the obvious case being indexing by search services such as Google. However, the IR may or may not want a third party to make cache copies of complete works, particularly as a collection of works often has greater value than the works individually. As well, IRs may decide to harvest works from each other, triggering a number of unexplored questions. OpenDOAR recommends that repositories allow transient harvesting of full items by robots for benign or beneficial purposes (JISC, n.d.a). Since re-use statements almost always assume that end-users are individuals, this practice may not be considered in most SA documentation.

1.6. COMPLEXITY OF THE SA

Because of these complex issues – institutional protections, submitter rights and responsibilities, end-user permissions, and the