

Report on a deposit licence for E-prints

Circulation: PUBLIC
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Notes

1. For the purposes of this document, an e-print is defined as an electronic version of a research paper, either pre or post publication, which has been created for the purpose of enhancing other researchers access to the research paper.

Summary

This report emphasises the value of a deposit licence as a means of establishing a formal contract between the depositor and the e-print repository. Deposit licences can be used to reassure the author that the repository is not claiming rights in their work, provide permission for the repository to manage the e-print, and reduce the repository's liability if a paper is found to be infringing copyright. It provides a detailed summary of existing e-print agreements and highlights additional considerations that should be made when creating a non-exclusive deposit licence.

Purpose of a Deposit Licence

The relationship between educational institutions and commercial publishers is complex. Concerns about the rising cost of journal subscriptions and the requirement for authors to sign-over their copyright before a publisher will consider academic work have lead to a need to explore alternatives to current scholarly publications model (Simpson, 2002). The Open Access Movement is one such alternative for distributing research output that encourages academics to self-archive their work within an e-print repository. This is made available to the user 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*" (BOAI, 2003).

In these circumstances, anything that is perceived as a barrier (financial, legal or technical) to the flow of information is not encouraged. Perhaps consequently, few e-print repositories establish formal agreements with depositing authors, because such agreements are thought to discourage authors from depositing. A survey of e-print repositories by the RoMEO project found that 31.8% of respondents - the largest single group - took it on trust that the author had the right to deposit a document with them, without explicitly asking them in a written statement (RoMEO, 2000). Although this may reduce the technical barriers associated with depositing, the absence of a deposit licence will increase the likelihood that legal barriers will become an issue at a later date. A deposit licence will assist in establishing the respective rights and obligations of the depositing author and the repository.

Criteria for deposit

The comprehensiveness of a deposit licence will often vary according to the legal requirements of the publisher. Publications such as the Journal of the American Society for Information Science and Technology use detailed deposit licences in order to account for a myriad of possible contract obligations that may affect submitted works. Deposit licences for e-print repositories are often shorter, less formal and lack the legal jargon required by commercial organizations (see <http://orgprints.org/> (Organic e-prints, n.d.) and <http://tardis.eprints.org/discussion/e-PrintsSotondepositagreementfinal.doc> (Tardis, 2003) for examples) unless their host institution specifically requires it.

The majority of deposit licences cover four key topics: the ability of the depositor to legally deposit the e-print; the rights the depositor maintains over the deposited work; the permissions the repository gains to maintain the deposited work; and, conditions under which the repository can remove the e-print.

The author should be given the opportunity to read the deposit licence before the submission process is completed. The TARDIS deposit process, for example, places the deposit licence on the initial registration page, thus establishing user agreement before submission, and on the final deposit page as a reminder.

Depositor Rights

The potential limitations of using exclusive licence agreements in the education sector have been well documented (Gadd, et-al, 2002a). Gadd et-al (2002), Hunt (2002) and Harnad (2001) have previously highlighted the importance of encouraging authors to *voluntarily* submit work (pre-print and post-print) to e-print repositories without signing away their copyright as an important facet of encouraging the development of open archives. E-print repositories should, therefore, normally use non-exclusive deposit licences in order to reassure the depositor that they will retain copyright in the deposited work

Depositor declaration

The depositor declaration indicates that the depositor is the copyright owner, or has the permission of the copyright owner (the publisher or institution) to deposit the e-print. This should be made clear in the deposit licence for three reasons. First, the declaration can be used to establish who is legally responsible for the e-print (the copyright holder), which will protect the repository against accusations that they knowingly infringed copyright for content in their repository. This may also be important in protecting the repository from any liability arising from factual errors and other problems with the e-print. Second, it establishes that the depositor has given the repository permission to copy, transform or convert the e-print data if this proves necessary for delivery or preservation at a later stage in the event that the copyright holder subsequently claims that the data migration infringes their rights. This allows the repository to migrate Work without infringement of the authors' copyright or their right of integrity (to ensure the work is not intentionally modified in a manner that would be prejudicial to the artist's reputation). Third, the depositor declaration gives the repository a clear record of whom they should contact in the future if the need should arise.

The depositor declaration also establishes if there are any additional restrictions on the use of the content. For post-prints, there are likely to be legal objections to the use of the publisher's layout and use of the printed version of the work.¹ In such circumstances an additional field that allows the depositor to outline or reproduce the copyright statement given in the publisher's Copyright Transfer Agreement should be the default option, with an option to declare that the e-print is restriction-free if it allows full open-access.

Repository Rights & Responsibilities

Current repository deposit licences are divided between those that only request permission to store the e-prints and those that establish the need to store and migrate or otherwise preserve the resource-print. To protect the institution from legal action and establish the long-term requirements for preservation and continued access it is advisable that the deposit licence clarifies the following:

- **Legal responsibility** – The deposit licence should clearly indicate that the repository is not legally responsible for mistakes, omissions, or legal infringements within the deposited e-prints. This should provide a degree of protection for the repository and host institution from potential legal action taken as a result of the actions of the author. Equally, the deposit licence can establish that the author is not legally responsible for ensuring the accuracy of the information they have provided (AHDS, undated) if, for example, it later becomes out-of-date or obsolete.

¹ Harnad (2001) proposes the depositor work around restrictive terms of publication by submitting a draft of the work along with a list of subsequent changes made before publication (Harnad, 2001). Although technically feasible, it will likely prove unsatisfactory to the reader.

- **Migration** – The need for data migration at a later stage is gradually being recognised by many repositories. James, et-al (2003) outlines the changes in the mid to long-term that may affect the users ability to access the resource and emphasises the need to migrate data to ensure continued access. The deposit licence should establish that the depositor gives permission for the repository to migrate the e-print to new file formats or perform other work necessary to ensure continued accessibility. For example, the AHDS Visual Arts deposit licence outlines the agreement between the depositor and the legal institution, in this case the Surrey Institute of Art & Design, acting on behalf of the AHDS Visual Arts to allow AHDS Visual Arts and Arts and Humanities Data Service “to preserve, and make accessible in a variety of formats and media, the deposited materials for educational purposes” (AHDS Visual Arts, 2003).

Exit Strategy

The purpose of an e-print repository is to provide access to deposited material for a suitable period of time. Feedback on an internal SHERPA discussion document about deposit agreements for e-prints suggested a need to establish clear guidelines on the exact period of retention (indefinitely or a specific timescale). It is therefore important that the deposit licence establish the situations under which the author or repository may withdraw the e-print from the repository, and the availability of any associated metadata records after it is withdrawn.

- **Retention Period** – In some circumstances it may be appropriate to offer the depositor the option to archive the e-print for a pre-designated time period. Reasons for this choice may include the status of the e-print as an early draft, legal or contractual obligations.
- **Specific Circumstances** – At some point in the future it may be necessary to remove an e-print when specific circumstances take place. For example, feedback from the initial deposit agreement discussion paper highlighted the desire to remove papers if it is later found the research is falsified, breaks existing laws or is libellous.

The option that an e-print can be removed at a later date may attract depositors (such as publishers) whom are wary of the concept of long-term storage (Project Euclid, 2000). Even if the aim is to encourage the indefinite deposit of e-prints, some possibility for alternative arrangements should be allowed for in the deposit form. Careful ordering of the available choices or requiring depositors to contact the repository administrator can help encourage depositors to select the repository's preferred option.

In the event that an e-print is removed, it is wise to retain the associated metadata. E-print repositories, such as Tardis, establish the continued inclusion of a 'citation to the work' as a non-negotiable deposit requirement for deposit. This provides an audit trail of its temporary existence within the repository that will inform users that its removal was deliberate (James et-al, 2003).

Sample e-print licence

Although the primary goal of e-print repositories is to encourage authors to willingly deposit their work, some method of formalizing the relationship between the depositor and the repository is both useful and wise. Inevitably, formal agreements will appear strict and may include some legal jargon, which is often confusing and can be off-putting to the depositor, who may then reconsider their decision to submit. When introducing a deposit licence, it is therefore useful to consider its location in the deposit process and its target audience. A deposit licence may be more palatable if it is displayed late in the submission process, and its purpose is also explained in plain language. For example, a paragraph or two may be used to explain why a deposit licence is required.

Why is a deposit licence required?

This repository supports the long-term preservation of e-prints, and free access to them. To undertake this role, the administrators of the repository need permission to store, copy and manipulate the material in order to ensure that it can be preserved and made available in the future.

This Deposit License is designed to give repository administrators the right to do this, and to confirm that the depositor has the right to submit the material to the repository. The Licence is non-exclusive, and the depositor does not give away any of their rights to the repository.

For the deposit licence itself, the repository may take one of two approaches. The first approach is to seek a balance between their legal requirements and the need to encourage depositors to submit their work. Where possible, the licence should be short and avoid the use of legal jargon that may confuse the reader. The sample licence, below, is intended as an exemplar for use in existing and planned repositories.

When customising it the reader should ensure the following terms are altered appropriately:

- [Institution]: the university or organisation that currently host the e-print repository. E.g. University of Nottingham.
- [E-print repository]: the project or department that maintains the e-print repository.

Your right to publish your work

Rights granted to [the e-print repository] through this agreement are non-exclusive. You are free to publish the Work in its present or future version(s) elsewhere and no ownership is assumed by the repository when storing the e-print.

Depositing with [the e-print repository]

By agreeing to this license, you (the author(s), copyright owner or assignee), grant a ***non exclusive licence*** to [e-print repository] that authorises the following:

- a) You are the author, copyright holder or assignee and have authority to make this agreement, and give [the e-print repository] the right to publish the Work in a repository.
- b) That the Work is original and does not, to the best of your knowledge infringe upon anyone's copyright.

Permissions given to the repository

[The e-print repository] shall distribute electronic copies of the work for the lifetime of the repository, or based upon an agreed time span, and translate it as necessary to ensure it can be read by computer systems in the future. No charge will be made for distribution, except for media costs necessary for postal distribution.

Withdrawing your work

You may request the Work is removed at any point in the future. Equally, [the e-print repository] reserve the right to remove the Work for any professional, administrative or legal reason. A metadata record indicating the Work was stored in the repository will remain visible in perpetuity.

Disclaimer

While every care will be taken to preserve the e-print, [e-print repository] is not liable for loss or damage to the e-print or other data while it is stored within the repository.

Definition & terms

In this licence document:

- 'Work': means the e-print being deposited including abstract, text, images and related data.
- E-print': means an academic research paper stored in an electronic format.

The licence above is tailored to the target audience of a repository, who are unlikely to be experts in the legal implications of depositing an e-print.

A second approach for repositories wishing to consider a more structured approach is to establish a more formal licence framework. The second licence, below, provides a detailed breakdown of the rights of the depositor and the repository.

Depositor's declaration

1. By agreeing to this license, you (the author(s), copyright owner or assignee), grant a **non exclusive licence** to [the institution] on behalf of the [e-print repository] that warrant:
 - 1.1 You are the owner of the copyright in the whole Work (including content & layout) or are duly authorised by the owner(s), or other holder of these rights and are competent to grant under this agreement, a licence to hold and disseminate copies of the material.
 - 1.2 The Work is not and shall be in no way a violation or infringement of any copyright, trademark, patent, or other rights whatsoever of any person.
 - 1.3 That if the Work has been commissioned, sponsored or supported by any organization, you represent that you have fulfilled all of the obligations required by such contract or agreement.

The Repository's Rights and Responsibilities

- 2 [The e-print repository]:
 - 2.1 May distribute copies of the Work (including the abstract) worldwide, in electronic format via any medium for the lifetime of the project, or as negotiated with the depositor, for the purpose of free access without charge (except for associated media costs).
 - 2.2 May electronically store, translate, copy, or re-arrange the Work to ensure its future preservation and accessibility, unless notified by the depositor that specific restrictions apply.
 - 2.3 May incorporate metadata or documentation into public access catalogues for the e-print. A citation to the Work will always remain visible.
 - 2.4 Shall retain the right to remove the Work for professional or administrative reasons, or if it is found to violate the legal rights of any person.
 - 2.5 Shall not be under any obligation to take legal action on behalf of the Depositor or other rights holders in the event of breach of intellectual property rights or any other right in the material deposited.
 - 2.6 Shall not be under any obligation to reproduce, transmit, broadcast, or display the Work in the same format or software as that in which it was originally created.

Software

- 3.1. Copyright in any additional data, software, user guides and documentation to assist users in using the Work shall belong to [the e-print repository] on behalf of the [institution] and any other parties that [the e-print repository] may choose to enter into an agreement with to produce such materials.
- 3.2. While every care will be taken to preserve the physical integrity of the e-print, the [e-print repository] shall incur no liability, either expressed or implicit, for the e-print or for the loss of or damage to any of the e-print or associated data.

Definition & terms

4. In this Agreement:
 - 4.1. 'Agreement': means this licence document including all of its terms and conditions.
 - 4.2. 'Work': means the e-print being deposited including abstract, text, images and related data.
 - 4.3. 'E-print': means an academic research paper stored in an electronic format.

The legal aspects of these licences have been checked by JISC Legal. However, this does not constitute legal advice, and the reader must consult their own legal team before making use of the licence.

Conclusion

Deposit agreements should be considered an essential part of an e-print repository's operation. The guidance provided in this paper establishes the role of both parties within the deposit process. For the repository, it provides a formal framework that defines what the repository can and cannot do, making it easier to manage the e-print in the long-term while helping to reduce its legal liabilities. For the author, it provides reassurance that the repository is not taking ownership of their work, and makes them aware of what type of service the repository is providing.

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SHERPA Project Document

Report on a deposit licence for E-prints:
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Arts & Humanities Data Service
21/06/2004