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Andrew Wesolek

*Clemson University*, [awesole@clemson.edu](mailto:awesole@clemson.edu)

Paul Royster

*University of Nebraska-Lincoln*, [proyster@unl.edu](mailto:proyster@unl.edu)

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# Open Access Policies: Basics and Impact on Content Recruitment



Andrew Wesolek, Clemson University

Paul Royster, University of Nebraska–Lincoln

## Introduction

The allure of passing an institutional open access policy as a strategy to populate an institutional repository is clear. After all, educating faculty to retain their rights to their scholarly publications through passage of such a policy, then requiring them to make those publications available through an IR seems a sure path to success. However, this approach of “if you pass it, they will comply” rings eerily similar to the early and decidedly misplaced optimism of populating institutional repositories through a “build it and they will come” proposition (Salo, 2007).

The Registry of Open Access Repositories Mandatory Archiving Policies (ROARMAP) reports, though, that 73 campuses now have some form of institutional, departmental, or school, open access policy in place. Additionally, the Coalition of Open Access Policy Institutions (COAPI) consists of greater than 60 institutions that have OA policies in place or are actively working to pass them. Some of the most dramatic growth in COAPI membership and ROARMAP registration occurred in 2013, indicating that open access policies are increasing in popularity, and have been implemented with success (Duranceau, Kriegsman, 2013. Kipphut-Smith, 2014).

So, while OA policies are not a panacea for obtaining repository content, with the right approaches in development and implementation they can both provide content, educate campus communities, and enhance faculties’ academic freedom through rights retention. This chapter will explore some of the types of open access policies and discussion of whether or not an OA policy may be right for every institution.

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## Policy Basics

Though methods of implementing open access policies vary greatly (Duranceau, Kriegsman, 2013. Kipphut-Smith, 2014), the type of policies institutions have passed can be broken into two distinct categories, with some variation seen within them: Open Access Resolutions, and permission-based policies. Both of these demonstrate a grass roots led institutional or departmental commitment to the values of open access and institutional repository initiatives while providing an important catalyst for the educational efforts of IR managers and scholarly communication librarians. However, the critical difference is that the latter has a solid legal foundation, the implementation of which can enhance the author's rights of faculty members and expand the corpus of openly available scholarship at the institution (Priest, 2012). The former is not a policy in a strict sense, but more of a sentiment that can provide some support for the educational efforts of institutional repository staff, but cannot be implemented with the same degree of latitude as a permission-based policy. For that reason, we will focus on permission-based policies here.

Permission-based policies are generally rely on the Harvard Model OA policy and as such, consist of very similar language. The scope of these policies policies, though, can vary greatly. The OA policy passed at the University of Kansas, for example, applies to the entire institution, stating, "all scholarly peer-reviewed journal articles authored or co-authored while a faculty member of KU..." (*Open Access Policy...*). Conversely, Brigham Young University has taken a unit-based approach, passing a policy of very similar structure, but applicable only to faculty in the Harold B. Lee Library and the department of Instructional Psychology and Technology (Wiley, 2009).

While the scope of policies such as these varies, the structure of each deviates little from the Harvard model open access policy. Voted into effect by the Faculty of Arts and Sciences at Harvard University in February of 2008, this permission-based policy set the precedent for subsequent policies at MIT, University of Kansas, BYU, and others. The author of the policy, Stuart Sheiber has done the important work of making an annotated version of it available online, which clearly articulates the reasoning behind the exact language of the model policy so that it can be adopted on other campuses with the desired effect (Shieber, 2009).

There are three aspects of the Harvard Model that are important for this discussion: the grant of rights, the opt-out options, and deposit requirements, if any. First, the faculty *grants* to the university the nonexclusive right to exercise copyright in their scholarly articles and to authorize others to do the same. Use of the word “grants” is important, as it ensures that the policy only applies to articles published after the passage of the policy and it requires no action on the part of faculty for it to take effect. Second, the Provost, or a designate *will* waive this license if expressly directed to do so by the faculty author, typically on a per article basis. Third, each faculty author will provide accepted author manuscripts to the Provost’s office, or a designate, and the Provost’s Office, or designate may make the article openly available in an institutional repository.

While on the surface, it appears that an OA policy of this type imposes additional rules on faculty, however unpacking the legal language reveals an enhanced freedom for faculty to do what they like with their own scholarly works. First. The automatic grant of rights ensures that by doing nothing, faculty always have a green open access option for their scholarly works available to them. While many publishers currently allow authors to self archive their accepted author manuscripts, this is not always the case. Scholarly communication librarians may work with faculty to encourage them to submit author addenda along with their publication agreements to ensure that they have the right to self archive, or encourage them to publish in journals that have such language in place as part of their standard agreements, faculty authors often find the legal agreements difficult or too time consuming to navigate. A grant of rights as outlined survives any publication agreement that faculty authors may enter into and removes the work of researching and negotiating publication agreements from their shoulders.

Second, Harvard style policies typically contain language that allows authors to opt out of the policy at their sole discretion. In many cases, waivers to the policy are issued via online web forms that automatically generate a waiver at a faculty author’s request. There is no administrative oversight in this process and authors may not be required to provide any sort of reason for the waiver request. So, rather than having to “opt in” to open access through negotiation with one’s publishers, OA becomes the default, but the faculty member is completely at his or her liberty to “opt out” of OA if he or she chooses.

## Benefits

Institutional Open Access Policies drafted in the Harvard style have positive implications for the scholarly communication landscape, institutional culture, and expanded rights for individual faculty members. At the broadest level, the increase in number of passed OA policies sends a powerful and unified message that green OA is important to an increasing number of institutions and the faculty researchers affiliated with them. This message then increases pressure to universalize green open access options for published articles.

If the OA policy is passed as a faculty-led grass-roots initiative, as recommended by the guide to Good Practices for University Open-Access Policies, then it can be used as an effective educational tool to facilitate a more open campus environment (2015). In many cases, the institution's library is designated by the Provost to implement the OA policy. The combination of this designation along with the grass roots aspects of policy passage, can give libraries a degree of political capital, allowing them to meet stakeholders and departments across campus, where they may not have otherwise been able. This bit of leverage also allows scholarly communication librarians, or others in the library to continue to have conversations with their community about the broader issues in the current scholarly communication environment and the services the library may be offering to support faculty authors.

Arguments have been made that OA Policies create additional burdens for the faculty subjected to them in exchange for a perceived greater good of a reformed scholarly communication system. If OA policies simply required faculty deposit of scholarly material in an institutional repository, this might be the case. But, the granting of license inherent in the policy lays the necessary foundation to make deposit of material in an institutional repository much more streamlined, and due to the opt out option, still, essentially voluntary. When the grant of license in the OA policy takes effect, faculty no longer have to conduct the burdensome investigation and negotiation to determine whether or not they have the rights to make a manuscript copy of their works available in an institutional repository. Unless that faculty member has requested a waiver of the policy for that particular article, he or she always has the rights to make it openly available.

This is where institutional open access policies can be highly effective in populating institutional repositories. The early “if you build it they will come” supposition did not lead to successful institutional repositories, nor will an “if you pass it they will comply” lead to successfully implemented open access policies. If institutional open access policies can be implanted in ways that streamline the deposit of content into an institutional repository, though, both the IR and repository can be mutually successful. This can be achieved through automated opt-out processes, employing subject librarians to facilitate deposit of the research produced in their areas of responsibility, or partially automating the process by linking faculty activity reporting systems with institutional repositories (Wesolek 2014).

Much has been written about strategies for successfully developing and implementing an institutional open access policy. The Berkman Center’s Guide to Good Practices for University Open-Access Policies is an excellent starting point (2015). In addition to this guide, those interested in developing a policy on their own campus may find a wealth of information through the members of the Coalition of Open Access Policy Institutions (COAPI, 2015). COAPI exists to both educate and advocate for OA and OA policies, and COAPI leadership is happy to connect those interested in developing OA policies with members that have experience doing so in similarly sized institutions.

The ease, or lack there of, of passing an institutional open access policy will likely depend greatly on the culture and organizational structure of a particular university. When developed and implemented well, policies can have a significant impact on institutional repository success. They are by no means a panacea, though, and likewise a successful institutional repository is not a sufficient or necessary condition for the development of an OA Policy. Both Harvard and Princeton, for example, passed open access policies without the benefit of an existing IR at the time of their passage. From the Nebraska perspective, outlined below, we will see that at least one highly successful institutional repository made the conscious decision not to pursue development of an OA policy.

## **Why I Don't Want a Mandatory Open Access Deposit Policy: A Nebraska Perspective**

The University of Nebraska–Lincoln (UNL) Libraries have operated an institutional repository (IR) since 2005. As of November 2014, it holds more than 75,000 items and has been furnishing downloads at the rate of 500,000 per month for the past several years. Yet faculty have never been required to deposit there, and the IR managers have not pursued passage of a rule mandating deposit by faculty. This contravenes the wisdom and advice from numerous bodies, organizations, and experts. In my opinion, however, a mandatory deposit policy is not merely unhelpful in populating an institutional repository, it is also positively harmful to its growth, acceptance, and functioning. I will enumerate my reasons for believing this at some length, but they might be summed up by the following “thought experiment” (with apologies to Jackson Galaxy):

Imagine the faculty as a population of cats. You can make it a rule that they have to bring you the bodies of all the birds and small animals they kill. But obedience among cats is spotty and entirely voluntary, so the real challenge is making them want to. You can only succeed by establishing a trust relationship and providing rewards—chicken, tuna, milk—and perhaps grooming. Then you may soon be awash in dainty little carcasses. But since the rule won't work without the rewards, why have the rule?

The popularity of deposit policies may be said to begin around the time that Harvard University's Faculty of Arts and Sciences passed their first such resolution in February 2008, at which time they had neither a repository nor an office for scholarly communication. The event was well publicized, and it drew public attention to the campaign for “open” access to scholarly materials. Frankly, I was surprised that university faculty would vote to impose an additional requirement upon themselves, but I took it as a measure designed to encourage (or force) their university to set up an infrastructure for the open sharing and dissemination of scholarship—something we already had ongoing at Nebraska, where recruitment of IR content was, and remains, my primary responsibility.

I discussed the Harvard resolution with the UNL Dean of Libraries at the time, Joan Giesecke (who had been mainly responsible for starting the IR here), and we agreed that, while it was helpful to bring the issues of access and repositories to public attention, there was not reason for us to imitate that example and to seek a campus-wide mandate or policy of required deposit. For one thing, our IR was already growing at a healthy rate of 400 to 500 items per month on a strictly voluntary basis, and we felt that securing passage of a faculty resolution to mandate deposits would expend time and political capital that we did not care to invest. We also felt, moreover, that conversion of our voluntary program to one that was required by rule would place our efforts and our relationship with faculty on a fundamentally different footing. Here on the Great Plains, in the western United States, a culture that celebrates libertarian values and abominates government regulation is not necessarily inclined to “take orders”; moreover, university faculty generally fall somewhere between cats and cowboys on the spectrum of independent-mindedness.

In April 2010, our faculty senate did pass a resolution *endorsing* the IR and *recommending* its services to faculty, but there was never any discussion or suggestion of a requirement. The senate resolved:

that the participating faculty are to be congratulated for their support and use of the institutional repository and that all faculty are to be encouraged to take advantage of these services.

That is where we stand today, and, with more than half of all faculty represented by some amount of content and a steady flow of new recruits, the absence of a deposit requirement has not demonstrably limited the growth or acceptance of the IR. Quite the contrary, it has contributed to an atmosphere of mutual cooperation and respect. Our depositors have become our best ambassadors and recruiters; and faculty are free to participate on whatever terms and to whatever extent they choose.

Meanwhile, it has seemed that a good many scholarly communications professionals have settled on a two-pronged approach—either to purchase or to compel deposits. I believe that purchasing content by using library resources to pay open access (OA) fees is not a good idea; but that is a subject for a different essay. The other road for recruiting content—by requiring, mandating, or compelling



deposits—is similarly unattractive for reasons that fall into roughly three categories: passion, pragmatism, and proprietary rights.

## **Passion**

One of the core values of the Montessori program is “The child does something because of an inner desire to do it, not because the teacher said so.” Can we not extend this same courtesy to our faculty colleagues? Or do we regard them as manipulatable objects, as experimental subjects for social or academic engineering—all, of course, in the name of a good cause?

How can we claim to be helping faculty when we are imposing additional rules and requirements on them? Who then are we really helping—repositories that cannot otherwise get the cooperation of academic authors, or perhaps gold and hybrid OA publishers whose sales of paid licenses make for convenient solutions to the deposit requirements. My philosophy of the IR has been: “The repository belongs to the faculty, not to the library, not to the university, not to the public.” The repository serves the needs of the faculty as they see them, on their terms, at their convenience. The universities and world at large have no rights to access or re-issue their research, unless the faculty authors choose to specifically transfer or share those rights.

On a larger scale, I have come to believe there are too many rules already, and I doubt the usefulness of most of them, and especially distrust those instituted for people’s “own good.” I do not want to work with faculty under compulsion; ours is strictly a voluntary effort. I can be enthusiastic about offering a service that disseminates faculty research across the internet; I have no stomach for enforcing further rules on a class of employees already laboring under so many constraints. “Great news! Now you are supposed to make bricks without straw! Isn’t that exciting?” The university is a soul-less corporation, and the “public” an amorphous abstraction; but the faculty is a body of living individuals with whom one can have actual human relationships and bonds (even) of friendship. Our voluntary IR arrangement fosters this feeling on both sides; a compulsory arrangement—even one self-imposed—places the parties on different standing. I have spoken with IR managers from institutions with mandatory policies who say that they don’t ever tell faculty that it’s a requirement, for fear of spoiling their willingness to participate.

Mandatory deposit policies put the libraries or scholarly communications officers in an enforcement role, for which they lack the means and the will. I have seen posts recently about “putting teeth” into mandate policies, and I can only surmise this involves inventing some form of punishment (biting?) for faculty members who fail to comply. Personally and karmically, I want no part of that. The institution–employee relationship for faculty is already one-sided, and the library is fortunate not to be involved in administering discipline. The difficulty librarians face in getting faculty to return overdue books or pay library fines suggests that they may not be the proper agents for policing and enforcing deposit mandates.

Overall, I believe it is more beneficial and effective to instill a *passion* for the benefits of using an IR than to seek rules or procedures designed to prescribe participation. If we cannot make repositories attractive, easy, and rewarding to use, no amount of ordinance or regulation will produce the desired results.

At Nebraska we seek out potential depositors, welcome them with open arms, shower them with service, and above all make it easy to participate. I realize none of this is inconsistent with a deposit mandate or policy; but it makes the policy unnecessary.

## **Pragmatism**

When the idea of mandated deposit policies first became widespread, it was suggested to our Dean by others that we pursue a deposit resolution by referendum or edict, but to her (and to her credit), the effort and political capital involved seemed to outweigh any possible benefit. A binding resolution would have required action by the library dean, the faculty, and the campus administration. Multiple committees would have been created, convened, and consulted; the issues discussed, considered, and subjected to recommendations. Surveys or polls would probably have been taken, stakeholders identified, rubrics and procedures defined. And all this would have happened in “academic time.” The campaign would have raised issues of power and control over research output, involving the expectations and reward structure among the various participating (as well as the merely observing) bodies. And the library would have been in the middle, trying to broker accommodations and steer developments toward a concrete goal. It is extremely challenging to get numbers of faculty

to agree on anything—I don't think this qualifies as a discovery; it's more of an axiom. Let's just say that any proposal would have been considered from a wide range of perspectives and subjected to intense analysis from multiple viewpoints, and these would have needed either to be harmonized or facilely glossed over. In addition, complexities increase exponentially with the numbers of academics involved.

As mentioned, we were already up and running at this time, and this (hypothetical) resolution campaign would have reduced time spent on the primary goal of populating the repository with faculty content—an activity that I personally found more rewarding than canvassing for votes at the hustings. The idea of lobbying for passage of a new university rule was not attractive to me—I am just not evolved temperamentally for that sort of campus political activity.

Furthermore, a mandatory deposit rule had no obvious rewards to tempt the faculty in favor of passage. The existence of a requirement would not by itself produce wider dissemination; it would not lead more people to read your stuff once deposited. A mandatory deposit policy has no dangling “carrot” to lure the faculty into depositing; and its punitive “stick” is frail or nonexistent and held in the wrong hands. Most mandated deposit policies have all the force of a New Year's resolution—leaving one free to “opt out” at will. So I remain perplexed at the utility of working to implement a rule that can be observed or ignored at the discretion of the subjects.

Pragmatically speaking as well, a deposit mandate does not even apply to the vast majority of scholarship, that is, previously published material. So its efficacy in filling a repository is entirely prospective (and hypothetical). Repositories, however, have a mission to collect and disseminate the entire corpus of published (and unpublished) scholarship, including everything from the development of the clay tablet to the invention of the Nook. For example, more than 80% of Nebraska's IR contents were published before 2010 (see Table 1); and among the “most downloaded” items, documents from the 2000s, from before 1900, and from the 1950s predominate. We observe that usage of documents in the repository is related to relevancy much more than recency; and if traffic is an indicator of IR success, then the large corpus of scholarship untouched by deposit mandates is a critical component. I have not heard of any deposit policy that makes a retroactive stipulation, and have no idea how one would work.

**Table 1.** UNL Repository contents and past-year downloads by decade of publication

Decade	No. Items	pct.	Top 30* downloads	
			2013-14	pct.
2010s	13,730	18.2%	41,937	10.6%
2000s	26,286	34.8%	125,427	31.7%
1990s	13,272	17.6%	46,710	11.8%
1980s	7,972	10.6%	13,547	3.4%
1970s	5,574	7.4%	-	
1960s	3,102	4.1%	-	
1950s	1,917	2.5%	55,620	14.0%
1940s	946	1.3%	-	
1930s	889	1.2%	-	
1920s	625	0.8%	-	
1910s	600	0.8%	-	
1900s	229	0.3%	-	
pre 1900	304	0.4%	112,672	28.5%
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	75,446	100%	395,913	100%

\* The top 30 items represent 6.24% of the 12-month total of 6,344,419 downloads.

Finally, on the pragmatic front, adoption of a mandated policy would seem to me to threaten the IR manager with loss of control over the workflow. I have been fortunate to be able to proceed at my own pace in a semi-organized manner. We have been generally proactive in seeking content, but there have been times when the faculty response has threatened to overrun our defenses, and we struggle to deliver promised services on an appropriate timetable. The prospect of 2,000 researchers all dropping versions of their latest accepted manuscripts is actually frightening. I realize that, in theory, the IR manager does little more than punch their ticket and send them down the information highway, but the practical aspects of managing a faculty archive have little to do with theory. Self-deposited materials are rarely suitable for posting as submitted. Most often, there are permissions issues related to what version of an article may be allowed, as well as issues related to presentation and usability, clarification of rights, and the relation of the deposit to the version of record.

I do not believe our faculty here are unique in having a varied assortment of misunderstandings about the deposit policies of all the different publishers; and the differences among pre-prints, post-prints, and author-revised and peer-reviewed manuscripts are often more than a little esoteric and ineffable.

### **Proprietary rights**

The most pernicious effect of some of the mandatory deposit policies I have seen is the assertion by the institution of pre-existing publication and distribution rights to the content. Under some mandates, the depositor surrenders to the institution a part-ownership interest—granting the right to distribute and *to exercise all rights under copyright and to authorize others to do so*. This assertion is said to precede and survive any subsequent grant of publication rights to a publisher; it is not limited by term or specific media or format. I feel this is a slippery slope, trending downwards toward a future where the institution controls the distribution of the research output of the faculty as though it were a work for hire.

I am familiar with the justification—that this preserves the faculty author from the ruthless domination of the publisher, by establishing a prior claim to allow open distribution via the repository; but to me, the cure is nearly worse than the disease. I have attended or worked for six different universities (3 Ivy, 2 Big Ten); there is not one of them that I would trust to administer publication rights to an article of mine. I will grant that there exists an inequality of power between the single author and the giant multinational publisher, but there is an even more one-sided relationship with the university, who already controls the authors working conditions, income, health care, housing, etc. An author may fall out with John Wiley or the American Chemical Society and never publish with them again. Falling out with one's home institution is a much more dangerous situation. This blanket assertion of a license to distribute is a paternalistic incursion on the rights of faculty, albeit "for their own good," but it is unnecessarily heavy-handed. (See Table 2 for a comparison of author vs. institutional rights under two types of deposit policies.)

The deposit requirement, as I see it, presents faculty authors with a dilemma: they may opt out, rendering the whole question of mandates

**Table 2.** Author deposits, rights, and permissions under 2 regimes

	Nebraska-type <sup>a</sup>	"Harvard"-type <sup>b</sup>
Deposit requirement	no	yes
Posting agreement	permission	license
Effective term	at will	95 years
Deposit is revocable	yes	no
Other formats/media	no	yes
Deposit is transferable	no	yes
University can authorize derivatives	no	yes
Opt-out provision	<i>n/a</i>	yes

a. Voluntary one-time permission to post in IR.

b. Mandated deposit, exercise all rights under copyright and authorize others to do so.

moot; or they may misrepresent to publishers their capacity to convey unencumbered publication rights, because, in fact, the mandating institution has already established what is essentially a 95-year easement on the use of the intellectual property. An alternative might be to pay for gold or hybrid open access, in which case everyone is covered; though the authors must then secure the extra funds for the publisher and release under OA license any exclusive proprietary rights they might have wished to retain.

For those institutions that already have and love their deposit requirements, I have only good wishes. If it works for you, well, great; but it's not a club I am interested in joining. Some promoters of the idea seem to be looking far beyond the operation of the individual repositories, using them, in fact, as counters in the campaign for universal "open" access. Yet the justification seems more often focused on the rights of the public to use and repurpose the faculty's content than on the interests of the faculty or their rights to control their own intellectual property. I believe the repositories can and will be major factors in the growth and ultimate triumph of common access to academic and scientific research; but I believe this will be achieved by pumping huge amounts of content onto the internet rather than by putting a net of deposit requirements over working researchers to capture their budding output between conception and publication.

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