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The OAK Law Project Paper Submission – Due 7 December 2007

Professor Brian Fitzgerald and Anthony Austin

Paper Submission: Issues for Academic Authors, Institutional Repositories, Open Access Journals and End-Users

Introduction:

From 2 October 2007 to 9 November 2007, the OAK Law Project undertook a survey of issues facing academic authors within Australia in relation to repositories, open access journals and traditional subscription based academic publishing. The survey set out to obtain the following information:

- academic author's awareness and understanding of repositories and open access journals;
- their perceptions of the different models of publishing agreements, their preferences and their experiences when negotiating and entering into publishing agreements;
- their understanding of the legal implications of the different models of publishing agreements and the impact which these have on open access to academic and research material;
- academic author's reasons for
 - choosing between traditional subscription based publishers and repositories and open access journals as vehicles for publishing their work; and
 - what has made or prevented them from depositing or contributing their work into repositories or open access journals.

This paper submission outlines the results of that survey and analyses what practical steps can be undertaken in the light of that survey to facilitate the growth of institutional and disciplinary repositories and open access journals.

The OAK Law Project ('OAK' standing for Open Access to Knowledge) is an Australian research project sponsored by the Queensland University of Technology and is funded by the Australian Federal Government's Department of Education, Science and Training. The OAK Law Project develops legal protocols and frameworks for managing copyright issues in an open access environment and analyses legal and other issues important to facilitating open access in Australia and internationally. OAK Law has produced a range of publications to date which are available on the OAK Law website - <http://www.OAKlaw.qut.edu.au/>:

- OAK Law Project Report: Creating a Legal Framework for Copyright

Management of Open Access within the Australian Academic and Research Sector;

- OAK Law Project Report: Building the Infrastructure for Data Access and Reuse in Collaborative Research: An Analysis of the Legal Context;
- OAK Law Project Survey on Academic Authorship, Publishing Agreements and Open Access;
- OAK Law Project Guide to Developing Open Access through your Digital Repository;
- OAK Law Project Proposed Guide for Academic Authors;
- OAK Law Project Oak List of Publishers Agreements;
- OAK Law Copyright Guide for Research Students;
- Forthcoming OAK Law Project Report: Streamlining Collaborative Innovation in an e-Research World.

Survey Results:

The OAK Law Project Survey on Academic Authorship, Publishing Agreements and Open Access obtained various data on academic publishing from which certain conclusions can be drawn.

For academic authors, a decision to publish is based primarily on the reputation, impact and quality of the peer review of the publisher. Whilst the elements and benefits of open access are important to the majority of academic authors, this importance will be lessened if an author believes that depositing a work into a repository or publishing in an open access journal will reduce the chances of their work being published in media of good reputation, impact and peer review (such as a subscription based academic journal).

The majority of survey participants showed support for the elements of open access and broad agreement as to the benefits of open access. However, authors still have a real concern about reputation, impact and quality peer review and the use and re-use of their own works through open access. In addition, many authors do not feel comfortable about third parties creating new theories, research or other works which have been derived from the author's original open accessed work.

Academic authors will most commonly enter into an assignment agreement with a publisher; however the majority of academic authors would prefer to retain rights of open access in their works through a licence. The issue here is that most academic authors are not taking any steps to negotiate or amend these agreements so that they enter into a licence, rather than an assignment. In addition, academic authors are often prepared to assign copyright ownership in a work to a publisher (and not to retain any rights of ownership, distribution or use) simply in order to have their work published.

This seems to be fuelled by a general lack of knowledge or understanding on the part of authors about their rights and their ability to negotiate with publishers. Academic authors are often unsure as to what rights they have retained and other terms and conditions of their most recent and their previous publishing agreements. The survey suggests that academic authors may not have the requisite knowledge to identify rights and open access issues in publishing agreements and generally are not utilising open content or creative commons licences. Authors may not appreciate how these licences can apply without impacting on their chances of being published.

Academic authors do support the depositing of works through a non-exclusive licence for non-commercial, publicly accessible on-line institutional repository, but do not understand how publishing or depositing open access will link to or promote their work, profile, employment or career or how this activity will affect their receipt of funding. The lack of metrics or citation data in both repositories and in open access journals is a disincentive for academic authors to either deposit or contribute works.

Academic authors want a greater understanding of how publishing in an open access journal would satisfy their needs for reputation, impact and quality peer review. They want education and assistance about their rights so that they can negotiate for the retention of rights with publishers and understand the benefits and disadvantages for them in depositing into repositories or publishing in open access journals. This is of particular importance for academic authors of less than 10 years publishing experience.

It may be the case that many institutions or open access journals have decided not to address these issues, preferring instead to continue to promote repositories and open access journals on the basis of the greater public good and to let authors make their own decisions. Whilst authors might agree with the principles of open access, the failure of institutions or open access journals to address these issues has led to a sizeable number of authors either ignoring repositories/open access journals or developing uniformed opinions, making traditional subscription based publishing more attractive.

Proposed Strategies:

The issues raised by the survey may cause the growth of open access publishing and repository depositing to stagnate. If open access journals and institutional or disciplinary repositories wish to increase the size of deposits and contributions, they will need to explain to academic authors why depositing or contributing works should not prejudice their chances of publishing their work with traditional subscription based publishing media.

Academic authors need education, information and assistance from open access journals, institutions and repositories which explain if and how they meet the criteria of publishing reputation, impact and quality of peer review and how they satisfy author's requirements for accurate and high-profile metrics and citation. They will need to know how a system of metrics and citation operates and more importantly, why such a system is equivalent to, complimentary with or more advantageous than similar systems used by traditional subscription based publishing media.

Authors will also need explanations from open access journals, institutions and repositories as to:

- the operation and organisation of the repositories or open access journals;
- their position on open access principles, the rights of academic authors, repositories, open access journals and end-users and how they will disseminate works;
- how an open content licence /creative commons licence would allow other parties to make derivatives of their works without unduly affecting their copyright ownership or their chances of being published in traditional

subscription based media;

- how the depositing of works into repositories or open access journals will benefit an author's employment status or advance their career with the institution;
- how the repository or journal will be promoted to their own discipline outside of the author's institution;
- the types of works which can be deposited, the differences between pre-print, post-print and publisher versions, what versions will be allowed to be deposited and reasons why a traditional subscription based publisher should not preclude publication if versions are deposited or open access published;
- where applicable, why open access publishing fees are required and how the fee is used to maintain the operation of open access journals;
- if author's will be provided with support, assistance or guidelines by institutions or journals about these issues;
- if a repository or open access journal will be prepared to negotiate about these issues with traditional subscription based publishers.

Academic authors also need education, information and assistance from funding bodies to explain the funding bodies' position on open access and depositing or publishing funded works into institutional or disciplinary repositories or open access journals. They will also need to understand how depositing or publishing in open access may affect current and future funding.

Practical Guides:

In order to assist with the practical implementation of these strategies, OAK Law has developed or will be developing several guides which will be made available online to repository managers, academic authors and publishers.

For repository managers, there is the OAK Law Guide to Developing Open Access through your Digital Repository which addresses:

- The legal issues that arise:
 - Copyright ownership;
 - Rights necessary for repository depositing;
- Open access principles to be endorsed by institutions;
- Who can deposit into a repository;
- What material can be deposited into a repository;
- Deposit requirements – mandatory or voluntary;
- Full-text and abstract requirements;
- Differences between pre-prints, post-prints and publisher versions;
- Metadata requirements;
- Repository – depositor relationships;
- Repository deposit licences;
- Rights of access and use of end-users;

- Addressing author's concerns about the repository, copyright and the deposit process;
- Management and legal frameworks;
- A user friendly repository deposit licence that can be adapted by institutional repositories and an accompanying guide that explains the provisions of the licence

For academic authors, there will be the OAK Law: Academic Authors Guide to Publishing Agreements and Open Access Publishing which will cover:

- The principles of open access publishing and depositing, the effect that the demands of traditional subscription based publishing has on these principles;
- The legal issues that arise:
 - Copyright ownership;
 - Rights necessary for open access publishing and repository depositing;
- Balancing the demands of open access publishing with the demands of traditional subscription based publishing so that the academic authors interests are not prejudiced;
- The arguments that traditional subscription based publishers will make to restrain rights of open access and how strong these arguments are;
- How academic authors can weigh up the risks for them between open access and traditional subscription based publishing and to make an informed decision about how they wish to publish their work;
- How to negotiate an appropriate allocation of copyright interests with publishers;
- How they can encourage their institutions to enter into dialogue with traditional subscription based publishing to negotiate these interests;
- A 'Copyright Toolkit' that provides a checklist to assist academic authors in identifying assignments, exclusive licences and non-exclusive licences in publishing agreements and the rights contained in those agreements;
- The differences between assignments, exclusive licences and non-exclusive licences in the ownership, protection, transfer and retention of copyright;
- How rights are lost or transferred in assignments or exclusive licences and the relationship between the allocation of copyright interest in publishing agreements and enabling open access rights to published works;
- A template user-friendly 'Publishing Agreement' and accompanying step-by-step guide to the template, which can be used by academic authors as the publishing agreement between them and publishers. This author-friendly agreement will non-exclusively licence the academic author's work to publishers, without assigning ownership or comprising their rights of reproduction and dissemination;
- Template user-friendly 'Publishing Agreement Clauses' and template 'Author Addenda' and accompanying step-by-step guide to the templates, which can be used by academic authors where the publisher has submitted a publishing agreement that seeks assignment of their work to the publisher. These clauses and addenda will allow academic authors to amend and negotiate publisher's agreements to ensure the retention of rights for purpose of depositing and publishing of works in repositories and open access journals.

For both open access journal and traditional subscription media publishers who want to be informed about open access and to allow for open access rights to be retained by academic authors, there will be the OAK Law: Publishers Guide to Publishing Agreements and Open Access Publishing which will cover:

- The principles of open access publishing and depositing;
- The legal issues that arise:
 - Copyright ownership;
 - Rights necessary for open access publishing and repository depositing;
- Balancing the demands of open access publishing with the demands of traditional subscription based publishing so that the publishers and the academic authors interests are not prejudiced;
- The differences between assignments, exclusive licences and non-exclusive licences in the ownership, protection, transfer and retention of copyright;
- How publishers can weigh up the risks for them between open access and traditional subscription based publishing and to make an informed decision about how they wish to publish the work of academic authors;
- How to draft a publisher's statement on open access publishing and issues for consideration by a publisher in drafting an open access policy statement;
- A template 'Open Access Policy Statement' for use by publishers on their website;
- A template publisher-friendly 'Publishing Licence' which can be used by publishers as their publishing agreement between them and academic authors. This contractual licence will non-exclusively licence the academic author's work to the publisher, ensuring the publisher's rights of publication without the need to obtain rights of ownership in the work or to impede the author's rights of open access reproduction and dissemination;
- A template publisher-friendly 'Publishing Assignment' which can be used by publishers as their publishing agreement between them and academic authors. This contractual assignment will transfer ownership in the work to the publisher and will enable the publisher to licence back to the academic author rights of open access reproduction and dissemination.

Ultimately, frameworks will need to be established between institutions, open access publishers, funding bodies and traditional media publishers. The purpose of such frameworks is to reconcile their respective needs and to minimise the effect of any conflicts between them upon academic authors.

Conclusion:

In conclusion, we believe that open access publishing, whether as institutional or disciplinary repositories or open access journal publishing can effectively co-exist with commercial publishers.

Open access publishing can be actively supported and strengthened by the contributions of academic authors, provided that institutional or disciplinary repositories or open access journals can develop a management and legal framework that resolves these issues.

A management and legal framework must find ways to balance and satisfy author's concerns about open access and their commercial publishing interests and the

proposed OAK law guides provides a step for open access journals, institutions and repositories to establish such frameworks.