

# Outcomes, Questions, and Answers : “The Right to Deposit (R2D): Uniform guidance to ensure author compliance and public access”

## I. Introduction

On April 16, 2024, the [University of California \(UC\)](#) and [Authors Alliance](#) hosted a free webinar to explore the deposit rights environment authors will face under new, zero-embargo public access policies from federal funders, and the role institutions can play in supporting these rights. This event was co-sponsored by the [Association of Southeastern Research Libraries \(ASERL\)](#), the [Big Ten Academic Alliance \(BTAA\)](#), the [HBCU Library Alliance](#), the [Ivy Plus Libraries Confederation](#), the [Statewide California Electronic Library Consortium \(SCELC\)](#), and the [Texas Digital Library \(TDL\)](#).

Over 350 people joined the webinar. The speakers included representatives from the organizing institutions as well as panelists from a variety of co-sponsors:

- Günter Waibel, associate vice provost & executive director, California Digital Library
- David Hansen, executive director, Authors Alliance
- Rich Schneider, professor, Department of Orthopaedic Surgery, UCSF
- Katie Fortney, copyright policy & education officer, California Digital Library
- Katie Zimmerman, director of copyright strategies, MIT Libraries
- Sandra Aya Enimil, program director, Scholarly Communication and Information Policy, Yale University Library
- Maurice York, director of library initiatives, Big Ten Academic Alliance

The 90 minute event explored the requirements facing authors as new and updated federal agency public access plans are adopted as a result of the [White House Office of Science and Technology Planning \(OSTP\) public access guidance](#) (“the Nelson memo”). In particular, it focused on authors' understanding of and ability to deposit their articles “in agency-designated repositories without any embargo or delay” given the varied information and guidance they may encounter during the publishing process.

## II. Author experience

An author's primary concern is producing the best manuscript, revising their article in response to peer review, and getting accepted for publication in an appropriate journal. Along the way authors face inconsistent information from their funders, their institutions, and their publishers, often using different terminology and jargon. For instance, they may be told by their funder that they need to deposit their article in the funder's repository, and that they need to negotiate with their publisher to retain the rights to do so. Meanwhile, a publisher may present that same author with non-negotiable terms requiring the exclusive rights to distribute the author's article.

Authors need uniform guidance and integrated systems in order to streamline workflows and comply with policies. They need to be able to share their work widely and reuse the work of others in order to accelerate research and advance the public good. This kind of support will enable federal grantees to spend less time on logistics and compliance, and more time on the research they specialize in and which they are being funded to conduct.

## III. Institutionally-based support

Some institutions invest in agreements with publishers in which the institutions pay for Article Processing Charges (APCs). Articles published under this route are generally available under a Creative Commons license and can be readily deposited in a repository. However, this is not required by the Nelson memo. It is also a route that is not available to authors at all institutions.

Some institutions have attempted to negotiate with publishers on behalf of their authors to retain deposit rights even when an article is published on a subscription basis, but very few institutions have been successful. Faculty at some institutions have adopted open access policies to improve faculty deposit rights, but these policies have limitations: the education and process required to adopt them can be challenging, they don't cover every author at an institution, and publishers can require authors to waive them as a condition of publication.

Institutions have provided education to their authors for years and will continue to do so. Based on experiences supporting grantees subject to current and previous public access policies, this will continue to be a challenge.

## IV. Federal purpose license

The United States Office of Management and Budget uniform guidance for grants and agreements contains the following language in [2 CFR §200.315\(b\)](#):

To the extent permitted by law, the recipient or subrecipient may copyright any work that is subject to copyright and was developed, or for which ownership was acquired,

under a Federal award. The Federal agency reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes and to authorize others to do so.

This includes the right to require recipients and subrecipients to make such works available through agency-designated public access repositories.<sup>1</sup>

This provision, the Federal purpose license, has existed in some form since at least 1976. Some federal agencies, including the Department of Energy (DOE), have already been relying on it in the implementation of their public access plans. The Federal purpose license applies upon creation of an article, overriding all subsequent terms and licenses. It provides a highly effective, non-disruptive, elegant and familiar solution for accomplishing the ends of the Nelson memo without having to rely on individual authors and institutions to protect this right or navigate differing institutional approaches. Leveraging the Federal purpose license could also provide consistency for articles and authors subject to policies from multiple granting agencies.

## V. Conclusion

After reviewing the challenges facing authors, particularly the inconsistent and sometimes contradictory language they are faced with when it comes to sharing their publications in compliance with their policy obligations, it is clear that greater simplicity, clarity and uniformity is needed. Institutionally-based approaches can help many authors, but will never help everyone. The Federal purpose license appears to present a more comprehensive solution.

The organizers have prepared a “Statement in support of using the Federal purpose license to implement the 2022 OSTP public access memo,” also known as the “Right to Deposit” (R2D) statement. This statement has already been endorsed by all of the consortia co-sponsoring this event. Other institutions and individuals are encouraged to sign to indicate support for uniform reliance on the Federal purpose license by more federal agencies to improve clarity and compliance for their authors.

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<sup>1</sup> The last sentence was added in a recent revision and may not appear in all sources.

## Appendix - Q&A

### Federal purpose license

**1. If the Federal purpose license has already existed for a long time, and has new language clarifying that it can be used this way, does that solve the problem for authors?**

It depends on the author's funder. Agencies have rights in federally funded research publications, but they are not uniformly using them. Only some agencies are telling their grantees in agency guidance that the Federal purpose license covers sharing publications in agency-designated repositories. Other agencies aren't relying on their own rights from the license, and instead advising grantees to work with their publisher and secure the rights to post their publications independently. The Federal purpose license does not help authors if they don't know about it.

**2. What can higher education institutions and academic libraries do to help?**

Only agencies can determine what information for grantees their plans and supporting documentation will contain. Higher education institutions and libraries can help with education for authors. Libraries, offices of research and sponsored programs offices all may have the opportunity to provide information to grantees, so education will be most effective if these parts of the university collaborate. When a federal agency does invoke the Federal purpose license, institutions can help make sure that grantees are aware of that fact.

Institutions can also sign the "Statement in support of using the Federal purpose license to implement the 2022 OSTP public access memo" if they believe that clear guidance from agencies about the Federal purpose license would help their authors. Also, if they believe that explicit guidance about the Federal purpose license would be helpful to their authors, they can submit comments saying so in response to agency requests for information (RFIs) about draft public access plans.

**3. My institution has an OA policy. Does it matter for our authors whether or not agencies rely on the Federal purpose license?**

OA policies can make a big difference for authors by shifting the default for author deposit rights. But they also have gaps and failure points that the Federal purpose license does not: the Federal purpose license covers all federally funded publications (not just those written by faculty), and it cannot be waived.

### Publishers

**4. What kinds of actions do you see, or expect to see, from publishers in response to federal agency public access policies?**

We already see an attempt to steer federally funded authors towards Article Publishing Charges (APCs), despite repeated statements from OSTP and agencies that repository deposit, not OA at the publisher site, is what's required. This is likely to continue, and it will be an outreach and education challenge. Libraries that can negotiate with publishers about the author experience (e.g. author rights and author publishing contracts) may also be able to work with publishers to make sure workflows are not misleading to authors.

**5. Does your experience indicate that most journal staff understand the rights and policy landscape that authors are facing?**

No, it seems unlikely, unless the particular staff (e.g. editors) are under similar obligations and have taken the time to become educated about them. Day-to-day journal management involves a lot of workflow tasks, and from communications we've seen between authors and journal staff, nuanced education on rights and policy issues, rather than workflow issues, does not seem to have been a priority so far.

**6. Have publishers ever sent takedown notices for articles in your institutional repository?**

Yes, but very rarely. The [UC Office of Scholarly Communication has blogged about this](#). Here's a brief update and summary of UC's experience, which is similar to MIT's:

- Only two publishers have ever sent notices.
- About 50 articles have been targeted, compared to about 300,000 total articles in the repository that have been previously published in other venues.
- Most notices targeted articles published prior to UC's OA policies.
- All targeted articles were publisher versions of record.
- No takedown notices have been received in the past four years.

[Institutional open access policies](#)

**7. Who writes OA policies and gets them adopted?**

Most OA policies follow the same model, which is discussed at length in "[Good practices for university open-access policies](#)." Many institutions tailor the basic language in response to local needs. Achieving faculty support for a policy requires that the initiative is led by and owned by faculty advocates, and the exact wording of a policy also needs to come from the faculty. Libraries and administration can play a role in consultation and support, especially because they may be important to how the policy is implemented, e.g. with regards to the institutional repository.

**8. Do OA policies transfer copyright ownership from authors to institutions?**

No, they provide a non-exclusive license to the institution that survives subsequent grants to other parties, including publishers. Read more at “Good practices for university open-access policies,” in particular the sections on [Grant of rights to the institution](#) and [Types of policy](#).

### **9. Are OA policy waivers common?**

Not at this time. Most publishers do not require waivers: authors acquire waivers for less than 5% of articles subject to OA policies, based on the information available to UC and MIT. But whether or not to require a waiver as a condition of publication is up to a particular publisher, and publishers could start requiring waivers more often.

### **10. What version is deposited under an OA policy?**

Institutional OA policies, like federal agency public access policies, require authors to deposit authors’ final manuscripts. The UC Office of Scholarly Communication [answers the question in its author FAQ](#) this way:

Use the latest version you have that hasn’t been formatted by the publisher. If you used Microsoft Word to write the article, it will probably be a Word doc. If the version you’re looking at has the look and feel of the journal and the publisher’s copyright notice on it, it’s probably the wrong version.

If you no longer have your author’s final version, you may be able to retrieve a copy from the review system used by the journal in which it was published. A non-profit group has created a guide explaining how to download the author’s final version (referred to in the guide as an AAM) of an article from some of the most commonly used journal systems. [You can access the guide from the Open Access Button site.](#)