

# Campus Open Access Policies: legal considerations.

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# Four questions

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- Who owns faculty intellectual property?
- How will a campus policy relate to other OA mandates?
- What licenses are needed?
- What is the impact on later publication agreements?

# Who owns faculty copyright?

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- Copyright automatically owned by “author.”
- In “work for hire,” employer is considered the author.
- Application of WFH very doubtful
  - Does “teacher exception” still apply?
- Know your institution’s policy on ownership!
  - Distinguish copyright, patents and hybrid works of “know-how” (like software).

# Re. ownership issue

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- Irony that can help:
  - Faculty routinely give copyright away without compensation to publishers
  - Often reluctant to share with own institution.
- Note possible dispute re. why faculty owns ©.
- Effort to license faculty work offers:
  - Chance to discuss how OA serves basic values and rewards structure of academia
  - Chance to assert or emphasis faculty control.



# Impact of other OA mandates & models?

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- Will license cover right to deposit funded work in PubMed Central?
- Will deposit in a disciplinary repository be sufficient?
  - Does license seek OA in general, or institutional “branding?”
- How is hybrid publishing option addressed?
  - Does institution support OA fees? Should support continue after licensing for an IR?
  - Note faculty loyalty to traditional publishers.

# What should a license look like?

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- Non-exclusive.
  - Need not be a written transfer.
- Automatic.
  - Can arise upon creation of a work.
  - Many schools use such a license (or “interest” in faculty work) for other purposes already.
- Should give institution right to authorize others to use the work (specific re. CC license, i.e.)
- Will there be provision to waive the license? How? Under what circumstances?

# Impact on subsequent licenses & transfers?

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- All subsequent transfers will occur subject to the prior, automatic license.
  - This is not an unusual situation (i.e. gov't purpose license).
- Should inform publishers about license early and often.
  - Contract should acknowledge license, but prior interest likely effective regardless.
- Will license accommodate embargoes?