

PubMed Central Deposit and Author Rights

Agreements between 12 Publishers and the Authors
Subject to the NIH Public Access Policy

Ben Grillot

August 2008



Association of Research Libraries

Published by the

Association of Research Libraries
21 Dupont Circle, NW, Suite 800
Washington, DC 20036-1118
P (202) 296-2296 F (202) 872-0884
<http://www.arl.org/>

Ben Grillot © 2008



This work is licensed under the Creative Commons Attribution-Noncommercial-Share Alike 3.0 Unported License. To view a copy of this license, visit <http://creativecommons.org/licenses/by-nc-sa/3.0/> or send a letter to Creative Commons, 171 Second Street, Suite 300, San Francisco, California, 94105, USA.

PubMed Central Deposit and Author Rights

Agreements between 12 Publishers and the Authors Subject to the NIH Public Access Policy

Ben Grillot¹

Authors and publishers have long negotiated the ownership of copyright in scholarly works. However, with the rise of electronic publishing and a growing trend towards open and public access models, traditional author-publisher agreements are changing. One of many forces bringing about this change is the National Institutes of Health's (NIH) recently revised Public Access Policy, requiring authors of NIH-funded articles to submit their works to PubMed Central. As a result of this policy, authors of funded works are looking closely at their publication agreements and scientific, technical, and medical journal publishers are re-examining their author agreements to accommodate the author's needs. This paper, in an effort to help authors make informed choices about their rights, compares and contrasts how the agreements of 12 publishers permit authors to meet the requirements of the NIH Public Access Policy and share their works while they are under embargo.

I. Background

PubMed Central (PMC) is a free online research archive of peer-reviewed journal articles on biomedicine and the life-sciences administered by NIH. As a trusted repository of valuable scientific research, developed and managed by the National Library of Medicine, PMC acts to "ensure the durability and utility" of scientific research "as technology changes over time."²

At the instruction of the US House of Representatives, on February 3, 2005, NIH announced a policy requesting the submission to PMC of scholarly works derived, in whole or in part, from research conducted with funds from NIH grants.³ Authors were asked to provide the final electronic version of the manuscript as accepted by the publisher, including any edits made during the peer-review process. This policy became effective on May 2, 2005. In February 2006, as requested by Congress, NIH studied submission rates and determined that because compliance with this request was optional, less than four percent of NIH-funded researchers were depositing their works into PMC.⁴

Based on this progress report, Congress enacted a provision as part of the Consolidated Appropriations Act requiring NIH to make this policy mandatory.⁵ On January 11, 2008, the NIH released a revised policy making submission of articles to PMC mandatory. This policy, which became effective on April 7, 2008, requires that authors:

funded by the NIH submit or have submitted for them to the National Library of Medicine's PubMed Central an electronic version of their final, peer-reviewed manuscripts upon acceptance for publication, to be made publicly available no later than 12 months after the official date of publication.⁶

1 Ben Grillot, MLS (Maryland 2002), is a second-year student at The George Washington University Law School and a summer intern at the Association of Research Libraries.

2 See "PMC Overview." <http://www.pubmedcentral.nih.gov/about/intro.html>

3 See generally Michael W. Carroll, "Complying with the National Institutes of Health Public Access Policy: Copyright Considerations and Options." SPARC / Science Commons / ARL white paper, February 2008. <http://www.arl.org/sparc/advocacy/nih/copyright.shtml>

4 "NIH Progress Report to Congress," February 2006.

5 See Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, Div. G, Tit. II, §218.

6 Ibid. See also "Revised Policy on Enhancing Public Access to Archived Publications Resulting from NIH-Funded Research," NOT-OD-08-033. <http://grants.nih.gov/grants/guide/notice-files/NOT-OD-08-033.html>

Prior to this revised policy, some publishers of scientific, technological, and medical research were using publication agreements that did not permit authors to retain the rights they needed to submit their works to a funder-designated repository. Many publishers have subsequently reviewed and are revising the agreements they sign with authors in light of the NIH's revised policy. This paper compares the terms of these revised agreements, examining their support of authors' needs to comply with NIH policy.

A complete list of the publishers compared in this paper, along with the author agreements, policy statements, and other relevant documents examined, is provided in the Appendix. All documents examined were current as of August 8, 2008, but due to publishers' evolving approaches to both electronic publishing and the NIH policy, these policies are likely to change.⁷ Further, this sample of publishers is not meant to be comprehensive, instead the publishers were chosen because they are illustrative of the range of approaches taken in response to the NIH policy. However, those selected do provide a general cross sample of publishers from a variety of disciplines that receive NIH funding.

II. Analysis of the Agreements

This analysis of author agreements is not exhaustive, instead focusing primarily on those terms affecting an author's ability to comply with the current NIH Public Access Policy. These publication agreements differ from each other in three primary ways: the terms of the deposit, the length of the embargo period, and the rights retained by the author—both generally and during the embargo period. Three tables below summarize the terms of the agreements; some additional analysis is offered to enrich this basic data.

Complying with the Policy

Table 1. Terms of the Deposit in PubMed Central

Agreement Language

In this sample, most publisher agreements explicitly address, and permit, deposit into PMC—either in the agreement itself, or, in a few cases, in statements on their Web sites. Further, even when deposit into PMC is not mentioned, the agreements generally include language sufficiently broad to cover such use of the work. However, reliance on statements posted on Web sites as opposed to language contained in a written publication agreement is problematic. Illustrating this ambiguity, Taylor & Francis' (T&F) publicly posted document, "Taylor and Francis's position on Copyright and Author Rights,"⁸ does not clearly address deposit into PMC. In the absence of unambiguous language from the publisher addressing deposit into PMC, authors should consider the use of author addenda to supplement the publisher's agreements and clearly reserve the necessary rights to comply with the NIH policy.⁹

The Mechanics of the Deposit

Under the NIH policy, it is the author's responsibility to ensure that a funded work is deposited in PMC, but NIH works with publishers who wish to offer either upload or deposit services on behalf of authors. In this sample, several journal publishers (e.g., American Association for the Advancement of Science) simply allow

7 For example, an August 13 press release announced that T&F will upload the author's accepted version to PMC.

8 Taylor and Francis, "Taylor and Francis's position on Copyright and Author Rights."

<http://www.tandf.co.uk/journals/authorrights.pdf>

9 For a broad overview of author addenda see "Authors and Their Rights." <http://www.arl.org/pp/ppcopyright/author-rights-resources.shtml> See also Peter B. Hirtle, "Author Addenda: An Examination of Five Alternatives," *D-Lib Magazine* 12, no. 11 (November 2006) <http://dlib.org/dlib/november06/hirtle/11hirtle.html>

Table 1: Terms of the Deposit in PubMed Central

Agreement Language:	AAAS	ACS	APA	APS	BIO	ELSV	JCB	MAL	NPG	OUP	PNAS	T&F
Expressly permits deposit in PMC	No ~	Yes	Yes	No	No	Yes	Yes	Yes	No ~	Yes #	Yes	Yes #
If not, permits posting to:	Funding body's archive or designated repository			Free Access E-Print Servers	Digital Repositories				Funding body's designated archive			
Who Uploads and Approves Deposits into PMC?	Author	Author *	Publisher uploads, Author approves	Author	Author	Publisher uploads, Author approves	Publisher	Publisher	Publisher uploads, Author approves	Publisher	Publisher	Publisher uploads, Author approves
What Version is Deposited?	Accepted Version	Accepted Version	Accepted Version	Accepted Version	Publisher's Version	Accepted Version	Publisher's Version	Accepted Version	Accepted Version	Publisher's Version	Publisher's Version	Accepted Version

Definitions:

Accepted Version: Author's final version, including revisions based on peer-review comments and edits.

Publisher's Version: Final version as published, including all of publishers' formatting and copyediting.

Notes:

* If the author pays for immediate access under the ACS AuthorChoice model, ACS will deposit the Publisher's Version.

Author agreement is not publicly available, but the publisher's Web site describes the agreement in detail.

~ AAAS and NPG address PMC in statements on their Web site but not expressly in their License to Publish agreements.

AAAS	American Association for the Advancement of Science	JCB	Journal of Cell Biology
ACS	American Chemical Society	MAL	Mary Ann Liebert, Inc.
APA	American Psychological Association	NPG	Nature Publishing Group
APS	American Physical Society	OUP	Oxford University Press
BIO	BioOne Model Agreement	PNAS	Proceedings of the National Academy of Sciences
ELSV	Elsevier	T&F	Taylor & Francis

authors to make the deposit as required by NIH. A few (e.g., Elsevier) upload the accepted version and set the embargo period, though the author must review and approve that version to complete the deposit process. Still others (e.g., Oxford University Press) deposit the publisher's version on the author's behalf.

In some cases, the publisher offers the author an option of full deposit and immediate public availability in conjunction with a fee-based immediate-access service. For example, the American Chemical Society (ACS) provides a fee-based immediate-access model independent of the NIH deposit requirements. However, following the enactment of NIH's policy, ACS linked an NIH deposit service to this option. Under this model, the only way the publisher will deposit its version into PMC is for the author to pay for immediate access. If the author elects to publish under ACS's traditional program, responsibility for submitting the work remains with the author and only the author's version as accepted may be used.

The ACS describes these options in its "NIH Policy Addendum." First, if authors wish "to forgo the NIH's manuscript submission and proofreading tasks," they can choose ACS's fee-based AuthorChoice program under which "ACS deposits the final published article [to PMC] for immediate open availability,"¹⁰ as well as makes the article immediately available on the ACS Web site. If the author declines to pay for immediate access publication, however, the addendum states that "the author will be responsible for submitting all necessary electronic files... [and] will be responsible for proofreading and checking text and other converted files as may be required."¹¹ Further, the agreement states that "ACS accepts no liability for any errors or omissions" in the version supplied by the author.¹²

While it is helpful for authors to have access to immediate availability of their work, the way the deposit service is linked to the AuthorChoice program could confuse authors, while the intimidating disclaimer of publisher liability might leave them with the mistaken impression that they are assuming a significant risk if they fail to pay for immediate access to ensure complete fulfillment of their NIH deposit obligation.

Publishers have also considered the use of upload fees in conjunction with the NIH Policy. This fee, unlike an immediate access fee, does not make the work publicly available immediately, but instead is a cost the author must pay for the publisher to upload the work. In July 2008, the APA announced that it was going to begin charging a upload fee of \$2,500 for all articles that required submission to PMC. This policy was quickly retracted and according to its Web site is "currently being re-examined and will not be implemented at this time" leaving the exact duration of the embargo period, while at most 12 months, unclear at present.¹³

Table 2. Embargo Periods

The NIH Public Access Policy permits embargoes on deposited articles for up to a year (12 months) following publication. While the length of the embargo period varies by publisher, most journals require authors to select an embargo period granting the publisher a period of exclusivity following first publication of the article. For example, the American Physical Society, a publisher of physics research, has no embargo period based on long experience with e-print servers prevalent within the physics community. In contrast, most other publishers have periods ranging from 6 to 12 months before they allow the work to be made publicly available. A publisher that deposits on behalf of an author has the greatest opportunity to ensure that its embargo period is correctly established for the work. However, even if authors choose or are required to deposit their

10 "American Chemical Society Copyright Status Form, NIH Policy Addendum" (Revised April 2008). http://pubs.acs.org/copyright/nih/nih_addendum.pdf

11 Ibid.

12 Ibid.

13 "Document Deposit Procedures for APA Journals," American Psychological Association. <http://www.apa.org/journals/authors/pubmed-deposit.html>

Table 2: Embargo Periods

	AAAS	ACS	APA	APS	BIO	ELSV	JCB	MAL	NPG	OUP	PNAS	T&F
How Long the Embargo Lasts (in months) without Immediate Access Fee	6	12	TBD	0	6	12	6	12	6	Varies by Journal	6	12
Immediate Access Fee	n/a	\$3,000	TBD	n/a	n/a	\$3,000 ~	n/a	\$3,000 *	n/a	\$3,000 / \$1,800 ^	\$1,200 / \$850	\$3,100 ~

Notes:

* MAL charges \$3000 for the first publication and \$1500 for all subsequent publications.

^ OUP charges a higher rate if the author is not affiliated with an institution that subscribes to Oxford's journals. OUP also has lower rates for individuals in developing countries.

~ T&F's iOpenAccess program and Elsevier's Sponsored Article Program are only available for selected journals.

AAAS American Association for the Advancement of Science
 ACS American Chemical Society
 APA American Psychological Association
 APS American Physical Society
 BIO BioOne Model Agreement
 ELSV Elsevier

JCB Journal of Cell Biology
 MAL Mary Ann Liebert, Inc.
 NPG Nature Publishing Group
 OUP Oxford University Press
 PNAS Proceedings of the National Academy of Sciences
 T&F Taylor & Francis

works themselves, the NIH deposit process enables them to honor the embargo period specified in the publisher agreement.

As was discussed in conjunction with publisher deposit services, some publishers offer authors an immediate access model through a separate mechanism that eliminates the embargo period in exchange for a one-time payment. Among the publishers in this sample, the fee for this service ranges from \$850 for immediate access from the Proceedings of the National Academy of Sciences (PNAS) for an author whose institution has a PNAS site license, to \$3,100 for Taylor & Francis for any author. With these two publishers, if an author elects to pay, the publisher will immediately deposit the publisher's version into PMC on behalf of the author, as well as make it publicly available on the publisher's Web site and electronic databases, thus providing authors with a double advantage by enhancing distribution of their work and simplifying their deposit process.

Again, ambiguity in author agreements can make it difficult for authors to understand their options and the benefits each offers. Notably, the American Psychological Association's (APA) agreement does not indicate when the article will be deposited to PMC, instead stating only that the APA will submit the manuscript to NIH "in a manner consistent with federal law."¹⁴ Thus, the time of deposit as well as the duration of the embargo period, and an author's rights during this period, are unclear.

Further Complications

Table 3. Author's Sharing Rights during Embargo

To comply with the NIH Public Access Policy, authors need to retain sufficient rights in their articles to allow them to be deposited in PMC and made publicly accessible within 12 months of publication. In addition to these deposit requirements, authors should also consider what rights they retain during any embargo period when access to the work will be controlled by the publisher. Despite the NIH policy, most publishers considered here still require authors to give full copyright in the articles to the publisher. In exchange, the publishers may grant back to the author non-exclusive licenses to make certain future uses of the work. In this situation, NIH-funded authors have to check carefully to be sure that they understand how they can share their works before they become publicly accessible in PMC.

Alternative models allowing authors to retain a broader set of rights are acceptable to some publishers. The Model Publication Agreement developed by BioOne in March 2008 responds to the growing movement toward funder-mandated public access by allowing the author to retain the copyright in the work while granting the publisher a license for publication. This license is exclusive for a period of time and then becomes non-exclusive, opening up the options for the author to self-archive or otherwise distribute the article.

While authors cannot assume that publisher agreements will automatically allow them to retain deposit rights, in the agreements examined here publishers generally allow authors sufficient rights to meet their obligations. However, the rights granted to authors during the embargo period do vary. At the more restrictive end of the spectrum, Mary Ann Liebert, Inc.'s (MAL) Transfer of Copyright form requires an author to assign copyright to MAL and does not grant back to the author any rights or provide any licenses to use the material, requiring the author to request permission for each use. Slightly less restrictively, the American Chemical Society permits the posting of an abstract to the author's personal Web site and limits to 50 the number of copies of the final article that can be distributed, presented orally, or transmitted to colleagues. Additionally, the ACS only permits transmission on an employer's internal, secure network if it is a "work for hire." Taking a more liberal approach, PNAS permits authors to post the publisher's version on their own Web sites during the embargo and does not limit the quantity or format for distribution to students or use on a secure intranet site.

14 "APA Publications Rights Form," American Psychological Association. http://www.apa.org/journals/authors/publication_rights_form.pdf

Table 3: Author's Sharing Rights during Embargo (may change after embargo period ends)

	AAAS	ACS	APA	APS	BIO	ELSV	JCB	MAL	NPG	OUP	PNAS	T&F
Ownership of Copyright:	Author	Publisher	Publisher	Publisher	Author	Publisher	Author	Publisher	Author	Author (except for a few titles)	Publisher	Publisher (unless author requests ownership)
During Embargo, Author Can:				No Embargo			No Embargo					
Share with colleagues/students	Accepted Version	<50	Probably	Any Version	Any Version	Any Version	Any Version	As Fair Use Allows	Accepted Version	Any Version	Any Version	Any Version
Post to secure intranet site for scholarly purposes (e.g., courseware)	Accepted Version	If "Work for Hire"	Accepted Version	Any Version	Any Version	Any Version	Any Version	As Fair Use Allows	Accepted Version	Any Version	Any Version	Any Version
Post to personal Web site	Accepted Version	Abstract Only	Accepted Version	Any Version	Any Version	Preprint	Any Version	No	No	Preprint (if posted before publication)	Any Version	Preprint
Post to disciplinary Web site or IR	No	No	Accepted Version (IR only)	Accepted Version	Any Version (if required by funder or employer)	Preprint (IR only)	Any Version	No	No	Preprint (if posted before publication)	Accepted Version	Unclear

Preprint: Author's version prior to peer-review.

Accepted Version: Author's final version, including revisions based on peer-review comments and edits.

Publisher's Version: Final version as published, including all of the publishers' formatting and copyediting.

AAAS	American Association for the Advancement of Science	BIO	BioOne Model Agreement	NPG	Nature Publishing Group
ACS	American Chemical Society	ELSV	Elsevier	OUP	Oxford University Press
APA	American Psychological Association	JCB	Journal of Cell Biology	PNAS	Proceedings of the National Academy of Sciences
APS	American Physical Society	MAL	Mary Ann Liebert, Inc.	T&F	Taylor & Francis

Among publishers that allow authors to maintain copyright in exchange for a license to publish the material, some, like BioOne's Model Publisher Agreement, set a six-month period of exclusivity that clearly describes what uses an author is permitted to make of the work during that period and permits posting of the accepted version to the author's Web site. Notably, although the Journal of Cell Biology (JCB), retains an exclusive right "to publish, reproduce, distribute, display and store the Work in all forms" during the first six months following publication, "except as RUP may grant sublicenses," the agreement grants the the author the immediate non-exclusive right to "do anything they want with the Work" explicitly including posting on the author's or author's institution's Web site.¹⁵ In contrast, The Nature Publishing Group (NPG) is more restrictive during its six month embargo period, permitting scholarly use (including posting on a secure internal network) during the six month embargo period but not allowing public posting on an author's Web site.

Not surprisingly, regardless of which party retains the copyright, it is rare for a publisher to permit publication to a publicly available disciplinary Web site without an embargo period. BioOne only permits such posting if required by a funder or employer. Only four publishers (APS, JCB, OUP, PNAS) generally allow preprints to be posted to such repositories and of those, Oxford Journals only permits such posting if the preprint was posted prior to publication. In the absence of a payment for immediate release of an article, control over the publication of the article during this embargo period is understandably important to publishers. As a result, authors should review agreements carefully and, if need be, use tools such as author addenda to clarify the permissible uses of their work during, as well as after, an embargo period.

III. Conclusion

Responsibility for compliance with the NIH Public Access Policy ultimately rests with the authors of articles based on NIH-funded research. As a result, authors need to be confident they are retaining the rights necessary to allow their work to appear in PMC no later than 12 months after publication. Publishers, in response to this NIH policy, are, with varying degrees of clarity and innovation, granting authors a variety of options regarding the terms of the deposit, the duration of the embargo period, and the rights retained by authors.

Based on an examination of these 12 agreements, the following trends can be identified among publisher agreements that merit careful examination by authors. First, although some publishers are assisting authors with making the deposit to PMC, either publicly available immediately for a fee or after an embargo period, several agreements leave the author in some doubt about what will happen and when. Further, many agreements require authors to allow the publisher to upload the accepted version (which the author must then approve), despite the fact that some authors may prefer to make their own deposit and can do so while honoring the embargo period. Although some publishers are electing to provide separate forms covering the PMC upload or deposit, this is unnecessary since the necessary language can be provided in a standard publisher agreement form.

Additionally, while publishers have a legitimate interest in asserting the right of first publication, the duration and degree of restriction placed on the embargo period varies widely. Many publishers are choosing to make works available sooner than the 12 month maximum allowed by the NIH policy, to the benefit of authors, researchers, and the general public. There is a significant amount of inconsistency and unnecessary lack of clarity regarding author's rights during the embargo period. Authors are encouraged to closely examine their agreements to ensure that they are able to use their work adequately during and after the embargo period, while at the same time publishers are encouraged to clarify exactly what uses are permitted at what times.

The traditional model where the author assigns the publisher complete copyright in the work is being re-configured in some newer agreements to grant the publisher limited exclusive rights of first publication while the author retains ownership of the copyright along with a considerable remainder of distribution rights. This

¹⁵ See <http://www.jcb.org/misc/license.pdf>

model provides greater flexibility for authors to re-use their work in the future and, when properly executed, provides the publisher sufficient rights and incentives to make the work available.

The significant variability in publisher agreements requires authors with NIH funding to closely examine their agreements and the rights granted and retained when deciding where to publish their research. When faced with ambiguous agreements or in order to achieve consistency in retained rights, authors should consider the use of author addenda to provide clarity and retain the rights necessary to use the work as they see fit.

Appendix: The Publishers

Publication agreements from the following publishers were selected for analysis.

American Association for the Advancement of Science (AAAS)

License to Publish Form, Information for Authors.

<http://www.sciencemag.org/about/authors/prep/license.pdf>

http://www.sciencemag.org/about/authors/prep/lic_info.pdf

American Chemical Society (ACS)

Copyright Status Form, NIH Policy Addendum.

<http://pubs.acs.org/copyright/forms/copyright.pdf>

http://pubs.acs.org/copyright/nih/nih_addendum.pdf

American Psychological Association (APA)

APA Publications Rights Form, NIH – Public Access – PubMed Central Deposit Form.

http://www.apa.org/journals/authors/publication_rights_form.pdf

<http://www.apa.org/journals/authors/pubmed-form.pdf>

American Physical Society (APS)

Transfer of Copyright Agreement, FAQ.

<http://forms.aps.org/author/copytrnsfr.pdf>

<http://forms.aps.org/author/copyfaq.html>

BioOne (BIO)

Model Publication Agreement, Model Publication Agreement Informational Sheet. [Note: This agreement is a Model Agreement drafted by BioOne to assist publishers and is not necessarily reflective of the agreements actually used by publishers of journals included in BioOne.]

http://www.bioone.org/BioOne_Model_Pub_Agreement.doc

http://www.bioone.org/pdf/BioOne_Model_Pub_Info.pdf

Elsevier (ELSV)

Example – Journal Publishing Agreement, Elsevier NIH Policy Statement.

http://www.elsevier.com/framework_authors/pdfs/JPA_example.pdf

<http://www.elsevier.com/wps/find/authorsview.authors/nihauthorrequest>

Journal of Cell Biology (JCB)

Manuscript Content Verification and Provisional License to Publish.

<http://www.jcb.org/misc/license.pdf>

Mary Ann Liebert, Inc. (MAL)

Transfer of Copyright.

http://www.liebertpub.com/media/content/transfer_of_copyright.pdf

Nature Publishing Group (NPG)

License to Publish, Manuscript Deposition Service.

<http://www.nature.com/nature/authors/submissions/final/authorlicense.pdf>

http://www.nature.com/authors/author_services/deposition.html

Oxford University Press (OUP)

Publication Rights Policies, Guidelines for NIH-Funded Authors of Articles Published by Oxford Journals.

http://www.oxfordjournals.org/access_purchase/publication_rights.html

http://www.oxfordjournals.org/for_authors/repositories.html

Proceedings of the National Academy of Sciences (PNAS)

PNAS Copyright Assignment and Documentation Report, PNAS Open Access Option.

<http://www.pnas.org/misc/copyright.pdf>

<http://www.pnas.org/site/subscriptions/open-access.shtml>

Taylor & Francis (T&F)

Taylor & Francis's position on Copyright and Author's rights.

<http://www.tandf.co.uk/journals/authorrights.pdf>

http://www.tandf.co.uk/journals/iopenaccess_TCs.pdf