

What Are the Copyright Implications of the New OSTP Public-Access Guidance?

The following frequently asked questions (FAQs) address concerns about public access and copyright raised by the August 2022 White House Office of Science and Technology Policy (OSTP) guidance, “[Ensuring Free, Immediate, and Equitable Access to Federally Funded Research](#)” (also referred to as the Nelson memo). TL;DR: the Nelson memo has no implications for copyright policy.

The Nelson memo updated the 2013 memorandum “[Expanding Public Access to the Results of Federally Funded Research](#).” Significantly, the 2022 guidance eliminates the previous 12-month embargo period for federally funded research, now requiring federal agencies to ensure that the research they fund is available immediately to the public at no cost. The new guidance applies to all agencies with extramural research and development budgets, an expansion on requirements from agencies with research and development budgets above \$100 million. For more on how the federal government’s public-access guidance changed from 2013 to 2022, see this [side-by-side comparison](#).

What does the Nelson memo say about copyright?

The updated policy guidance issued by OSTP does not make any attempt to define, change, modify, or otherwise address US copyright law. Rather, the memo recommends that each federal science agency develop a policy conditioning its grant funding on an institution’s or researcher’s agreement to make their peer-reviewed scholarly publications immediately freely and publicly accessible by default in an agency-designated repository. Requiring researchers and their institutions to make work available as a condition for receiving federal funding concerns contract law, and is consistent with US copyright law.

Am I giving away my copyright if I deposit my article or data in a repository?

No.

Great! So how does licensing work?

If a researcher chooses to accept funding from the US federal government, they must agree to grant the funding agency a non-exclusive license to their scholarly outputs

funded by the grant. In this scenario, the researcher retains their copyright, unless and until they assign it to another party, such as a publisher. According to the Nelson memo, agency policies must describe the prerequisites needed to make publications freely and publicly available by default, including re-use rights and attribution, which has implications for the type of license that the researcher may use. Retaining copyright enables researchers to make those license choices.

A researcher may also choose to grant non-exclusive licenses to other parties, including publishers. After deposit of the author-accepted manuscript (AAM) in an agency-designated repository, any copyright the researcher might subsequently transfer to their journal publisher is already subject to the non-exclusive license.

Of course, a researcher may choose not to receive funding from a US funding agency, in which case they need not license their article to the agency, and may retain complete control of the work or assign their copyright to a journal publisher. The choice is up to the researcher.

What are my options for managing copyright if I publish in an open-access journal?

An academic author may retain the copyright to works they choose to publish in an open-access journal. Or, an author may choose to transfer some or all of their rights to a publisher. As mentioned above, the copyright for any federally funded work would be subject to the same non-exclusive license. Publishers have different policies regarding open access and copyright. For more information on working with traditional and open-access journals, please consult these resources:

- [Understanding Open Access](#), Authors Alliance
- [Author Rights & the SPARC Author Addendum](#), SPARC
- [About CC Licenses](#), Creative Commons

What are the benefits of this updated public-access guidance?

The benefits of public access to research data are accelerated by the government's updated guidance to make federally funded research publicly accessible **without an embargo on its free and public release**.

Scholars, particularly from smaller or historically disinvested institutions or independent scholars, will benefit from equitable access to the results of federally funded research (such as articles and research data) without paying for it directly, or without the need to obtain privileged access through libraries or other institutions. Authors will benefit because their works will be more accessible and discoverable, increasing citations and traffic to their work. Researchers will benefit because public-access repositories allow them to conduct data mining and manipulation on data that

cannot always be performed on data housed in traditional publishers' platforms. Society will benefit because free, immediate access to peer-reviewed scholarly publications and the scientific data underlying those publications will expand access to knowledge, allow for greater validity of research results, encourage a more efficient and collaborative research environment, and lower the cost of educating students.

What will the effects of this public-access memo be on smaller institutions?

Providing greater access to research outputs enhances the scholarly and scientific enterprise as a whole. Academic writing will be accessible by faculty, researchers, and students who cannot afford expensive journal subscriptions, or whose institutions do not subscribe to the journals they need. Public access can mitigate the barriers to accessing academic literature that can lead to delay or even abandonment of a research project. When research is made openly available, an individual with a laptop and a broadband connection has the capability of accessing knowledge that they can use to further their education, knowledge that they can use to advance our shared understanding of the world.

The National Science and Technology Council (NSTC) Subcommittee on Open Science will facilitate coordination among federal science agency public-access policies, and will take the following actions to reduce roadblocks and benefit institutions of all sizes, as well as early-career researchers:

- improve awareness of federally funded research results by all potential users and communities;
- consider measures to reduce inequities in publishing of, and access to, federally funded research and data, especially among individuals from underserved backgrounds and those who are early in their careers;
- develop procedures and practices to reduce the burden on federally funded researchers in complying with public-access requirements; and
- develop strategies to make federally funded publications, data, and other such research outputs and their metadata are findable, accessible, interoperable, and reusable (FAIR) to the American public and the scientific community in an equitable and secure manner.