Open Access Policies Panel Discussion

Julia Lovett  
*University of Rhode Island*, jalovett@uri.edu

Andrée Rathemacher  
*University of Rhode Island*, andree@uri.edu

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Open Access Policies
Panel Discussion

Julia Lovett & Andrée Rathemacher
University of Rhode Island

New England Library Association
Academic Librarians Section 2015 Fall Event
Open Access: Change, Challenge, Opportunity
November 13, 2015
Bridgewater State University, Bridgewater, MA
University of Rhode Island faculty unanimously pass Open Access Policy…

Next steps for the library?

At URI, library was very involved in passage of our OA Policy by the faculty in March 2013.

- Chair of Faculty Senate was librarian
- Chair of the committee that recommended the policy was librarian (me) [Senate’s “Ad Hoc Committee on Open Access”]

Because librarians lead the effort for a policy, we knew what our immediate next steps needed to be after passage.

I will outline what those immediate next steps were, and then Julia will discuss the ongoing work of implementing the policy.
After the URI OA Policy was passed in March, but before the President signed it in May, Julia and I received a meeting request from our Office of General Counsel to discuss the legal ramifications of the policy.

The General Counsel felt strongly that as part of our implementation, we should require that faculty sign a so-called Assistance Authorization Form. This form was created by Harvard, and we basically used theirs with modifications.

URI’s Assistance Authorization Form is a writable PDF document that each faculty member only needs to submit once.

The form authorizes the library to make deposits in DigitalCommons@URI on the faculty member’s behalf and, most importantly, confirms in writing the faculty member’s grant to URI of a non-exclusive license with respect to their scholarly articles as set forth in the OA Policy.

This is important because Title 17, Section 205 (e) of U.S. copyright law states that non-exclusive licenses should be in writing in order to survive a subsequent transfer of copyright by the owner [i.e. the author]. Interpretations of whether or not simply passing an Open Access Policy by itself adequately meets this written requirement differ, and not all institutions with OA Policies use a similar written instrument.

Nonetheless, our OGC insisted that we use the AAF, as he obviously felt that doing so would help keep the university safe from any claims of copyright infringement by
205 (e): Priority Between Conflicting Transfer of Ownership and Nonexclusive License.—A nonexclusive license, whether recorded or not, prevails over a conflicting transfer of copyright ownership if the license is evidenced by a written instrument signed by the owner of the rights licensed or such owner’s duly authorized agent, and if—(1) the license was taken before execution of the transfer; or (2) the license was taken in good faith before recordation of the transfer and without notice of it.

See https://www.law.cornell.edu/uscode/text/17/205

Contacting Publishers

A number of institutions with Open Access policies have sent letters to publishers to notify them of the policies’ existence. This strategy was pioneered by Ellen Finnie at MIT.

Legal rationale => To protect authors:

Permissions-based OA policies grant a non-exclusive license in copyright to the institution. This license is durable, even if an author transfers her copyright to the publisher, and even if the publisher objects to the policy.

However, if the author signs an Author Agreement that transfers copyright to the publisher, and does not let the publisher know about the license to the university, in theory there is a small risk that the publisher could go after the author for breach of contract.

So the reason to notify publishers about the policy is that it lessens the risk to authors who do not amend their publication agreements (as most do not).

Because the institution has already informed the publishers that the institution retains a license in all articles written by its faculty, the publisher cannot easily claim to have not known about this.
After the policy was passed, in summer 2013 I compiled and updated a list of publishers based on lists created by MIT, the University of California San Diego, and Oregon State University.

During the fall, I sent letters as email attachments to 508 individuals at 457 publishers. [Our letter was based on MIT’s letter.]

[Attached to each email was also: a) a copy of the Policy; b) a FAQ for publishers [based on MIT’s FAQ]; c) a sample Addendum to Publication Agreement.]
Out of 457 publishers, I received responses from 29 (a response rate of only 6.3%).

But a response from the publishers was not our primary motivation for sending the letters.

Most important was that we could document the fact that we had done so, to help protect faculty authors who do not use an Addendum to modify their publication agreements to conform to the Policy.

This also allows us to use language on our OA Policy LibGuide that is less strong with regard to using Addendums, as Addendums cause confusion, provoke requests for waivers, and are often not compatible with online publisher systems.
Implementation Decisions

- Terms of use
- Waiver process
- Author Addendum
- OA Policy LibGuide approval
- Publishers who say they’ll demand waiver but do not
- Article versions targeted
- Which faculty does Policy apply to?
- Strategies for identifying faculty publications
- Strategies for promoting the policy

As a result of the passage of the Open Access Policy, oversight of the Policy was added to the charge of the standing Faculty Senate Library Committee.

We had a list of topics we needed to run by the Library Committee before we could fully implement the Policy.

Fortunately, I happened to be the Chair of the Faculty Senate Library Committee, so I was able to convene meetings and bring these issues before the committee members for direction and decisions.

The complete list of issues the committee addressed in the first year after the policy was passed (2013-2014) appears on the slide. I'll highlight just two.
One thing we needed to run by the Faculty Senate Library Committee was the terms of use under which OA Policy articles could be used.

That is, we needed an answer to the question from faculty, “What can people do with my articles?”

We ended up copying Harvard’s terms of use, which prohibits selling the articles. It also disallows making “any translation, adaptation or other derivative work” -- except that people may “include the article in a collection or database, change the technical format of the article, and use excerpts for teaching or other permitted purposes.”

This restriction on most derivative works was important to some of our faculty, especially to an influential faculty member in the English Department who was concerned about bad translations of her work.

Of course, many feel that the ideal license for OA scholarship is CC-BY.

And other institutions use CC licenses for their OA Policy articles. For example, MIT uses CC-BY-NC.

The advantage to a CC license is that it is clean, widely understood, and machine readable.

But using a CC license would have meant an all-or-nothing stance with regard to
derivative works, and we preferred the nuance of Harvard’s ToU in this regard.
Publishers and waivers (don’t poke the bear)

Institutions with OA policies are familiar with the publishers that as a matter of course require waivers of the OA Policy before they will publish an article.

Most notably: Science, Nature, PNAS.

However, there are other publishers who insist in their written policies that authors must get a waiver, yet do not follow up with authors to see if they got a waiver or not.

The Faculty Senate Library Committee decided as a matter of policy, that if a publisher does not follow through in their policy of asking an author for a waiver, and goes ahead and publishes an article despite the author NOT having waived out of the Policy, we will proceed with depositing the manuscript in DigitalCommons.

Like other institutions that have made this decision, this is not something to advertise widely, as we don’t want those publishers to start demanding to see waivers.

As one faculty member on the Library Committee said, “We don’t want to poke the bear.”

(The committee also recognized that waivers can be granted after the fact, and if a faculty member is confronted by a publisher about the posting of their article, their article can be taken down retrospectively.)
Customizing the repository

- Key article-level metadata
  - Rights information: OA Policy Terms of Use
  - Author Manuscript version statement
  - Citation to the published version

- Example: *The Evolution of Difficult Childbirth and Helpless Hominin Infants*

Prior to the OA Policy we had already been depositing journal articles, as much as possible, as allowed by publishers. So we had a base to work from - had already established default metadata fields.

Once the Policy went forward, we had to make some adjustments to the metadata to reflect this new “type” of article. It was important to convey certain information to readers about these articles - terms of use, version, and citation to the published version. Since we use Digital Commons, it was a matter of figuring out what was needed and communicate to Bepress. Bepress was very accommodating and easy to work with on this.

Show article example - point out version statement; Terms of Use, and Citation -- link to the Terms of Use page; **Point out that all this information appears on the cover page also (this is important because users more often land directly on the PDF rather than the metadata page)**
Customizing the repository

- OA Policy articles (marked OAP Terms of Use) brought together at:
  
  http://digitalcommons.uri.edu/oa_facpubs/

- Enables tracking of OAP article submissions

Having OAP articles marked in some way also makes it easy for us to track submissions

We use the ToU “check box” as a marker to distinguish OAP articles from other faculty articles

Digital Commons enables reports for any series, so you can generate usage stats from here
Developing new policies and procedures, and documenting them, was part of the implementation process. We use a Google Site to document all of this. We also use a shared file space for keeping copies of documents related to the Policy.

Much of the work is done by a graduate student, and some by a staff member, so training was necessary.
Seeking articles for deposit (... this is the hard part)

- Mediated deposit with a “low tech” approach
- Citation alerts for URI author affiliation
- Standard email for requesting articles

Work done by a library grad student ~10 hours/week

We are still a low-tech approach to requesting articles directly from faculty members. Depositing articles is mediated and we actively request.

Actually, sending requests isn’t the hard part; it’s actually getting the articles that’s hard
Set up citation alerts in every database we could think of
Developed an email template to request these things
As far as tracking our requests etc., the student does keep a spreadsheet of what she has requested; we do not have a database but that may be a future step
Reviewing submissions, fielding questions

- We double-check article submissions before uploading
  - Is it the author manuscript version?
  - Have they signed an Assistance Authorization Form?

- Questions from faculty
  - Am I legally covered?
  - How do I comply?
  - Why the author manuscript?
  - Waiver requests

We double check article submissions before uploading because

We do get questions fairly regularly from faculty; Andree and I both spend time answering these questions via email and phone
Tracking & Marketing the Policy

Tracking statistics
- Articles posted
- Requests sent
- Most downloaded articles

Marketing/promoting the Policy
- Monthly email to faculty, Top 3 Most Downloaded
- Handouts/fliers
- Ongoing effort...

DO NOT MENTION THE FLIER

Made handouts and fliers to put around campus and also targeting new faculty
What’s next?

- Faculty Senate Library Committee
- Three-Year Report, end of year
  - Assessing success of the Policy
  - Identifying goals for the future
- Continuing to assess and improve day-to-day procedures and promote the Policy

member of Lib Committee
Last but not least...

*OA Policies create new opportunities for the library!*

Opportunity for the library to develop new services and expertise and to be seen as experts in the area of Open Access

While these Policies are faculty-driven and it’s important to have faculty and not just librarians leading the charge, librarians are very well positioned to advocate for OA Policies and it has been a very positive experience.