

Open access and author rights: questioning Harvard's open access policy

Harvard's open access (OA) policy, which has become a template for many institutional OA policies, intrinsically undermines the rights of scholars, researchers, authors and university staff, and it adulterates a principal tenet of open access, namely, that authors should control the intellectual property rights to their material. Assessing the implications of Harvard's open access policy in the light of Peter Suber's landmark book, *Open Access*, as well as resources from the Scholarly Publishing and Academic Resources Coalition (SPARC) and Title 17 of the United States Code (USC), this article uncovers an intellectual 'landgrab' by universities that may at times not work in the interest of the author or creator of research and weakens the appeal of open access.

Keywords

author rights; Harvard open access; SPARC; intellectual property rights; Author Addendum; United States Code; Title 17



PATRICK H.
ALEXANDER

Director
Penn State University
Press

'The Congress shall have the power ... To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;'

—The Constitution of the United States, Article 1, Section 8, Clause 8.

'OA isn't an attempt to reduce authors' rights over their work. On the contrary, OA depends on author decisions and requires authors to exercise more rights or control over their work than they are allowed to exercise under traditional publishing contracts. One OA strategy is for authors to retain some of the rights they formerly gave publishers, including the right to authorize OA. Another OA strategy is for publishers to permit more uses than they formerly permitted, including permission for authors to make OA copies of their work. By contrast, traditional journal-publishing contracts demand that authors transfer all rights to publishers, and author rights or control cannot sink lower than that.'¹

—Peter Suber, *Open Access*, pp. 22–23

I have been directly involved in open access (OA) publishing since 2007. Like most small publishers, I was initially skeptical, fearful and at times even angry when others did not seem to understand what has now become a time-worn truism, 'someone's gotta pay for this'. But the press soldiered on, looking for opportunities to experiment with OA, and we continue to do so.

One of the pioneers of the movement is Peter Suber. His book, *Open Access*, makes the case for OA journal content. What began as a small effort has positively and dramatically transformed scholarly publishing. Open access has become a global movement. At Penn State University Press, we have strengthened our commitment to OA and with more funding would pursue more.² Large commercial publishers, like Taylor & Francis, Elsevier, Springer and SAGE, as well as purely OA publishers such as PLOS and Hindawi, have capitalized on OA publishing, and the engines of OA, like Plan S,³ continue to generate

2 new incentives as well as requirements for OA publishing. The case for OA is so well-known and self-evident as to not bear repeating here. Thus, this article does not in any way contest the general legitimacy and efficacy of OA publishing. It supports OA publishing.

One item that does bear bringing up, however, is author rights. What has happened? Author rights as a foundational tenet of OA are being scuttled. University-led OA policies are silently and slowly undermining that foundational notion that, in Peter Suber's words, 'OA depends on author decisions and requires authors to exercise more rights or control over their work than they are allowed to exercise under traditional publishing contracts.' Below, I want to explore the effects of OA mandates at universities that not only undermine but violate the rights of authors, at times in ways that, ironically, traditional publishing never would. One of the most visible proponents of author rights as a key argument for adopting OA has been the Scholarly Publishing and Academic Resources Coalition (SPARC). I served on an advisory board for SPARC many years ago, when it was still part of the Association of Research Libraries (ARL). SPARC, ostensibly a staunch and prominent proponent of author rights, was originally connected with the ARL but split off in the late 1990s and became part of New Venture Fund, a 'struggling' non-profit (Note 1). SPARC, which also has offices in Europe and Japan, may not have originated the principles behind its commitment to protecting author rights but it has staked its claim that 'author rights' is ground worth taking in the battle for open access. SPARC sets out the central points in a document entitled: 'Author Rights: Using the SPARC Addendum'.⁴ The value of an author's rights remains rhetorically tied to OA principles. But when it comes to author rights practically speaking, there is a disconnect between what institutions say and what they actually do. The prime example comes from Harvard.

'Author rights as a foundational tenet of OA'

Harvard's open access policy, originating out of Harvard University Library's Office for Scholarly Communication in 2010, with roots in the Faculty of Arts and Science's unanimous adoption of an OA policy in 2008, has been presented—by Harvard itself in this instance—as the way forward for authors. Harvard's OA policy self-consciously intends to be a template (Note 2)⁵ for implementing OA policies across campuses. A recent count shows at least 79 institutions have adopted the policy, including my own, Penn State University (Note 3). Harvard's policy (Note 4), especially as it pertains to author rights, bears close reading:

'when it comes to author rights practically speaking, there is a disconnect between what institutions say and what they actually do'

'The Faculty of (*university name*) is committed to disseminating the fruits of its research and scholarship as widely as possible. In keeping with that commitment, the Faculty adopts the following policy: Each Faculty member grants to (*university name*) permission to make available his or her scholarly articles and to exercise the copyright in those articles. More specifically, each Faculty member grants to (*university name*) a nonexclusive, irrevocable, worldwide license to exercise any and all rights under copyright relating to each of his or her scholarly articles, in any medium, provided that the articles are not sold for a profit, and to authorize others to do the same. The policy applies to all scholarly articles authored or co-authored while the person is a member of the Faculty except for any articles completed before the adoption of this policy and any articles for which the Faculty member entered into an incompatible licensing or assignment agreement before the adoption of this policy. The Provost or Provost's designate will waive application of the license for a particular article or delay access for a specified period of time upon express direction by a Faculty member.'

3 Even a cursory look at U.S. copyright law indicates that the author holds copyright at the time of creation, and, in the words of SPARC's 'Addendum' on author rights, the author holds copyright, 'unless and until you transfer the copyright to someone else in a signed agreement'. Is there any reason to disagree with this? According to U.S. copyright law, enshrined in the United States Code (USC), Title 17, Chapter 2, §204(a),⁶ transfer of copyright or exclusive rights must be conveyed in writing and is subject to formalities set forth in that chapter (Note 5). But what about in the case of Harvard's open access 'template', which is being used by so many universities and colleges? Do scholars sign their rights away to their '*university name*' when their institutions or faculty senates adopt Harvard's open access template? My university's OA policy even applies to staff who may publish an article. Under U.S. law, non-exclusive licenses need not be in writing,⁷ but there needs to be some mutual understanding. Does the Harvard policy create that understanding, even if faculty disagree or are not aware? But what if I do not agree or do not remember agreeing? What if a faculty senate agrees but an individual scholar does not? Can a faculty senate's decision override my decision as the copyright holder? Harvard's policy and its permutations elsewhere look an awful lot like negative option marketing. That is, you are 'in', unless you let *university name* know that you are out and secure a waiver (Note 6). The burden falls to you to extricate yourself. What is more, if under these OA policies you are still the copyright holder, it will fall to you financially and practically, not to an institution or a publisher, to register the copyright in your name so that you are entitled to the critical benefits of recordation (Note 7). It would fall to the copyright holder—you—to defend against a claim of copyright infringement. Universities are claiming all the benefits of having all rights under copyright but share in absolutely none of the risks.

'U.S. copyright law indicates that the author holds copyright at the time of creation'

'Do scholars sign their rights away to their '*university name*' when their institutions or faculty senates adopt Harvard's open access template?'

SPARC's Addendum gave me something else to think about:

'Normally, the copyright holder possesses the exclusive rights of reproduction, distribution, public performance, public display, and modification of the original work. An author who has transferred copyright without retaining these rights must ask permission unless the use is one of the statutory exemptions in copyright law.'⁸

'Universities are claiming all the benefits of having all rights under copyright but share in absolutely none of the risks'

This is complicated. The Harvard policy says that you retain the copyright but that you licensed all rights under copyright to *university name*. Plus, it says that *university name* has the right to sublicense all those rights to another entity as long as your articles are not sold for a profit. So that means that *university name* (or another entity to whom all rights under copyright were licensed) could take your articles, mash them up with other articles and create a textbook, sell it to students, recover all manufacturing and overhead costs, and not pay the author a dime. I can see why faculty are lining up to do this. The Addendum from SPARC continues:

'The copyright holder controls the work. Decisions concerning use of the work, such as distribution, access, pricing, updates, and any use restrictions belong to the copyright holder. Authors who have transferred their copyright without retaining any rights may not be able to place the work on course Web sites, copy it for students or colleagues, deposit the work in a public online archive, or reuse portions in a subsequent work. That's why it is important to retain the rights you need.'⁹

According to *university name*'s unsigned policy in which you licensed all rights under copyright 'irrevocably', the author retains rights, but now they are non-exclusive and less valuable. Of course, the fact that *university name* can sell the intellectual property (without profit but recovering costs) and distribute it for free means that few publishers would be in a position to contract with you to publish your content. The policy states, 'The Faculty of

4 (*university name*) is committed to disseminating the fruits of its research and scholarship as widely as possible.' Do we have evidence that licensing rights to a university leads to broader dissemination? If not, why should researchers endorse this? What effect will *university name's* control of all rights under copyright have on your chances of publishing in a top-flight journal? Does a university's institutional repository have the impact factor of the leading journal in your field? Open access journals can be top-flight, as long as they are peer reviewed, but what if you want to write a book based on one or two of those articles that are OA and controlled by *university name*? You know that if you want to reuse a journal article, you can contact a publisher. But what if you do not want *university name* to continue giving away your work for free? Far too often, researchers ignore OA policies and sign agreements transferring rights to publishers. And some publishers may refuse to publish if an author insists on adhering to a university's OA policy. As a result, authors are handcuffed by a university policy that stifles possible publishing opportunities for their research. The potential for this problem is particularly acute in the humanities and social sciences (hss) disciplines. Because of the almost non-existence of funding compared to science, technology, engineering and medicine (stem) disciplines, hss researchers, lacking in funding, may miss opportunities to publish in venues that matter for their careers (Note 8).

The word 'irrevocably' initially bothered me. It sounded like there was no way to get out of this agreement with *university name*. Almost every publishing agreement I had seen before Harvard's open access policy—actually most legitimate agreements of any kind—necessarily included some kind of termination clause. It was really troubling me until an attorney I know remarked, "'irrevocably" doesn't necessarily mean what it says'. Creative Commons pretends this does not apply to CC licenses, and I bet SPARC does as well. I had forgotten that the go-to answer for many attorneys is, 'It's complicated.' Once he told me this, I was comforted to think that even though Harvard's policy said 'irrevocably' it probably didn't really mean it. And after all, the policy did leave a way forward: 'The Provost or Provost's designate will waive application of the license for a particular article or delay access for a specified period of time upon express direction by a faculty member.' I suspect my provost neither wants to hire someone as his designate nor handle the phone calls, e-mails and paper requests from faculty (and in some cases staff) to waive *university name's* irrevocable control of all rights under copyright of faculty intellectual property. I wonder about that 'specified period of time', too. A day? A fortnight? The next blue moon? Who does the specifying? Why not the author? What constitutes 'express direction'? When I expressly directed my university library's copyright attorney that I wanted a waiver on everything I write, she told me I would have to request that on a case-by-case basis. I did not see that in *university name's* policy (Note 9). According to Eric Priest, who has written about the legal implications of the Harvard open access policy, 'irrevocably' means exactly that, but the institution would 'abandon its license' upon a request for a waiver. He states,

'Regarding the legal mechanics of the waiver provision, because the license is expressly irrevocable, a faculty member's request that the policy be waived should not be construed as a revocation. Rather, the waiver provision appears to be best construed as a binding commitment by the school to abandon its license upon the faculty member's request.'¹⁰

How does Priest reconcile his interpretation with USC Title 17, §203(a)3? According to U.S. law, all licenses are subject to statutory termination:

'Termination of the grant may be effected at any time during a period of five years beginning at the end of thirty-five years from the date of execution of the grant; or, if the grant covers the right of publication of the work, the period begins at the end of thirty-five years from the date of publication of the work under the grant or at the end of forty years from the date of execution of the grant, whichever term ends earlier.'¹¹

The potential for confusion here would have, of course, been mitigated if I had heeded SPARC's admonition, 'That's why it is important to retain the rights you need.'

5 According to SPARC,

'Transferring copyright doesn't have to be all or nothing. The law allows you to transfer copyright while holding back rights for yourself and others. This is the compromise that the SPARC Author Addendum helps you to achieve.'¹²

I'm hoping that because I retain copyright, I can license my work, have it translated, use it in course packs, put it on an institutional repository and in general make use of it. SPARC confirms this. *University name* is looking for 'non-exclusive rights'. I wonder, though, since I gave 'a non-exclusive, irrevocable, worldwide license to exercise any and all rights under copyright relating to each of [my] ... scholarly articles, in any medium ...' does that mean *university name* could also license my work for these reasons? Could they give it away, license it under a Creative Commons¹³ CC-BY-NC license, or sell it for less than I could? That would seem to be the case. And giving something away is not always in the best interest of the researcher, particularly if it restricts her ability to publish her research. Academic freedom to publish is being inhibited when the choice of publication venues is limited.

'Publishing agreements are negotiable. Publishers require only your permission to publish an article, not a wholesale transfer of copyright. Hold onto rights to make use of the work in ways that serve your needs and that promote education and research activities.'¹⁴

Is SPARC really interested in author rights? Is SPARC's Addendum truly designed to help you negotiate? Why is there no critical assessment of the possible negative ramifications of Creative Commons licensing (Note 10)? Possibly because SPARC does not want you negotiating with your university or objecting to CC licenses. Is the Addendum designed to help authors, or does it promote the agenda of institutions? SPARC advises you on how to negotiate with publishers. But what does SPARC actually know about publishing (Note 11). Why do they not advise scholars about negotiating with universities and libraries? Potentially, especially for hss researchers, these OA policies can be detrimental to a researcher's career. I can only hope that my institution promotes education and research activities and does not weaken further my ability to control my own intellectual property and copyright. I am also hoping that the electoral college will disappear.

'Why is there no critical assessment of the possible negative ramifications of Creative Commons licensing?'

SPARC's Addendum touts itself as a 'legal instrument that modifies the publisher's agreement and allows you to keep key rights to your articles'. That is, it purports to change the terms of an existing legal agreement that has already been signed. The rationale for the Addendum is succinct and to the point:

'You would never knowingly keep your research from a readership that could benefit from it, but signing a restrictive publication agreement limits your scholarly universe and lessens your impact as an author'.¹⁵

If I'm reading SPARC's Addendum (Note 12) correctly—and I'm not an attorney (Note 13)—it looks like the Addendum pledges to amend the terms of an existing signed agreement with a publisher to whom I transferred all rights under copyright after the fact. This is problematic. Setting aside the legal prestidigitation inherent in the Addendum, this can place a researcher in an untenable position. Say your article has been accepted, the Addendum arrives on the publisher's desk. The publisher, a small hss society publisher, relies on subscription income to support its membership. It can ill afford to forego revenue, so, in order to meet its financial obligations, it rejects your article and decides to select another piece without the OA restrictions. You are left with an unpublished article that must undergo the entire review process elsewhere, where it will be likely to face the same precarity again unless you are able to find an OA publisher and the funds to publish your work.

6 Open access has transformed publishing in many positive and enduring ways, but it is also the case that open access is complicated and that one size does not fit all. Not only do staggering differences exist between OA publishing in the stem fields versus hss disciplines as well as differences between available funding in Western Europe and the U.S. versus funding in Africa and India, but the implications for authors will not always be the same. For many, especially in the STEM fields, retaining control of one's copyright may not be essential to professional success; for others, it could be (Note 14). Peter Suber indicates that the best outcome would be that authors would 'exercise more rights or control over their work than they are allowed to exercise under traditional publishing contracts'. But authors and researchers, especially those in hss disciplines, seem oblivious to the potential hijacking of author rights that is endemic in OA policies like Harvard's. They have embraced OA without being fully informed about what may or may not be in their best interests. SPARC could do more to advise them about author rights. It is time for universities, funders (Note 15), institutions and researchers to rethink the place and value of author rights in the context of open access policies and ensure that authors, not universities, are controlling their rights, or if institutions do control rights, they should also assume responsibility. Suber's observation that in contrast to OA agreements, 'traditional journal-publishing contracts demand that authors transfer all rights to publishers, and author rights or control cannot sink lower than that' may not have taken into consideration Harvard's open access policy, which, at times, contradicts the best OA practices when it comes to author rights. This article asks more questions than it answers. Clearly it will fall to legal experts to sort out the best practices vis-à-vis author rights in OA publishing, but supporters of OA should agree that those best practices should both accomplish the mission of OA and protect the interests of the author of a scholarly article.

'in the STEM fields, retaining control of one's copyright may not be essential to professional success; for others, it could be'

'best practices should both accomplish the mission of OA and protect the interests of the author'

Abbreviations and Acronyms

A list of the abbreviations and acronyms used in this and other *Insights* articles can be accessed here – click on the URL below and then select the 'full list of industry A&As' link: <http://www.uksg.org/publications#aa>

Competing Interests

The author has declared no competing interests.

Editorial Note

On 20/11/2020 this article was reclassified from a Research Article to an Opinion Piece due to an editorial error.

Notes

1. New Venture Fund's 2016 Form 1099 indicates that its net assets or fund balances were at the time \$321,816,285. The Association of Research Libraries announced the organizational change on its website 17 June 2014, <https://www.arl.org/news/sparc-enters-administrative-agreement-with-new-venture-fund/> (accessed 19 August 2020).
2. According to the pdf, it was last updated '1.12 of December 18, 2015, 18:49:36'. 'If you are considering adopting an open access policy at your institution, we [Harvard University Libraries] encourage you to download and review this model policy language. This language represents the accumulated experience of multiple institutions that have drafted and implemented open access policies: ...'
3. A recent list of institutions can be found here: https://cyber.harvard.edu/hoap/Additional_resources_-_Policies_of_the_kind_recommended_in_the_guide (accessed 20 August 2020).
4. Shieber, "Policy," The underlined portions are in the original document.
5. United States Code, Title 17, ch. 2, §204(a), <https://uscode.house.gov/view.xhtml?path=/prelim@title17/chapter2&edition=prelim> (accessed 20 August 2020). Moreover, ch. 2, §201(d)2 states: 'Any of the exclusive rights comprised in a copyright, including any subdivision of any of the rights specified by section 106, may be transferred as provided by clause (1) and owned separately. The owner of any particular exclusive right is entitled, to the extent of that right, to all of the protection and remedies accorded to the copyright owner by this title.'
6. Suber, Open Access, p. 68, in speaking about open licensing, notes that, 'On the contrary [to waiving copyright], open licenses presuppose copyright, since they express permissions from the copyright holder. Moreover, the rights not waived are fully enforceable.'
7. See, e.g., what the Library of Congress says about the importance of recordation, especially United States Code, Title 17, ch. 4, §412, <https://www.govinfo.gov/app/details/USCODE-2011-title17/USCODE-2011-title17-chap4-sec411> (accessed 20 August 2020).
8. As a back-of-the-envelope contrast, consider the United States' National Institutes of Health 2020 federal budget allocation of \$41.68 billion. "NIH Budget Appropriation for Fiscal Year 2020," January 8, 2020, <http://www.niaid.nih.gov/node/12299> (accessed 20 August 2020); National Science Foundation's federal budget request of \$7.1 billion, NSF FY20 Budget Request to Congress Brochure, March 18, 2019, https://www.nsf.gov/publications/pub_summ.jsp?ods_key=nsf19005 (accessed 20 August 2020). Compare those figures against the National Endowment for the Arts \$162.25 million, "National Endowment for the Arts Appropriation History," <https://www.arts.gov/open-government/national-endowment-arts-appropriations-history>

(accessed 20 August 2020) and the National Endowment for the Humanities \$162.25 million, "NEH Statement on FY 2020 Budget," <https://www.neh.gov/news/neh-statement-fy-2020-budget> (accessed 20 August 2020). For those interested in the math, that's stem \$48.78 billion versus hss \$324.5 million.

9. It seems worth looking into how non-exclusive rights can be terminated, United States Code, Title 17 §203(a), <https://www.govinfo.gov/app/details/USCODE-2011-title17/USCODE-2011-title17-chap2-sec203> (accessed 20 August 2020); Cornell Law School's Legal Information Institute, <https://www.law.cornell.edu/uscode/text/17/203> (accessed 20 August 2020).

(a) Conditions for Termination.—In the case of any work other than a work made for hire, the exclusive or nonexclusive grant of a transfer or license of copyright or of any right under a copyright, executed by the author on or after January 1, 1978, otherwise than by will, is subject to termination under the following conditions:

(1) In the case of a grant executed by one author, *termination of the grant may be effected by that author or, ...* (italics added).

10. Just as a quick example: let's say you write an article on Jim Crow laws in Alabama, 1910–1938, and license it with a CC-BY license. A hate group decides to take your article, recontextualize portions of your article to buttress their argument that those laws should be enforced today. All they need to do is give you credit. Such use would be 'okay' under a CC-BY license.

11. Not surprisingly, the vast majority of SPARC's staff and leadership come from backgrounds other than publishing: <https://sparcopen.org/people/> (accessed 21 August 2020).

12. The SPARC Addendum contains language like this:

ADDENDUM TO PUBLICATION AGREEMENT

1. THIS ADDENDUM hereby modifies and supplements the attached Publication Agreement concerning the following Article: ...

and this:

4. Author's Retention of Rights. Notwithstanding any terms in the Publication Agreement to the contrary, AUTHOR and PUBLISHER agree that in addition to any rights under copyright retained by Author in the Publication Agreement, Author retains: ...
7. For record keeping purposes, Author requests that Publisher sign a copy of this Addendum and return it to Author. However, if Publisher publishes the Article in the journal or in any other form without signing a copy of this Addendum, such publication manifests Publisher's assent to the terms of this Addendum.

Such assertions suggest that SPARC sees the Addendum as superseding any existing agreement, and silence is viewed as assent.

13. Priest, "Mandate," ¶220, p. 390, <https://scholarlycommons.law.northwestern.edu/njtip/vol10/iss7/1> (accessed 21 August 2020), sees no legal problems in Harvard's OA policy and argues that '... permission mandates can create legally enforceable, durable nonexclusive licenses'. Priest's position—clearly different from mine—is nearly an *apologia* for OA and builds from OA's basic assumptions. His rehearsal of the history of OA and the reasons why OA is valid are definitely worth reading. His article, however, seems more interested in the larger question of institutional rights, not the author's rights. He concludes, 'Thus open access content, as it is usually defined, is distinct from public domain content. In the case of open access works, the copyright owner retains some rights in the work but grants other rights to the public, while public domain content is accessible and usable by all for any purpose, with no individual or group holding exclusive rights.' I am uncertain how Priest reconciles the requirements for the termination of licenses outlined in Title 17, §203 (a) (3) with his position that rights are 'irrevocable'.
14. HSS researchers face unique challenges compared to STEM researchers when it comes to the potentially detrimental effects of OA upon their careers. First, HSS scholars lack the funding to support OA publications (see note 16), and if scholars are forced to publish OA, how will they pay for it? Or, what if there are no OA journals recognized in a particular discipline as counting for tenure and promotion? Second, when publications like hss dissertations are made openly available, it undermines the potential of that work to be revised and published as an early career scholar's 'first book' [see, for example, Patrick H Alexander, "Your dissertation is done. Move on," *Chronicle of Higher Education*, 14 September 2014, <https://is.gd/xFiYaM> (accessed 21 August 2020)]. Even though Harvard's OA policy is concerned with journal articles, when an institution adopts an OA policy, authors wishing to reuse portions of an OA dissertation as journal articles may find it difficult to withdraw, embargo, reuse or adapt material and the OA version may be considered as already 'published'. Third, the nature of the information as it relates to the author/researcher can be quite different as in the case of scientific results, data and findings that are the building blocks of research (stem) versus the often highly personal interpretive, creative, speculative and theoretical nature of hss research.
15. Plan S, an initiative from cOAlitionS, is perfectly content to cede intellectual property to universities: 'Authors or their institutions retain copyright to their publications' (emphasis added), which aligns with the Harvard OA policy, Shieber, "Policy," https://www.coalition-s.org/plan_s_principles/ (accessed 21 August 2020).

References

- Peter Suber, *Open Access* (MIT Press, 2012), <https://mitpress.mit.edu/books/open-access> (accessed 19 August 2020).
- Penn State University Press OA publishing, https://www.psupress.org/unlocked/unlocked_gallery.html (accessed 19 August 2020). My article is in no way intended to represent the views of my institution.
- Plan S is an initiative of cOAlition-S, an 'international consortium of research funders'. *Plan S*, <https://www.coalition-s.org/> (accessed 19 August 2020).
- SPARC Author Addendum to Publication Agreement, <https://sparcopen.org/our-work/author-rights/sparc-author-addendum-text/> (accessed 20 August 2020). Hereafter SPARC, Addendum.
- Stuart M Shieber, "A Model Open Access Policy," *Harvard Library Office for Scholarly Communication*, <https://osc.hul.harvard.edu/modelpolicy/> (accessed 20 August 2020).

6. United States Code Title 17, <https://www.copyright.gov/title17/> (accessed 20 August 2020).
7. Digital Media Law Project (hosted by the Berkman Center for Internet and Society), "Creating a Written Contract to Transfer or License Rights under Copyright," <https://www.dmlp.org/legal-guide/creating-written-contract-transfer-or-license-rights-under-copyright>, (accessed 22 August 2020), 'The grant of a non-exclusive license can be oral or inferred from conduct.'
8. SPARC, Addendum.
9. SPARC, Addendum.
10. Eric Priest, "Copyright and the Harvard Open Access Mandate," *Northwestern Journal of Technology and Intellectual Property* 377, (2012): ¶132, p. 397, <https://scholarlycommons.law.northwestern.edu/njitip/vol10/iss7/1> (accessed 21 August 2020).
11. United States Code, Title 17, ch. 2, §203(a), <https://www.copyright.gov/title17/92chap2.html> (accessed 21 August 2020).
12. SPARC, Addendum.
13. Creative Commons Licensing, <https://creativecommons.org/licenses/by-nc/4.0/legalcode> (accessed 21 August 2020).
14. SPARC, Addendum.
15. SPARC, Addendum.

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Patrick H. Alexander
Director
Penn State University Press, US
E-mail: pha3@psu.edu
ORCID ID: 0000-0001-9455-2524



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