

# Draft discussion document for Duke Open Access policy

## Prologue

Among the enduring themes of Duke's strategic plan are "knowledge in the service of society" and "affordability and access," key components of our goal as a research university to create, disseminate and preserve knowledge. In Spring 2009, Provost Peter Lange established the Digital Futures Task Force to propose a set of measures that Duke University can undertake to further these ends.

The proposed Open Access policy would provide the legal basis for Duke to preserve the work of Duke scholars in a permanent digital repository and to provide access to that work to anyone who seeks it. The policy is intended to serve the faculty's interests by allowing articles to receive open distribution, simplifying authors' retention of distribution rights, aiding preservation, and providing unified action to discourage publishers from rejecting articles because they will be available in open access. In any case in which the license works against the interest of a faculty member, the policy allows for waiver of the license or delay of distribution.

While the precise mechanisms by which this will work have not yet been fully developed, the intention is that this policy will not result in more work for the faculty, and it is worth a relatively small investment because, in many fields, work published in journals is not accessible to those who do not subscribe to the journal or whose libraries don't subscribe.

By joining research universities such as Harvard, Stanford, and MIT as well as funding agencies including NIH in adopting an open access policy and building a digital repository service, Duke becomes part of a growing, important movement toward a new mode of open access scholarly publication.

**Digital Futures Task Force**, co-chairs Cathy N. Davidson (English, Franklin Humanities Institute) and Paolo Mangiafico (Office of the Provost)

- Martha Adams, Medical School
- Stuart Benjamin, Law School
- Samantha Earp, OIT Academic Services
- Deborah Jakubs, University Librarian and Vice Provost for Library Affairs
- Jim Moody, Sociology
- Negar Mottahedeh, Literature
- Tony O'Driscoll, Fuqua School
- Tim Pyatt, University Archives/Special Collections Library
- Kathleen Smith, Biology
- Kevin Smith, Library/Scholarly Communications
- Kim Steinle, Duke University Press

## **Policy Text**

The Faculty of Duke University is committed to disseminating the fruits of its research and scholarship as widely as possible. In addition to the public benefit of such dissemination, this policy is intended to serve faculty interests by promoting greater reach and impact for articles, simplifying authors' retention of distribution rights, and aiding preservation. In keeping with these commitments, the Faculty adopts the following policy.

Each Faculty member grants to Duke University permission to make available his or her scholarly articles and to reproduce and distribute those articles for the purpose of open dissemination. In legal terms, each Faculty member grants to Duke University a nonexclusive, irrevocable, royalty-free, worldwide license to exercise any and all rights under copyright relating to each of his or her scholarly articles, in any medium, and to authorize others to do so, provided that the articles are not sold. The Duke faculty author remains the copyright owner unless that author chooses to transfer the copyright to a publisher.

The policy will apply 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 written request by a Faculty member.

To assist the University in distributing the scholarly articles, each faculty member will make available, as of the date of publication or upon request, an electronic copy of the final author's version of the article at no charge to a designated representative of the Provost's Office in an appropriate format (such as PDF) specified by the Provost's Office. The Provost's Office will make the article available to the public in Duke's open-access repository. In cases where the Duke license has been waived or an embargo period has been mutually agreed, the article may be archived in a Duke repository without open access for the period of the embargo, or permanently in cases of waiver.

The Office of the Provost, in consultation with the Executive Committee of the Academic Council, will be responsible for interpreting this policy, resolving disputes concerning its interpretation and application, and recommending changes to the Faculty from time to time.

The Faculty calls upon the Library Council and Duke University Libraries to develop and monitor a plan for a service or mechanism that would render compliance with the policy as convenient for the faculty as possible.

The policy and service model will be reviewed after three years and a report presented to the Faculty.

## Additional background info / FAQ

### Benefits of open access and an institutional repository

- **How does this benefit faculty authors?**

- Repeated studies indicate that scholarly articles that are available in open access form are downloaded and cited more often than articles published only in subscription-based journals, and that citations occur more quickly than with a traditional publication cycle
- Duke will provide persistent storage of and access to a digital copy of your work, ensuring that it will continue to be available to readers even if access is no longer possible through the original publisher's online service.
- You will have a persistent web address for each of your articles that can be used for citing your work, and that you can use for links in academic or personal web pages and social networking sites, and which can be e-mailed to colleagues who want to read your work. This will save the labor of repeated scanning and file management. The web page at Duke that this address points to will have a link to and citation information for the original article on the publisher's site as well as an archival copy in the Duke repository that will be accessible to those who do not have subscription access to the published version.
- Research funding mandates are becoming more common, and pending federal legislation would vastly increase the numbers of funded research works for which open access will be a requirement. A license given to Duke will allow the university to make the process of fulfilling these mandates much easier for individual authors.
- Because Duke will hold a cumulative license in the scholarly works of its faculty authors, the university will be able to negotiate directly with publishers on behalf of covered authors. This can make the process of publication and open access deposit much easier.

(see comment on the success of this process at Harvard at:

<http://blogs.law.harvard.edu/pamphlet/2009/07/28/publishers-cooperating-with-the-harvard-oa-policy/>)

- **How does this benefit Duke?**

- Using the opportunities provided by the Internet and digital technologies to improve access to the scholarly work produced by Duke faculty helps the university fulfill its fundamental educational mission
  - Specifically, greater access to scholarship serves the strategic goals of greater international impact and collaboration. Such access can also foster and facilitate greater interdisciplinary collaboration and enhances university's goal of using knowledge in the service of society.
- By creating a university-managed repository of scholarship at Duke, the University can showcase the work of its faculty across disciplines without interfering with the normal interests and expectations of each individual author.

### **Benefits for the academic researcher:**

1. increase the visibility of your research findings, your work is easier to disseminate, easier to find and easier to read
2. make it easier to manage your list of publications on your personal website and your organization's website
3. give you a place where your scholarly works are permanently stored, whether they are a PDF of a journal article, a Microsoft Word document of a technical report, a Microsoft PowerPoint file of a conference poster, a JPEG file of a photograph, an audio file of a musical performance or a video file of a speech
4. enable a simple web address to your piece of work that can be cited in subsequent works or easily refer other interested parties too
5. make possible easy access to materials previously only available in print e.g. theses, dissertations
6. give an indicator of the impact your research is having in your field, help identify who is reading your work (or at least from where they are accessing it) and encourage impact to be more related to the merit of your work and not the name of the journal in which it is finally published
7. offer new opportunities for publishing your works e.g. as part of a virtual journal, for others to comment on your work and provide feedback
8. encourage others to do the same, so you can easily find and read the work of your colleagues and others
9. make it easier to keep abreast of the latest research findings (certainly within the University)
10. for those working in a fast-moving field e.g. computer sciences or electronics, enable quick and dated dissemination of your research findings, which could establish prior discovery
11. have a safe, backed-up and secure place to store your scholarly works
12. have an organized single point of reference for your work, accessible 24/7, readable from any web-enabled device (Windows PC, Apple MAC, PDA, mobile phone), from work, from home, while you are abroad at a conference etc.
13. reduce your workload associated with managing your portfolio of scholarly works (or at least not add to it)
14. improve your understanding of copyright, make you aware of your rights and maximize the return of your efforts
15. meet and manage the requirements of funding bodies with respect to disseminating your research outputs and ensure you can confidently tick this box on new funding applications

### **Benefits for research administrators, research managers, librarians, and senior academic staff, Heads of Faculty/School:**

16. provide new opportunities for the archiving and preservation of valuable digital works
17. provide meaningful reports on scholarly work, which can act as a barometer of research activity in a particular field, help to identify trends and inform managers involved in strategic planning
18. provide timely alert messages on latest submissions which can increase awareness and responsiveness of support functions and managers

19. facilitate cross-boundary research, by cataloguing scholarly works according to the subject material and not (solely) the affiliation of the author
20. reduce duplication of records and inconsistencies in multiple instances of the same works
21. reduce some of the mundane activities of managing digital collections by automating common tasks and harvesting information from other sources

**Benefits for the University (and its component parts):**

22. demonstrate to its employees, in particular the academic community, that individuals and their work are valued, by supporting mechanisms that reduce workload and maximize the benefits to them of their efforts
23. provide a reference point for scholarly works that can interoperate with other systems and maximize efficiencies between them by sharing information
24. increase the visibility, reputation and prestige of the institution
25. improve the accuracy and completeness of the institution's record of scholarly works
26. ease the management of an institution's intellectual property rights by raising awareness of copyright issues and facilitating the recording of relevant rights information
27. provide a resource of information for a 'shop window' or marketing tool to show others how the institution is making a difference, this would act to entice staff, students and funding
28. act as a tool to support externally and internally driven audits of research activity e.g. annual reviews, accreditation
29. reduce total cost and risk of ownership, in particular incurred by an institution's component parts who might be supporting equivalent services locally (or at least allow local resource to be allocated to alternative activities)
30. offer greater flexibility and integration than other mechanisms of disseminating scholarly works (e.g. disparate independent system/websites) with more coherent security and preservation of digital materials
31. contribute to the mission and values of an institute, in terms of openness, freedom-of-speech and equality-for-all

**Benefits for the global community:**

32. assist research collaboration through facilitating free exchange of scholarly information
33. aid the public understanding of research endeavors and activity
34. reduce costs (or at least allow their reallocation) associated with publisher subscriptions

[Adapted from <http://www.irproject.manchester.ac.uk/about/businesscase/index.html>]

**Is this policy unique?**

- No. The faculty at Harvard University, as well as at Stanford, MIT, Boston University and others have adopted similar policies. The language in this document draws heavily from similar policies adopted over the past two years by these institutions.

- Research funders are supporting such efforts as well. For instance, the National Institutes of Health now require posting of articles derived from research they fund in the open-access repository; and the Howard Hughes Medical Institute (HHMI) as well as the Wellcome Trust require any scholarly articles on research they fund to be made openly accessible. A bill now going through the US Congress, the Federal Research Public Access Act, would require that US Government agencies with annual extramural research expenditures of over \$100 million to make manuscripts of journal articles stemming from research funded by that agency publicly available via the Internet. The manuscripts will be maintained and preserved in a digital archive maintained by that agency or in another suitable repository that permits free public access, interoperability, and long-term preservation, such as the one being developed at Duke. The law would require that each manuscript be freely available to users without charge within six months after it has been published in a peer-reviewed journal.
- A list of the many institutions and funders that already have similar policies can be found here: <http://www.eprints.org/openaccess/policysignup/>

## Impact of the policy

- **Is the university taking the rights to my writing?**
  - No. The Open Access Policy grants a limited nonexclusive license to Duke. You still retain ownership and complete control of the copyright in your writings, subject only to this prior license. You can exercise your copyrights in any way you see fit, including transferring them to a publisher if you so desire. (However, if you do so, Duke would still retain its limited license to archive and distribute the article from its repository. Also, if your article arises, in whole or in part, from NIH-funded research and was accepted for publication after April 7, 2008, you must retain sufficient rights to comply with NIH's Public Access Policy.)
- **What will Duke do with the articles it has license to?**
  - Duke has set up a repository called [DukeSpace](#) to make available the scholarly articles provided by its faculty members. This repository has the institution of Duke University standing behind it to ensure its availability, longevity, and functionality, to the extent technologically feasible. The repository will be backed up, mirrored, and made open to harvesting by search services such as [OAIster](#) (now part of WorldCat) and [Google Scholar](#).

Through the transferability provision, Duke may further allow others to distribute the content, provided that the articles are not sold. For instance, faculty at other institutions could be given permission to make copies for free distribution directly to their students. However, Duke does not have—and cannot grant to others—the right to sell the articles or to sell a book containing the articles.

- **So who owns the copyright in articles I write?**
  - You, as the author of the article, own copyright in it until and unless you sign that copyright over to a publisher. The license to Duke is not an “assignment” or transfer of copyright. It is just permission from you, as the copyright holder, to Duke to make

a certain specified use of your work. This license arises immediately for all scholarly articles written while a faculty member at Duke after the effective date of the policy; if you do sign your copyright over to a publisher, the limited license granted prior to that “assignment” remains with Duke.

- **What does it mean to say this is a non-exclusive licenses?**
  - “Non-exclusive” means that the permission you give Duke to put you work into DukeSpace does not prevent you from giving permissions to others, including publishers, to also exercise some or all of the rights you hold as the copyright holder. What you do with your work, or allow others to do with it, remains your decision.
- **Can others distribute my work, for instance, placing it in a course pack?**
  - Only a party with appropriate rights can license an article for use in a course pack. This policy grants Duke the right to license such uses, so long as the course pack was not sold, so that others (and yourself if you otherwise transfer copyright) could get permission from Duke for free use of your articles in course packs. Alternatively, others (and you) could continue to get permissions from the publisher, typically by paying royalties to the publisher, if desired. To take another example, Duke also could authorize others to make your articles available online (for example, in another repository), provided that they were not sold. Of course, no one would be able to sell your articles without getting permission from the appropriate rights holder, whether that is you or a publisher to whom you have assigned such rights.
- **Can my articles be used to provide search or other services by companies such as Google or disciplinary repositories?**
  - Yes, consistent with the goals of open access and ensuring wide visibility and availability of scholarly articles, the license allows Duke to enable both commercial and nonprofit entities to use the articles to provide search or other services, so long as the articles are not being sold. For instance, the license allows Duke to enable the articles to be harvested and indexed by search services, such as Google Scholar, so that they can more readily be found, and to be used to provide other value-added services that don't involve charging for access to the articles themselves. Duke also could authorize use of the articles in a commercial service that provides information extracted from the articles (but not the full text itself), such as bibliographic data or citation lists.
- **Will Duke be able to take advantage of future changes in technology to provide open access to the articles?**
  - Yes, if new technological means of distributing or making the articles available evolve during the lengthy term of copyright, the license is intended to give Duke the flexibility to use those means to advance the purposes of the policy, provided always that the articles are not sold.
- **What kinds of writings does this apply to?**
  - Only scholarly articles. Using terms from the [Budapest Open Access Initiative](#), faculty's scholarly articles are articles that describe the fruits of their research and that

they give to the world for the sake of inquiry and knowledge without expectation of payment. Such articles are typically presented in peer-reviewed scholarly journals and conference proceedings. Many of the written products of faculty effort are not encompassed under this notion of scholarly article: books, popular articles, commissioned articles, fiction and poetry, encyclopedia entries, ephemeral writings, lecture notes, lecture videos, or other copyrighted works. This is not to denigrate such writings. Rather, they are generated as part of separate publishing or distribution mechanisms that function in different ways and whose shortcomings, if any, the present policy does not and is not meant to address.

- **Does the policy apply to articles I wrote before the policy was adopted?**
  - No, it doesn't require that you deposit any articles that were completed before the policy was adopted, nor any articles for which you entered into an incompatible publishing agreement before the policy was adopted. If you wish to deposit articles written prior to the adoption of the policy, you are welcome to do so, provided that you retained the right to make your articles available in this fashion when you signed any publication agreements regarding them. Of course, the policy also does not apply to any articles you write after leaving Duke.
  
- **Does the policy apply to co-authored papers?**
  - Yes. Each joint author of an article holds copyright in the article and, individually, has the authority to grant Duke a non-exclusive license. Joint authors are those who participate in the preparation of the article with the intention that their contributions be merged into inseparable or interdependent parts of the whole. If coauthors disagree about making the article available for open access via Duke's repository, the opportunity to waive the license (opt out) is available.
  
- **Will this policy harm the journal publishers?**
  - There is no reason that it should. The policy allows each author to decide where to publish his or her work and how to accommodate the requirements of a chosen publisher. Many publishers already permit authors to archive the final author's manuscript in an institutional repository like DukeSpace. A sample publication contract that permits this, used by a Duke University Press journal, can be found at <http://library.duke.edu/blogs/scholcomm/wp-content/uploads/2007/02/dukepubk.pdf>. If a publisher wants the release of an open access copy of the author's final manuscript delayed for 6 month or a year so as not to undermine subscription sales, this policy can accommodate that embargo. Finally, if a publisher absolutely objects to the license granted to Duke, the license will be waived upon request of the faculty author.
  
- **What if a journal publisher refuses to publish my article because of this prior license?**
  - This should be an uncommon problem; according to a 2008 survey, between 70 and 80% of journal publishers already allow authors to deposit articles they publish in an institutional repository.<sup>1</sup> If your publisher objects, however, you have a number of

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<sup>1</sup> The study, by The Publishing Research Consortium, an industry "think tank," can be found at <http://www.publishingresearch.net/documents/JournalAuthorsRights.pdf>



options. One is to obtain a waiver of the license under the policy. Alternatively, you can work to persuade the publisher that it should accept Duke's non-exclusive license in order to be able to publish your article, or seek a different publisher. You can consult with Duke's Office for Scholarly Communication for help in the process of working with publishers and addressing their specific concerns.

- **How does the waiver process work?**

This will depend on the method by which your article is submitted to the DukeSpace repository. If you (or someone you designate) submits your article, you will have the option at the time of submission to specify whether you are opting out of the open access provisions of the license (in which case a copy of your work will be archived by Duke, but access will not be provided to the public from Duke) or by placing a temporary embargo (delay of release) on open access. If article citations and full text are being collected by other means (automated processes based on your faculty database profile or online bibliographic sources, or as a service by librarians, for example) you will be asked whether any of your articles require a waiver or embargo. In many cases, the Library's Scholarly Communications Office or automated processes should be able to advise you on the default policies of your publishers using databases of publisher copyright and self-archiving policies (such as [SHERPA/RoMEO](http://www.sherpa.ac.uk/romeo/)<sup>2</sup>). See below for more information on the submission process.

- **Can I delay access to my article in DukeSpace?**

- Yes, you can also instruct that your article not be accessible for some period of time after publication (an embargo). Doing this may make some publishers more comfortable with this policy, without requiring a complete waiver. In this case, your article will not become available in DukeSpace until after the period of time you designate has elapsed.

- **How will this license affect the peer-review of my article and the promotion and tenure process?**

- Since this policy does not affect your ability to submit your article for publication to any journal you wish, the peer-review will be determined by the practices of the journal you choose and will not be affected by the prior license to Duke. After you make any changes to your article in response to the review process, you should submit the revised version so that the DukeSpace repository will contain the final author's version of your article. As with peer-review, this license will have no impact on the promotion and tenure review process because you will still be free to publish in whatever journal you wish that will accept your work.

- **My publication contract allows me to put the “final author's version” of my article in an institutional repository, but not the “publisher's version.” What are these different versions?**

- These discussions generally distinguish three versions of an article. The “pre-print” is the version you submit initially to a publisher and which is sent out for peer-review. The final author's version (sometimes called a post-print) is the revised version that

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<sup>2</sup> <http://www.sherpa.ac.uk/romeo/>

you create after the peer-review process and in response to comments from reviewers. This is the version that will usually be deposited in DukeSpace under this policy (and many publishers already allow this under their existing publication contracts). The publisher's version is the article as it appears in the journal, after it is copyedited and formatted by the publisher. Publishers are inconsistent about whether they allow deposit of the publisher's version in an institutional repository; some allow and even encourage it while others forbid it. In any case, there should be little substantive difference between the published version and the final author's versions that will be available in DukeSpace. DukeSpace will accept the latest version possible under the publisher's contract, and will wherever possible provide a link to and citation information for the published version, to make clear that the published version is the preferred version and that the Duke copy is a secondary copy for archival purposes and to provide access to readers who do not have access to the published version.

- **My publisher offers open access to articles it publishes for a fee. How does this relate to the policy?**
  - Because this license allows Duke to provide open access to your article in DukeSpace, it is not necessary for you to pay a separate fee to the publisher for the same level of access. If you wish to do so, of course, you are free to make that decision, and some grant funders who support research allow grant money to be used in that way.

## **DukeSpace and the planned service model for assisting with deposit.**

### **How will the process work?**

- As the policy has not yet been adopted, precise procedures have not yet been worked out for assisting faculty to deposit and make available their articles via a Duke repository. We anticipate that there may be several options to make this process simple and quick for faculty or their assistants.
- For authors wishing to submit articles themselves (or have someone submit on their behalf), there will be a web form to do so.
- In many cases, initial compilation of lists of your publications might be done periodically through automated processes based on your faculty database profile or online bibliographic sources (i.e. Google Scholar, Web of Science, or repositories like PubMedCentral to which you have already submitted articles), or as a service provided by librarians. In these cases, you would be asked to confirm the information collected, specify whether you need to opt out of the policy or place a temporary embargo on any of them, and upload your final author's version if one was not able to be collected from the published source.
- We aim to integrate the deposit process as much as possible with other existing processes that faculty already perform, such as updating profile web pages or submitting citations of publications for annual reports – in this scenario you might upload a formatted list of citations (exported from EndNote or Refworks or Zotero, for example) and an automated process would assist in preparing reports and profile

- pages as well as collecting the articles themselves for deposit to the repository, and providing persistent links to them in your profile and reports.
- We may also be able to provide a service that allows you to CC article submissions to an e-mail address at Duke that will trigger the deposit process.
  - Examples of how this works at Harvard illustrate how it might also work here at Duke:
    - <http://osc.hul.harvard.edu/DASH/dash-procedure-faq.php>
    - [http://hul.harvard.edu/news/2009\\_0901.html](http://hul.harvard.edu/news/2009_0901.html)

### **Where will the funding for an open access repository come from?**

Open access is a University priority, and also helps support well established University initiatives such as a broader global audience, interdisciplinary research and service to society. As such, the budgeting for institutional repository initiatives is part of long term planning and budgeting, not a short term charge back to departments. The Library, OIT and others will be working on repository efforts in order to fulfill University goals. Some of the cost of these efforts might come from internal reallocation, some from external funding, and some from planned new spending over time.

### **Additional resource on Open Access**

- **Statement of principles for university open access policies**
  - <http://www.arl.org/sparc/advocacy/three-principles-for-univ.shtml>
- **FAQ for helping publishers understand university open access policies**
  - <http://osc.hul.harvard.edu/OpenAccess/publishers.php>