

1 **University of Maryland, College Park**

2 **Equitable Access to Scholarly Articles Authored by University Faculty**

3 **DRAFT ONLY – REVISED VERSION: 2/12/21**

4 **I. Purpose**

5 The University of Maryland is committed to disseminating its knowledge and research as widely
6 as possible. In furtherance of its land-grant mission of teaching, research, and public service, the
7 University adopts this policy of *Equitable Access to Scholarly Articles Authored by University*
8 *Faculty* to increase the visibility, readership, and impact of the University of Maryland’s
9 Scholarly Articles, and to ensure that the Scholarly Articles are permanently available in the
10 University’s digital repository to readers and researchers worldwide.

11 **II. Definitions**

12

13 **A. University Faculty**

14 University Faculty shall include individuals who receive a salary or other consideration from the
15 University for performance of services on a part-time or full-time basis and who also hold
16 faculty rank, including tenure-stream, permanent-status-stream, and PTK faculty.

17 **B. Scholarly Article**

18

19 A Scholarly Article is a copyrighted work that describes the fruits of University Faculty
20 members’ scholarship and research; is deemed a form of “Traditional Works of Scholarship” in
21 *IV-3.20(A) UNIVERSITY OF MARYLAND INTELLECTUAL PROPERTY POLICY*; and is given
22 to the world for the sake of inquiry and knowledge by the University Faculty member without
23 expectation of payment. Such articles are typically presented in peer-reviewed scholarly journals
24 and conference proceedings.

25 **C. University**

26 The University of Maryland, College Park.

27 **D. University Libraries**

28 The University of Maryland Libraries, College Park, is identified as the “University Libraries,”
29 and is the unit charged with ensuring that the Scholarly Articles addressed in this policy are
30 collected, organized, provided, and preserved. The University Libraries administers and manages
31 the University’s digital repository, which enables discoverability of and equitable access to the
32 Scholarly Articles.

33 **E. Equitable Access**

34 For the purposes of this policy, equitable access refers to the removal of permission and cost
35 barriers related to the open discoverability, retrieval, and use of UMD’s scholarly articles.

36 **III. Policy**

37

38 **A. Open Access License**

39 Equitable access to Scholarly Articles will be achieved by an Open Access License. Each
40 University Faculty member grants permission to the University of Maryland to make available
41 their Scholarly Articles to the public. Specifically, each University Faculty member grants an
42 irrevocable, worldwide, royalty-free, nonexclusive license to exercise any and all rights under
43 copyright relating to each of their Scholarly Articles, in any medium now known or later
44 developed, and to authorize others to do the same for the purpose of making Scholarly Articles
45 widely available to the public (“Open Access License”), provided that the articles are not sold for
46 a profit. This policy does not transfer copyright ownership of Scholarly Articles to the
47 University. Copyright ownership remains with University Faculty as described in *IV-3.20(A)*
48 *UNIVERSITY OF MARYLAND INTELLECTUAL PROPERTY POLICY*, subject to this Open
49 Access License.

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51 **B. Scope**

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53 This policy applies to all Scholarly Articles authored or co-authored while the person is a
54 member of University Faculty except for any articles completed before the adoption of this
55 policy and any articles for which the University Faculty member entered into an incompatible
56 licensing or assignment agreement before the adoption of this policy. The Provost or Provost’s
57 designate will waive application of the license for a particular article or delay access for a
58 specified period of time upon express direction by a University Faculty member.

59 **C. Deposit**

60 No later than the date of publication for a Scholarly Article, the University Faculty member will
61 provide an electronic copy of the University Faculty member’s final, accepted manuscript to the
62 University Libraries, at no charge, in an appropriate format (such as PDF). Questions about
63 deposit should be referred to the University Libraries. The University will make the Scholarly
64 Article available to the public in an open access repository.

65 **D. Opt-Out / Waiver**

66 Upon written direction by a University Faculty member submitted to the University Libraries
67 prior to the date of publication of a Scholarly Article, the Open Access License will be waived
68 for that Scholarly Article or access to that Scholarly Article will be delayed (embargoed) for an
69 agreed upon period of time.

70 **F. Policy Interpretation/Changes**

71 The Office of the Senior Vice President and Provost will be responsible for interpreting this
72 policy, resolving disputes concerning its interpretation and application, and recommending
73 policy changes as needed.

74 **END OF PROPOSED POLICY. PLEASE SEE NOTES THAT FOLLOW.**

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76

77 **ADDITIONAL NOTES TO FACILITATE REVIEW OF POLICY**

78 **Further Information:**

79 For questions, additional detail, or help with compliance with this Policy, please contact the
80 University Libraries at libadmin@umd.edu.

81 **Related Policies and Documents**

82 USM's *Statement Supporting Open Access Dissemination of Scholarship*, 2017
83 <https://www.usmd.edu/newsroom/docs/USMOpenAccessStatement.pdf>

84 UMD's Intellectual Property Policy
85 <https://policies.umd.edu/assets/section-iv/IV-320A.pdf>

86 Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities, 2003,
87 <https://openaccess.mpg.de/Berlin-Declaration> with signatories including UMD:
88 <https://openaccess.mpg.de/319790/Signatories>

89
90 **EXPLANATORY NOTES NOT PROPOSED AS PART OF THE POLICY BUT**
91 **PROVIDED HERE ONLY TO FACILITATE REVIEW OF THE DRAFT (content**
92 **adapted from Harvard University's Office of Scholarly Communication)**

93
94 ***Section I, Line 5, regarding disseminating its knowledge and research as widely as possible:***
95 The intention of the policy is to promote the broadest possible access to the university's research.
96 The preamble emphasizes that the issue is access, not finances.

97
98 ***Section III, A, Line 40, use of the word "grants":*** The wording here is crucial. The policy
99 causes the grant of the license directly. An alternative wording, such as "each faculty member
100 shall grant", places a requirement on faculty members, but does not actually cause the grant
101 itself.

102
103 ***Section III, A and B, Scholarly Articles:*** The scope of the policy is scholarly articles. What
104 constitutes a scholarly article is purposefully left vague. Clearly falling within the scope of the
105 term are (using terms from the Budapest Open Access Initiative) articles that describe the fruits
106 of scholars' research and that they give to the world for the sake of inquiry and knowledge

107 without expectation of payment. Such articles are typically presented in peer-reviewed scholarly
108 journals and conference proceedings. Clearly falling outside of the scope are a wide variety of
109 other scholarly writings such as books and commissioned articles, as well as popular writings,
110 fiction and poetry, and pedagogical materials (lecture notes, lecture videos, case studies). Often,
111 faculty express concern that the term is not (and cannot be) precisely defined. The concern is
112 typically about whether one or another particular case falls within the scope of the term or not.
113 However, the exact delineation of every case is neither possible nor necessary. In particular, if
114 the concern is that a particular article inappropriately falls within the purview of the policy, a
115 waiver can always be obtained. One tempting clarification is to refer to scholarly articles more
116 specifically as “articles published in peer-reviewed journals or conference proceedings” or some
117 such specification. Doing so may have an especially pernicious unintended consequence: With
118 such a definition, a “scholarly article” doesn’t become covered by the policy until it is published,
119 by which time a publication agreement covering its disposition is likely to already have been
120 signed. Thus, the entire benefit of the policy’s nonexclusive license preceding a later transfer of
121 rights may be vitiated. If clarifying language along these lines is required, simultaneously weaker
122 and more accurate language can be used, for instance, this language from Harvard’s explanatory
123 material (also used above): “Using terms from the Budapest Open Access Initiative, faculty’s
124 scholarly articles are articles that describe the fruits of their research and that they give to the
125 world for the sake of inquiry and knowledge without expectation of payment. Such articles are
126 typically presented in peer-reviewed scholarly journals and conference proceedings.”

127
128 **Section III, A, Line 41, exercise any and all rights under copyright:** The license is quite broad,
129 for two reasons. First, the breadth allows flexibility in using the articles. Since new uses of
130 scholarly articles are always being invented — text mining/uses being a prime example —
131 retaining a broad set of rights maximizes the flexibility in using the materials. Second, a broad
132 set of rights allows the university to grant back to an author these rights providing an alternative
133 method for acquiring them rather than requesting them from a publisher. Even though the
134 university is being allowed to exercise a broad set of rights, it is not required to exercise them.
135 Universities are free to set up policies about which rights it will use and how, for instance, in
136 making blanket agreements with publishers. For example, a university may agree to certain
137 restrictions on its behavior in return for a publisher’s acknowledgement of the prior license and
138 agreement not to require addenda or waivers. Harvard has provided a model agreement of this
139 type as well: <http://osc.hul.harvard.edu/docs/model-pub-agreement-090430.pdf>.

140
141 **Section III, A, Line 45, not sold for a profit:** This term may be preferable to the vaguer term
142 “noncommercial”. The intention is to allow uses that involve recouping of direct costs, such as
143 use in course packs for which photocopying costs are recovered. Given that open access
144 availability allows seamless distribution using a medium with essentially zero marginal cost,
145 even this level of commercial activity may not be needed. Indeed, Harvard has stipulated in
146 agreements with publishers that it will refrain even from cost-recouping sales: “When Harvard
147 displays or distributes the Article, Harvard will not charge for it and will not sell advertising on
148 the same page without permission of Publisher. Even charges that merely recoup reproduction or
149 other costs, and involve no profit, will be forbidden.” Allowing cost recovery does provide an
150 additional set of rights that can be negotiated in this way. Alternatively, the policy can eschew all
151 sales if deemed preferable, in which case, the phrase “for a profit” can be dropped.

152

153 **Section III, A, Line 44, authorize others:** The transferability provision allows the university to
154 authorize others to make use of the articles. For instance, researchers can be authorized to use the
155 articles for data mining. The terms of use of the institution’s repository can take advantage of
156 transferability to make available an appropriately scoped set of rights automatically for articles
157 covered by the policy. The Harvard DASH terms of use
158 (<http://osc.hul.harvard.edu/dash/termsfuse>) provides an example. Most importantly, the
159 transferability provision allows the university to transfer the broad rights in the policy back to the
160 author, so that authors can legally distribute their articles from their own web sites (as they often
161 do illicitly now), to use them for their classes, to develop derivative works, and the like. In that
162 sense, the policy leads to authors retaining rights, not just universities obtaining rights.

163
164 **Section III, A, Line 44, authorize others to do the same:** This ordering of phraseology,
165 introduced in the MIT policy, makes clear that the transferability provision applies both to the
166 retained rights and the noncommercial limitation.

167
168 **Section III, B, Line 54, articles completed before the adoption:** Application of the license
169 retroactively is problematic, and in any case, suspect. This clause makes clear that the license
170 applies only prospectively.

171
172 **Section III, D, Line 67, will be waived: Not “will be waived.”** The waiver is at the sole
173 discretion of the author. This broad waiver policy is important for the palatability of the policy. It
174 is perhaps the most important aspect of this approach to open-access policies. The ability to
175 waive the license means that the policy is not a mandate for rights retention, but merely a change
176 in the default rights retention from opt-in to opt-out. Many of the concerns that faculty have
177 about such policies are assuaged by this broad waiver. These include concerns about academic
178 freedom, unintended effects on junior faculty, principled libertarian objections, freedom to
179 accommodate publisher policies, and the like. Some may think that the policy would be
180 “stronger” without the broad waiver provision, for instance, if waivers were vetted on some basis
181 or other. In fact, regardless of what restrictions are made on waivers (including eliminating them
182 entirely) there is always a de facto possibility of a waiver by virtue of individual faculty member
183 action demanding an exception to the policy. It is far better to build a safety valve into the policy,
184 and offer the solution in advance, than to offer the same solution only under the pressure of a
185 morale-draining confrontation in which one or more piqued faculty members demand an
186 exception to a putatively exceptionless policy. In any case, with several years of experience with
187 these policies, it has become clear that waiver rates are exceptionally low even with this
188 completely open waiver provision.

189
190 **Section III, D, General note about the waiver of license:** The waiver applies to the license, not
191 the policy as a whole. The distinction is not crucial in a pragmatic sense, as it is generally the
192 license that leads to waiver requests, not the deposit aspect of the policy, and in any case, an
193 author has a de facto waiver possibility for the deposit aspect by merely refraining from making
194 a manuscript available. Nonetheless, if it is possible to use this more limited formulation, it is
195 preferable in reinforcing the idea that all articles should be deposited, whether or not a waiver is
196 granted and whether or not they can be distributed.

197

198 **Section III, D, Line 68, will be delayed:** Duke University pioneered the incorporation of an
199 author-directed embargo period for particular articles as a way of adhering to publisher wishes
200 without requiring a full waiver. This allows the full range of rights to be taken advantage of after
201 the embargo period ends, rather than having to fall back on what the publisher may happen to
202 allow. Since this is still an opt-out option, it does not materially weaken the policy. An explicit
203 mention of embargoes in this way may appeal to faculty members as an acknowledgement of the
204 prevalence of embargoes in journals they are familiar with.

205
206 **Section III, C, Line 61, University Faculty member's final, accepted manuscript:** The author's
207 final accepted version—the version after the article has gone through peer review and the
208 revisions responsive thereto and any further copyediting in which the author has participated—is
209 the appropriate version to request for distribution. Authors may legitimately not want to provide
210 versions earlier than the final version, and insofar as there are additional rights in the publisher's
211 definitive version beyond the author's final version, that version would not fall within the license
212 that the author grants.

213
214 **Section III, C, Line 60, no later than the date of publication:** The distribution of articles
215 pursuant to this policy is not intended to preempt journal publication but to supplement it. This
216 also makes the policy consistent with the small set of journals that still follow the Ingelfinger
217 rule. An alternative is to require submission at the time of acceptance for publication, with a
218 statement that distribution can be postponed until the date of publication.

219
220 **Section III, E, Line 70, Policy Interpretation/Changes:** Specifying a review makes clear that
221 there will be a clear opportunity for adjusting the policy in light of any problems that may arise.

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223 **DRAFT REVISION NOTES:** Revised after PACT review on 2/8/21; Revised after Library
224 Forum on 2/11/21