

A Faculty Open Access Policy at CWRU: Proposal and FAQ

CWRU Libraries Open Access Working Group
Spring 2021

Introduction

In the [Think Big](#) university-wide strategic planning process, Case Western Reserve University produced its [North Star](#) statement – *Case Western Reserve is a high-impact research university that aspires to be a community where humanity, science and technology meet to create a just and thriving world* – along with [Four Pathways](#) to guide efforts and decision-making.

[Pathway 3, Achieve Social Impact](#), calls the university to action with the specific imperative: “to achieve a deeper impact, we must disseminate our research and teaching more widely beyond our campus.... extending access to our classrooms and scholarship to communities that did not have it in the past.” The disparities referenced in this imperative are profound and not unique to CWRU. The majority of the scholarship produced by the world’s academic and research institutions is published behind expensive and unsustainable paywalls that prevent equitable access to and participation in the systems that generate scholarly knowledge.^{1 2}

Open Access is an international set of principles and practices through which scholarly research outputs (e.g. peer-reviewed articles, conference papers, reports, monographs, datasets) are made freely available online to the public, without cost barriers to access or restrictions on reuse. Mechanisms for enabling open access to scholarship are numerous and include, among others, open access repositories, open access journals, and open access policies.

An **Open Access policy** is a policy of a research university or institution, funding agency, publisher, or other entity that enables the open dissemination and open use of scholarly research outputs. There are several kinds of open access policies:

¹ Altman, M., & Bourg, C. (2018). A Grand Challenges-Based Research Agenda for Scholarly Communication and Information Science. *MIT Grand Challenge PubPub Participation Platform*. <https://doi.org/10.21428/62b3421f>

² Piwowar H, Priem J, Larivière V, Alperin JP, Matthias L, Norlander B, Farley A, West J, Haustein S. (2018). The state of OA: a large-scale analysis of the prevalence and impact of Open Access articles. *PeerJ* 6:e4375 <https://doi.org/10.7717/peerj.4375>

- **Funding agency policies**, which require open sharing of published results as a condition of receiving a research grant. Both government (e.g. NIH, NSF) and private (e.g. Gates Foundation) funding agencies can have open access policies.
- **Publisher/journal policies**, which stipulate that published articles are to be openly available online and labeled for reuse.
- **Institutional** (also called **Campus, University, or Faculty**) **policies**, through which faculty or other publishing authors on a campus typically grant their institutions certain nonexclusive rights to their scholarly articles for purposes of open dissemination. Institutional OA policies are usually voted on and passed through an institution’s governing bodies, e.g., a faculty OA policy is typically ratified by a faculty senate.

The purpose of this document is to propose a Faculty Open Access Policy statement and provide information on faculty open access policies to share with the CWRU Faculty Senate Committee on the University Libraries.

A faculty open access policy at CWRU would have the following purposes and benefits:

- To enable the widest possible dissemination of CWRU faculty-authored scholarship.
- To allow CWRU faculty to automatically retain rights to share and reuse their own scholarship. Under the status quo, many researchers unknowingly or inadvertently sign away copyright ownership of their articles to publishers and can be restricted in how they can legally use and share their own scholarship. An OA policy would allow CWRU faculty certain rights automatically.
- To allow other researchers and the general public worldwide to access and use CWRU-authored scholarship.

Faculty open access policies are common, with nearly 80 universities and colleges in the U.S. having adopted such policies.³ Though policy types vary, consensus has emerged on the effectiveness of different open access policy statements, with analyses identifying “permissions-based” (also known as “Harvard-Style” or “Harvard-MIT” policies due to the development of such policies there) as the most effective and legally sound.⁴ The proposed statement below is adapted from such policies, which have been developed, reviewed, and vetted by university counsels, legal experts in copyright and publishing, and faculty to ensure the appropriate granting of rights from faculty to their respective institutions.⁵

³ [MIT](#) and [Harvard](#) maintain lists of open access policy institutions. For data on open access policies worldwide across different research organizations, see ROARMAP (Registry of Open Access Repository Mandates and Policies)

⁴ See for example: Berkman Klein Center for Internet & Society, Harvard University, [Good practices for university open access policies](#); Simon Frankel and Shannon Nestor, [Opening the Door: How Faculty Authors Can Implement an Open Access Policy at Their Institutions](#); Eric Priest, [Copyright and the Harvard Open Access Mandate](#), *Northwestern Journal of Technology and Intellectual Property*, vol. 10, no. 7, 2012.

⁵ Berkman Klein Center for Internet & Society, Harvard University, [Good practices for university open access policies](#)

Proposed policy statement:

In alignment with Case Western Reserve University's [North Star](#) and its third Pathway, [Achieve Social Impact](#), the Faculty of Case Western Reserve University is committed to disseminating its research, teaching, and scholarship as widely as possible beyond the campus and to communities that did not have access to it in the past. In keeping with that commitment and consistent with the Case Western Reserve University [Faculty Handbook](#) and [Intellectual Property Policy](#), which assert that faculty authors shall own the copyrights to their scholarly articles, the Faculty adopts the following policy:

Each Faculty member grants to Case Western Reserve University nonexclusive permission to make available their scholarly articles and to exercise the copyright in those articles for the purpose of open dissemination. In legal terms, each Faculty member grants to Case Western Reserve University a nonexclusive, irrevocable, paid-up, worldwide license to exercise any and all rights under copyright relating to each of their 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 will apply to all scholarly articles written 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. Application of the policy shall be waived for a particular article upon written notification by the author.

The Faculty Senate charges the Faculty Senate Committee on the University Libraries to advise on an implementation mechanism for the policy that would: 1) obtain an electronic copy of the faculty author's final version of the article, or when rights permit, the version of record of the article, and make it available to the public in an open access repository, not prior to the article's publication date unless directed otherwise by the faculty member; and 2) render compliance with the policy as convenient for the faculty as possible.

This policy is to take effect immediately; it will be reviewed after five years by the Faculty Senate Committee on the University Libraries, with a report presented to the Faculty.

Appendix: Glossary and FAQ on Faculty Open Access Policies:⁶

Definition of terms in the policy, in order of appearance:

- *Nonexclusive permission*: faculty members retain ownership and complete control of the copyright to their writings, subject only to this prior license. Faculty authors can exercise their copyrights in any way they fit, including transferring them to a publisher if desired.
- *Scholarly articles*: “research publications” as defined broadly in the CWRU [Faculty Handbook](#), which typically, but not exclusively, include peer-reviewed articles based on original research submitted to journals or conference proceedings, and that faculty contribute to the world to advance inquiry and knowledge, and without expectation of payment. “Scholarly articles” may encompass, in addition to journal articles, book chapters, essays in edited volumes, reports, or other scholarly works that are not published on a royalty-generating basis.
- *Irrevocable, paid-up, worldwide license*: the permission, once granted, may not be taken back; there are no fees associated with the permission granted; and, the permissions apply worldwide.
- *Copyright*: a bundle of five rights automatically granted to creators of original works: 1) the right to reproduce the work; 2) the right to prepare derivative works (e.g. translations); 3) the right to distribute the work; 4) the right to display the work publicly; and 5) the right to perform the work publicly.
- *Not sold for a profit*: CWRU could not generate a profit from exercising the rights granted to the university to share faculty articles.
- *Authorize others to do the same*: a right under copyright law in which a copyright holder has the sole right to exercise any of the five rights, and the right to authorize others to exercise any of those rights. This language transfers the nonexclusive right to CWRU to allow others to use the articles in specified ways and contexts.
- *Author’s final version of the article*: the author’s final version that incorporates changes made as a result of the peer-review process, but prior to publisher’s copy-editing, typeface, or formatting. (Also called “accepted manuscript,” “author’s final manuscript,” or “post-print.”)
- *Version of record*: the final published version of an article as it appears in a journal, book, etc.
- *Open dissemination / open access repository*: journal articles stored and made available on the public internet, permitting any users to read, access, and use the articles for noncommercial purposes, without financial, legal, or technical barriers other than those inseparable from gaining access to the internet itself.

⁶ Portions of this FAQ were adapted from MIT Libraries, “FAQ on the MIT Faculty Open Access Policy,” <https://libraries.mit.edu/scholarly/mit-open-access/fag-on-the-oa-policy/> and the University of California Office of Scholarly Communication, “OA Policies FAQ,” <https://osc.universityofcalifornia.edu/for-authors/open-access-policy/policy-fag/>

How does a faculty open access policy work? If I am a CWRU faculty member, would I have to do anything?

- A faculty open access policy, if voted on and adopted by the Faculty Senate, functions by: 1) granting from the faculty to CWRU permission to openly disseminate faculty-authored scholarly articles; and 2) reserving rights for CWRU faculty to use and share their scholarly articles.
- Open dissemination of such articles would occur using [Digital Case](#), the university's open access repository for CWRU-produced scholarly output and other CWRU collections, managed by the Kelvin Smith Library. Faculty in the Law School would continue to use the [Scholarly Commons](#) repository managed by the law library. The Faculty Senate Committee on University Libraries together with the CWRU Libraries would coordinate efforts with the offices of deans and academic departments, and other campus offices to ensure that the process for depositing faculty articles is as convenient for the faculty as possible. Both repositories are managed and supported by the libraries to ensure long-term access to and preservation of CWRU-produced scholarly content.
- Other than adopting the policy through the Faculty Senate, individual faculty members would **not** be mandated to do anything or comply with anything. Rather, by virtue of its adoption by the Faculty Senate, the policy functions automatically by shifting the default environment from one in which faculty frequently sign away copyrights to their scholarship to one that ensures that faculty and CWRU retain rights to freely share CWRU-authored scholarship. Faculty members could assist in the implementation of such a policy by submitting their articles to the repository, and would be encouraged, but not required, to do so. In the implementation of the policy, efforts would be made to ensure that the process of collecting articles under the policy would be as convenient for the faculty as possible, and would include integration with faculty research profile systems.

To whom would a CWRU Faculty Open Access policy apply?

- Because a CWRU Faculty Open Access policy would require the vote of the Faculty Senate to pass, it would only apply to university faculty. Other publishing authors on campus who are not represented by the Faculty Senate could individually grant CWRU permission to openly share their articles but would not be governed by a faculty policy.
- Other publishing authors on campus who are not represented by the Faculty Senate are encouraged to contact the CWRU Libraries to determine open access pathways for their works.

What kinds of writing or scholarship would CWRU Faculty Open Access Policy open access apply to?

- It would apply to "scholarly articles," "research publications" as defined broadly in the CWRU [Faculty Handbook](#), which typically, but not exclusively, include peer-reviewed articles based on original research submitted to journals or conference proceedings, and that faculty contribute to the world to advance inquiry and knowledge, and without expectation of payment. "Scholarly articles" may encompass, in addition to journal articles, book chapters, essays in edited volumes, reports, or other scholarly works that are not otherwise published on a royalty-generating basis.

- The policy would apply to the “**author’s final manuscript**” version of the article, which is the final version of the author’s manuscript that incorporates any changes made as a result of the peer-review process, but prior to publisher’s copy-editing or formatting.
- Whenever possible as rights permit, efforts would be made to deposit the **version of record** of an article, which is the final published version as it appears in publication.
- Many written products are not encompassed under this specific notion of scholarly article, such as books, popular articles, commissioned articles, fiction and poetry, encyclopedia entries, ephemeral writings, lecture notes, lecture videos, or other copyrighted works. While a Faculty Open Access Policy would not be meant to address these kinds of works, individual faculty members are encouraged to consult with the CWRU Libraries to determine open access pathways for such works not covered under the policy.

Would a policy apply to articles I’ve already written?

- The policy would not apply retroactively to articles written prior to the adoption of the policy. If a policy were adopted, it would apply to articles published after the adoption date. It would not apply to articles written by faculty after leaving CWRU.

Does an open access policy dictate where I can or can’t publish?

- No. A faculty open access policy would only give CWRU permission to disseminate your articles and ensure that you retain certain rights as an author to use your own scholarship. Consistent with the university’s policies on academic freedom, faculty would be free to publish in the venues of their choosing.

Would an open access policy allow CWRU to take the rights to faculty scholarship?

- No. An open access policy would grant specific nonexclusive permissions to CWRU to disseminate the article. Consistent with the university’s [Faculty Handbook](#) and [Intellectual Property Policy](#), faculty would still retain ownership and complete control of the copyright in their writings, subject only to this prior permission. Faculty could still exercise their copyrights in any way they see fit, including transferring them to a publisher if desired. However, CWRU would still retain its license and the right to distribute the article from its repositories, unless a waiver for the policy is obtained.
- *Note on scholarly articles and “works made for hire:”* Under copyright law, “[works made for hire](#)” refers to works created by individuals within the scope of their employment, and as such, are the intellectual property of the employer, not the individual employee. The question of whether faculty’s scholarly works constitute “works made for hire” is not legally settled, with considerable tension existing between the Copyright Act’s definition of “works made for hire” and the intellectual property policies of U.S. research universities, most of which respect the well-established academic norm that faculty ought to own the rights to their own scholarly work. Like the policies at most U.S. research universities, the CWRU [Faculty Handbook](#) and [Intellectual Property Policy](#) do **not** consider the scholarly works of faculty to be “works made for hire.” The Faculty Open Access Policy proposed in this document is in alignment with the Faculty Handbook and IP Policy and asserts that faculty own the copyrights to their scholarly works.

Would an open access policy put me in legal jeopardy if I sign a publication contract with a publisher, or would a journal or publisher's policy conflict with an open access policy?

- No, a faculty OA policy would not put you in legal jeopardy if you sign a publication contract. Because of the way such policies are intended to function under U.S. copyright law and the intellectual property policies of universities, the policy would constitute a “pre-existing license” between CWRU faculty and the university, and such a pre-existing license should have force over any subsequent agreement between a CWRU faculty member and a publisher.
- Additionally, if CWRU faculty were to adopt an OA policy, the CWRU Libraries would coordinate with FSCUL to identify a list of publishers (based on an analysis of the publication output of CWRU faculty) to inform that such a faculty policy had been passed, and that, as a result, CWRU retains the rights to use the author’s final versions of their scholarly works.
- Some publishers require faculty at OA policy institutions to opt out of the policy in order to publish the article. If a faculty member wishes to publish an article with such a publisher, they may obtain a waiver and opt out of the policy for that specific article.

Would an open access policy apply to articles that I co-author with non-CWRU authors?

- Yes. Each joint author of an article holds copyright in the article and, individually, has the authority to exercise the copyright. 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. Under U.S. copyright law, any joint author can give nonexclusive permission to copy and distribute the work. Best practices would include treating open access policy participation like other co-authorship issues – determining author order, reporting contributions, etc. – and, hence, discussing the issue among co-authors as part of the writing and publication process.

Could I opt out of an open access policy?

- Yes, faculty would be able to opt out of the policy for any particular article for any reason. FSCUL and the CWRU Libraries would work together to create a process that would make it as convenient as possible for the faculty to obtain a written waiver.