

OPEN ACCESS POLICY AT THE UNIVERSITY OF OSLO

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Introduction

On the 6th of December 2011, the University Board of the University of Oslo adopted an Open Access policy regarding the self-archiving of scientific articles and theses in the University of Oslo's electronic, institutional repository.

The basis for this decision rests in the cross disciplinary and thorough work laid down by the University of Oslo in order to combine the technical, bibliographical, political and legal aspects of an Open Access policy. Equally important has been to involve all faculties and institutes as well as the employees unions in a broad hearing in order to have a strong foundation and well rooted decision within the institution.

During the last couples of years, there has been an increased focus on the self-archiving of peer-reviewed scientific articles and theses in order to make such documents publicly available. The term "self-archiving" usually means the deposit of an electronic copy of a scientific article or theses in an institutional, online repository in order to provide Open Access to it on the Internet. This is called the Green Road to Open Access, while another method - publishing in an Open Access journal - is usually referred to as the Golden Road. The Open Access policy of the University of Oslo implements the Green Road to Open Access.

This article will try to illustrate the political background and the legal aspects of the University of Oslo's Open Access policy, but will also briefly describe the institutional process leading to the new Open Access policy.

Background: National and European guidelines and reports – Report concerning copyright at the University of Oslo of October 2009 and the University of Oslo's Strategic Plan for 2010 - 2020

In Report no 30 to the Norwegian Parliament, Stortinget (2008-2009) Climate for Research, the

Ministry of Education and Research states that it wants as much openness as possible concerning research results. In principle, all publicly funded research data should be publicly available as long as this is *within the limitations set by law and regulations*. The Norwegian Association of Higher Education Institutions presented on 30 January 2009 a report¹ recommending a number of specific measures to contribute to making research results more openly available. At the same time the Research Council of Norway adopted new Principles for Open Access to Scientific Publications².

Funding institutions are increasingly demanding that the research they are funding should be made publicly available via repositories linked to the Internet. In August 2008, the European Commission launched the Open Access Pilot³ in the Seventh Framework programme (FP7) that will run until the end of the Framework Programme. It aims to ensure that research results funded by the EU citizen are made available to the population at large for free. For those institutions that have not created their own institutional repositories, the Commission has established OpenAire⁴ providing a network of open repositories for the free online access to knowledge produced by scientists receiving grants from the Seventh Framework programme (FP7) and the European Research Council (ERC).

In December 2005, the Rector of the University of Oslo established a committee consisting of leading researchers from different faculties at the University of

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http://www.uhr.no/documents/Rapport_fra_Open_Access_arbeidsgruppe.pdf

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http://www.forskningsradet.no/en/Article/The_Research_Councils_Principles_for_Open_Access_to_Scientific_Publications/1240958527698?lang=en

³ http://ec.europa.eu/research/science-society/document_library/pdf_06/open-access-pilot_en.pdf

⁴ <http://www.openaire.eu/>

Oslo, including two professors from the Faculty of Law, to review and give recommendations concerning intellectual property rights with regard to research results and teaching material created by university employees during the execution of their work duties. The report was delivered in October 2009⁵. In the report, the committee has carefully balanced the individual rights of the employees against the institution's needs to manage work results in accordance with institutional goals and societal demands. This report on copyright has been crucial for the further work within the institution, creating a firm legal foundation for the implementation of an Open Access policy.

The University of Oslo's Strategic Plan for 2010 to 2020⁶ states that the university will adopt a *more comprehensive approach to the dissemination and communication of research. Priority will be given to the efforts to preserve and publicize scientific publications in open, institutional archives and to Open Access publishing.* The University Boards decision of 6 December 2011 is a further step towards increased access and sharing of publicly funded research.

Copyright law and Academic Freedom

According to the Norwegian Copyright Act⁷, any person who creates a literary, scientific or artistic work shall have the copyright therein. Only natural persons can create such work, hence the copyright can not be generated by an institution. It is stated in the Copyright Act section 2 that it is the *exclusive right* of the copyright holder to dispose of such work by *producing copies* and by *making it available* to the public. Legally speaking, the self-archiving of a scientific article implies the production of an electronic copy for the institutional repository and making it available, online, to the public, thus affecting the core of the researcher's exclusive rights according to the Copyright Act. The employees of the university can not be deprived of these statutory rights by a unilateral decision of the institution's board. Neither can the head of administration make this kind of decision within the powers of the institution itself.

It must be rooted in a bilateral agreement, for example in the employment contract, as the University of Oslo has chosen to do (see section 4 below).

When adopting an Open Access policy it is equally important to secure and preserve the researcher's academic freedom. Academic freedom is a well established and fairly wide collective term, in Norway stated in the Act relating to Universities and University Colleges, section 1-5. One aspect of academic freedom is to protect the academic integrity of individual researchers and teachers. Academic freedom implies a great degree of academic autonomy of each employee, i.e. the researcher's right to choose subjects, methodology and practices. Important with regard to Open Access is the researcher's right to publish his or hers research findings⁸, including the researcher's right to choose *when* and *where* these findings should be published. An Open Access policy must not include elements that challenge these rights. The Open Access policy of the University of Oslo aims at preserving the individual's academic freedom while creating more openness.

New Open Access policy and amendments to the employment contracts

The Open Access policy of the University of Oslo will enter into force the 1 January 2012. According to this policy:

1. All personnel employed after 1 January 2012 shall deposit a post print⁹ version of scientific articles created in the course of their duties in the electronic, institutional repository¹⁰ of the University of Oslo. Personnel employed before this date are encouraged to follow the same regime. If the employee has published in a journal that does not allow the deposit in an institutional repository, the employee is exempted from this duty. The same applies if one of the co-authors rightfully refuses to consent.

⁵ Utredning om opphavsrett ved Universitetet i Oslo, oktober 2009

⁶ <http://www.uio.no/english/about/strategy/Strategy2020-English.pdf> page 10

⁷ Act no 2 of May 1961 Relating to the Copyright in literary, scientific and artistic works

⁸ Act no 15 of 4 April 2005 relating to universities and university colleges, section 1-5

⁹ Final peer-reviewed manuscript accepted for publication

¹⁰ DUO Digital publications at UiO
<http://www.duo.uio.no/englishindex.html>

2. All personnel engaged after 1 January 2012 *shall* make their best effort to ensure that the deposited article thereafter is made available Open Access as soon as possible through the electronic, institutional repository of the University of Oslo. Personnel engaged before this date is encouraged to follow the same regime.
3. If two or more publication channels are equal as regards subjects, the University of Oslo recommends that the employee chooses to publish in the journal that make the article publicly available either through self-archiving in an online repository (Green Road) or through an Open Access Journal (Golden Road).

From 1 January 2012 the standard employment contracts for scientific and technical-administrative personnel will contain an addendum concerning the electronic deposit and subsequent online publication through the university's repository in line with the newly adopted Open Access policy. As mentioned above, the obligations according to the policy are based on a bilateral agreement in connection with the employment contract. The policy can not be given retroactive effect for personnel engaged before this date. However, the technical and administrative system implemented to comply with the Open Access policy is made as simple as possible in order to invite and encourage all personnel to comply. Self-archiving requires copyright clearance. As described above, the researchers have initially exclusive rights to their scientific articles. Through the publishing agreement, the researcher transfers copyright to the publisher. The obligation that rests on university personnel *to make their best efforts* in order to comply with the Open Access policy, implies that the researcher sends a ready made standard letter and standard addendum to the publishing agreement along with the article when the article is first sent to the journal. These documents will be easily available for all employees on the University Web. This system is very similar to the system adopted by the Commission in the Open Access Pilot launched in 2008. Thus, many of the researchers at the University of Oslo are already familiar with the system.

Having adopted an Open Access policy, the University of Oslo may enter into institutional agreements regarding copyright clearance with those publishers that offer such agreements. When an institutional agreement is signed between the university and the publisher, the researcher is exempt from sending the standard letter for copyright clearance mentioned above. Consequently, the administrative burden for the researcher is left to a minimum.

By giving the employees the ultimate right to choose where and when to publish, by including the obligations of the Open Access policy in the new employment contracts and by not giving these obligations retroactive effect, the University of Oslo has preserved the employee's academic freedom and their rights according to the Copyright Act.

Institutional process

As mentioned above, the Rector established a committee to review and give recommendations concerning intellectual property rights in 2005. The committee's report was delivered in October 2009. In parallel with this work, Open Access was discussed and prepared politically, technically and bibliographically within the institution. The University of Oslo Strategic Plan for 2010 to 2020 was adopted by the University Board 27 April 2010 with recommendations on Open Access. On 20 May 2011, a draft Open Access policy along with a draft addendum to the employment contracts was sent on a broad hearing to all faculties, institutes and centers within the university as well as the student parliament and the employee's unions. Deadline for the hearing was set to 15 August 2011. On 20 June 2011 the university arranged a discussion meeting¹¹ with representatives from the employee's unions. The 3 November 2011 the proposal was discussed in the Rector meeting. On the 6th of December 2011, the University Board of the University of Oslo adopted¹² a new Open Access policy regarding the self-archiving of scientific articles and theses in the University of Oslo's electronic, institutional repository.

¹¹ Hovedavtalens § 12 nr. 2

¹²

http://www.uio.no/om/organisasjon/ledelsen/styret/moter/kart_pr ot2011/7/sakskart.xml, V-sak 6 saksnr. 2009/16304



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