OPENING KNOWLEDGE

RETAINING RIGHTS
AND OPEN LICENSING
IN EUROPE 2023

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Opening Knowledge:
Retaining Rights and Open Licensing in Europe

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1.   Executive summary

Open Access has always had at its heart the pursuit of unrestricted access, and free and unhindered reuse of the outputs of research.

In this context, Project Retain[1] was established as a part of the Knowledge Rights 21[2] programme to review non-legislative practices in Europe affecting researchers and authors in the domain of authors rights and licensing, that will enable open access and reuse. The project's focus has been to understand the landscape of institutional, funder and publisher policies affecting author rights in Europe, the motivations behind changes, and to develop awareness and sharing good practice. In particular, it has considered Rights Retention policies - those promoting the practice of retaining sufficient rights for academic works of institutions' employees to make the work immediately openly accessible and reusable.

"What do researchers need? Is there need for a mandate given that funders / governments have done this? Strengthen the focus on making it easier for researchers, strengthen the idea that they will retain their copyright."

We have used a range of methods to achieve this including a survey of European institutions, focus groups, workshops and interviews, as well as desk-based research of literature and policy documents.

European research institutions are exploring and increasingly implementing policies which retain rights over the outputs of research for researchers and the institutions themselves. They should continue to do so, working closely with their researchers to ensure policies have support and that the benefits to authors are clear.

There is no one size fits all approach - different policies are more appropriate and stronger in different contexts dependent on legislation, publishing culture, funding requirements and other factors. However, generally, policies are stronger where the institution itself retains and exerts certain rights for achieving more openness and not just the researcher if a clear legal basis for such a policy exists. According to legal advice received by institutions in the UK, British copyright law recognises earlier licences where prior knowledge of the licence can be demonstrated, and thus a carve out in contract law is applicable to publishing contracts. Advice suggests that such a mechanism does not apply in continental legal jurisdictions, and so alternative mechanisms or legislative reform may be required to achieve the same effect, whether that is at national level or as part of broader EU consideration of copyright harmonisation.

Policies from which researchers must opt-out and are communicated to publishers by institutions are less bureaucratic and ensure researchers can more readily make their work Open Access with minimal effort. All policies require resources in place to develop, implement and to support researchers, and institutions have made more progress when working in small networks or groups of peers. This removes the perception of risk that some institutions have if they are the first mover.

"Be brave - being too risk averse will prevent the world moving forward. Don't just leave it to funders or governments."

Policies adopted by funding organisations have raised awareness of the importance of rights retention and have accelerated its adoption and have incentivised similar policy development at institutions. However, funder policies can only go so far: in particular in relation to equity, as they only address researchers in receipt of funding. While some provide general guidance and materials, their policies place the responsibility for implementation on the author, as funders not part of the agreements between researchers and publishers and lack the resources to intervene or respond to individual requests for support from authors. Where funders work across international jurisdictions, it is also difficult for them to take account of differences in national context or legislation. It is important that funders consider the limitations and implications of their policies and seek routes to support institutional policy development since this will translate into the successful implementation of rights retention.

" Explaining what is being done to mitigate risk or why it isn't a risk makes a huge difference."

"Something magical happens when you get lawyers and librarians sitting together."

Publishers' ability to work within the policy framework which institutions are establishing is clear from the willingness of some publishers to do so. All publishers should ensure that researchers (and institutions) can retain all the rights they need over their creations - to be able to reuse them for their own purposes or to share and grant others the right to reuse freely. It is important that publishers provide clearer and more consistent responses to authors and institutions seeking to assert their rights and that they help them comply with Open Access policy requirements be they from nations, funders or institutions.

All parties should seek more understanding of the effects of open licensing, and in particular the additional benefits that CC BY licences offer over other more restrictive CC licences and adjust their advocacy activities accordingly. Some institutions are not yet willing to mandate open licencing or more specifically CC BY use; and some publishers are unwilling to permit CC BY licences for Author Accepted Manuscripts or as a default publishing license on the Version of Record. The value for authors and how rights retention and open licensing supports the change in research dissemination practices needs to be advocated to mobilise change.

We encourage open discussions and dialogue between all groups and parties, to ensure they fully understand each other's motivations and concerns. Stakeholder groups are not monolithic, and there is value in dialogue on rights retention and open licensing within and across them to seek to overcome fears, misunderstandings, and disagreement.

" Some publishers are less helpful than others. The first response is always a 'sausage machine' response, but persistence and escalation can have an impact."

Recommendations

<u>Institutional policymakers</u>

- Research and higher education institutions should augment their existing policies with elements calling for rights retention to support immediate Open Access to all types of research scholarly outputs. In order to do this, they should:
  - Seek expert legal advice to ensure that appropriate rights are retained by institution and employee/author under local copyright and contract law.
  - Consider how to make an approach most effective given the prevailing Open Access models and publishing cultures; the *Good practices for University Open Access policies*[3] is a valuable resource for doing this.
  - Design strategies to ensure approval from researchers, including involvement in policy-making, awareness-raising campaigns and training.
  - Provide resources to support researchers who are being required to retain rights; at minimum this should be specific guidance on how to meet the requirements being placed on them. Ideally it should be staff with responsibility to provide advice and support communications and negotiations with publishers.
  - Work with networks of institutions that they consider peers to pool expertise and capacity.
  - Showcase policies and approaches locally, regionally and nationally to build awareness and understanding.

<u>Funders and legislators</u>

- Design policies as much as possible to accommodate the different contexts and jurisdictions in which institutions and researchers are working.
- Support institutions seeking to develop rights retention policies and, for national funders and legislators, in particular, seek common frameworks to accommodate retention of rights.
- Gain understanding of funder good practices and showcase them.
- Maintain dialogue with publishers who are seeking to support authors, advocating changed practices relating to author rights retention, copyright transfer and open licensing.
- Continue to advocate for the value of open licences, and in particular value of CC BY over more restrictive licences.
- Introducing a requirement for rights retention and open licensing on a European level could be further ensured if a new European Knowledge Act be introduced to protect and support the work of Higher Education institutions if rights retention and open licensing cannot be regulated on a national or local level. Such an Act needs to be introduced to make legislation – which has often been directed at the for-profit market – to come in line with the needs of today's university.

Publishers

- More publishers should help authors and their institutions to retain sufficient rights over their creations for immediate OA and reuse.
- Support the right of authors to make at least the Author Accepted Manuscripts (AAMs) openly available as default, whether they are mandated to do so under a rights retention policy or not.
- Provide clearer and more consistent response to authors and institutions seeking to assert and retain their rights, articulating specific concerns rather than blanket objections.
- When licences other than CC-BY are used, ensure that any derivatives and commercial uses have author approval.
- In addition, this report repeats the following recommendations for publishers from the 2020 SPARC Europe report *Open Access: An Analysis of Publisher Copyright and Licensing Policies in Europe*[4] remain appropriate:
  - Provide more succinct information with as little jargon as possible on copyright ownership, embargo policies and licensing of journal articles in a consistent format at title level
  - Replace the exclusive licence assignment to publish, only asking for a non-exclusive licence to publish the Version of Record of the article to enable authors further publishing rights in online venues that bring them greater visibility.
  - Set zero embargoes for all self-archived journal articles.
  - When publishing OA, licence material with CC BY making this licence the default to all authors, regardless who funds their work; requiring a more restrictive licence in exceptional circumstances rather than making this the preferred choice.
- Discuss the topic of rights retention and open licensing with the goal to innovate and support immediate OA in the coming years within the sector and with funders and institutions.

2. Report

Overview of project

The Knowledge Rights 21[5] (KR21) programme seeks to strengthen the right of all to knowledge, through changes in legislation, policies, and practice across Europe.

Project Retain[6] is one strand of KR21 focusing on research practices and non-legislative approaches. This report is to develop an understanding of current European policy making practices in the area of rights retention and open licensing and how well they serve researchers.

This report is targeted at policymakers within research institutions, research funding organisations and academic publishers. All these groups can empower authors and simplify requirements in ways that will improve scientific progress, teaching and learning, and the public good in general. We also hope the report and its recommendations will be of interest to a wider range of parties interested in Open Access and the policies that underpin it.

Methodology

This has been done through a range of different techniques including

- a survey of 150 European research institutions
- two focus groups of research institutions
- holding a workshop with early career researchers
- 30 1-to-1 interviews with policy makers from funders, institutions, publishers and representative bodies
- desk-based research of literature and policy documents[7]

In order to perform the main task of this project - to empower the members of the academic community to retain their authors' rights and share freely, it is essential that we get insight into the needs of researchers and the circumstances in which they do research and publish. Researchers are a diverse group but in the main, their priority is conducting research. Their needs, interests and priorities vary according to their experience, personality, discipline and area of their research, and the country and context in which they work - as well as a myriad of other factors. Such context is shaped by the interplay of several key stakeholders: institutions, research funders and publishers.

When consulting with researchers, Open Access is seen as positive. However, engaging with practices that help to facilitate it – such as the use of open licences, rights retention, negotiation of publishing agreements – are not high on their agendas. This emerges from our engagement with organisations which represent and engage with researchers, such as European Council for Doctoral Candidates and Junior Researchers (Eurodoc).[8]

It is impossible to design and conduct a study where a sufficiently representative sample of European researchers, according to all relevant characteristics as it would inevitably suffer from self-selection bias. However, the approach in which the situational complexities of researchers are outlined by inquiring about them with their funders, publishers and a network of entities within their academic institutions (those who set policies but also those who provide support) granted us a thorough and comprehensive landscaping.

Research underpinning the report has focused on those stakeholder groups who affect research practices through their policies, processes and relationships with researchers:

- *Research institutions* - through their employment of researchers, and provision of resources and support required to conduct research.
- *Research funders* - through the granting of funds to researchers, and the incentives and conditions that accompany that funding.
- *Publishers* - through the service they provide to researchers as authors of scholarly works, and the guidance and conditions under which they do so.

This report seeks to understand how these stakeholder groups are supporting researchers, and how their policies affect them. Practices are favoured when they demonstrably have the support of researchers and simplify the administrative burden placed on researchers, and there is great value in engaging researchers to ensure these objectives are achieved.

Overview of context

Open Access has always had at its heart the pursuit of unrestricted access to and free and unhindered reuse of the outputs of research, both by researchers themselves and for other potential users.[9] The translation of this ideal into practice has evolved and diversified into many forms over time, according to different contexts.

Mechanisms to encourage researchers to retain specific rights have been in place for many years. Author addendums which modified publisher contracts were introduced around 2004, with the first funder policies with rights retention provisions introduced in 2005 by the Wellcome Trust and followed by the National Institutes of Health (NIH) in 2008. In that same year, Harvard adopted an Open Access policy through which its faculty grant non-exclusive rights to the institution allowing it to make scholarly articles openly accessible via its institutional repository. Many other institutions have adopted similar policies across the world in the last 15 years but uptake has been slow in Europe until recently.

Europe has seen significant development of Open Access (OA) policies over the last 20 years, but less development on the retention of rights by researchers. This has changed over the last few years with the UKSCL licence in the UK working to develop model institutional licensing policies to better ensure compliance with funder mandates.

The launch of cOAlition S Rights retention policy in 2021 also boosted efforts, requiring authors to retain specific rights through incorporating specific language in their manuscripts on point of submission to publishers. Many cOAlition S members have subsequently adopted their own policies, as have a range of institutions, beginning with Edinburgh and UiT, The Arctic University of Norway in 2021.[10]

Additionally, the European Commission has undertaken a review of copyright and how it affects research. One strand considered the different routes through which research could be made available to everyone and concluded that rights retention might work in different jurisdictions, but that further work was required on ownership of copyright in different countries, and specifically the initial owner of the copyright.[11]

Summary of findings

This section provides a high-level summary of the results of our research which are presented below in detail under *Detailed findings.*

Rapid development of institutional policies

An institutional rights retention policy can be defined as follows:

> *An expressed position setting out the practice of retaining sufficient rights for academic works produced by an institutions' researchers to make the work openly accessible and reusable immediately.*

The pace of development of policies which meet this definition is striking, as shown in Figure 1.

Over 30 institutions which responded to the survey conducted as part of this report are in the process of developing a policy which covers author rights retention. A further 17 have such policies in place, eight of which were implemented in 2021 or 2022, as per Figure 1; one institution's policy was formally approved as we interviewed a representative from the institution's library. Some of the policies in place were interim or pilot at the time of interview but were expected to become fully adopted early in 2023. The pace of development is likely to continue or accelerate in 2023 and 2024.[12]
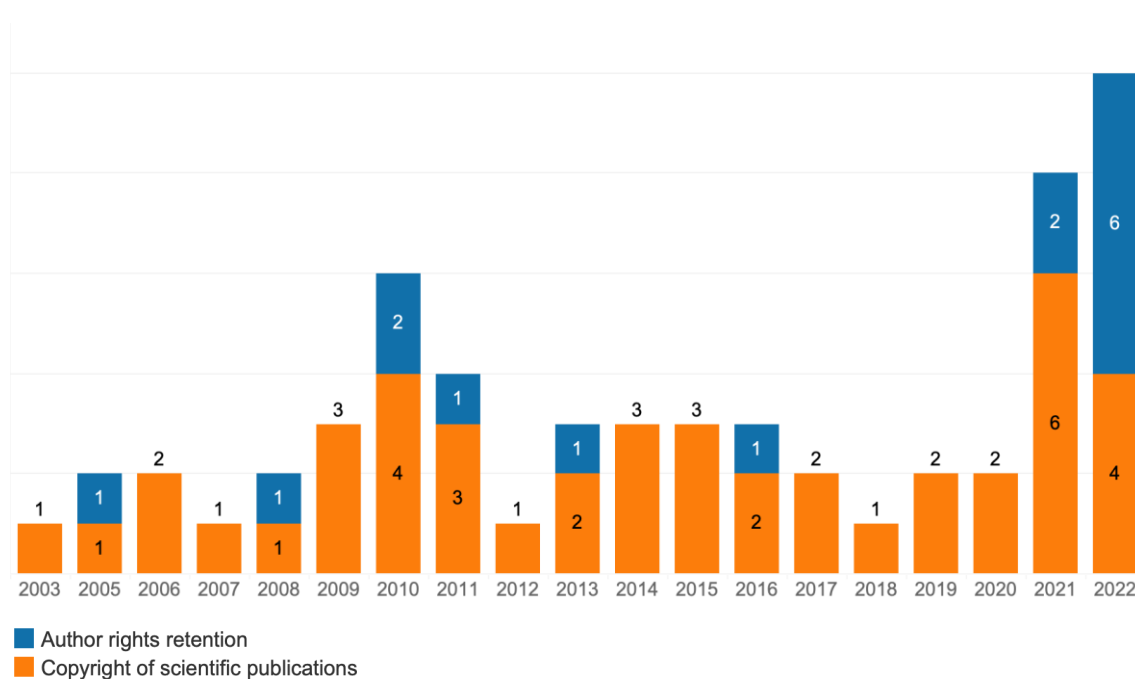
Figure 1 - When were policies covering copyright of scientific publications / author rights retention first introduced? n=59

Policies have been put in place and developed in institutions in Germany, Iceland, Ireland, Norway, Sweden, and the UK while co-ordinated discussions are being held in the Netherlands and France. However, adoption in Europe has so far been driven by institutions in the UK, which accounts for three of the existing policies and 15 of those in development recorded in our survey.

Variation in policies

Analysis of policies and discussion with institutions currently developing or considering them highlight that policies can vary across the dimensions[13] set out in Table 1.

Type of policy	Specifically: ● Mandate, recommendation or guidance ● Open Access policy, Copyright policy, Intellectual Property, Publications, Scholarly Output, or one of the many other alternatives
Content covered	● Journal articles, all written scholarly output, or all outputs from research ● All outputs, or only results of research funded by a funder requireing right retention
Authors covered	Employed faculty only or extended to non-faculty
Opt-in or opt-out	Whether researchers are included in the policy by default but are able to opt-out, or have a choice to opt-in to following its requirements
Process for approval	The variety of decision-making bodies and faculty approval mechanisms
Legal basis for policy	Including but not limited to ● *Rights assignment to* the institution or the author ● *Method of communication* via inclusion of text in scholarly outputs, formal communication by the institution to publishers
Version	Author Accepted Manuscript, Version of Record or both
Specified processes involved in implementation	Including but not limited to: ● Deposit of output in an institutional repository ● Application of specific licence types ● Individuals responsible for different elements

Table 1 - Dimensions across which institutional rights retention policies vary

These closely mirror elements highlighted by Peter Suber and Stuart Shieber of Harvard University in the *Good practices for University Open Access policies*.[14] The first school at Harvard to adopt a policy did so in 2008 and it has a number of features that are closely related to the policies developing in Europe albeit with differences.

Table 2 highlights the Harvard policy along these dimensions and compares it to three of the first policies to emerge in Europe, from the University of Edinburgh and The University of Tromsø – The Arctic University of Norway (UiT) in 2021, and Leibniz University Hannover in 2022. These policies do differ, but not completely and there are strong similarities, highlighting the influence of the Harvard policy.

	Harvard	Edinburgh	Tromsø	Leibniz
Policy title	Open Access	Research Publications & Copyright policy	Principles for Open Access to academic publications	Open Access Policy at Leibniz University Hannover
Mandate or guidance	Mandate	Mandate	Mandate	Recommendation
Content covered	Journal articles	Journal articles; encouraged for all scholarly outputs	Journal articles; encouraged for all scholarly outputs	Scientific publications, including monographs or proceedings
Authors covered	Faculty only, but additional policies covering non-faculty	Academic staff	Employees and students	Members of the university
Opt-in or opt-out	Opt-out	Opt-out	Opt-out	Opt-in
Process of engagement / approval from faculty	Non exclusive licence is granted to the university by faculty, then affirmed in writing and granted back to author	Employment contract requires assignment of non-exclusive licence to institution	UiT given permission to make their academic works available; Rector has the legal responsibility for interpreting this policy, resolving disputes about its Interpretation.	No formal consultation undertaken
Formal communication with publishers	N/a	- Letter from institution notifying publishers of prior licence - Insertion of language by authors in manuscripts recommended	Policy itself provides notification to publishers	N/a
Article type	VoR or AAM	VoR or AAM	VoR or AAM	Not specified
Specified mechanisms	Institutional repository - DASH (Digital Access to Scholarship at Harvard)	Institutional repository	Institutional repository - Munin	Institutional repository
Licence applied	Homegrown non-exclusive licence, close to CC-BY-NC.	CC BY	Creative Commons licence	A free licence, preferably CC BY
Link	https://osc.hul.havard.edu/policies/	https://www.ed.ac.uk/information-services/about/policies-and-regulations/research-publications	https://uit.no/Content/762228/cache=1643633369000/PRINCIPLES%20FORr%20OPEN%20ACCESS%20TO%20ACADEMIC%20PUBLICATIONS%20AT%20UIT.pdf	https://www.uni-hannover.de/en/universitaet/profil/ziele-strategien/open-science/open-access/open-access-resolution

Table 2 - Contrast between Harvard-style rights retention policy and those developing in Europe

Many different policies are possible by combining different options along these dimensions; not all possible combinations will emerge. The exploration among peer networks will result in copying and sharing of policies. However, different flavours of policy are emerging in different countries, according to specific contexts under which they are developed and the factors driving their development.

<u>Factors driving development of institutional policies</u>

Different factors have contributed to the rapid adoption and type of policies developed across Europe over the last 3 years. Providing support for researchers is a major (if not the major) element, but other aspects are also important. The context in which the policy is developed, and specifically the legal jurisdiction and publishing culture, are affecting the pace and nature of policies which are developed.

Support for authors

Institutions consistently cite the need to support authors as motivating factors behind their adoption of institutional rights retention policies.

- *Ensuring equity* - rights retention policies are a route to ensuring Open Access for the broadest possible group of authors - notably unfunded researchers, those not covered by transformative agreements, or those whose disciplines do not have viable alternative options to publish Open Access.
- *Reducing the administrative burden* - institutions cite a desire to ensure to reduce the administrative burden on researchers when following funder policy requirements and to reduce the complexity of what they are required and able to do.
- *Providing resources* - institutions seek to remove pressure on researchers in licensing negotiations with publishers by making a clear institutional policy position for the researcher to refer back to or by providing expertise and support staff.

Legal context

The UK has seen a proliferation of institutional rights retention policies because institutions have had sufficient access to sufficient legal expertise, and the advice provided has indicated that the law in the UK facilitates the adoption of institutional policies.

This began through the UK Scholarly Communications Licence and Model Policy (UKSCL)[15] led by Chris Banks and Torsten Reimer at Imperial College London and was continued in a number of interested institutions. According to legal advice received by institutions in the UK, British copyright law recognises earlier licences where prior knowledge of the licence can be demonstrated, and this carve out in contract law is applicable to publishing contracts. If the institution in question has appropriately and precisely publicised the policy and notified affected publishers, the institutional policy supersedes the irrevocable grant of licence. Institutions have been advised that publishers seeking to bypass the policies would be procuring a breach of contract and that a non-exclusive contract cannot be nulled by an exclusive one where there is prior notice of the contract. While there has not yet been a test in law of this advice, the clarity has reassured institutions as to the risk and led to the approach of UK institutions notifying publishers of their policies when they are adopted.

Institutions in other jurisdictions have also identified that their legal jurisdictions offer them appropriate routes to move forward - notably in Norway and Germany

The prior licence mechanism which works in the UK nonetheless cannot operate in other jurisdictions where there is no specific provision in copyright law allowing a prior licence to prevail over exclusive licences granted on the same work afterwards.

In France, researchers retain full copyright over their scientific writings. There is a mechanism for automatic transfer of rights to an employer, but the law makes an exception for researchers on the basis of academic freedom. While institutions could ask their researchers to assign rights to them to facilitate a "prior licence" system, this cannot be imposed and would be contrary to established culture and practice. As such, it is not considered a viable route.

In Spain, if the author grants an exclusive licence to the publisher, he/she warrants the publisher that the exploitation will not conflict with other uses of the article. If the author granted a prior licence to his institution, then he or she has a legal duty to give notice to the publisher, when entering the publishing contract. If this is not done, the publisher will be protected by law. As such, this is not considered a viable route.

The proximity of those tasked with developing policies to suitably expert legal advice, and sufficient capacity in legal departments to support policy development are also factors positively affecting the ability of institutions to develop policies. They provide reassurance to management and affect the institution's appetite for risk.

Networks facilitating adoption

A sense of safety in numbers has been an important factor for UK universities, as well as an incentive not to fall behind their peers. The UKSCL initiative provided a forum in which discussion began, which has been carried forward by Scottish institutions, the group of Northern research-intensive universities (the "N8") and Oxbridge in England. Research-intensive Norwegian institutions and dialogue across Scandinavia are further examples. The willingness of Harvard and Edinburgh representatives to give time to those wishing to know more has been important in the acceleration in the development of rights retention policies.

Open Access environment

The specifics of an Open Access environment in certain countries or regions can strongly impact the traction of institutional right retention policies. Where Open Access publishing is primarily facilitated through commercial APCs or Transformative Agreements there is a strong awareness in academia of the high costs and inequities. This is tied to the existence and spread of prior institutional Open Access policies, which have been enforced, monitored, and tied to functional self-archiving procedures and infrastructures of institutional repositories.

Institutions developing policies consistently cited as motivations the slow pace of the transition to Open Access, that routes are not equitable for all researchers and the high cost of paying APCs to publishers for Open Access. These policies are not seen as a replacement for publishing articles in journals, but rather a path to be pursued in parallel.

Rights retention policies have also gained traction in environments where funders conduct research assessment on material that is self-archived in institutional repositories, and that has a material impact on institutional funding, e.g. in the UK and Norway.

Where the dominant model is one of Diamond OA or smaller not-for-profit institutional presses, as is the case in many Southern and Eastern Europe countries, the use of open licences and the practice of not requiring the transfer of copyright to publishers is more common. In such circumstances, the issue of rights retention may not be seen as a high priority and institutions can perceive their position for initiating change toward leading international publishers as less powerful. Moreover, having strong Open Access positions of national research funders and national policy- or lawmakers can both have a decisive influence on the national level.

Researcher engagement

In the significant majority of cases, institutions undertook a detailed process to consult and engage researchers before their policy was developed. This process ranged in scale from involving a few faculty leaders or key researchers with a special interest, to a month-long consultation process reaching hundreds of researchers.

Several institutions underwent formal processes with researcher unions or representative bodies for researchers. This was considered important and significant in generating support for policies as they highlighted that the institution was not an instance of the institution taking something away from researchers, rather increasing the researchers' ability to publish where they like without uncertainty and complexity. This was considered important due to the connection of copyright ownership to employment conditions, and that any change in the status quo on institutional ownership of research outputs needed to be understood and accepted.

The value of such a process is hard to overstate, since it ensures the policy is not just seen as library-driven, but rather owned by faculty and aligned with their needs. Wherever institutions had invested time and resources in engagement of researchers, they pointed to it as critical in ensuring the policy was approved and supported. This is echoed in the terms in which policies are described to researchers; institutions have focused on framing in terms of the researchers' rights, ownership and ability to reuse materials; they are not an instance of the institution taking away a right to publish in some journals, rather an increase in the researchers' ability to publish where they like without uncertainty and complexity.

Departmental roles

The support of institutional leadership is also a factor, and on some occasions no progress can be made for years before a change in leadership means swift progress. Leadership does not have to be actively supportive if it is not actively opposed and may be motivated by developments among the institutions' peers.

The role of libraries should not be understated, either as policy initiators or developers or as implementers providing crucial support. Figure 2 shows that almost 75% of the institutions are already providing support to researchers on author rights retention, and more than this provide support on open licensing and copyright of scientific publications.
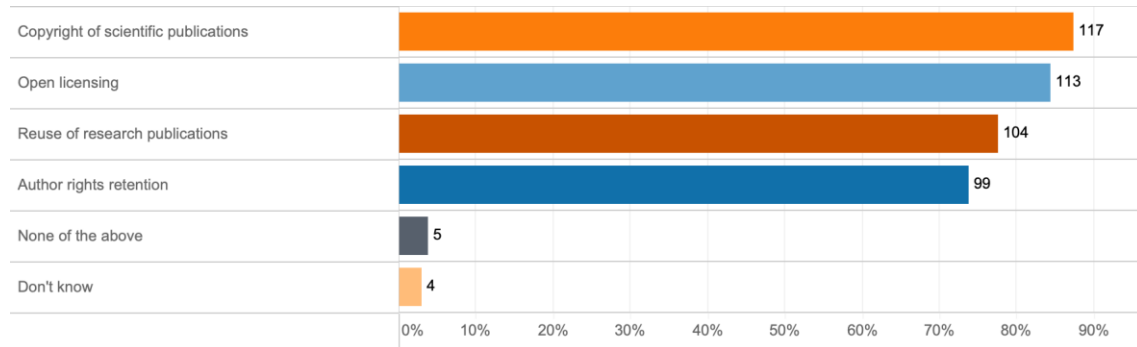
Figure 2 - Does your organisation offer support to researchers in any of the following areas? n=134

Responsibility for providing support mainly sits with libraries in each of these areas, at more than 60% of respondents for all of the areas covered by the survey. Legal departments have a significant role to play in the provision of support for copyright of scientific publications and rights retention as indicated in Figure 3.
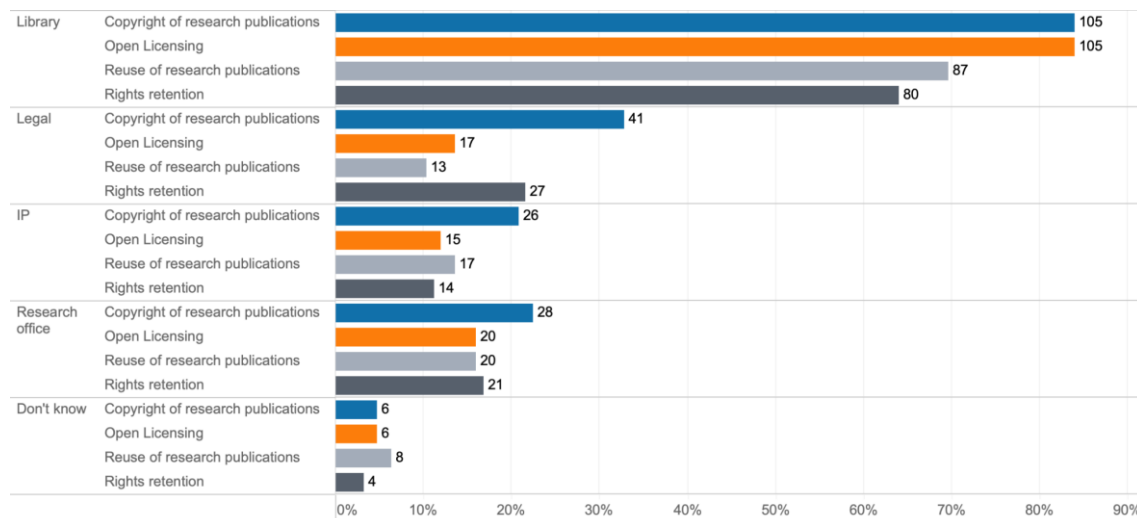
Figure 3 - Which department or departments have responsibility for the provision of support in different areas? n=125

Support from researchers can be seen as a factor in the adoption of policies. In cases where researcher support has not been forthcoming, or where institutions do not believe it will be forthcoming, some state that policies have not been pursued. Many institutions have found support from researchers as policies strengthen researchers' rights, ownership and ability to reuse materials.

Priorities for policy development

Due to funding and publishing cycles, it is too early at the time of writing to fully assess the impact of institutional rights retention policies of different types, at the institutional level or in aggregate. Currently, according to the data available and expectations of funders and institutions, rights retention will be an important route through which researchers ensure their outputs are made accessible. However, this will occur alongside the growth in articles published under Transformative Agreements or through the payment of APCs.

However, some policy variations offer clearer benefits for researchers. These points align closely with those made by Peter Suber in the *Good practices for University Open Access policies* [16]:

1. *Specific legal basis* - In the United States, the assignment of rights to an institution prevails over later assignment of rights to a publisher under copyright. This is done via a 'written instrument' from the author which is obtained through different mechanisms (although a policy which is sufficiently well-known may prevail without it). Such policies follow the style of Harvard.

   Harvard-style policies do not rely on the work for hire doctrine [17] under which the employer, not the employee, is considered the legal author of a work created by employees as part of their job. This strengthens the policies since it is clear that they derive their validity from adoption by researchers rather than legal doctrine. The policies draw on demonstrable support from researchers in a way that is essentially impossible under a funder / grantee relationship.

   In the UK, while the legal context is different to the US, legal advice obtained via UK institutions has suggested that the same effect can be achieved if a publisher has knowledge of the prior grant of licence. This is achieved by the institution writing to publishers to notify them. Although this has not yet been tested in law, the notification ensures that the non-exclusive licence will stand irrespective of what an academic author signs with the publisher.

   It is unclear whether the same effect can be achieved in other legal jurisdictions due to the lack of provisions that recognise prior copyright licenses. However, initiatives are in place in the Netherlands and France between peer groups of institutions and supportive research funders to explore alternative options which might achieve the same effect in law.

   This highlights the value of expert, local legal advice for institutions seeking to develop a policy.

   Introducing a requirement for rights retention and open licensing on a European level could be further ensured if a new European Knowledge Act be introduced to protect and support the work of Higher Education institutions if rights retention and open licensing cannot be regulated on a national or local level. Such an Act needs to be introduced to make legislation – which has often been directed at the for-profit market – to come in lin line with the needs of today's university.

2. *Fully integrated into policy framework* - institutions can conduct a broader review of their policy stack while developing a policy on author rights retention, merging and simplifying the structure of policies which apply to the outputs of research. Institutions have also used the opportunity to clarify in their policies that, while legally initial copyright may reside with the institution, in practice they do not exercise that right and authors retain all the rights they require over their own work.

3. *Rights assigned to institution and autho*r - policies which grant rights to an institution, free researchers from the need to make a specific assertion in their texts or enter into negotiation with publishers. Similarly, the reassignment of rights back to researchers as per the Harvard-style policy grants them freedom to use and reuse their own work for their own purposes.

4. *Clear demonstration of support and approval* - given the range of needs, opinions and expectations, a clear demonstration of support from researchers – whether or not it is formally required for the policy to be adopted – demonstrates ownership and understanding of the value of a policy. Where such support does not and cannot be created, pursuit of a policy may be impossible or counter-productive.

5. *Make it easier for authors* - to ensure support and compliance, the variation of policy adopted should, wherever possible, remove administrative barriers for authors rather than creating them. This favours:
   ○ opt-out policies over opt-in
   ○ integration with processes for depositing in institutional repositories
   ○ broad coverage of content types and authors covered to simplify implementation and reduce the need for future revision
   ○ communication to publishers via formal institutional correspondence rather than specific author use of language

6. *Dedicated resourcing* - Researchers consistently seek support on rights retention, copyright and open licensing even when no formal rights retention policy applies. There is a need to resource libraries and other departments to provide this support particularly when policies are developed, approved and launched. Legal expertise and support is also critical.

The role funder policies play

The profile of the cOAlition S rights retention policy[18] and the subsequent implementation of policies by its members have played a significant role in the rapid development of institutional policies in Europe. They have raised the profile of rights retention. cOAlition S and its members' policies have prompted academic institutions to follow suit and investigate the options available to them.

As with institutional policies, it is too early to fully assess the impact of funder rights retention policies of different types, at the institutional level or in aggregate. Mechanisms to track and monitor policies are also not yet fully developed, although there is evidence of the use of specific wording in the wake of the cOAlition S policy launch.[19]

There is no specific reason that funder and institutional rights retention policies should be directly linked. Indeed, Harvard's policy was developed without reference to any funder policies. However, in some jurisdictions funders and institutions are actively working together to explore options for a co-ordinated policy framework while in others there is no attempt at coordination, only support from the funder of the principle of institutional level policies. The level of integration varies depending on the nature of the funder's relationship with institutions, whether the funder is focused on one country, the number of institutions, and the precise legal status of the funder. Some interviewees simply expressed support, some outlined measures they are taking to more actively support development through joint initiatives. National funders in particular may have more ready access to specialist legal advice.

However, policies implemented by institutions have advantages over those implemented by funders for similar reasons that some variations of institutional policies are more effective than others. That is, institutional policies are likely to be better aligned with the needs of researchers than funder policies.

The vast majority of funders do not employ researchers directly; they can financially incentivise and enforce compliance through grant provision, but this relationship makes it much more difficult for them to build support for a policy among researchers or ensure that its benefits are clear.

Funder policies do not require assignment of rights to the funder itself, only that an author retain them. Funders have clearly expressed that they have no wish to change this arrangement. As such, they have no standing to facilitate the deposit of manuscripts or support negotiations with publishers; nor do they have resources to respond to author queries if they wished to. Under funder rights retention policies, the responsibility and the added administrative action falls on researchers which need not be the case under institutional policies.

Indeed, the need to support researchers and ensure they can meet funder policies is part of the motivation for institutions developing their own policies. Institutions have felt they have to act to avoid their researchers being left unsupported or unclear on funder requirements. The more that funders can adapt their policies to different contexts and jurisdictions, the more institutions will be able to support researchers to implement them.

Publisher positions on retention of rights

There has been a growth in the number of articles being published Open Access in the last two years, often under a CC BY licence, and there has been an increase in the number of Open Access journals.[20]

However, there has been little change in the copyright and licensing policies of the largest publishers in the last two years, according to the review of DOAJ data or publisher policies conducted to support this report. As such, the recommendations from the report conducted by SPARC Europe in 2020[21] remain valid.

Large commercial publishers continue to ask for a transfer of copyright or an exclusive publishing licence. They permit authors to self-archive an AAM and to make it publicly available after a period of time that can last from 6 to 36 months, with 12 to 24 months being a common period. There has been some shortening of embargo periods, but not consistently and they remain in force.

Publisher response to the growth and development of funder and institutional rights retention policy has so far been limited and inconsistent. Some publishers already have agreements and policies that align with rights retention policies. This is more likely to be the case at fully open access publishers and, in particular, those that were fully open access at launch than at those publishing hybrid or subscription titles, although there are differing responses among each group. There have been public expressions of concern[22] about rights retention policies, but also groups of publishers expressing support.[23] Publishers do not have a great deal of evidence about what impact the growth of rights retention policies will have. It is also too soon for such evidence to be available to institutions and funders, and appropriate tracking systems have not yet been established.

The concerns of publishers centre on two main elements:

- undermining the publishers' ability to transition to a full Open Access model and find sustainable business models to achieve Open Access at scale
- undermining their ability to preserve the scholarly record through the widespread dissemination of zero embargo, CC BY licenced Author Accepted Manuscripts (AAM) at the expense of the Versions of Record (VoR).

Authors including rights retention language in manuscripts have not received a consistent response from publishers. Many publishers have avoided any conflict by finding an alternative way to make a manuscript Open Access - via a waiver or a change in corresponding author whose institution is covered with a Publish & Read agreement, for example. Others have requested the language be taken out or sought to get authors to sign forms on submission or acceptance. A few have amended their guidance and publishing agreements to state that they are in conflict with cOAlition S approach to rights retention; they do not specify the legal basis for this view, or the consequences where a conflict arises.

There has also not been a consistent response from publishers to letters received from institutions notifying them of rights retention policies. Several institutions stated that the majority of publishers have not acknowledged them, and that those institutions getting responses have received as many positive as negative. Publishers understand that the employer relationship institutions have with researchers brings policy implications that are absent from the funder / grant recipient relationship. The policies being implemented have opt-outs and are in countries with well-advanced transition to Open Access facilitated by commercial APC-based publishing and Transformative Agreements. Additionally, if there is any evidence that the adoption of Harvard-style policies in the USA over the last 15 years has had any tangible impact on subscriptions or the perceived value of the VoR, it is not readily available. Publishers are generally familiar with the requirements of a Harvard-style policy and have published manuscripts covered by it for many years, with only a tiny fraction of researchers requiring opt-outs from researchers.

In some cases, the lack of response or the inconsistent response from publishers is driven by commercial concerns and to protect the industry from uncertain change. The uncertainty and a lack of consistency is also tied to the difficulty publishers adjusting systems to identify rights retention language as well as uncertainty about the best strategy or potential impact. There is also reluctance to dedicate resources to accommodating access to something that is not the final version of the paper.

There is also a concern held by a range of publishers that support transition to Open Access; concern that rights retention will accelerate transition to a particular market structure, to the detriment of 100% OA publishers & those pursuing more innovative routes, as well as space for dialogue and further accommodation.

Given that some publishers are willing to allow authors to retain all necessary rights and proactively support the requirements of different rights retention policies, there is reason to believe that further dialogue and open discussion of concerns will lead to greater support and change over time.

Open licensing

This report has found consistent evidence that there is a need to reinvigorate advocacy for:

a) the use of open licensing
b) the value of a CC BY licence over more restrictive licences

This evidence comes from a range of different evidence sources inconsistent application and support for these stances.

Publisher policies and practices

From a comparison of public policies and agreements used on subscription journals by the 10 large commercial publishers (Cambridge University Press, De Gruyter, Elsevier, Emerald, Karger, Oxford University Press, SAGE, Springer Nature, Taylor & Francis and Wiley), the embargoes publishers require before permitting the self-archived materials to be made publicly available do not seem to have changed substantially in the last two years.

Although more and more publisher licences are adopting CC licences in relation to self-archived material, this is not usually a CC BY licence but rather a CC BY-NC or CC BY-NC-ND for subscription journals. Using a CC BY licence has the effect of promoting broader access and reuse, thus facilitating the reuse of materials in classrooms and via repositories and researchers' webpages. However, with the use of the most restricted open licences, namely, CC BY-NC and CC BY-NC-ND, publishers retain control of the commercial use and production of derivatives from publications. Despite the use of open licences in open venues, publishers retain the control of such uses. It also means that the conditions under which most authors publish may or will not fulfil the requirements of their funders.

As per Figure 4, Open Access journals listed in the Directory of Open Access Journals (DOAJ) show that. CC BY is the licence most commonly offered by journals - it is offered by over 5500 titles or nearly 60% of the total. Just over 25% of journals also offer CC BY-NC-ND and just under 20% offer CC-BY-NC. Other licences are offered by less than 5% of the titles listed.
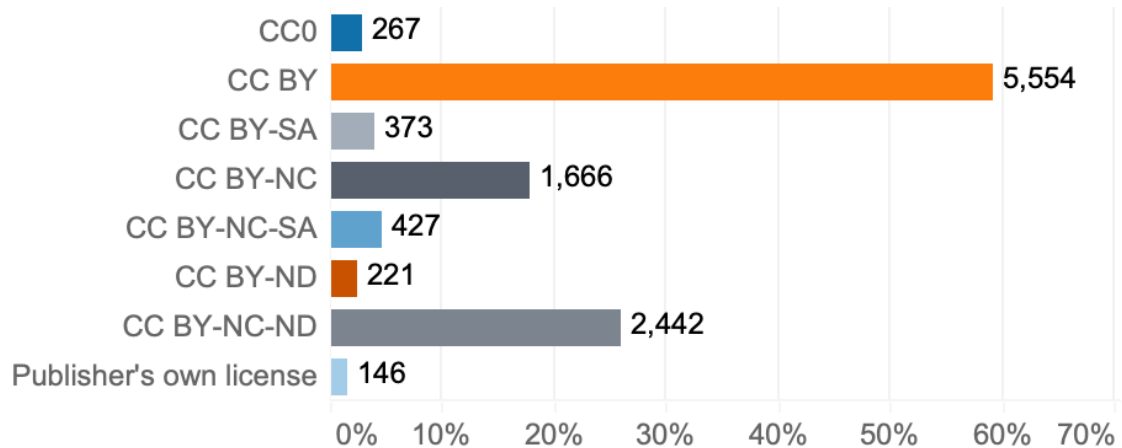
Figure 4 - Breakdown of licences offered by DOAJ European journals Feb 2023; note journals listed more than once where they offer multiple licences. n=9408

This is the case across titles but more common among the long tail of publishers with one journal; publishers with more titles are more likely to facilitate a choice of licence by authors. Publishers that also publish hybrid or subscription titles, use more restrictive licensing on their Open Access journals than do publishers with only Open Access titles.

Concerns from publishers about rights retention centre around the widespread requirement of CC BY licences. This is more frequently cited as a concern than the elimination of embargoes or the use of AAMs at the expense of VoRs, although these do remain issues. Publishers express some concern about their ability to manage rights on behalf of authors if a CC BY licence is applied to the AAM but a different licence is applied to the VoR, since any potential user can utilise the AAM rather than the VoR.

Publishers remain concerned about the possible exploitation of CC BY licences by unscrupulous parties; and there have been some but rare examples in relation to openly accessible books. Balancing this risk against others can lead to different entities to take different positions.

Institutional policies and practices

It is notable that where institutions have reviewed their open licensing policy, many are continuing to permit the use of licences that include the NC and the ND elements.

For example, where institutions have adopted policies on Open Licensing, they are more likely to recommend than mandate the use of open licences as shown in Figure 5.

Yes - we require them
Yes - we recommend them
No
Don't know
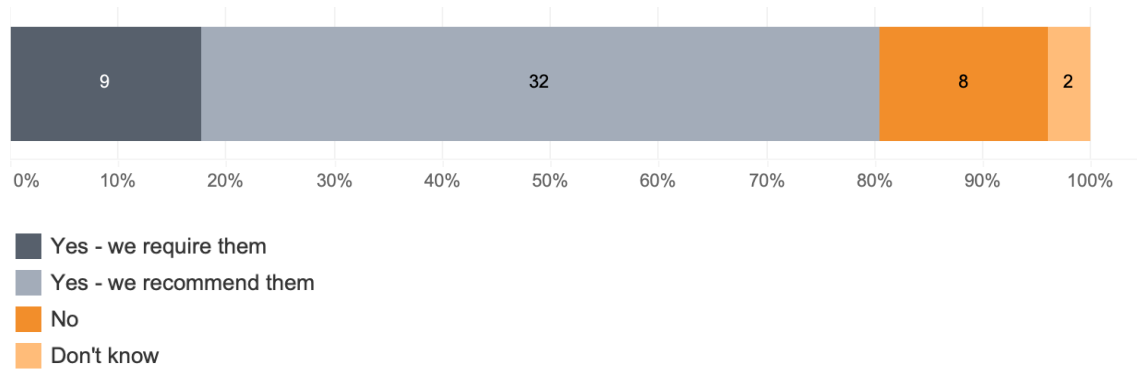
Figure 5 - Do you ask for Creative Commons or equivalent licences? n=51

Figure 6 illustrates that such policies most commonly mention the CC BY, licence - this occurs in 85% of cases. CC0 is mentioned 24% of the time, but more restrictive licences are mentioned even more frequently - between 29% and 41% of the time depending on the type in question. As with publishers, CC BY is most commonly featured, but CC BY-ND and CC BY-NC are still widespread. Many institutions mention a range of licences in order to give the author choice although most policymakers promote CC BY and call for authors to choose as liberal a licence as possible.
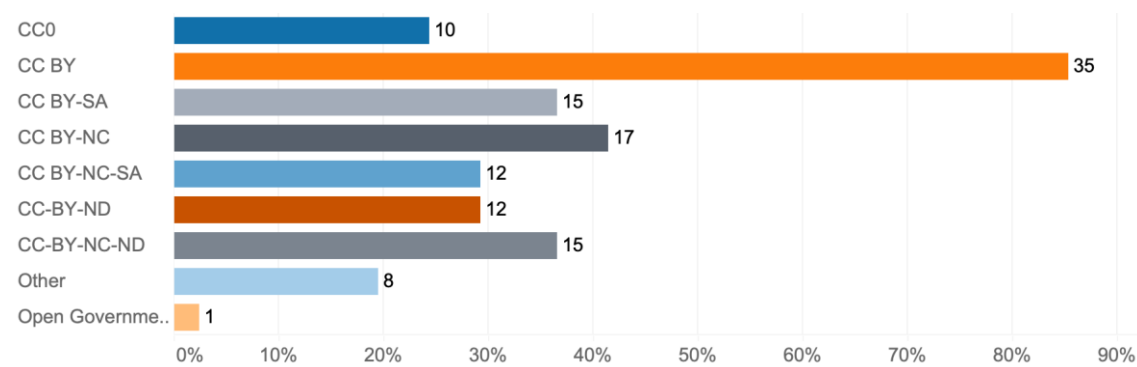
Figure 6 - Which licence types do you specify? n=41

Institutions have made these choices because authors continue to express concerns about the most liberal licences because of their concerns about poor derivatives or commercial exploitation, as well as the particular needs of their disciplines. The issue can be seen as one that could undermine overall support for Open Access in countries where the transition is less well established than in others.

While CC BY remains the gold standard, if institutions are willing to apply less permissive licences than CC BY to AAMs, it is likely that more publishers (although not all) would actively support rights retention policies. In any circumstance, clearer and consistent statements of objections from publishers are important to ensure discussions on the subject progress.

The value of dialogue

The research underpinning this report highlights a number of areas where there is space and potential for further dialogue between stakeholders.

These include:

- Publishers abandoning the practice of requiring transferring copyright or exclusive licences
- Facilitate routes to Open Access that are compatible with rights retention but do not rely on expensive APCs
- Development of mechanisms for giving approval for commercial and derivative licences which involve the author
- Advocating the value of open licensing and CC BY licences over more restrictive licences.

Some interviews conducted for this report highlighted anxiety that the debate about author rights has caused them. The polarisation of the debate and the tone of language used has intensified pressure felt by researchers and those supporting them from institutions, funders and publishers.

One positive development would be a move away from referring to and engaging with stakeholder groups as if they were homogenous blocks when analysis of policies and research shows that this is not the case.

Specifically,

- There is a tendency to speak of all publishers as a monolithic group, loading frustrations with the practices common to some onto all publishers as a whole.
- There is a tendency to claim that rights retention policies can work in all cases and situations, and that the process for initiating and supporting them might be easier at research intensive institutions and in some legal jurisdictions.
- There is a tendency for publishers to reject proposed rights retention policies wholesale, when the range of variation is significant, and publishers have accommodated them in different forms for many years. More detail from publishers expressing their concerns would be productive.

None of these tendencies is helpful, and they are factors in the polarisation which affects debates in the sector on these topics.

Commitment from all parties to further dialogue with groups and subgroups from different stakeholders is critical to making progress, even where there is a reasonable anticipation of disagreement. Whilst there is more discussion on rights retention and open licensing amongst institutions, funders and publishers, research seems to show that opinions are more polarised on the issue amongst publishers, also on the appropriate way forward cross-stakeholder dialogue could significantly help here. In all cases, there is value in a commitment to engage researchers and seek to inform them on the topics under debate.

3. Detailed context

Open Access has always had at its heart the pursuit of unrestricted access to and free and unhindered reuse of the outputs of research, both by researchers themselves and for other potential users.[24] The translation of this ideal into practice has evolved and diversified into many forms over time, according to different contexts.

Mechanisms to encourage researchers to retain specific rights have been in place for many years. Author addendums which modified publisher contracts were introduced around 2004, with the first funder policies with rights retention provisions introduced in 2005 by the Wellcome Trust and followed by the National Institutes of Health (NIH) in 2008. In that same year, Harvard adopted an Open Access policy through which its faculty grant rights to the institution allowing it to make scholarly articles openly accessible via its institutional repository. Many other institutions have adopted similar policies across the world in the last 15 years but uptake has been slow in Europe until recently.

Policies which outline how authors and their institutions can and should retain rights when publishing and those which encourage or mandate publishing in the most accessible way are tightly entwined and have been throughout the history of the Open Access movement. Harvard adopted an Open Access policy incorporating rights retention in 2008. Through the policy, Harvard faculty grant a wide set of nonexclusive rights to the university which then makes articles openly accessible via its institutional repository.

Many other American research institutions have adopted similar policies and, although there have been examples of such policies being adopted in Europe, these have been relatively isolated, at least until recently. Peter Suber[25], Director of the Harvard Open Access Project and Senior Advisor on Open Access has written and continues to write and provide direct assistance, and pro bono consulting on this topic, and many others connected to Open Access.

Europe has seen a significant development of Open Access (OA) policies over the last 20 years but less reform of copyright, licensing practices or author rights in general.

This has begun to change over change. Funders such as the Horizon Europe programme and cOAlition S require authors to retain rights to enable broad sharing of work under; a number of institutions have developed policies and support mechanisms for authors, and others have adopted policies that ensure the institution itself retains rights to the publications of its researchers.

The UK Scholarly Communications Licence and Model Policy (UKSCL) was an initiative encouraging institutions in the UK to adopt a model open access policy with licensing to institutions that would better ensure compliance with funder mandates[26]. It did this by trying to simplify the complex interrelationship of funder and publisher policies, by introducing a single mechanism. While no such single mechanism has been introduced, the UKSCL initiative has been enormously influential. It has framed the debate in the UK, provided access to legal expertise and made clear the appropriate approach under UK law and connected UK institutions that have then gone onto develop policies.

In 2018, a group of influential funders known as cOAlition S established a set of principles known as Plan S to help make full and immediate OA a reality. The Plan S requirements were followed by a strategy for rights retention in 2020 and the cOAlition S rights retention policy[27] was formally launched in January 2021 as one of the mechanisms cOAlition S supported to achieve full and immediate OA. The policy required that funded researchers apply a CC BY licence to the Author Accepted Manuscript and declare this to publishers at the point of submission by incorporating specific language in their manuscripts. The prior licence is taken to have legal precedence over any later licensing agreement the author signs with a publisher, although there are differing interpretations over the enforceability of the earlier licence[28]. Many cOAlition S members have since adopted policies which are closely aligned but vary due to particular legal contexts.

The European Research Area Council has been undertaking a review of copyright and how it affects research, and it has an action area dedicated to the topic as part of the European Research Area. In 2022 and 2023 in particular, experts were asked to analyse and report on the current status of copyright across Europe and how different approaches affect the research enterprise. One strand reviewed the range of research exceptions in European legislation, to what extent they are harmonised and how useful they are to research activities.

Another strand considered the different routes through which research could be made available to everyone, the different limitations that existed and how they operated in different countries. The routes considered included though were not limited to secondary publishing rights and rights retention policies. It concluded that Secondary Publishing Rights has to date facilitated access to but not reuse of research and that legislation in different jurisdictions referred to application of embargoes. The study concluded that rights retention might work in different jurisdictions, but that further work was required on ownership of copyright in different countries, and specifically the initial owner of the copyright.

A range of institutions, beginning with Edinburgh and UiT, The Arctic University of Norway in 2021[29], have developed and implemented their own policies on the basis of extensive legal advice.

4. Detailed findings

4.1 Institutions

Survey results

Background and method

A survey of research institutions was undertaken to understand the policies and support they have in place in a number of areas, specifically:

- Copyright of research publications
- Author rights retention
- Open licensing
- Reuse of research publications

The full survey questionnaire is included in *Appendix B*.

The survey was disseminated widely across Europe by SPARC Europe and its partner organisations through newsletters, email lists and social media channels. The survey received 238 unique responses with a completion rate of 71%.

A total of 92 responses were excluded from the final analysis because:

- they provided extremely limited or no detail in their responses
- they answered 'no' when asked if they agreed to take part in the survey
- their response was identifiably a duplicate.

Breakdown of respondents

A total of 146 unique responses were included in the final dataset and analysed. These respondents break down as follows:

- 33 or 22% were from the UK, with 10 or more respondents from Spain, Sweden, Poland, Croatia and France. The other respondents were widely distributed across Europe.
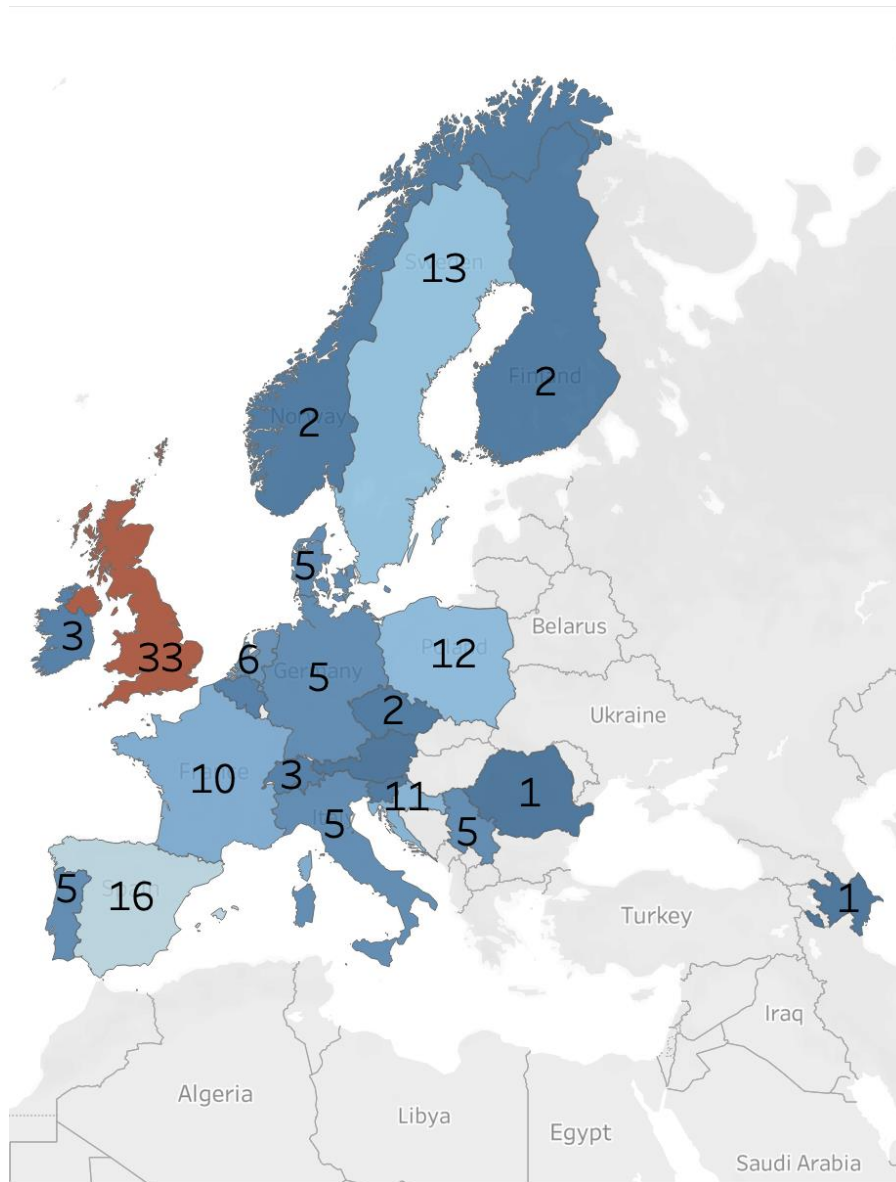
Figure 7 - Total respondents broken down by country of organisation, n=146

- 91 respondents or 62% were based at Research-intensive Universities, with a further 14 or 10% in Non research-intensive Universities and 13 or 9% in Technical Universities.
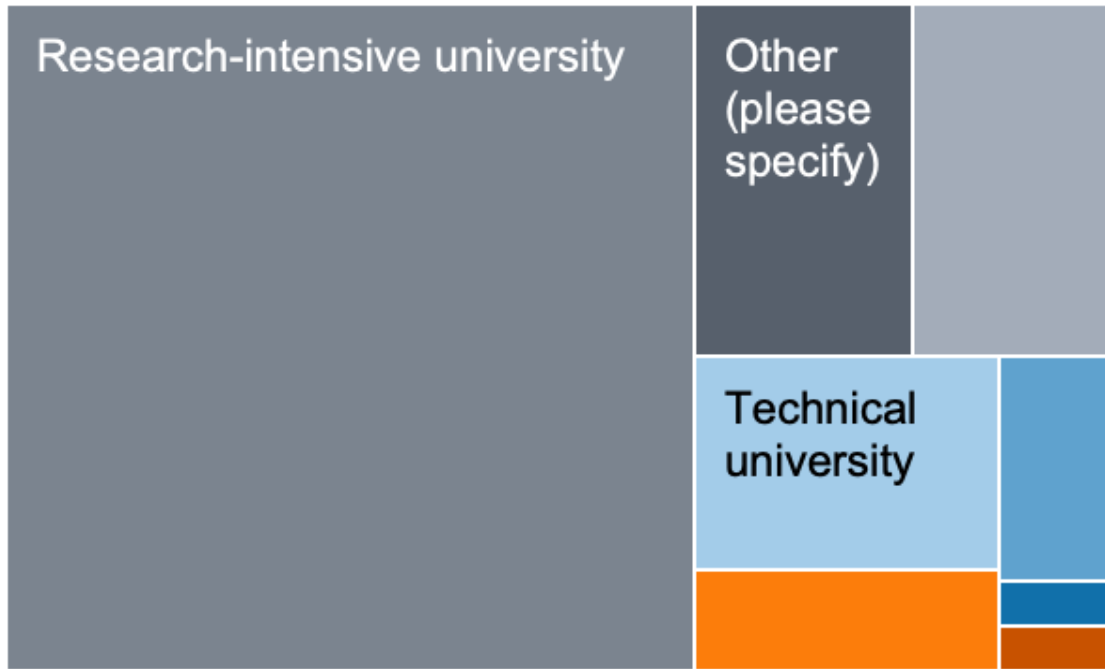
Org type
- Research-intensive university
- Non-research-intensive university / college
- Technical university
- Independent research organisation
- Other higher education institution
- Distance learning university
- Other post-secondary institution
- Other

Figure 8 - Total respondents broken down by type of organisation, n=146

- Respondents from the UK and Sweden mainly came from Research-intensive Universities, with 23 and 11 of respondents in each country respectively

- 123 respondents or 84% were based in a library, with a further 7 or 5% based in a Research Offices. Other respondents were split equally across Policy units, Legal departments, and other departments

Department
- ■ Library
- ■ Other
- ■ Research office
- ■ Legal Office
- ■ Policy unit
- ■ Technology / Information Systems
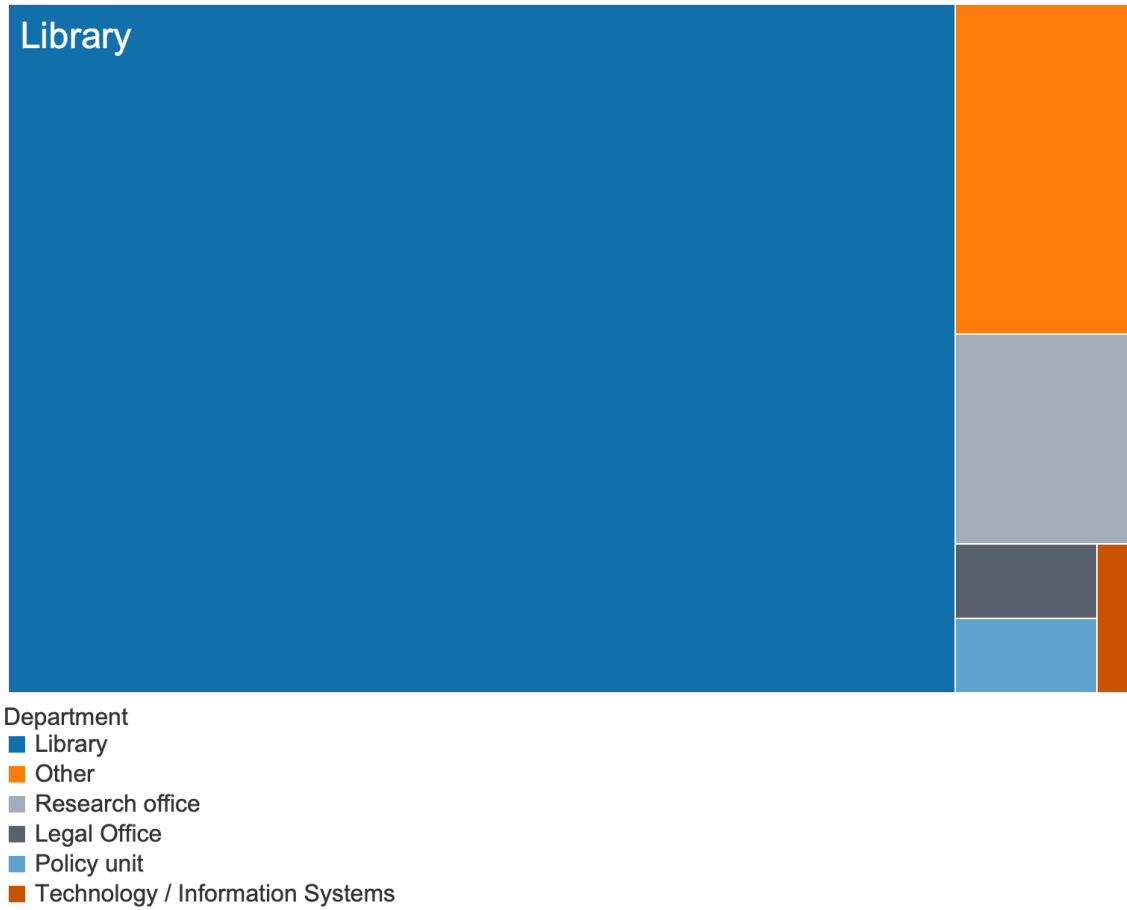
Figure 9 - Total respondents broken down by department, n=146

Respondents were asked about their familiarity in a number of areas related to the survey, and overall indicated a high degree of acquaintance. Over 80% considered that they were either *Familiar* or *Very familiar* with all of the areas covered. While Rights Retention was the area in which the lowest number of respondents considered themselves to be *Very Familiar,* this was still 62 organisations or 45% of the total and a further 52 or 43% judged they were *Familiar*. Less than 1% of respondents were *Very unfamiliar* with any of the topics covered by the survey. While it is not possible to independently validate this level of familiarity, we were able to assure ourselves of respondents' expertise from narrative responses and follow on interviews.
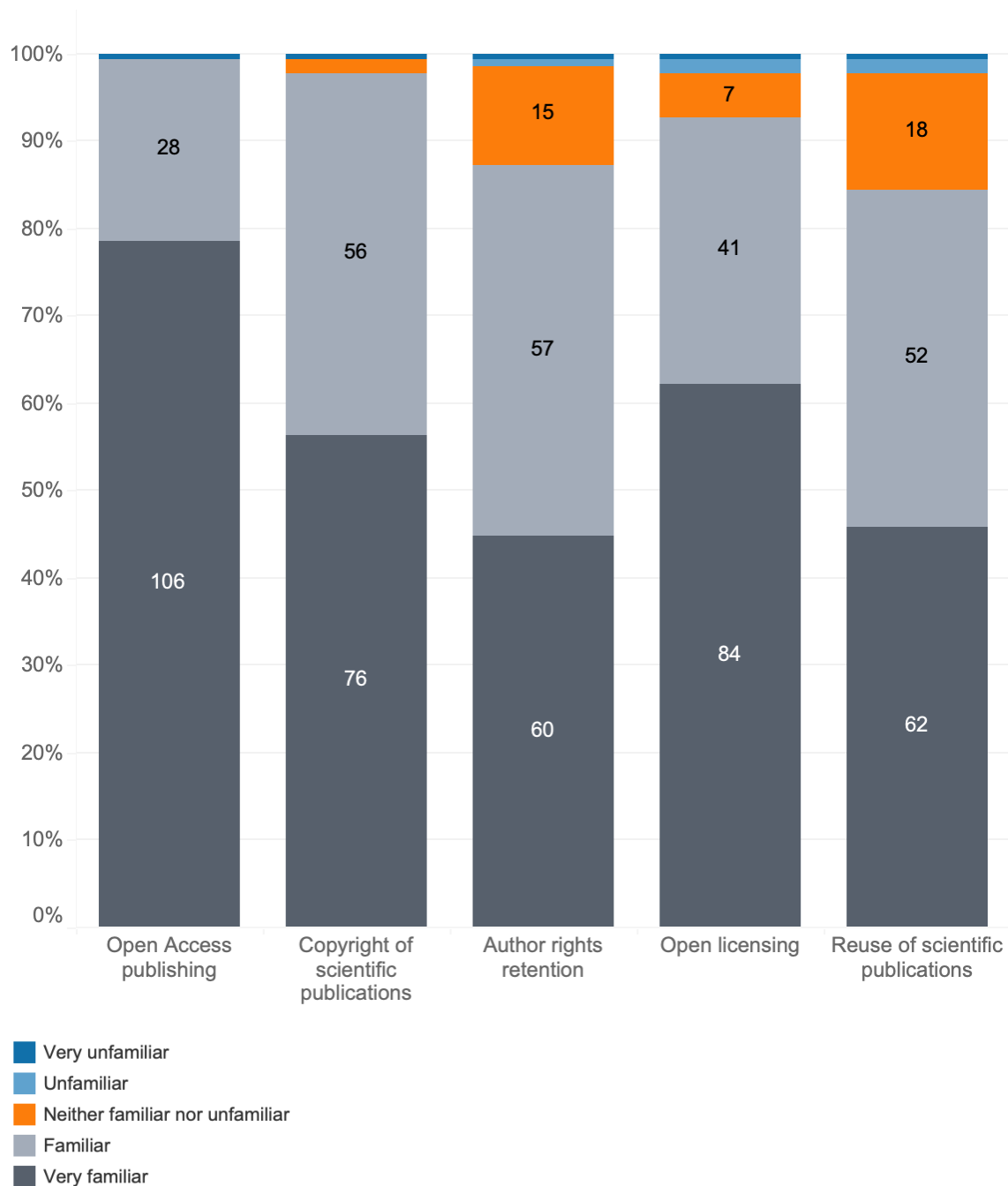
Figure 10 - How familiar are you with the following areas? n=136

Respondents expressed a higher degree of familiarity with the cOAlition S funder rights retention policy (110 or 81% *Familiar* and *Very familiar*) and publisher policies covering author rights (107 or 79%) than licensing or institutional policies covering author rights retention (80 or 63% *Familiar or Very Familiar*, with 17% *Unfamiliar or Very unfamiliar*).
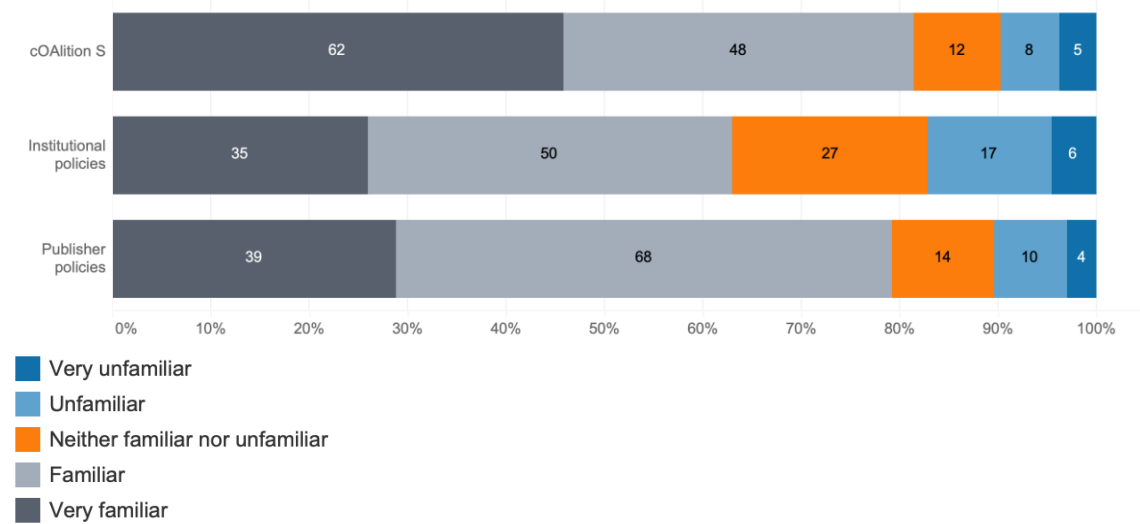
Figure 11 - How familiar are you with the following specific policies or types of policy? n=135

Copyright ownership of scientific publications

Over 92% or 127 respondents considered that they were *Familiar* or *Very familiar* with the ownership of copyright in the country in which their organisation is based. No respondents considered themselves to be *Very unfamiliar*.
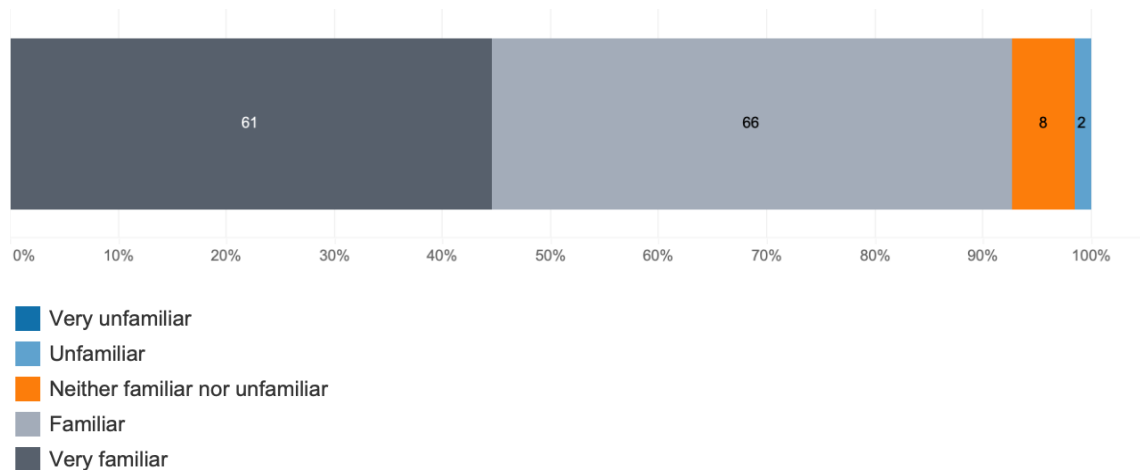
Figure 12 - How familiar are you with the legal position on initial copyright ownership for scientific publications in your country? n=137

When asked *Who owns the initial copyright for scientific publications in your country?* 76 or 62% of respondents said that it lies with the author, and a further 24 or 19% felt copyright lies with the employing organisation. Another 23 or 19% responded by choosing *Other.* These respondents were primarily in the UK and Spain and highlighted in their responses that:

- they believed ambiguity in the law and actual practice made the question difficult to answer
- while employing organisations may technically own copyright, in many cases they did not exercise that ownership or allow authors to retain the copyright under their employment contracts.

Less than 1% said that they did not know where copyright lay.

Author
Employing institution
Other
Don't know
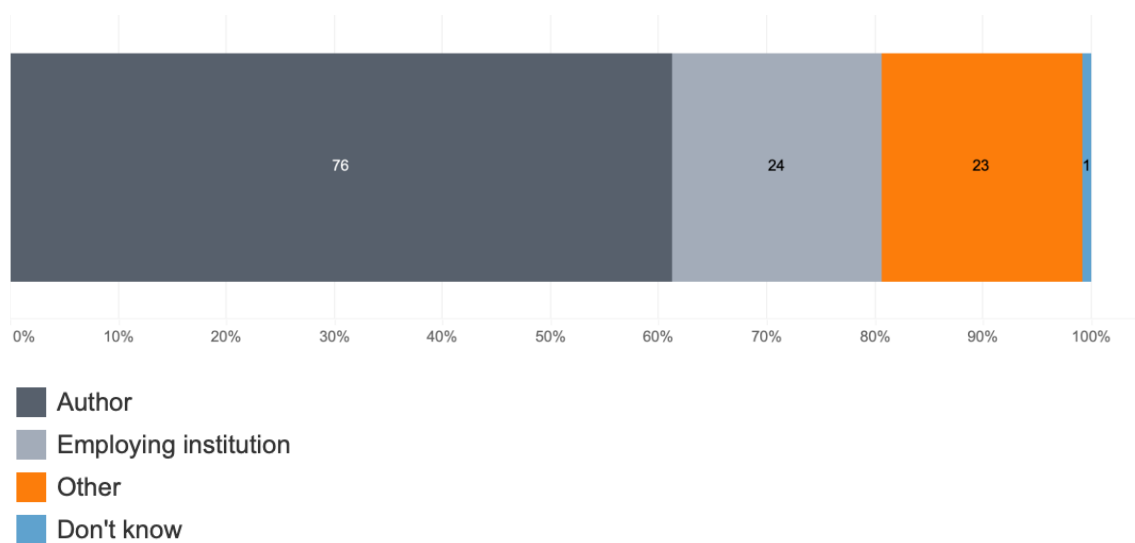
Figure 13 - Who owns the initial copyright for scientific publications in the country in which your organisation is based? n=124

More than half of respondents (74 or 55%) would seek further information on copyright ownership from their organisation's legal office or advisers. Over 40% said that they would seek further information from their library or national copyright organisation. Over 30% would also approach either a national Open Access support organisation or their own organisation's support team. Around 15% of respondents said they would also seek further information from another source. Several respondents used this option to highlight that they themselves were the main source of information on copyright within their institution.
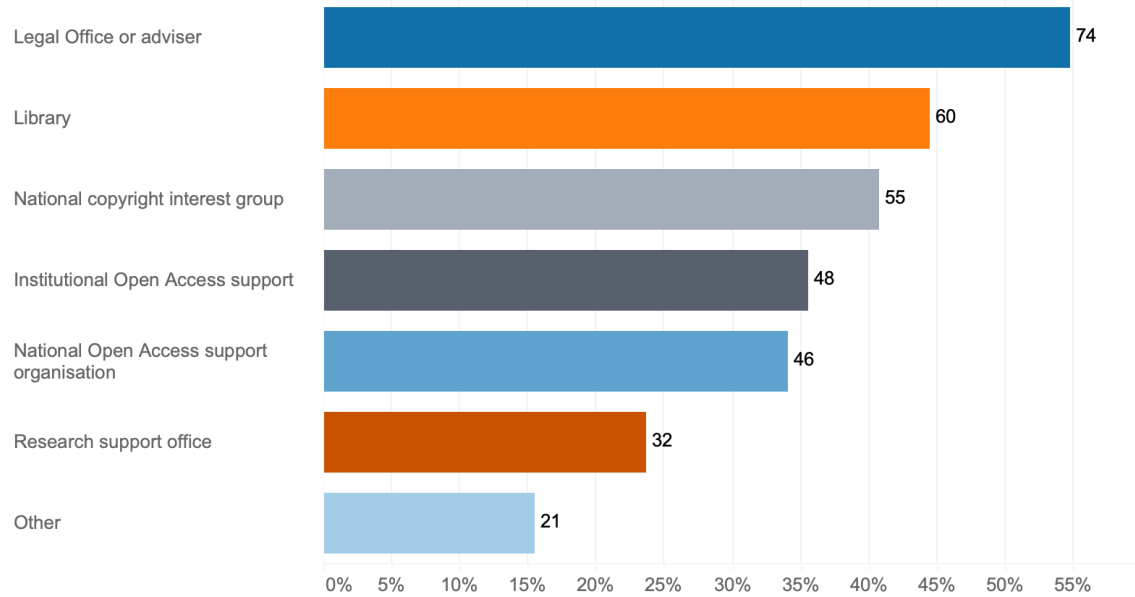
Figure 14 - If you wished to understand the copyright ownership of scientific publications in your institution's country, where would you seek further information? n=135

Support to researchers

Respondents' organisations provided extensive support to researchers in the areas covered by the survey, with Author rights retention the least common area of support still provided by 99 organisations or 74% of respondents. Only 5 respondents or 4% did not provide support in any of the areas covered.
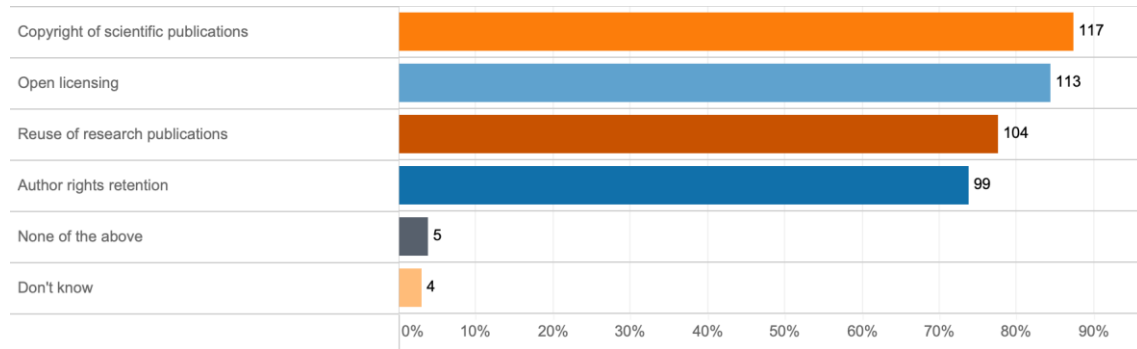
Figure 15 - Does your organisation offer support to researchers in any of the following areas? n=134

The most common form which support took was support for Open Access and Open Science related questions, provided by 122 or 98% of respondents' organisations. All other types of support were provided by 74% to 86% of cases, with the notable exception of negotiating with publishers on behalf of authors, which was only provided by 31% of organisations. Notably, supporting negotiations with publishers was provided by more than half (51%) of the organisations based in the UK and less than 25% of organisations across the rest of Europe.
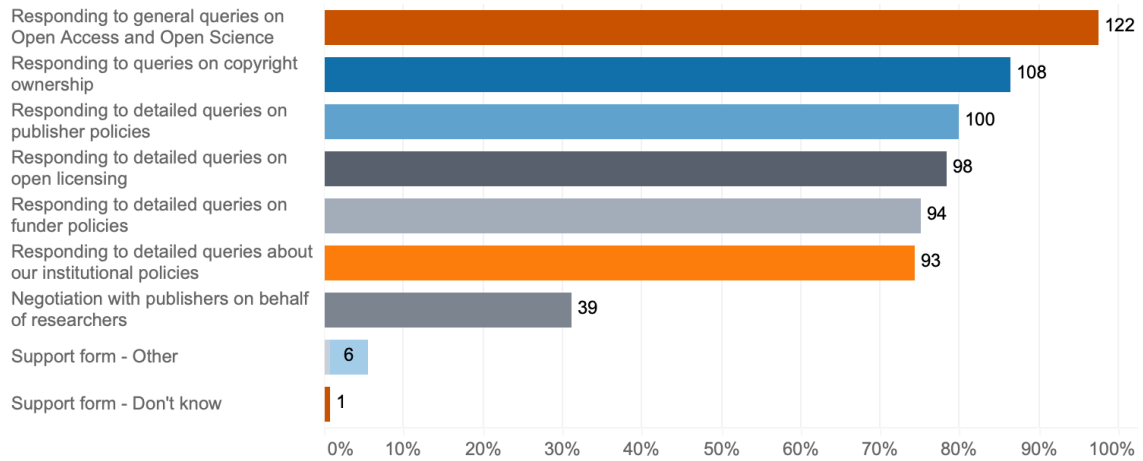
Figure 16 - What form does this support take? n=125

Researchers most frequently seek support on Open licensing, with 64 or 57% of respondents seeking support *Frequently* or *Very frequently*. Less than 25% of respondents said researchers were seeking frequent support on author rights retention, with 33% saying that such support was *Never* or *Rarely* sought.
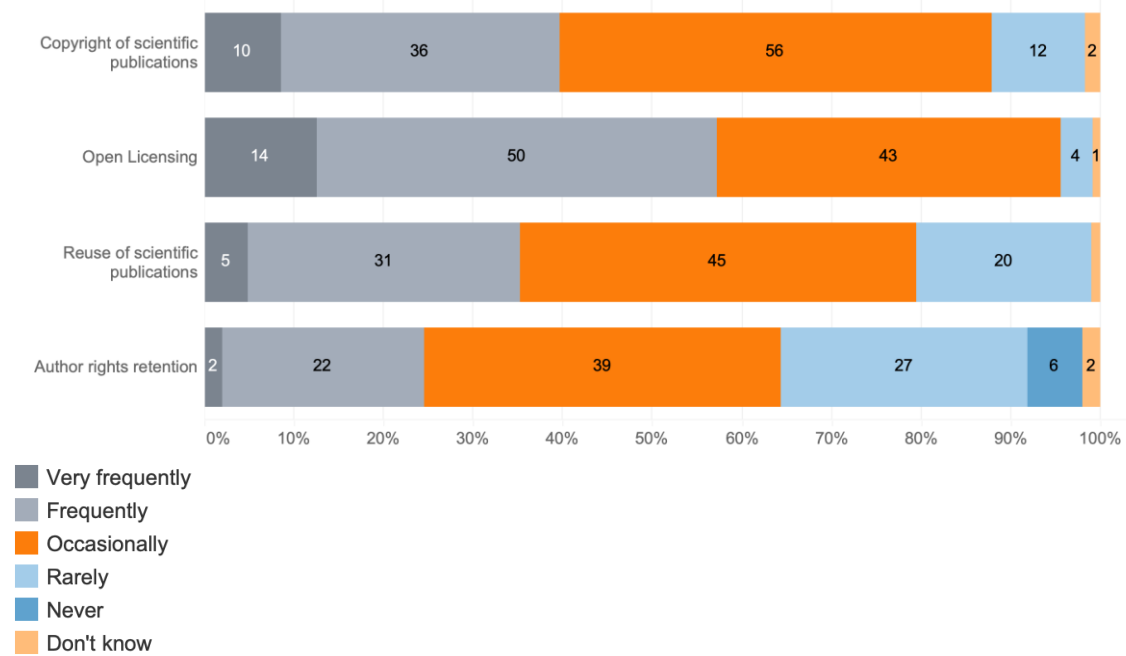
Figure 17 - How frequently do researchers ask for support regarding each area? n=124

Responsibility for providing support mainly sits with libraries, at more than 60% of respondents for all of the areas covered by the survey. Legal departments have a significant role to play in the provision of support for copyright of scientific publications at 33%, but for all other combinations of department and policy area responsibility for support was less than 25%.
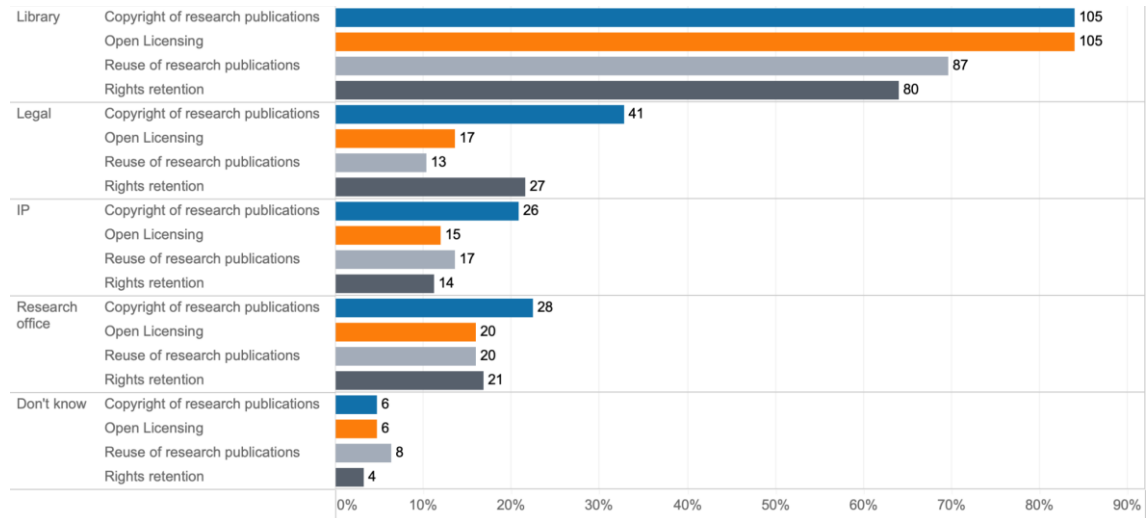
Figure 18 - Which department or departments have responsibility for the provision of support in different areas? n=125

Organisational Policies

Just over 50% or 64 organisations have a policy in place which covers copyright of scientific publications, with a further 20 respondents or 19% currently developing such a policy. Only 20% or 23 respondents' organisations have a policy in place covering reuse of scientific publications. The figure falls to less than 14% or 17 organisations with respect to policies covering author rights retention, but strikingly 32 or 25% currently have such a policy in development.
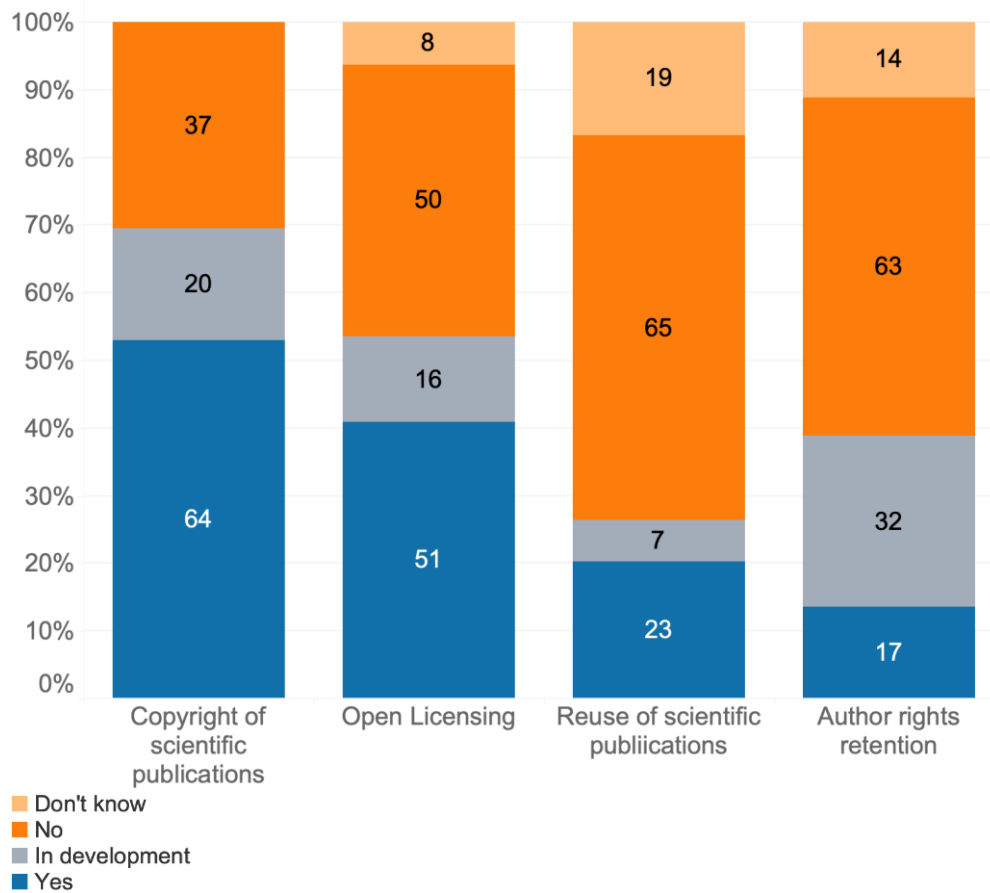
Figure 19 - Does your organisation have a policy or policies which cover the following areas? n=131

The introduction of policies which cover copyright of scientific publications & author rights retention has spiked in the last 2 years. The largest number of policies came into effect in 2021 & 2022, alongside the large number currently in development.
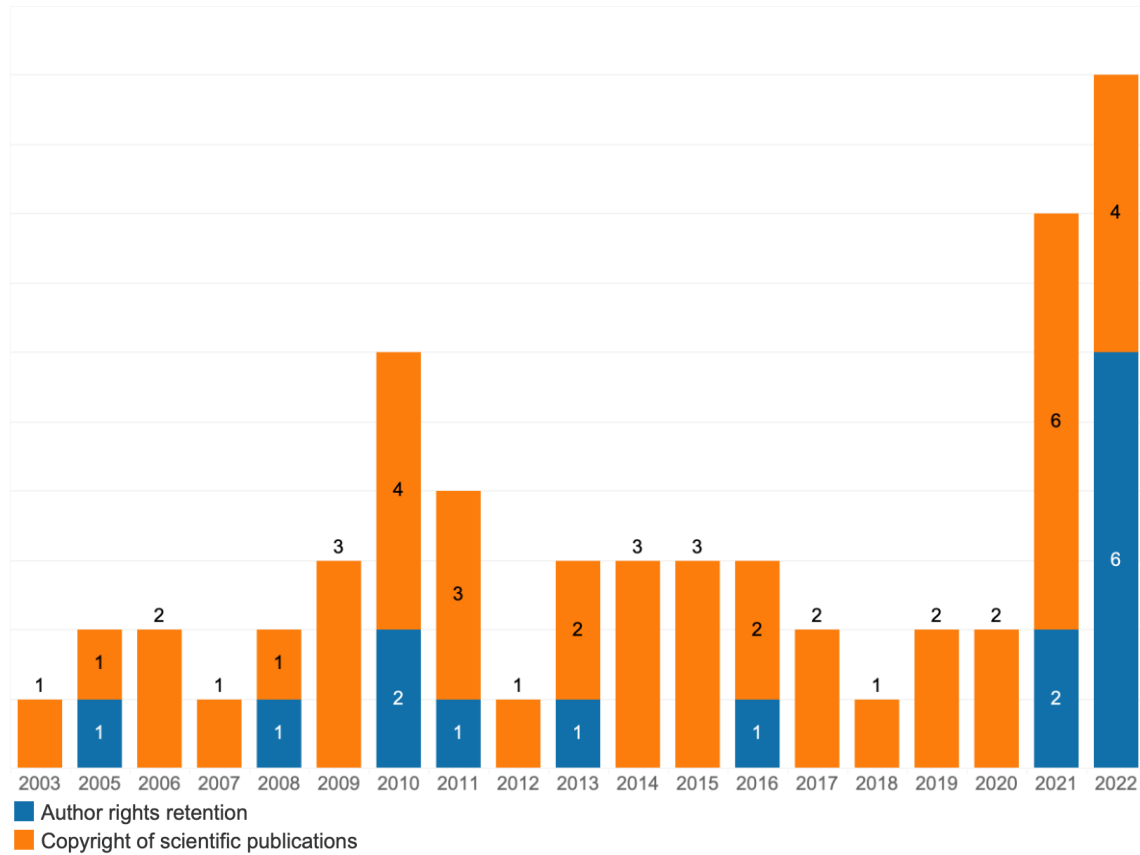
Figure 20 - When were policies covering copyright of scientific publications / author rights retention first introduced? n=59

Policies covering copyright of scientific publications

When a respondent's organisation has a policy or policies which covers copyright of scientific publications, for 41 organisations this includes an Open Access policy; for a further 38 it includes a general copyright or intellectual property policies. A range of other policy types are then named by different respondents.
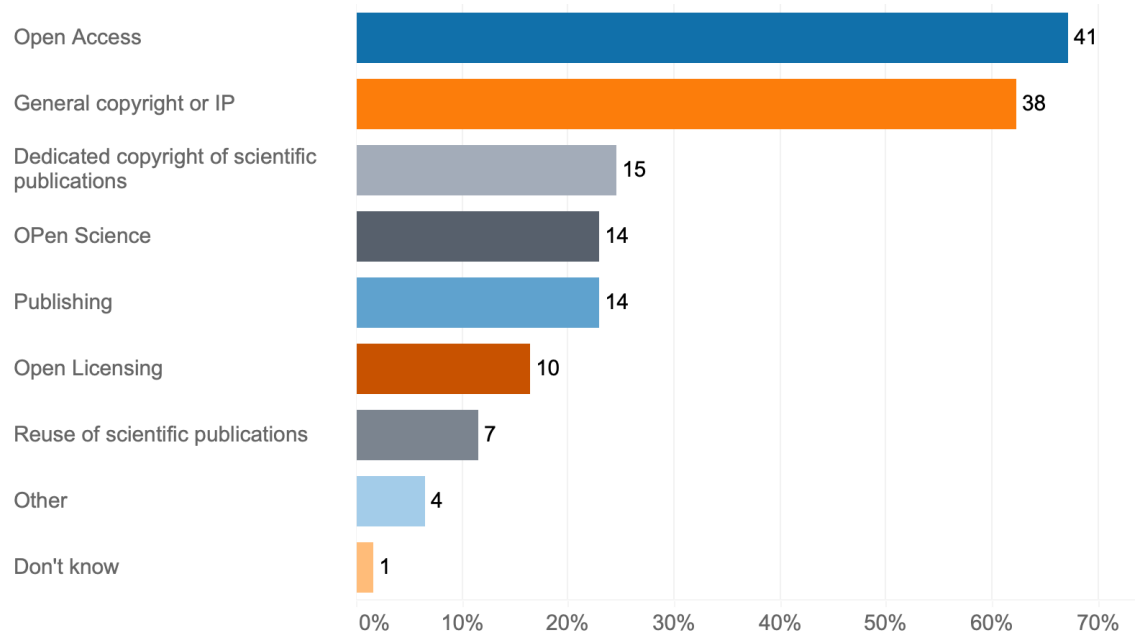
Figure 21 - Which of the following policies does your organisation have which cover copyright of scientific publications, n=61

Only 18 organisations with policies covering the copyright of scientific publications monitor whether researchers comply with those policies, with 24 stating that no such monitoring occurs; although an additional 18 respondents did not know whether such monitoring actually occurred.
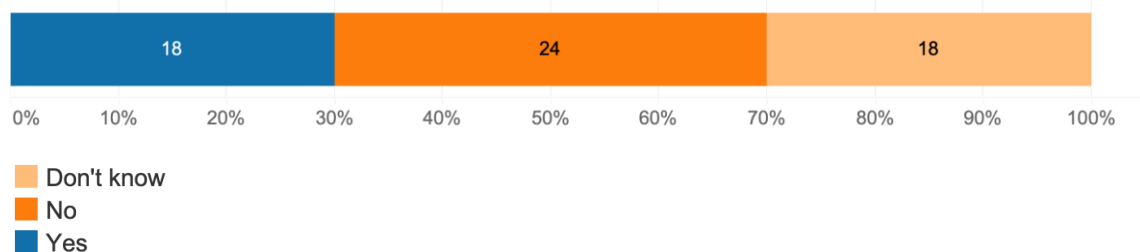
Figure 22 - Does your institution monitor whether researchers are complying with policies regarding copyright of scientific publications? n=60

Where monitoring of policies does occur, researchers *Almost always* or *Often* comply in 76% of cases. No respondents said that researchers *Rarely* or *Never* comply with the policies.

5	8	2	2

■ Don't know
■ Sometimes
■ Often
■ Almost always
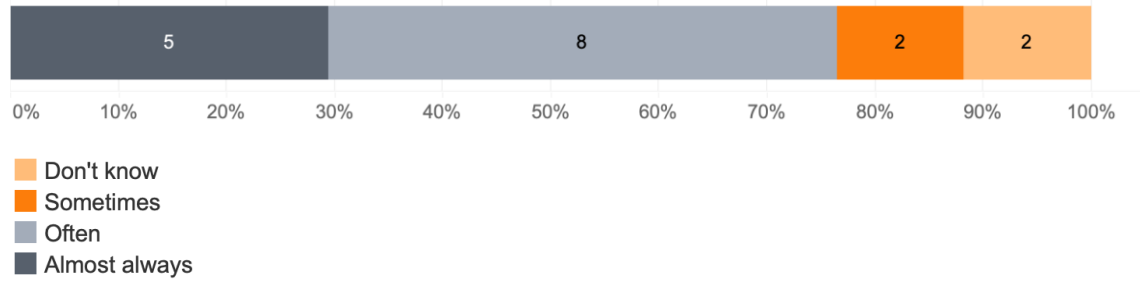
Figure 23 - To what extent do researchers comply with policy on copyright of scientific publications? n=60

In only 7 cases does the respondent's organisation assert ownership of copyright; the same proportion of respondents did not know whether or not their organisation asserted ownership of copyright. The much larger proportion - 44 respondents' organisations - do not make any such copyright assertion.

7	44	7

■ Don't know
■ No
■ Yes
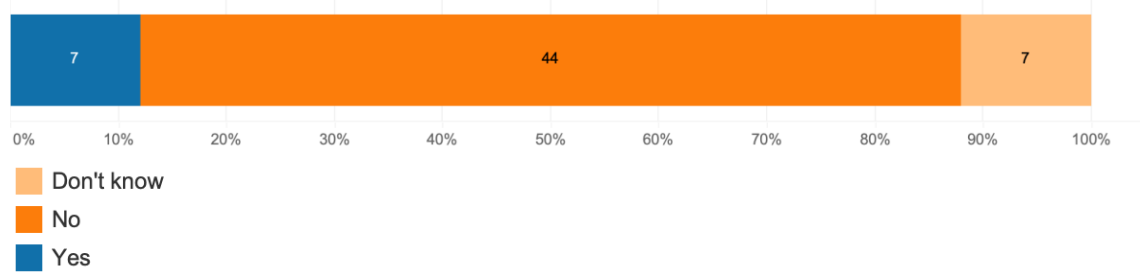
Figure 24 - Does your organisation assert ownership of copyright of scientific publications? n=58

Policies covering author rights retention

Over half of the policies covering rights retention identified in this survey are in the UK. Several such policies are already in place in Sweden and Poland, with several currently under development in France and the Netherlands.
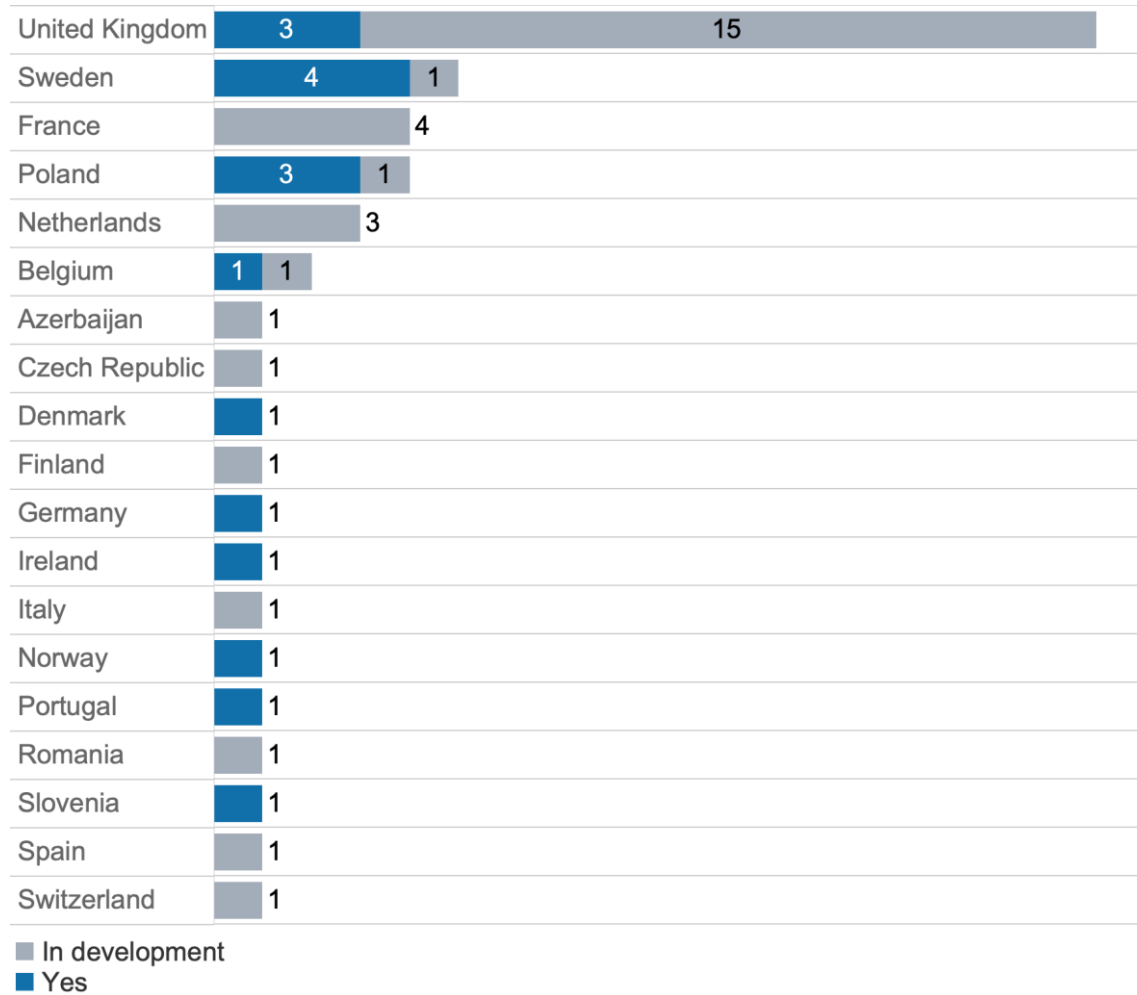
Figure 25 - Breakdown of policies covering author rights retention by country, n=49

Where a respondents' organisation has a policy or policies in place covering rights retention, in 11 cases this was part of an Open Access policy. In more than 12 cases the subject was covered by publishing or general copyright policies, evenly split between the two.
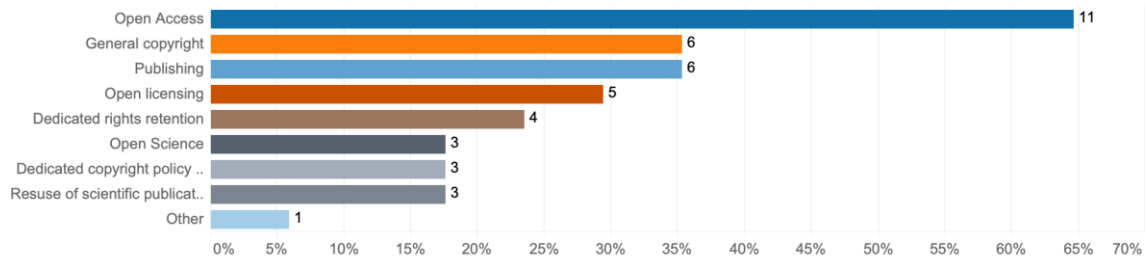
Figure 26 - Which of the following policies does your organisation have which cover author rights retention, n=17

Respondents did not know whether their organisation monitored whether researchers were complying with policies on author rights retention in 7 cases. Of those that did know, only 2 organisations or 12% are undertaking monitoring.
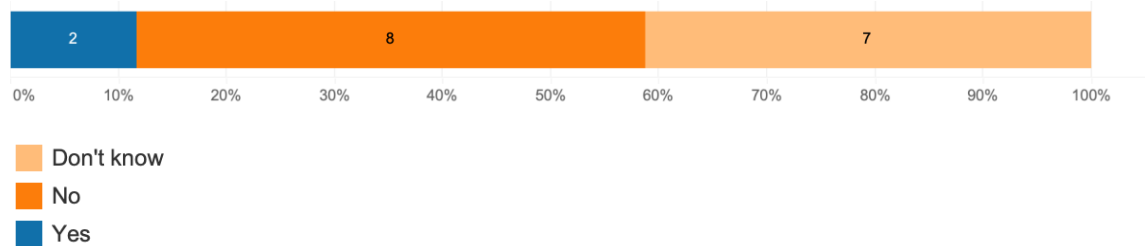
Figure 27 - Does your institution monitor whether researchers are complying with policies regarding rights retention?? n=17

Policies covering open licensing

Where a respondents' organisation has a policy or policies in place covering open licensing, in 33 cases this included an Open Access policy; next most common were publishing policies and dedicated open licensing policies, which occurred in 18 cases each.
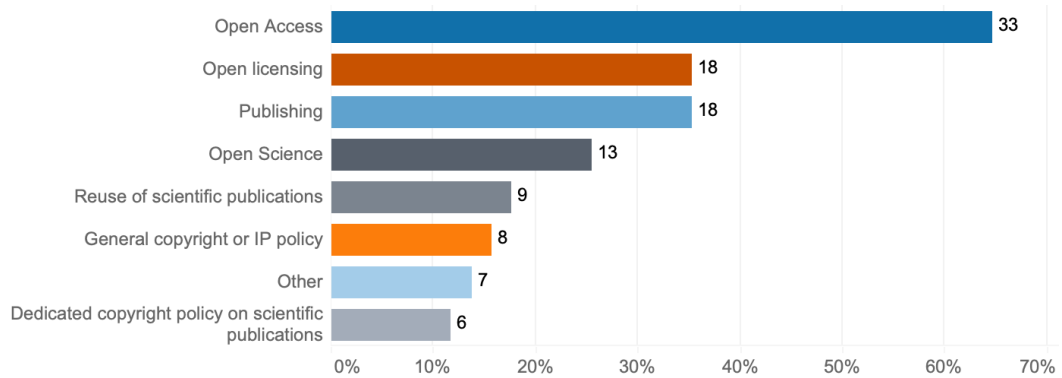
Figure 28 - Which of the following policies does your organisation have which cover open licensing, n=51

In only 9 cases do policies covering open licensing require the use of Creative Commons licences, although another 32 of such policies recommend their use.
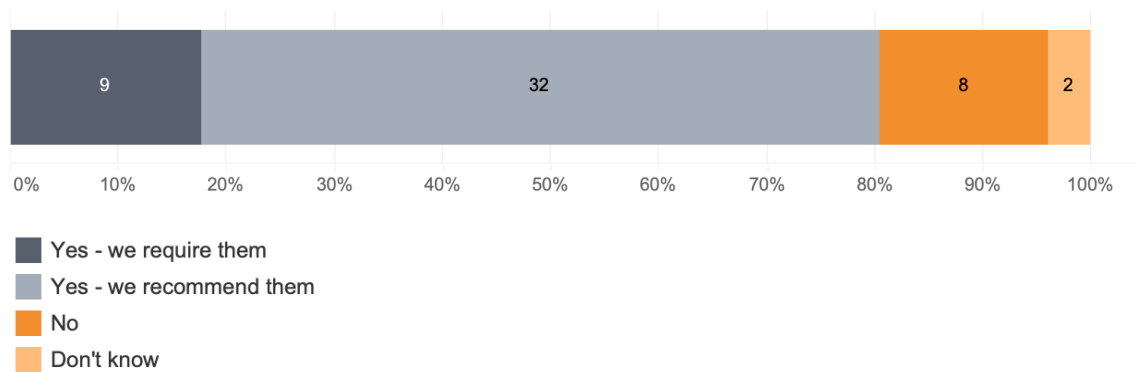
Figure 29 - Do you ask for Creative Commons or equivalent licences? n=51

The licence most commonly mentioned in such policies is the CC BY licence, which is mentioned by 35 policies. CC0 licences are mentioned in 10 cases, but more restrictive licences are mentioned even more frequently - between 12 and 17 cases of the time depending on the licence type in question.
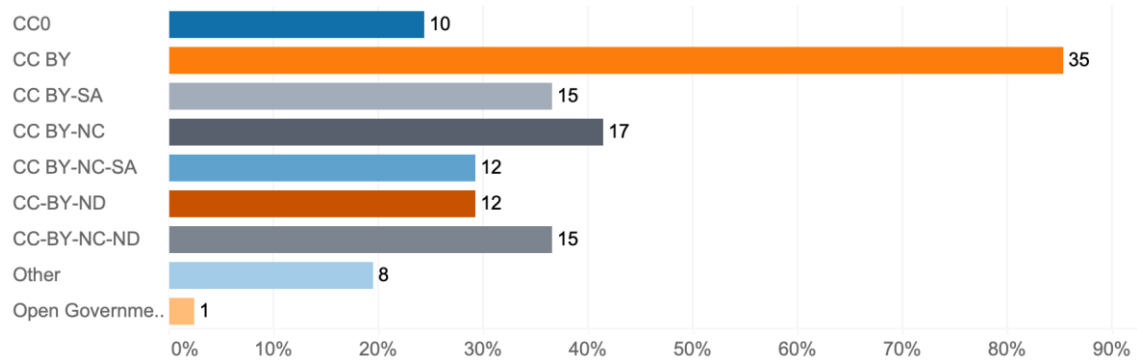
Figure 30 - Which licence types do you specify? n=41

Desk-based review of institutional rights retention policies

Overview

The survey sent to institutions used the following policy definition:

> *'a written document that stipulates the expectations for the organisation and its researchers'*

This is consistent with previous SPARC Europe work and surveys in the area.

A total of 17 institutions responded positively to this follow-up question:

> *'Does your organisation have a policy or policies which cover rights retention?'*

and provided links to the policy or policies in question. These policies were then analysed in more detail.

While some of the policies provided were not available in English and some were only available to internal users, as many as possible were reviewed for contents and variations, based on their availability at the time of the review. Some additional policies were sourced through interviews or other channels or desk-based research. A list of the 16 policies reviewed (including Harvard which was used as a reference) can be found in the Appendix.

Variations

During the policy document analysis, we developed the following definition of an institutional policy covering rights retention. The following definition proved to be more useful and robust than our original question at capturing the range of reviewed policies in a non-ambiguous way:

> *An expressed position setting out the practice of retaining sufficient rights for academic works of institution's employees to make the work immediately openly accessible and reusable.*

Many different variations can be accommodated within this definition while still capturing the core elements. Policies which meet this definition are in place in Iceland, Ireland, Germany, Norway, Sweden and the UK. Within countries that have multiple policies in place, there are strong similarities among them.

For any future institution aiming to formulate a policy, it may be useful to have an overview of important elements that need to be covered, together with the examples from already existing policies. Therefore, the variations of policy elements are illustrated by the quotes from analysed examples.

The major variations found in the policies reviewed were as follows along with illustrative examples from the policies reviewed quoted in tables.

Mandate or recommendations

Policies may be mandates (i.e. requiring researchers to act in specific ways) or recommendations (i.e. suggesting, sometimes very strongly that researchers act in specific ways). Policies may simply be guidance (i.e. provide information and details to inform researchers about choices they will face and the requirements they may be under) or they may set out specific rights that accrue to the institution or researcher as a result of the policy (e.g. assignment of a non-exclusive licence to the institution)

Principles for open access to academic publications at UiT The Arctic University of Norway (UiT)
Research Publications & Copyright Policy (Edinburgh)
Open access policy (Harvard)
Open Access Policy (Bifröst)
Open Access Policy at Leibniz University Hannover (Leibniz)
Open Science Policy & Open Science Plan (Stockholm University)

Table 3 - Examples of name & type of policy

Policy status

Policies may be pilots, interim or permanent. In some cases, the policy was in the process of being made permanent at the time of review. Policies can also vary significantly between interim and permanent status, as lessons learned and feedback from researchers can lead to substantial changes.

Opt-in or opt-out

A policy may allow researchers to opt in or opt out. This depends in part whether it is a mandate or just a recommendation / guidance, or whether it is permanent or interim. The mechanisms set in place for authors to ask to opt-in or opt-out can also vary.

"The Rector, or an authorised representative of the Rector, may exempt individual scholarly articles from this resolution or delay their publication for a set period, should the employee in question submit a written request." (Bifröst)
"The Provost or Provost's designate will waive application of the licence for a particular article or delay access for a specified period of time upon express direction by a Faculty member." (Harvard)
"The University recognises that there may be situations outwith a staff members control where it is difficult to follow this policy exactly. In this case it will be permissible for staff to voluntarily opt out of the requirement for immediate open access upon publication, or the assignation of a CC BY licence. However this may cause the research output to be non-compliant with funder policies. To opt-out we simply ask authors to contact the Scholarly Communications Team with details of the publication." (Edinburgh)
"Authors wishing to reserve themselves against the full-text version being made available in Munin may apply for an exemption." (UiT)
"Researchers publish open-access research data during or after completion of a project in the appropriate repository. For research data that cannot be published with open access, metadata should be published openly if no obstacle exists." (Stockholm)
"Leibniz University Hannover encourages its members to retain the right to further use of their works" (Leibniz)

Table 4 - Examples of language used by policies to determine whether researchers must opt-in or opt-out

Scope and coverage

Scope and coverage of policies can differ as follows:

- *Content type* - journal articles are always covered but policies may refer in addition to additional forms of scholarly output be they text-based - proceedings, books, monographs, chapters - or other forms of academic output - notably software and data. It is too early to be sure, but it appears that where a mandate applies to journal articles, it may not apply to other outputs, where recommendations are more likely. Within reviewed policies, it seems as the 'stronger' ones (mandates) tend to only require retention of rights for articles, while other policies cover broader scope of research outputs.

"research results, research data and research-related documentation (lab books, data management plans, ethical review decisions, etc." (Stockholm)
"scientific publications. This applies not only to journal articles, but also to other publication types such as monographs or proceedings." (Leibniz)
"This policy applies to all scholarly articles, including conference proceedings ....Whilst the policy does not apply to monographs, scholarly editions, text books, book chapters, collections of essays, datasets, or other outputs that are not scholarly articles, the University strongly encourages researchers to make them as openly available as possible." (Edinburgh)
"The requirement about uploading full-text versions applies to peer-reviewed articles in journals and anthologies. However, UiT also encourages authors to upload other genres of academic literature, including books (monographs), popular science articles, newspaper articles and other research-based dissemination activities." (UiT)
"The policy applies to all scholarly articles authored or co-authored while the person is a member of the Faculty" (Harvard)
"The policy does not apply to books, teaching materials, reports, advisory opinions or materials other than scholarly articles published in academic journals." (Bifröst)

Table 5 - Examples of content covered by policies

- *Authors covered* - employees, students, those in receipt of grant funding, specifically applying when a researcher has a funder with its own rights retention policy

"its members" (Leibniz)
"employees and students" (UiT)
"The policy applies to all employees and concerns anyone whose position requires publication of research results" (Stockholm)
"all staff on research contracts" (Edinburgh)
"member of the Faculty" (Harvard; separate policies provide equivalent for non-faculty researcher)
"academic employees at the University" (Bifröst)

Table 6 - Examples of researchers covered by the policy

Licences required

None of the reviewed institutional policies requires a named and specific CC licence unconditionally. Most policies mention CC licences, but the precise use of open licences required or recommended under the policy whether general or specified Creative Commons licences, CC BY or more. There is always with a possibility for opting out or leaving the choice between multiple licences.

"a Creative Commons Attribution (CC BY) licence, or a more permissive licence" (Edinburgh)
"a Creative Commons licence" (UiT)
"a free licence (preferably CC BY)" (Leibniz)
"under an open licence whenever possible" (Stockholm)
"a non-exclusive, irrevocable, worldwide licence to exercise any and all rights under copyright except to sell the work for a profit" (Harvard)
not specified (Bifröst)

Table 7 - Examples of licences specified by policies

Legal context and mechanism

Different contexts in different countries and legal jurisdictions affect the form and the content of policies. A detailed overview of this context is revealed in the section on *Qualitative research analysis* setting out the results of one-to-one interviews & focus groups. When reviewing policies, the following elements can be observed:

● reference to the existing legal framework (Secondary publishing rights) (ie owner of copyright in academic works, specific legal basis on which institutional rights retention is established)
● reference to and reliance on national OS plans
● reference to and reliance on national or trans-national funder rights retention positions

The precise nature of the author's rights, specifically:

● initial ownership of copyright
● rights owned/retained by the author
● any rights granted to the institution (i.e. non-exclusive rights)

"each Faculty member grants to university a nonexclusive, irrevocable, worldwide licence 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 do the same" (Harvard)
"all members of the academic staff authorise the University to make scholarly articles authored by them publicly available and to save them in an open access archive such as Opin vísindi (opinvisindi.is)" (Bifröst)
"By failing to apply for an exemption from the rule concerning Open Access, UiT's employees and students give the institution permission to make full-text versions available in the open research archive (currently called Munin) under a Creative Commons licence" (UiT)
"The University of Edinburgh confirms the current practice that members of staff own the copyright to their scholarly works. Upon acceptance of publication each staff member with a responsibility for research agrees to grant the University of Edinburgh a non-exclusive, irrevocable, worldwide licence to make manuscripts of their scholarly articles publicly available under the terms of a Creative Commons Attribution (CC BY) licence, or a more permissive licence." (Edinburgh)
"Stockholm University's open science policy sets out the overall strategic objectives for the University in an open science system" (Stockholm)
"Leibniz University Hannover calls on university members to exercise their secondary publication rights and to additionally publish copies of their publications in parallel in the university's open access repository." (Leibniz)

Table 8 - Examples of mechanisms and legal context specified by policies

Article type

Whether the policy applies specifically to the Author Accepted Manuscript or is ambiguous about which version of an article is required.

"author's final version" (Harvard)
"the latest peer-reviewed manuscript version (the author's accepted manuscript, "postprint")" (UiT)
"the accepted manuscript (AM)" (Edinburgh)
not specified (Leibniz)
not specified (Stockholm)
not specified (Bifröst)

Table 9 - Examples of manuscript version referred to by policy

Other elements

There are three further elements that distinguish policies. First, whether action is required to secure rights, whether it be an action by the author or the institution. This includes the:

- ○ need to include specific language in manuscripts or cover letters at the point of submission
- ○ need for the institution to communicate with publishers

Second, the extent to which the policy highlights existing infrastructure (notably CRIS systems and Institutional Repositories) and well-established manuscript deposit processes.

"After granting the licence each staff member with a responsibility for research will provide an electronic copy of the accepted manuscript (AM) of each article at no charge to the appropriate representative of the University of Edinburgh in an appropriate electronic format (such as PDF). The University of Edinburgh will deposit the AM in a digital repository, with article metadata usually available immediately upon deposit and the AM being made accessible to the public on the date of first online publication (or the conference end date for conference proceedings) under a Creative Commons Attribution (CC BY) licence." (Edinburgh)

"Each Faculty member will provide an electronic copy of the final version of each article no later than the date of its author's publication (...) The Provost's Office may make the article available to the public in an open-access repository" (Harvard)

"All members of the academic staff shall submit an electronic copy of the final author version of their scholarly articles to the University's library in an appropriate format (such as PDF), as instructed by the library. They shall do so at no cost to the University and no later than on the date of publication. The library of the University may make the article publicly available in an electronic open access repository." (Bifröst)

"full-text versions of research articles written by employees and students at UiT must be uploaded (deposited) continuously in the national register (currently called Cristin). ... All full-text versions uploaded will be made openly available in the institution's repository (currently called Munin)" (UiT)

"In its role as a university library, TIB supports the members of Leibniz University Hannover in Open Access publishing. Together with the university, it is committed to the transformation of scientific publishing to Open Access. University members are supported by an advisory service, an institutional full-text repository" (Leibniz)

Table 10 - Examples of implementation approaches referred to in policies

Third, the responsibilities of different parties to ensure papers are deposited and made openly accessible.

"The legal responsibility is placed on the institution, not the individual researcher. ... The Rector has the legal responsibility for interpreting this policy, resolving disputes about its interpretation and ensuring the processing of applications for exemptions from the rule concerning open access." (UiT)
"The Office of the Provost will be responsible for interpreting this policy, resolving disputes concerning its interpretation and application" (Harvard)
"The Rector shall make a decision concerning any matters of dispute that may arise." (Bifröst)
"The University of Edinburgh" (Edinburgh)
"Leibniz University Hannover encourages its members to retain the right to further use of their works when concluding publishing agreements and to transfer only simple rights of use." (Leibniz)
"Stockholm University is responsible providing its researchers with support and information to conduct research of the highest possible quality and impact in the open science system that is gradually being developed. This responsibility includes providing a local infrastructure that supports and enables the proper management, storage, access and preservation of research results and data. ... Researchers are responsible for ensuring that research results and data are handled and made available in a correct and information-secure manner pursuant to applicable legislation, research ethics principles and the University's governance documents." (Stockholm)

Table 11 - Examples of responsibilities of parties mentioned in policies

Exceptions

A small number of policies reported in the survey were also dismissed from the detailed review because they did not fulfil all the required elements of a definition of a rights retention policy that was developed and agreed later during the project. In particular, this applies to the following type of policy:

- Policies which set out the copyright and rights policy of an institutions' in-house publishing activities
- Self-archiving policies that encourage or mandate researchers to make their articles available in an institutional policy in a manner compliant with publishers' policies on embargoes, reuse or licencing

Future tracking which builds on this status quo analysis will need to ensure this distinction is made clear.

Qualitative research analysis

The following summarises points made during the sixteen interviews conducted with representatives from research institutions, as well as two focus groups and open text fields in the survey.

Policy development

Interviewees and respondents were consistently familiar with funder rights retention requirements such as that of cOAlition S which have influenced many to consider their own policies. Several, however, were not aware that institutional policies existed, such as those at Edinburgh or Tromsø, or how that these differed in nature from a policy requiring researchers to self-archive their publications. They were not aware that such policies had not been developed in the UK and other countries, although there was great interest in the topic. Two institutions communicated that they had begun to develop rights retention policies as a result of seeing and completing the survey and the discussions with Project Retain.

Rights retention is most commonly covered in general Open Access and / or Intellectual Property policies. A small minority refer to 'Self-archiving' or 'Open knowledge' in their titles and cover broader researcher responsibilities such as the need to use PIDs (persistent identifier) and metadata. The scope of policies varies. They all refer to scholarly articles and commonly also include reference to non-article outputs such as monographs and book chapters. Less commonly, they refer to data and software.

A few institutions identified a need for a wider review of their Open Access and Intellectual Property policies and are conducting a multi-stage review over two or more years. In the small number of cases where interviewees had chosen to pursue a pilot policy, this reflected the approach taken by an institution's immediate peers and the complex approval structure for policy changes in the institution. Where pilots had been in place for a year or so, the response meant rapid progress to a full policy was anticipated.

The presence of a formal, approved policy was important and allowed more progress even in institutions whose policies were less ambitious in scope, or remained open to interpretation. The presence of a policy allows librarians and other support staff to provide more specific recommendations in dialogue with researchers than would otherwise be possible, and guidance can feature more detailed and direct examples.

Several interviewees highlighted that progress was made on Open Access when it was made a requirement of European Commission funding, and that there was no similar mandate in place to drive rights retention although the cOAltiion S call for rights retention was also mentioned as a factor that influenced change and/or discussion.

Legal context

Detailed and expert legal advice has been a necessary factor underpinning the development of institutional rights retention policies which go beyond supporting researchers to follow funder mandates. The nature of the contract law and copyright legislation vary greatly between jurisdictions. Institutions must use precise framing and processes for their policies to be valid and appropriately implemented.

According to legal advice received by institutions in the UK, British copyright law recognises earlier licences where prior knowledge of the licence can be demonstrated, and thus a carve out in contract law is applicable to publishing contracts. If the institution in question has appropriately and precisely publicised the policy and notified affected publishers, the institutional policy supersedes the irrevocable grant of licence. Institutions have been advised that publishers seeking to bypass the policies would be procuring a breach of

contract. This combination makes policies very close in nature to that of Harvard viable, even though the legal basis is different, and many such policies are being implemented or considered in the UK.

Interviewees from Northern European institutions have proceeded with similar policies, with adjusted framings and processes to accommodate their legal frameworks and the legal status of authors and institutions. Interviewees in the Netherlands and France are exploring what their own legal and copyright systems permit as they lack the specific elements in UK law.

In some other jurisdictions, the strength of creator rights and ownership are considered too strong for such an approach to be viable; in others no detailed legal evaluation is yet underway that would facilitate exploration of such policies. As such, in any review of laws around contracts and research, there are complicated issues to be borne in mind.

Additional factors affecting policy development

- *Reducing the administrative burden* - interviewees cite a desire to ensure a reduction in the administrative burden on researchers and the complexity of what they are asked to do. Adoption of a Harvard-style rights retention policy (in principle) means the researcher can publish in any journal they choose without concern over the specificity of their funder mandate or an undue administrative burden. Institutional rights retention policies are considered simpler and less disruptive than alternatives (institution claims copyright, funder claims copyright, funder licences copyright) and do not add extra steps such as the need to include specific wording in articles. One interviewee also highlighted that institutional rights retention was an opportunity to reduce the burden on the institution via reduced administration and simplified resources.

- *Providing clarity and support* - Interviewees highlighted that the development of policies covering rights retention has been driven by factors which are more pragmatic and instrumental in nature. Institutions are able to remove pressure on researchers either by providing expertise and resources or just by having a clear position for the researcher to refer back to. These policies also clarify copyright ownership of research outputs, which can be ambiguous or the subject of tension due to differences in the legal position and common practice.

- *Ensure equity* - Interviewees see institutional rights retention policies as a route to ensuring Open Access for a broad group of authors who are currently not able to publish in the journal of their choice - unfunded researchers, postgraduates, early career researchers, those not covered by transformative agreements, or those who for disciplinary reasons do not have sufficient Open Access routes available to them.

- *Predominant Open Access model* - institutional rights retention has gained most traction where the predominant culture is one of Gold Open Access and commercial APCs alongside a culture of self-archiving in repositories. It has less currency where the dominant model is one of Diamond OA, where the transfer of copyright to a publisher has never been a factor. Interviewees from Central, Southern or Eastern Europe highlighted their perception that rights retention or broader copyright reform was not

achievable at present and that more progress was needed on more fundamental issues first, specifically research assessment and broader acceptance of Open Access.

- *Frustration at existing Open Access routes* - interviewees consistently cited the slow pace of the transition to Open Access, and the high cost of commercial routes. Institutional rights retention policies are not seen as a replacement for publishing articles in journals, but rather a path to be pursued in parallel that will cause publishers to accelerate their transition to Open Access and can be used as a negotiating tool to reduce institutional expenditure.

- *Network to facilitate adoption* - the presence of peers interested in pursuing rights retention policies is a consistent theme. This reflects a feeling of safety in numbers when trying something innovative which may bring a legal risk. It also reflects a willingness to consider something if a peer institution has already done it or is considering it. This feature is visible in the UK in different forms, for example participants in the UKSCL, Scottish institutions, the N8 northern research-intensive universities but also in other countries, notably, the Netherlands, France, among research intensive Norwegian institutions and dialogue across Scandinavia. A lack of central direction and no perceived advantage (and indeed perceived risk) in being first mover were reasons cited by interviewees operating without an obvious peer network interested in the topic.

- *Funder requirements* - institutional rights retention is more readily established where funders already conduct research assessment on material that is self-archived, and that material has an impact on institutional funding.

Institutional factors

The support of institutional leadership is a major factor in accelerating the development of institutional rights retention policies. On some occasions, interviewees highlighted that a proposal had made no progress for three or four years before a change in leadership meant it was swiftly adopted. Leadership does not have to be actively supportive if it is not actively opposed and is motivated by developments among the institution's peers.

This applies to the most senior leadership in the institution, but also across multiple departments - specifically the library, legal office and those responsible for research policy. The proximity of the legal office to the library is important, as integration allows quicker and deeper support.

An appetite for risk and a sense of the strategic opportunity are motivating factors for institutional leadership support. Interviewees also highlight cultures of innovation, pragmatism and desire-to-lead within the library as critical factors in the development and implementation of policies.

There is also a need for sufficient resources to be available as only so much progress can be made at one time. If rights retention is not a high priority for institutional leadership, it will be unlikely to be developed in an institution without sufficient capacity in the library or legal office.

Communication & engagement

In the majority of cases institutions undertook a detailed process to consult and engage researchers as the policy was developed.

This is echoed in the terms in which policies are described to researchers; institutions have focused on framing in terms of the researchers' rights, ownership and ability to reuse materials; how they are not an instance of the institution taking away a right to publish in some journals, rather an increase in the researchers' ability to publish where they like without uncertainty and complexity.

Engagement was most successful when it was begun early in the process and followed up repeatedly throughout it. Institutions with policies in place had begun development and consultation over a year before any approval date. Some chose to adopt a pilot phase as part of their engagement strategy.

The role of the library in policy development is evident, but the need for support and commitment from faculty and support staff in faculties is also a consistent theme. Institutions have also found it important to stress that the policy is not owned by the library or primarily a library policy.

Several institutions actively engaged those sceptical of rights retention or Open Access in drafting the policy to ensure their concerns could be actively addressed and to ensure they received the wider context. Some engaged with high-level faculty representatives whereas others spent many hours consulting with up to 200 researchers. One interviewee stressed the importance of the connection to teaching and promoting the ability of researchers to reuse research in teaching. In two cases, no formal process was developed to engage researchers. This was either because of a presumption that researcher needs were sufficiently understood or that researchers had no interest in the topic.

Several institutions underwent formal processes with researcher unions or representative bodies for researchers. This was considered important due to the connection of copyright ownership to employment conditions, and that any change in the status quo on institutional ownership of research outputs needed to be understood and accepted by unions. This was cited as a particularly successful factor by institutions in Scotland.

Publisher response to institutional policymaking

Institutions introducing Harvard-style rights retention policies have had little or no response from publishers. In the UK, institutions have formally written to publishers to ensure they are aware of the policies. These letters are generally sent by the institution's legal office. They have mostly not been acknowledged; where there has been a response, institutions have received as many positive, encouraging responses as they have negative, critical ones.

The response to libraries providing support for researchers including funder-mandated rights retention language in their articles has been more mixed. Most publishers have ignored the language, but some have asked for such language to be taken out. This can occur at all points in the publishing process, sometimes after acceptance but does not appear to be consistent across the industry or indeed within individual publishers.

A few interviewees had a sense from their own private conversations that publishers are moving to a more positive stance, with the development of more processes to identify and accommodate the position. Institutions were aware of many instances where publishers had worked constructively to find a solution that allowed the researcher to fulfil their funder's grant conditions without accepting the rights retention language, through a waiver or change in corresponding author to take advantage of Read-and-Publish deals.

Implementation of policies

Institutions have provided substantial support to researchers, most specifically through libraries. This is the case irrespective of whether the policy is Harvard-style or merely reflects the need to implement funder policies.

Some interviewees expressed frustration that funders policies mandated action by researchers, but had not provided sufficient clarity or support for researchers. They felt that where the default advice became "ask your librarian", librarians sometimes lacked the expertise, resource or standing to intercede for an author. There was also some anger at publishers who were presenting contracts that caused researchers to breach their funder or institutional conditions knowingly or unknowingly.

On the whole, interviewees felt that publishers did not have resources or systems in place to deal with funder or institutional rights retention policies, and simply needed to adopt open licensing and open access more rapidly.

Future development and needs

Institutions with policies in place highlight several factors that those developing policies should consider well in advance:

- Dedicated legal expertise and contacts for support and negotiation is essential
- Engaging researchers early and consistently is vital, with internal barriers often related to researchers' lack of awareness on copyright management
- Training and mandatory classes on this subject are an advantage when policies are in place
- Workflow adaptation will take time, particularly the need to changes the focus of support teams and build capacity

Communities of Practice have not yet evolved in this space, partly because the development of policies is relatively new, and partly because the gap is being filled by peer groups and heavy demands on the time of teams in Edinburgh, Harvard and a few other centres. Interviewees were split on the need for a formal framework for this, with some feeling needs were too wide, and others thinking that space for discourse was valuable, but not at expense of informal peer groups which have been and remain key to development of policy.

Coordinated or centralised resources would be valuable, even recognising the difficulty posed by different legal frameworks and policy frameworks. Specific examples suggested by interviewees were:

- A consistent framework for negotiation with co-authors, and collaboration agreements across legal jurisdictions
- A centralised resource categorising policies and allowing copy and paste
- Pro forma language that could be shared to allow simpler notification process
- Co-ordinated notification by peer groups operating in the same context to reduce administrative burden
- Centralised legal advice

Interviewees articulated a desire to see greater coordination, dialogue and work between stakeholders. They felt that the combination of funder and institutional policies remains important, with funder policies creating space and providing an incentive for researchers and institutional policies creating greater ability for institutions to act to support their researchers. There was strong support for a European-level approach or mandate for rights retention in those countries where institutional rights retention policies have not yet gained traction and where Open Access take up was driven by European funding mandates.

There was a desire for a forum in which conversations between funders, publishers and institutions could take place, as well as a commonly expressed desire to avoid treating these as uniform blocks of stakeholders. Rights retention policies come in different flavours at the funder and institutional levels, and publishers have not reacted uniformly to them. Interviewees felt progress would benefit from dialogue and the need for compromise, especially across national boundaries.

The value of legal system reform was mentioned by some stakeholders, particularly those where copyright and contract law did not easily facilitate institutional rights retention policies. More than one interviewee highlighted the need for carefully navigating any conflict or accommodations required between Anglo-American contract law & continental European-style law; they expressed a need for legal certainty for interpretation of funding guidelines and publishing contracts. Some interviewees favoured further implementation of rights retention policies precisely because it did not require legislative reform. They highlighted the expense of legal reform, and the long delays and lobbying to which it can be subjected.

Open licensing

It is common for institutions to have policies covering the use of open licences, but they are not uniform in nature. Many recommend the use of licences rather than mandating them; they consistently recommend researchers should adopt the most open licence, rather than specifying a CC BY licence should be used. Interviewees reported that this remains a complex topic.

One interviewee stated that they felt researcher voices have been ignored or dismissed by Open Access advocates on this topic. This sentiment was echoed less strongly by several interviewees who stated that compromise has proved necessary as researchers have strong concerns and valid arguments against restricting the use of CC BY NC or ND licences.

These arguments relate to cultural disciplinary differences, the need to protect author freedom, and the need to create support for Open Access in general before imposing the most permissive licence.

One interviewee stated that the institution had decided against recommending any specific licences, and particularly CC licences, because of the need to avoid the possibility that the licences could change in the future and the institution would then not know what it was recommending.

4.2 Publishers

Overview of SPARC Europe report 2020

SPARC Europe published a report[30] in 2020 that explored copyright and licensing practices amongst the most prominent journal publishers in Europe and amongst European DOAJ journals. The report analysed the policies of 10 large journal publishers and the copyright and open licensing policies of European OA journals listed in the Directory of Open Access Journals. The report then considered Plan S copyright & licensing requirements, and the readiness of the sector to meet them.

The report indicated that publishers, funders, institutions and researchers could enable immediate OA via policy changes without the need for complex and costly legislative reform which was being considered across Europe, or reviews of how the ownership of academic output was effectively managed to ensure that rights were not unnecessarily transferred.

The report found that if publishers continued with current licences and copyright practices, authors would continue to conflict without changes in funder grant conditions or retention of rights by institutions and or authors.

The report's recommendations were directed at different stakeholder groups, summarised as follows:

Publishers

- Simplify and align copyright policies with clear OA-supportive principles across journal portfolios and across publishers
- Provide more succinct information with as little jargon as possible on copyright ownership, embargo policies and licensing of journal articles in a consistent format at title level
- Consistently provide machine-readable and up-to-date policy data to support policy compliance workflows, including providing that information to Sherpa Romeo
- Replace the exclusive licence assignment to publish, only asking for a non-exclusive licence to publish the Version of Record of the article to enable authors further publishing rights in online venues that bring them greater visibility.
- Set zero embargoes for all self-archived journal articles.
- Use existing licensing frameworks such as Creative Commons rather than new licensing schemes or versions of record to simplify an already complex landscape.

- When publishing OA, licence material with CC BY making this licence the default to all authors, regardless who funds their work; requiring a more restrictive licence in exceptional circumstances rather than making this the preferred choice.

Research funders

- Communicate and discuss your policy regarding rights retention and open licensing with all stakeholders.
- Plan for research grant conditions to require for all peer-reviewed publications supported in whole or in part by the funding they receive
  - researchers/authors to retain copyright and the publishing rights
  - apply, from the date of the grant agreement, an open licence, preferably CC BY, to those publications, and
  - make them publicly available in open repositories, preferably the VoR, or else the AAM version

  This will enshrine OA to published research as a fundamental part of the award, notwithstanding any contradictory language in journal publishing agreement.

Research Institutions including university libraries

- Seek institutional Open Access, intellectual property or publishing policy alignment with allies to support rights retention and open licensing such as that specified in Plan S.
- Review guidance provided to academic colleagues on copyright and licensing to ensure this is consistent with standardised terms. These should be as simple as possible.
- When entering into new or renewing employment contracts
  - ensure that copyright remains with the authors and/or the institution
  - to apply, from the date of employment, a CC BY copyright licence to all their future Versions of Records (VoR) by default or else the AAM version.
- Work with publishers, funders and OA advocacy bodies to adopt standardised language when describing policy positions on copyright ownership and licensing.
- Ensure standardised language is used by research offices, university libraries and academic schools when advising academic authors on OA copyright retention and reuse licence.
- Follow the Plan S principles for any institutional publication, especially the ones related to research to be coherent/consistent in supporting the OA movement

Academic authors

- Understand the importance of retaining copyright and sufficient rights to publish openly.
- Consider the positive impact of reuse licences on current research and education.
- Familiarise themselves with OA-enabling copyright policy through training or by calling on advice.
- As a journal editor, discuss current journal copyright policies that do not yet enable immediate OA with their publisher.

- Ask publishers to explain their policies on copyright ownership and end-user licensing in terms that authors understand.
- Request the copyright and licensing conditions specified by the funder and/or that they prefer when communicating on their journal article once it has been accepted considering preferably a non-exclusive licence, zero month embargo and CC BY on the Version of Record as providing the most open route to scholarly communication)

This report provides an update on these recommendations throughout findings of research undertaken with institutions and funders. The policies of the most prominent journal publishers in Europe and European DOAJ journals have been re-analysed as set out below.

Prominent publisher policy positions

The policy documents of 10 prominent European journal publishers (11 if Springer and Nature are taken as separate publishers) were analysed in 2023. The documents included (but were not limited) to author agreements, copyright and licensing FAQs, author rights statements, self-archiving and OA policies found on publishers' websites. The full review conducted in 2020 was not repeated, but we looked at the following elements:

- Retention of copyright
- Self-archiving permitted
- Embargo periods required
- Licensing requirements for self-archived material
- Language relating to rights retention

Some notable aspects relating to the control of copyright and licensing were also identified.

	Embargo period in sell-archiving in institutional repositories for AAM	AAM licence	Rights retention language included
Cambridge	Various - depends on title, but usually 0 / 6 months	BY-NC-ND	Yes, against
De Gruyter	12 months on VoR	-	-
Elsevier	Various - depends on title but usually 12 / 24 /36 months	BY-NC-ND	-
Emerald	0 months	BY-NC	-
Inderscience Publishers	12 months	-	-
Karger	0 months	-	Yes, positive
Oxford	Various - depends on title	-	-
SAGE	0 months	-	-
Springer Nature (Springer)	12 months	-	Yes, against. Exceptionally accepted for 2022 UKRI funded research
Springer Nature (Nature)	6 months	-	Yes, against. Exceptionally accepted for 2022 UKRI funded research
Taylor and Francis	12 / 18 months	BY-NC	-
Wiley	12 / 24 months	-	Yes, against

Table 12 - Summary of policy positions of prominent European journal publishers

The review has identified some limited changes from the position in 2020, with the following the most significant findings:

- The embargoes publishers require before authors are permitted to make self-archived materials made openly available have not changed substantially
- More and more large commercial publishers allow a CC licence to be applied to any self-archived material, but this is not usually a CC BY licence but rather a CC BY-NC, or CC BY-NC-ND licence
- This has the effect of promoting broader access to publications, facilitating the use of materials in classrooms or dissemination via repositories and webpages. However, it means that publishers keep control of the commercial use and production of derivatives. Significant control of the future use of the researcher's work remains with the publisher
- It can also mean that the conditions under which many authors publish may not fulfil the requirements of their funders.

DOAJ analysis & changes

Overview

We undertook a review of the 9408 European journals indexed in the Directory of Open Access Journals (DOAJ) on 18 February 2023. This review sought to establish the policies in place on those journals relating to copyright transfer, author retention of copyright, open licensing. DOAJ data relating to these journals was analysed to ascertain:

- where author holds copyright with no restrictions
- the use of CC licences by journal, incorporating both the most restrictive licence permitted and number of licence types authors can choose from
- what differences could be identified between between the 20 publishers with the highest number of indexed titles & other publishers
- changes since May 2020 when SPARC Europe last undertook such a review
- other relevant trends.

DOAJ changes since 2020

The DOAJ historically captured both the 'Author copyright status' & 'Publishing rights retention' for each journal. This changed[31] in 2020, and journals now provide a Yes / No answer to the question.

'Do authors retain the copyright and full publishing rights without restrictions?'

DOAJ confirmed that this change was put in place to better clarify author rights. Some publishers allow authors to retain copyright but require them to transfer or licence exclusive publishing and/or commercial rights, or place other restrictions on author reuse of their material. This means that authors may appear to retain their full rights, but in fact do not. The revised wording is intended to reflect this. However, DOAJ has identified that there remains confusion among applicants who do not understand the nuances of copyright & publishing rights. This appears to be particularly common among publishers transitioning journals to Open Access from subscription models.

Additionally, journals are now asked to indicate all of the licence types that authors can choose; in 2020 they could only indicate one licence type and were asked to provide only the most restrictive licence that they offered. DOAJ made the change in response to publishers who wished to show that they permitted a range of licences or allowed a more permissive licence on request.

Breakdown of journals

The 20 publishers who publish the highest number of European journals listed in DOAJ account for 2825 of the 9408 titles published by 3805 distinct publishers. This analysis gives an insight into the structure of the market and how the reach of different publishers is growing and shrinking. This represents 30% of the total number of titles listed, but only 0.5% of the number of publishers. Both figures have fallen slightly from the same analysis in 2020, indicating the long tail of publishers has become even longer, although the largest 5 publishers account for 15% of the total number of journals.

	2023	*2020*	*% change*
Top 20 # titles	*2825*	*2348*	*20%*
Total number of publishers	*3805*	*2986*	*27%*
Top 20 proportion of total number of publishers	*0.53%*	*0.67%*	*-22%*
Top 20 proportion of total number of titles	*30%*	*33%*	*-9%*
Median number of titles	*1*	*1*	*0%*
Mean number of titles	*2.5*	*2.4*	*4%*

Table 13 - Analysis of 20 publishers highest number of European journals listed in DOAJ - Feb 2023 compared to May 2020

There has been some movement within the list of the largest 20 publishers since 2020 with three publishers no longer in the list. They have been replaced by Emerald Publishing, Istanbul University Press and AVES. Elsevier now has the most journals listed, at 468 up from 230 in 2020. MDPI has moved into second place and Taylor & Francis, Frontiers and Wiley have also seen large rises in the number of titles they publish. A more detailed review as to the causes of these movements falls outside the scope of the current review.

Publisher	Journals 2023	Journals 2020	% change	% of total	Cumulative %
Elsevier	468	230	103%	5%	5%
MDPI AG	342	200	71%	4%	9%
BMC	308	321	-4%	3%	12%
Hindawi Limited	216	238	-9%	2%	14%
Sciendo	207	323	-36%	2%	16%
Taylor & Francis Group	186	152	22%	2%	18%
SpringerOpen	169	187	-10%	2%	20%
Frontiers Media S.A.	132	64	106%	1%	22%
SAGE Publishing	120	103	17%	1%	23%
Wiley	117	49	139%	1%	24%
Oxford University Press	90	47	91%	1%	25%
Dove Medical Press	78	101	-23%	1%	26%
De Gruyter	74	61	21%	1%	27%
Emerald Publishing	52	29	79%	1%	27%
Universidad Complutense de Madrid	48	44	9%	1%	28%
University of Bologna	45	34	32%	0%	28%
Istanbul University Press	45	2	2150%	0%	29%
Copernicus Publications	44	38	16%	0%	29%
Ubiquity Press	43	43	0%	0%	30%
AVES	41	5	720%	0%	30%

Table 14 - Publishers of largest number of European journals listed in DOAJ - Feb 2023 compared to May 2020

Moving from an analysis by publisher to one by the country in which the journal is based, the UK is the country of publication with the largest number of journals with 1998 or 21% of the total. This is more than twice as many as Spain which has the second largest number of publications at 956 or 10%, and Poland in third with 810 publications or 9%. 17 countries have more than 100 journals listed and these account for 90% of the total European journals listed. There has been growth in the titles published across Europe, although the largest growth can be seen in Switzerland and the Netherlands which mirrors the increased publications made by Frontiers and Elsevier highlighted above.

Country	2023 journals	% of total	cumulative %	2020 journals	% change 20 to 23
United Kingdom	1998	21%	21%	1625	23%
Spain	956	10%	31%	768	24%
Poland	810	9%	40%	620	31%
Switzerland	589	6%	46%	393	50%
Russian Federation	573	6%	52%	334	72%
Italy	493	5%	58%	403	22%
Türkiye	451	5%	62%	401	12%
Ukraine	427	5%	67%	316	35%
Netherlands	387	4%	71%	238	63%
Romania	370	4%	75%	345	7%
Germany	347	4%	79%	264	31%
France	312	3%	82%	231	35%
Serbia	213	2%	84%	178	20%
Portugal	165	2%	86%	111	49%
Croatia	149	2%	88%	122	22%
Czechia	138	1%	89%	0	
Norway	121	1%	90%	106	14%
Lithuania	95	1%	91%	80	19%
Bulgaria	84	1%	92%	64	31%
Slovenia	70	1%	93%	38	84%
Hungary	69	1%	94%	56	23%
Finland	65	1%	94%	36	81%
Austria	53	1%	95%	55	-4%
Belgium	53	1%	96%	44	20%
Sweden	52	1%	96%	46	13%
Slovakia	49	1%	97%	43	14%
Denmark	49	1%	97%	37	32%
Greece	46	0%	98%	0	
Bosnia and Herzegovina	40	0%	98%	29	38%
Moldova, Republic of	39	0%	98%	24	63%
Estonia	35	0%	99%	27	30%
Belarus	22	0%	99%	14	57%
Ireland	17	0%	99%	16	6%
North Macedonia	15	0%	99%	0	
Latvia	14	0%	100%	11	27%
Armenia	10	0%	100%	9	11%
Montenegro	9	0%	100%	0	
Iceland	6	0%	100%	7	-14%
Albania	5	0%	100%	0	
Georgia	4	0%	100%	4	0%
Cyprus	3	0%	100%	3	0%
Malta	2	0%	100%	3	-33%
Luxembourg	2	0%	100%	5	-60%
Azerbaijan	1	0%	100%	0	
Grand Total	**9408**			**7106**	**32%**

Table 15 - Number of European journals listed in DOAJ by country - Feb 2023 compared to May 2020

Licences offered

Range of licences offered

CC BY is the licence most commonly offered by journals - it is offered by over 5500 titles or nearly 60% of the total. Just over 25% of journals also offer CC BY-NC-ND and just under 20% offer CC-BY-NC. Other licences are offered by less than 5% of the titles listed.
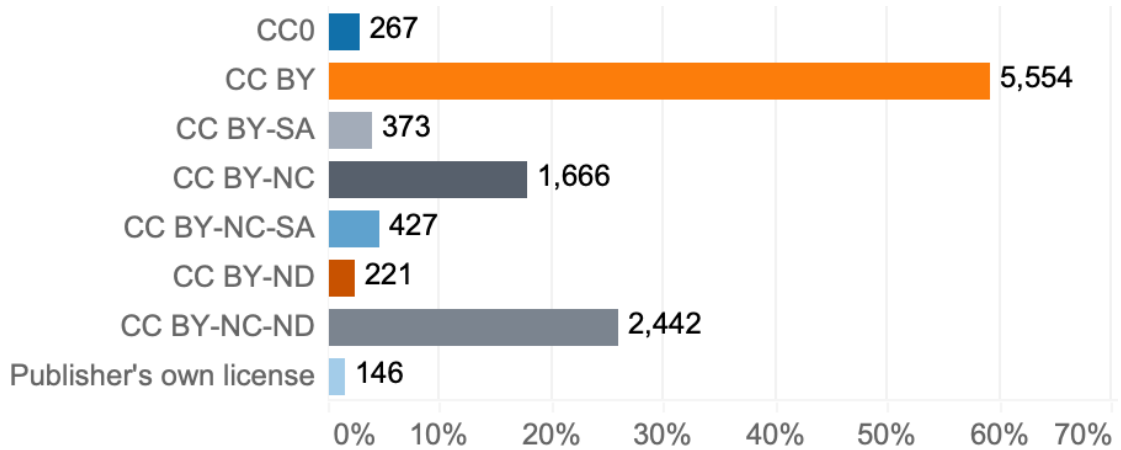
Figure 31 - Breakdown of licences offered by European journals listed in DOAJ Feb 2023; note journals listed more than once where they offer multiple licences

DOAJ data shows that CC BY is more likely to be offered by the largest 20 publishers (over 80%) than by the other 3785 publishers (less than 45%), but CC BY-NC and CC BY-ND are offered by similar percentages in both. Publishers outside the largest 20 are very unlikely to offer CC0; none of the 20 largest publishers report using their own licence rather than CC licences on any of their titles.

Largest 20 publishers		
CC0	261	
CC BY		2,526
CC BY-SA	10	
CC BY-NC	590	
CC BY-NC-SA	7	
CC BY-ND	47	
CC BY-NC-ND	743	
Publisher's own license	0	
Other		
CC0	6	
CC BY		3,028
CC BY-SA	363	
CC BY-NC	1,076	
CC BY-NC-SA	420	
CC BY-ND	174	
CC BY-NC-ND	1,699	
Publisher's own license	146	

Figure 32 - Breakdown of licences offered by European journals listed in DOAJ, analysed to compare 20 publishers of largest number of journals against other publishers; note journals listed more than once where they offer multiple licences

Looking at the largest 20 publishers, there is a wide range of variation, but some trends are apparent. Generally, publishers who *only* publish 100% Open Access titles (ie those who only publish titles eligible for inclusion in DOAJ) offer only CC BY (or CC0) licences - MDPI, BMC, Hindawi, SpringerOpen, Frontiers, Copernicus and Ubiquity would fit this category.

Generally, publishers who publish 100% Open Access titles alongside subscription titles offer CC BY alongside other licence options; in the majority of cases this is CC BY-NC or CC BY-NC-ND.

	CC0	CC BY	CC BY-SA	CC BY-NC	CC BY-NC-SA	CC BY-ND	CC BY-NC-ND
Elsevier		452					462
MDPI AG		341					1
BMC	255	308					
Hindawi Limited		216					
Sciendo		48	4	7	2	1	150
Taylor & Francis Group		185		168			
SpringerOpen	3	169					
Frontiers Media S.A.	3	132					
SAGE Publishing		114		112			5
Wiley		116		81		45	81
Oxford University Press		89		60			16
Dove Medical Press		78		78			
De Gruyter		64					15
Emerald Publishing		52	1	1	1	1	1
Universidad Complutense d..		38	1		2		7
Istanbul University Press				45			
University of Bologna		30	4	6	1		4
Copernicus Publications		44					
Ubiquity Press		43					
AVES		7		32	1		1

0%   100%

Table 16 - Analysis of licences offered by 20 publishers of largest number of European journals listed in DOAJ February 2023; note journals listed more than once where they offer multiple licences

Most restrictive licence offered

Where DOAJ previously asked for only the most restrictive licence offered by a journal, this analysis can be recreated where journals offer more than one licence and choosing the most restrictive licence.

For 4400 journals or around 47% of the total, the most restrictive licence offered is CC BY. This is followed by CC-BY-NC-ND at just over 25% of the total, and CC BY-NC at just over 15%.
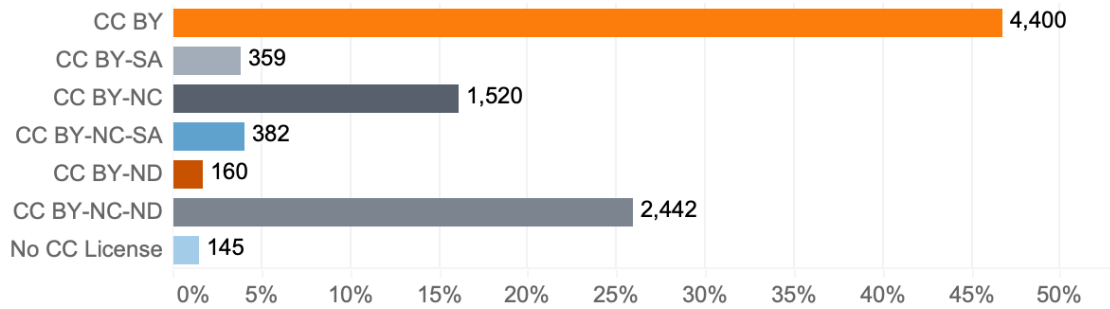
Figure 33 - Breakdown of most restrictive licences offered by European journals listed by DOAJ February 2023 note journals listed only once

For the largest 20 publishers, CC BY is the most restrictive licence offered by 55% of journals. This is followed by CC-BY-NC-ND at just over 25% of the total, and CC BY-NC at just over 15%.

The figures are broadly similar for other publishers, although CC BY is the most restrictive licence for just over 40%.

The difference between the largest 20 publishers and others is the use of a range of other licence types rarely used by the largest 20 publishers - CC BY-SA, CC BY-NC-SA, CC BY-ND - and cases where the publisher does not use a CC licence at all.

Largest 20 publishers		
CC BY		1,574
CC BY-SA		8
CC BY-NC		494
CC BY-NC-SA		5
CC BY-ND		1
CC BY-NC-ND		743
Other		
CC BY		2,826
CC BY-SA		351
CC BY-NC		1,026
CC BY-NC-SA		377
CC BY-ND		159
CC BY-NC-ND		1,699
No CC License		145

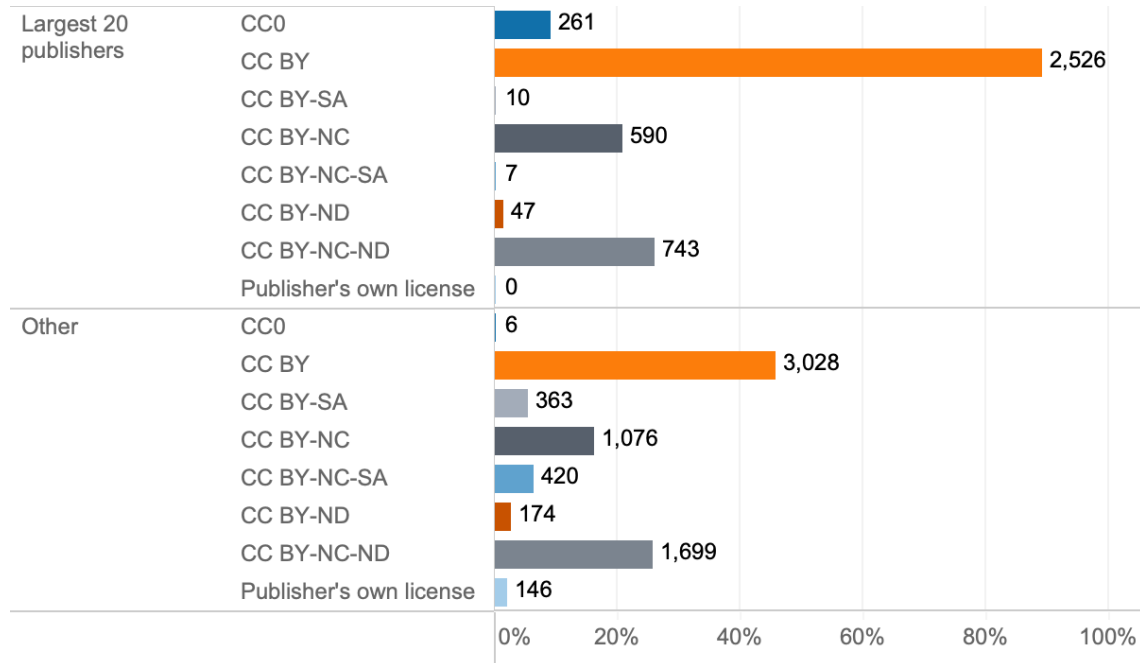*Figure 34 - Breakdown of most restrictive licences offered by European journals listed in DOAJ, analysed to compare 20 publishers of largest number of journals against other publishers; note journals listed only once*

Looking at the group of 20 largest publishers, again there is an obvious distinction between publishers who only publish 100% Open Access titles - where CC BY is the most restrictive licence - and those who publish hybrid and subscription titles - who have titles which offer a range of different licences.

However, variation is apparent among those who publish hybrid and subscription titles, specifically:

- Titles published by Emerald and De Gruyter are predominantly or entirely offering CC BY licences
- Elsevier stands out because CC BY-NC-ND is the most restrictive licence on all but 1% of its titles
- Several other publishers offer CC BY-NC as the most restrictive licence - notably Taylor & Francis, SAGE and Dove
- Some publishers offer wide variation across their titles, notably Sciendo, Wiley, and Oxford University Press

	CC BY	CC BY-SA	CC BY-NC	CC BY-NC-SA	CC BY-ND	CC BY-NC-ND
Elsevier	1%					99%
MDPI AG	100%					0%
BMC	100%					
Hindawi Limited	100%					
Sciendo	23%	1%	3%	0%		72%
Taylor & Francis Group	10%		90%			
SpringerOpen	100%					
Frontiers Media S.A.	100%					
SAGE Publishing	7%		89%			4%
Wiley	29%		1%		1%	69%
Oxford University Press	26%		57%			18%
Dove Medical Press			100%			
De Gruyter	80%					20%
Emerald Publishing	98%					2%
Universidad Complutense de Madrid	79%	2%		4%		15%
Istanbul University Press			100%			
University of Bologna	67%	9%	13%	2%		9%
Copernicus Publications	100%					
Ubiquity Press	100%					
AVES	17%		78%	2%		2%

0%   100%

Table 17 - Breakdown of most restrictive licences offered by 20 publishers of largest number of European journals listed in DOAJ February 2023; note journals listed only once

Number of licences offered

The significant majority of journals offer only one licence type - just under 8000 titles or 85%. This number is driven by the long tail of publishers outside of the largest 20 publishers, where the figure approaches 100%. A majority of journals published by the largest 20 publishers offer only one choice of licence, although 40% offer a choice of two licences.
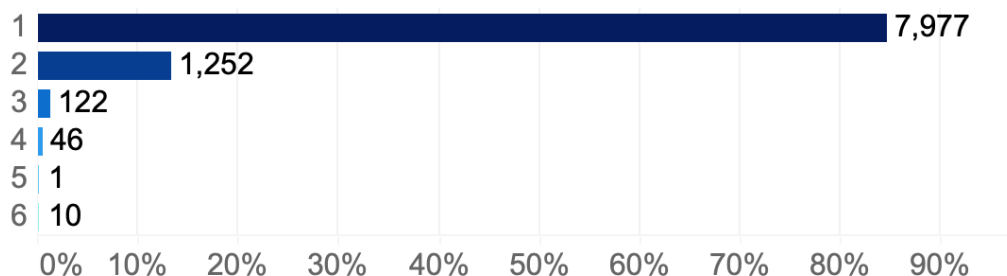
Figure 35 - Breakdown of number of licences offered by European journals listed in DOAJ February 2023
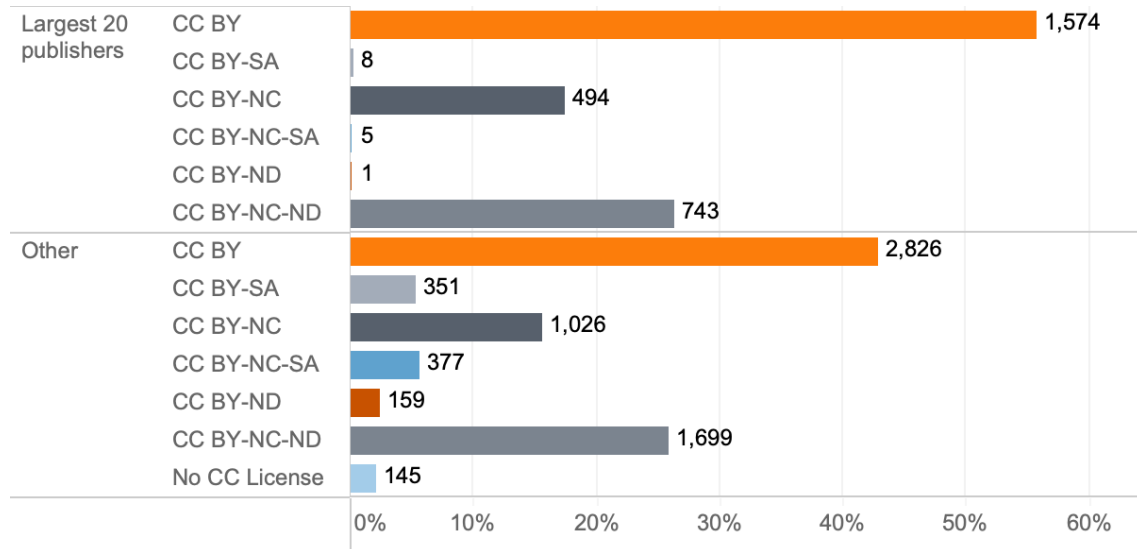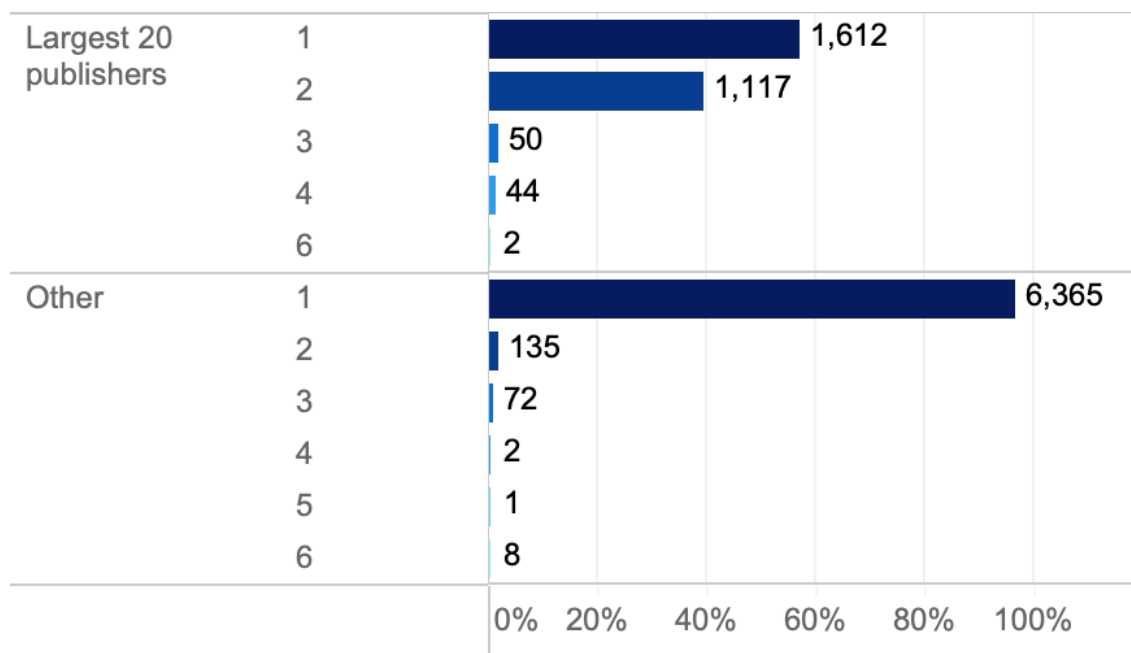

Figure 36 - Breakdown of number of licences offered by European journals listed in DOAJ February 2023, analysed to compare 20 publishers of largest number of journals with other publishers; note journals listed only once

Within the group of 20 largest publishers, generally greater choice is offered by publishers who continue to publish subscription or hybrid titles, as they offer CC BY or an alternative licence; publishers who only publish 100% Open Access titles offer only one licence choice.

	1	2	3	4	6
Elsevier	5%	95%			
MDPI AG	100%				
BMC	17%	83%			
Hindawi Limited	100%				
Sciendo	100%				0%
Taylor & Francis Group	10%	90%			
SpringerOpen	98%	2%			
Frontiers Media S.A.	98%	2%			
SAGE Publishing	12%	84%	4%		
Wiley	30%	2%	31%	38%	
Oxford University Press	27%	63%	10%		
Dove Medical Press		100%			
De Gruyter	93%	7%			
Emerald Publishing	98%				2%
Universidad Complutense de Madrid	100%				
Istanbul University Press	100%				
University of Bologna	100%				
Copernicus Publications	100%				
Ubiquity Press	100%				
AVES	100%				

0% 100%

Table 18- Breakdown of number of licences offered by 20 publishers of largest number of European journals listed in DOAJ February 2023; note journals listed only once

Changes since 2020

We were able to match over 6000 journals between the 2020 and 2023 analyses.

Only 439 journals or 7% of the total have changed their most restrictive licence offered between 2020 and 2023. About two thirds of these journals changing licence (273 or 62%) made a change to a more permissive licence; 213 of these moved to using CC BY licence (213 or 48%). Of the third moving to a more restrictive licence type, most moved to a CC BY-NC-ND licence or CC-BY-NC.

		2023 license					
		CC BY	CC BY-SA	CC BY-NC	CC BY-NC-SA	CC BY-ND	CC BY-NC-ND
2020 license	CC BY		6	40	2	3	31
	CC BY-SA	7			2		4
	CC BY-NC	72	3		2	5	38
	CC BY-NC-SA	5	5	1		1	8
	CC BY-ND	3					
	CC BY-NC-ND	118	10	36	12	1	

Figure 38 - European journals listed by DOAJ analysed to show those changing and retaining the most restrictive licence offered between May 2020 and February 2023.

These patterns are broadly replicated across the largest 20 & other journal publishers. Although only a small number of journals are changing licence, around two thirds of these journals are moving to more permissive licences, not more restrictive ones. The most common licence type adopted in 2023 was CC BY, for the largest 20 publishers and others.

			2023 license					
			CC BY	CC BY-SA	CC BY-NC	CC BY-NC-SA	CC BY-ND	CC BY-NC-ND
Largest 20 publishers	2020 license	CC BY			4			11
		CC BY-NC	18					8
		CC BY-NC-SA	2					2
		CC BY-NC-ND	55	1	4			
Other	2020 license	CC BY		6	36	2	3	20
		CC BY-SA	7			2		4
		CC BY-NC	54	3		2	5	30
		CC BY-NC-SA	3	5	1		1	6
		CC BY-ND	3					
		CC BY-NC-ND	63	9	32	12	1	

Figure 39 - European journals listed by DOAJ analysed to show those changing and retaining the most restrictive licence offered between May 2020 and February 2023, analysed to compare 20 publishers of the largest number of journals against other publishers.

Author retention of copyright

For just over 60% of the journals, the publisher has answered Yes to the question: *'Do authors retain the copyright and full publishing rights without restrictions?'* per the DOAJ definitions.

This figure falls just below 60% for the journals published by the largest 20 publishers.

Figure 40 - Retention of copyright and publishing rights by authors across European journals listed by DOAJ, analysed to compare 20 publishers of the largest number of journals against other publishers.

Looking across the largest 20 publishers, there are significant differences. For publishers who publish only 100% Open Access journals, authors consistently keep copyright and full publishing rights across all of their titles.

The picture is more mixed for those who publish subscription or hybrid titles as well. Authors do not retain rights on any Dove Medical Press titles, and very few at Elsevier, Sage, Taylor & Francis, or Oxford University Press. Authors retain their rights on around 35% of the titles published by Sciendo or Wiley, and the figure reaches 75% for De Gruyter and 90% or more for Emerald and the other University presses listed.

Figure 41 - Retention of copyright and publishing rights by authors across 20 publishers of the largest number of European journals listed by DOAJ

Although not perfect, there is an apparent correlation between the rights retained by authors and the licences offered by different journals. Journals which offer the most permissive licences (CC0, CC BY) are more likely to allow authors to retain copyright and publishing rights than those which offer less permissive licences (CC BY-NC, CC BY-ND, CC BY-NC-NC).
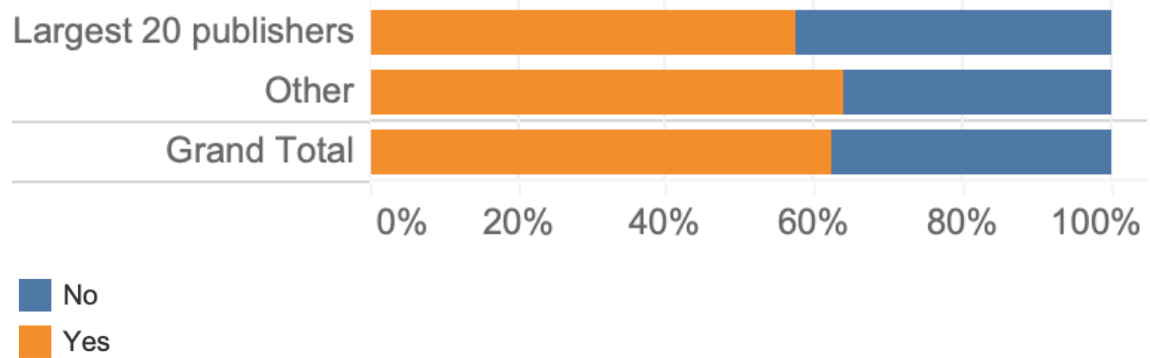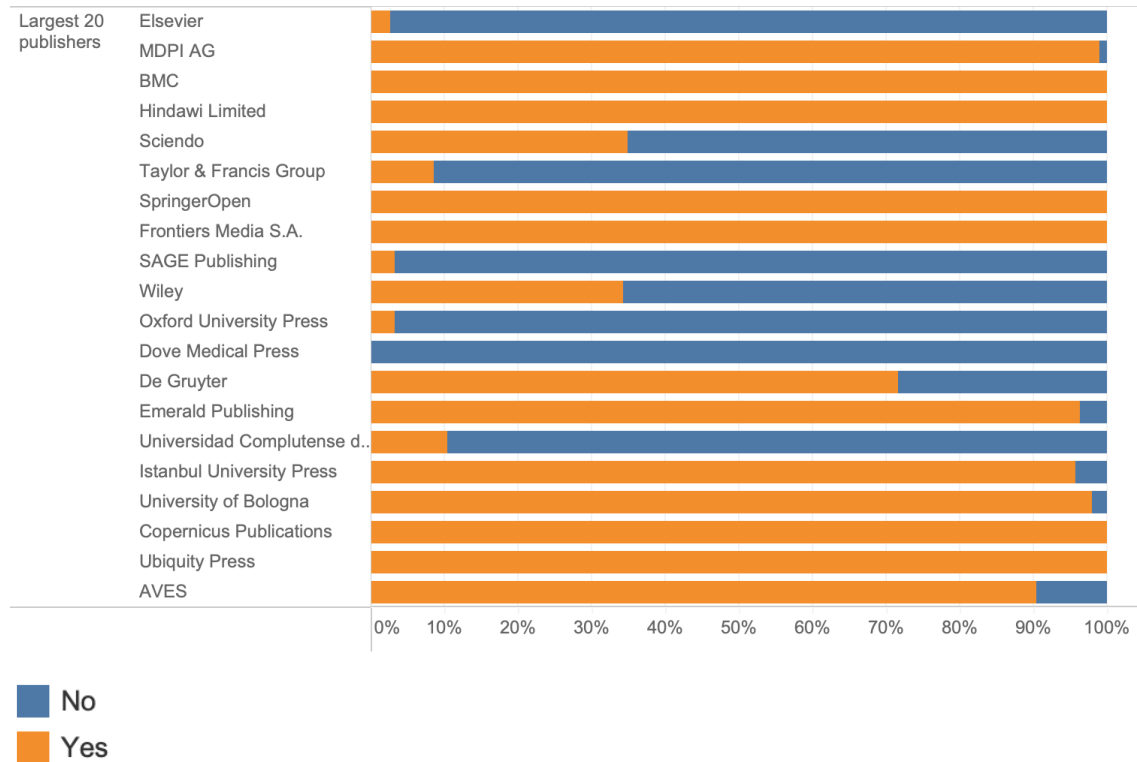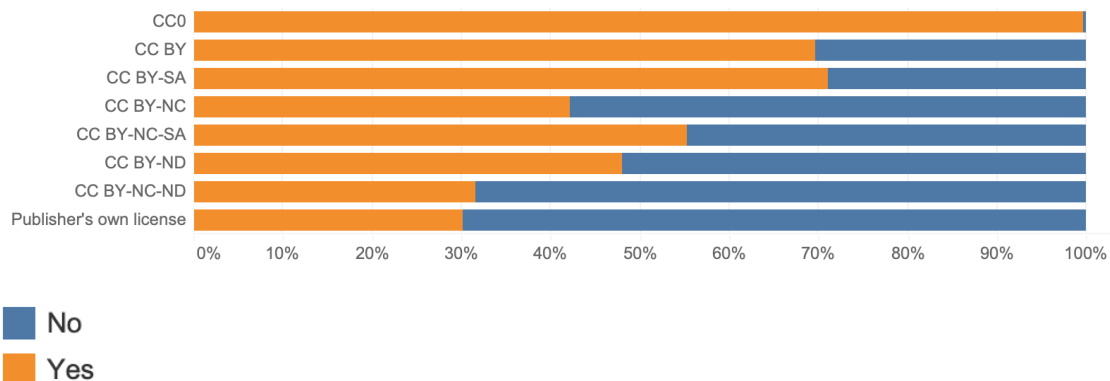

Figure 42 - Retention of copyright and publishing rights by authors across European journals listed by DOAJ, analysed by licence offered; note journals listed more than once where they offer multiple licences

Qualitative research analysis

The following summarises key points made during the eight interviews conducted with publishers and representative bodies during the research phase of the project.

General response to rights retention

The publishers interviewed consistently expressed a strong desire to make research open and to be flexible in response to author needs and the mandates they face. They acknowledged that the sector as a whole has been slow and needs to move more quickly to transition to full Open Access.

Some publishers felt that when they had actively engaged with funders' policies and consultations, their views were not really considered. There was a belief that publishers were engaged too late in the development of policy, but an acknowledgement that there has been some progress more recently by funders and funder groups.

Finally, interviewees expressed a view that rights retention was likely to be a temporary measure as the publishing industry transitioned to full Open Access. As such, it was not a topic they wished to engage a great deal of capital on, choosing instead to focus on transition of their own businesses.

Publishers expressed a desire to focus on needs not agendas. There was a willingness to support discussions on licensing and copyright assignment to ensure authors' needs were met. Interviewees expressed concern about the unintended consequences of current rights retention approaches. They expressed a desire for more and more meaningful dialogue. This is explored in more detail below.

Specific responses to institutional and funder rights retention policies

Interviewees acknowledged that the publishing industry, and indeed they as individual publishers, had not reacted consistently to rights retention policies. There are different views on almost all topics among the publishing community and as a result most are operating a holding approach, without any formalised policy about whether and how to respond to new policies on rights retention.

Some interviewees acknowledged that institutions have standing as researchers' employers and are also seeking to make it easier for researchers to meet their funders' mandates. However, the possibility was also expressed that rights retention policies were favoured by research intensive organisations because they do not wish to shoulder a greater share of the cost of publishing under pay-to-publish rather than pay-to-read models.

When an article with rights retention wording enters publishing workflows, some publishers have actively sought to find a way to ensure the researcher meets their funder mandate without the need for the language - through APC waiver or finding a way to allow the final version of that article to be published Open Access. Publishers do not see this as a sustainable or scalable approach, but highlight that it demonstrates their commitment to OA of the final version of articles.

Interviewees had not received a high volume of letters regarding rights retention despite the number of institutions launching policies. Most had to date come from institutions with Transformative Agreements in place, so conflict created by rights retention policies was minimised. As such, no formal policy for responding or monitoring had been required, although this might change if the volume changed or there was a measurable impact on the publisher's business. Interviewees are trying to understand change in this area and figuring out how best to support that whilst supporting business goals.

Concerns about the impact of Rights Retention policies

Interviewees articulated specific concerns about rights retention policies which can be broadly grouped as follows:

Undermines the Version of Record

Some interviewees were concerned that any proliferation of rights retention would lead to the increased use of AAMs over the VOR. They highlighted that the proliferation of AAMs neglected the fact that most of the investment and work from publishers occurs between submission and acceptance, and so they made a substantial contribution even before the production of an AAM. Interviewees highlighted the accountability and responsibility publishers take on for those who come into contact with the article - ensuring best practices and standards are adhered to and editing or retracting as necessary. Interviewees highlighted that the VoR was critical to achieve the vision of a reliable, linked, scholarly record.

Undermines other Open Access routes

Some publishers saw rights retention policies which require immediate archiving of an Author Accepted Manuscript (AAMs) under a CC BY licence with zero embargo as undermining non-Gold routes to Open Access. As such, this will accelerate the transition of

their journals to pay-to-publish models. Some interviewees highlighted that this would render rights retention a moot point, but that it would consolidate publishing under a Gold APC model under large Pay to Publish with a smaller number of large commercial publishers. This would achieve Gold Open Access, but has potential to undermine innovation and experimentation with business models, and other routes that have previously been viable, such as maintaining subscriptions while supporting immediate green open access.

Additional points

- Interviewees felt that the publisher's determination of who could produce derivative works or use research for commercial purposes was not about taking away control from researchers but about effectively managing rights on behalf of authors and ensuring the work is used as intended. Interviewees saw this was a scalable way of responding to requests that authors and institutions could replicate, and that authors were contacted as a matter of practice to make them aware of these requests, if not necessarily to ask their permission.

- Interviewees acknowledged that there has been a shift away from the requirement for authors to assign their copyright to publishers, and toward the use of exclusive licences. Interviewees acknowledged that it is debatable whether there is any meaningful difference between these two approaches. Interviewees expressed a willingness to encourage publishers to allow authors to retain copyright and explore how to support making research reusable and open in ways that would not require an overhaul of legislation.

4.3 Funders

Qualitative research analysis

The following summarises key points made during the seven interviews conducted with funders and funder groups during the research phase of the project.

Role of rights retention

The use of rights retention language plays a specific role in the mandates of the funders interviewed, and rights retention was always one route among several which the researchers can take to achieve Open Access.

Different funders place a slightly different emphasis on the route depending on the legal jurisdictions in which they fund research, their willingness to pay APCs or how commonly researchers use archiving to fulfil their policy. Interviewees acknowledged that they did not see rights retention as an alternative to publishing in established venues, and as one of several routes that would be valid for researchers making papers openly available.

Some interviewees articulated that publishers had a right to reject manuscripts incorporating rights retention language, but that – in reality – most of them would be able to find an alternative way to publish and monetise publications.

Interviewees stressed that they did not have any plans to explore routes that would grant legal standing to the research funder, through the assignment of non-exclusive rights. They had only and would only consider policies that ensured authors or their institutions retained the rights to publish.

Implementation

The level of compliance with funder rights retention policies and the extent of use of mandated language are not yet clear.

It has always been hard to monitor publications made Open Access via archiving because of embargoes, metadata quality and licensing data. It is not high on the agenda to develop such monitoring processes and interviewees were open that they have sought a more flexible approach to implementation of rights retention. Some funders had been willing to permit exemptions to grantees who had attempted but been unable to follow the requirements of a policy, but this was rare and exceptional. While they are interested in tracking and ensuring compliance, they are only really interested in investigating high volume failures to comply. Interviewees generally outlined trust-based approaches.

It is also generally too early for interviewees to know the impact of their policies due to funding and publishing timelines - any connection between policy change and behaviour change will not really be visible until 2024.

Some funders, on the other hand, are developing processes to track and monitor the impact of rights retention policies and are making resources available to foster this. They are also investigating ways to make these mechanisms available across jurisdictions.

Relationship to institutional policies

All interviewees were supportive of the development of institutional rights retention policies. The level of support varied depending on the nature of the funder's relationship with institutions, whether the funder was focused on one country, the number of institutions in the country, and the legal status of the funder. Some interviewees simply expressed support, some outlined measures they are taking to more actively support development through joint initiatives.

Some interviewees felt that institutional policies were more achievable than funder policies due to the employment relationship between institution and researcher.

Response from and relationships with publishers

Interviewees reported a mixed response from publishers to their rights retention policies. What response they do report is generally second hand as funders have not intervened in publisher / researcher discussions, some for legal and policy reasons and some for capacity reasons.

Interviewees report minimal response from publishers to their policies. These range from 'nothing' to accommodation and pushback. Most commonly, funders said that the response had come in correspondence and discussions directly with researchers. Interviewees saw this as a particular issue for junior researchers and were keen to find ways to alleviate the burden on researchers.

Rights retention was mentioned by a few interviewees as a topic of negotiation with publishers as part of consortia negotiations. Interviewees expressed desire for further dialogue with publishers, but this was limited by a belief that it would be challenging due to competition law and the lack of desire on publishers to meaningfully change practices.

Some interviewees highlighted that publishers are service providers and dialogue could proceed with those who were willing to provide a service on the appropriate basis. They articulated that publishers should specify clearly what they were and were not willing to accommodate, and that greater clarity was important for such discussions to happen.

Certain interviewees expressed an understanding for the negative reactions from publishers due to the way in which rights retention has been communicated and given the extensive endeavours of some publishers to redesign systems for Gold OA.

Open licensing remains a significant topic. Adoption of a requirement for a CC BY licence was the biggest change for one interviewee. Some interviewees had heard lots of concerns from publishers and researchers about the impact of open and specifically a CC BY licence despite little actual evidence of harm. One funder had adopted a standard CC BY requirement but would permit exemptions where a genuine need could be demonstrated to accommodate the research in question. Such an approach generates the need to think about why a more restrictive licence was necessary.

Overall funders felt that rights retention was one route through which greater open access to publications could be achieved.

5. Appendices

Appendix A – Methodology

Background

The Stichting IFLA Foundation Programme in partnership with IFLA, LIBER, and SPARC Europe are implementing a three-year Arcadia Foundation-funded programme to reform copyright laws and regulations – both legislative and non-legislative – that enable libraries to significantly improve access to and use of copyrighted works. The Knowledge Rights 21 Programme aims to promote change at European, national, and local levels providing valuable examples for the rest of the world. It is driving reform in six key areas, including improving rights retention and open licensing.

Project Retain, a one-year project led by SPARC Europe, intends to accelerate the uptake of rights retention and open licensing to enable researchers to share their work openly. It will do this by calling for publisher, institutional, and funder policy change and by empowering authors to refuse to cede their intellectual property. We will carry out research to provide a solid and informed basis for this change, and then campaign and support a transformation in copyright policy that embraces OA amongst publishers, funders and institutions.

The broad aims of the research were to

- understand researcher / author motivations via existing research, institutional knowledge and representative bodies, i.e. the system supporting authors
- outline funder and institutional positions, via their copyright and (primarily journal) publication and open licensing policies using SPARC Europe's extensive institutional network, and those of its partners, KR21 and other umbrella organisations
- document and compare policies between organisations and stakeholder groups (ie publishers, institutions and funders) as well as assessing alignment with and implementation of policies of cOAlition S, the EUA and the European Commission
- publisher research will utilise SPARC Europe's 2020 report Open Access An Analysis of Publisher Copyright and Licensing Policies in Europe. This presented an analysis of publisher licensing policies; we will update this work and review it, identifying new innovations and progress with particular interest in responsiveness to author attitudes and needs
- develop greater understanding of motivations underpinning current policies and positions, both progressive and conservative
- establish baselines of progress against which to monitor change in the coming 2 years.

Methodology

Project Retain has undertaken a mixed methods study for this report. Multiple strategies were used to collect data between September 2022 and February 2023 from a range of different stakeholders including institutional policymakers, funders, publishers and researchers.

Survey

A survey of research institutions was conducted to understand the policies and support they have in place in a number of areas, specifically

- Copyright of research publications.
- Author rights retention
- Open licensing
- Reuse of research publications

The survey was disseminated widely by SPARC Europe and its partner organisations through newsletters, email lists and social media channels. The survey received 238 unique responses with a completion rate of 71%.

The full survey questionnaire is included as Appendix B to this survey. The anonymised survey results have been made available: 10.5281/zenodo.8088262

Interviews

A total of thirty one interviews were conducted - sixteen with representatives from research institutions, six research funders, one group of funders, five publishers and three organisations representing publishers and publishing organisations. Interviews were semi-structured around key themes with questions and the approach varied depending on the context and existing knowledge about the policies of the interviewees. Interviews were conducted on a confidential basis.

A number of survey respondents indicated that they were willing to take part in follow up interviews. Those selected were chosen to obtain a broad range of representation in policy status and geographic representation.

Focus groups

Survey respondents who indicated that they were willing to take part in focus groups were approached and asked to participate in one of two sessions. These reached 12 organisations who were asked in detail about their policy development, motivations, support provided to authors and researchers and how they themselves could be supported in future.

Workshop

A workshop was conducted as part of the European Council for Doctoral Candidates and Junior Researchers (Eurodoc) monthly webinar series for researchers. Attendees were asked about their needs, priorities and opinions of open access, rights retention and open licensing.

Desk research

The following desk-based work was conducted as part of the

- Review of 15 institutional rights retention policies. A full list of policies review is included in Appendix C.
- Review of 11 publisher copyright & licensing policies
- Analysis of licensing & copyright across approx 9400 European DOAJ titles in February 2023

Appendix B – Survey questionnaire

Beginning on next page

Section 1 - Introduction

About the survey

The aim of this survey is to understand whether research institutions have put in place policies and support in a number of areas.

The survey asks about the following topics:

- **Copyright of research publications - how intellectual property that protects original works of authorship applies to the written outputs of research. Specifically:**
    - **Whether the initial ownership of copyright is with authors or their employing organisation**
    - **What rights are transferred from authors to publisher.**
- **Author rights retention - the extent to which researchers retain rather than transferring control of their published research.**
- **Open licensing - the promotion of licenses which grant permission to access, re-use and redistribute.**
- **Reuse of research publications - ensuring that the written outputs of research can be reused, by the community as a whole but also by the original author in new contexts.**

About Project Retain

Project Retain is a one-year project led by SPARC Europe as part of The Knowledge Rights 21 (KR21) Programme, which aims to promote change in European copyright law, in this case, to support Open Access.

Research on rights retention and open licensing in Europe will underpin a campaign to develop copyright policy to support authors. Please help us in this aim by filling in the survey.

Section 2 - Completing the survey

We are very grateful to you for completing this survey which will take approximately 10 minutes.

The survey is aimed at research institutions; please complete just one response per organisation.

Only those questions marked with an asterisk * are mandatory.

You can download the PDF of the survey here: https://sparceurope.org/download/10875/

Answers will be analysed as part of a report to be published in 2023; personal data will be removed before the dataset is deposited on Zenodo with a CC0 licence. Please note institutional names will remain in the published dataset.

For more information on our privacy policy, see https://sparceurope.org/privacy-policy/

This survey is managed by SPARC Europe.

If you have any questions, please mail us at survey@sparceurope.org

The survey will close at 1400 CET 28 November 2022.

* 1. I understand and agree to participate in this survey

◯ Yes

◯ No

About you and your organisation

* 2. Where is your organisation based?

[⬍]

* 3. Type of organisation (please select one)

○ Research-intensive university

○ Non-research-intensive university / college

○ Technical university

○ Independent research organisation

○ Distance learning university

○ Other higher education institution

○ Other post-secondary institution

○ Other (please specify)

[   ]

About you and your organisation

4. Name of your organisation

[   ]

* 5. Your department (please select one)

○ Library

○ Legal Office

○ Policy unit

○ Research office

○ Technology / Information Systems

○ Other (please specify)

[   ]

* 6. Your role / job title

[   ]

Project Retain Institutional Survey

Contacting you

* 7. Would you like us to share a link to the report and results of the survey when they are published in 2023?

○ Yes

○ No

Contacting you

* 8. Name

* 9. Email

10. Are you willing for Project Retain to contact you directly to take part in a follow-up interview or focus group?

○ Yes

○ No

SPARC✴ Europe | KR 21

Project Retain Institutional Survey

Contacting you

* 11. Are you willing for Project Retain to contact you directly to take part in a follow-up interview or focus group?

○ Yes

○ No

Project Retain Institutional Survey

Contacting you

* 12. Name

* 13. Email

Your understanding and awareness

This section asks questions about your familiarity in a number of areas related to copyright, open licensing and author rights.

14. How familiar are you with the following areas (please select one answer per area):

	Very familiar	Familiar	Neither familiar nor unfamiliar	Unfamiliar	Very unfamiliar
Open Access publishing	○	○	○	○	○
Copyright of research publications	○	○	○	○	○
Author rights retention	○	○	○	○	○
Open licensing	○	○	○	○	○
Reuse of research publications	○	○	○	○	○

15. How familiar are you with the following specific policies or types of policy (please select one answer each):

	Very familiar	Familiar	Neither familiar nor unfamiliar	Unfamiliar	Very unfamiliar
cOAlition S rights retention strategy	○	○	○	○	○
Institutional policies covering author rights retention - for example Harvard or Edinburgh	○	○	○	○	○
Publisher policies covering author rights and licensing, for example De Gruyter and Elsevier	○	○	○	○	○

Project Retain Institutional Survey

Your understanding and awareness

* 16. The initial ownership of copyright of research publications may be held by researchers or the institution that employs them, depending on the law in the country and institutional policies.

How familiar are you with the legal position on initial copyright ownership for research publications in your country?

- ○ Very familiar
- ○ Familiar
- ○ Neither familiar nor unfamiliar
- ○ Unfamiliar
- ○ Very unfamiliar

Your understanding and awareness

17. Who owns the initial copyright for research publications in your country? (please select one answer)

○ Author

○ Employing institution

○ Don't know

○ Other (please specify)

[   ]

Your understanding and awareness

18. If you wished to understand the copyright ownership of research publications in your institution's country, where would you seek further information? (please select all that apply)

☐ National copyright interest group

☐ National Open Access support organisation

☐ Institutional Open Access support

☐ Legal Office or adviser

☐ Library

☐ Research support office

☐ Other (please specify)

Project Retain Institutional Survey

Organisational support for researchers

This section asks about whether your institution provides support to researchers in the areas covered by this survey.

* 19. Does your organisation offer support to researchers in any of the following areas? (please select all that apply)

- [ ] Copyright of research publications
- [ ] Author rights retention
- [ ] Open licensing
- [ ] Reuse of research publications
- [ ] Don't know
- [ ] None of the above

Organisational support for researchers

20. What form does this support take? (please select all that apply)

- [ ] General queries on Open Access and Open Science
- [ ] Detailed queries about our institutional policies
- [ ] Detailed queries on funder policies
- [ ] Detailed queries on publisher policies
- [ ] Detailed queries on open licensing
- [ ] Advice on authors' copyright ownership
- [ ] Negotiation with publishers on behalf of researchers
- [ ] Don't know
- [ ] Other (please specify)

Organisational support

21. How frequently do researchers ask for support regarding each area? (please select one answer per area)

	Very frequently	Frequently	Occasionally	Rarely	Never	Don't know
Copyright of research publications	○	○	○	○	○	○
Author rights retention	○	○	○	○	○	○
Open licensing	○	○	○	○	○	○
Reuse of research publications	○	○	○	○	○	○
Don't know	○	○	○	○	○	○

Organisational support for researchers

22. Which of these department or departments have responsibility for the provision of support in different areas? (please select all that apply)

	Library	Knowledge transfer / Intellectual Property Office or equivalent	Research office or equivalent	Legal	Don't know
Copyright of research publications	☐	☐	☐	☐	☐
Author rights retention	☐	☐	☐	☐	☐
Open licensing	☐	☐	☐	☐	☐
Reuse of research publications	☐	☐	☐	☐	☐
Don't know	☐	☐	☐	☐	☐

Organisational support for researchers

23. If you can provide us with any further research or information with respect to your answers to questions on the support you provide support, then please describe it here and provide links where possible

Project Retain Institutional Survey

Organisational policies

This section asks about the policies your institution has in place in several different areas. We refer to policy as a written document that stipulates the expectations for the organisation and its researchers.

The survey will asks about the following policy areas:

- **Copyright of research publications**
- **Author rights retention**
- **Open licensing**
- **Reuse of research publications**

The survey asks about these areas separately to build a picture of how different institutions have developed policies. For example, some institutions address author rights retention via an Open Access policy; some cover it via a policy on copyright of research publications; some may address it in both policies at the same time; some have no policy at all.

24. In your organisation, which of these departments are involved in policy-making in the following areas (please select all that apply):

	Library	Knowledge transfer / Intellectual Property Office or equivalent	Research office or equivalent	Legal	None of them	Don't know
Copyright of research publications	☐	☐	☐	☐	☐	☐
Author rights retention	☐	☐	☐	☐	☐	☐
Reuse of research publications	☐	☐	☐	☐	☐	☐
Open licensing	☐	☐	☐	☐	☐	☐

Organisational policies - copyright of research publications

* 25. Does your organisation have a policy or policies which address the copyright of research publications? (please select one)

◯ Yes

◯ In development

◯ No

◯ Don't know

Project Retain Institutional Survey

Organisational policies - copyright of research publications

26. In which of the following types of policy does your organisation address copyright of research publications? (please select all that apply)

☐ Copyright of research publications (ie dedicated policy)

☐ Copyright or intellectual property (ie general policy)

☐ Publishing

☐ Open Access

☐ Open Science

☐ Open licensing

☐ Reuse of research publications

☐ Don't know

☐ Other (please specify)

27. Please provide links to these polices.

28. When were policies covering copyright of research publications first introduced by your organisation?

Organisational policies - copyright of research publications

29. Does your institution monitor whether researchers comply with policies regarding copyright of research publications?

○ Yes

○ No

○ Don't know

Project Retain Institutional Survey

Organisational policies - copyright of research publications

30. To what extent do researchers comply with your organisation's policy on copyright of research publications? (please select one)

- ○ Almost always
- ○ Often
- ○ Sometimes
- ○ Rarely
- ○ Almost never
- ○ Don't know

Organisational policies - copyright of research publications

31. Does your organisation assert ownership of copyright of research publications?

○ Yes

○ No

○ Don't know

Organisational policies - copyright of research publications

32. Please describe in as much detail as you can the current status of the policy on copyright of research publications, when you expect it will be published, and why it has not been to date.

Project Retain Institutional Survey

Organisational policies - copyright of research publications

33. Please tell us in as much detail as you can as to whether your institution has considered introducing policies relating to copyright of research publications and why to date it has not done so.

Organisational policies - rights retention

* 34. Does your organisation have a policy or policies which address author rights retention?

○ Yes

○ In development

○ No

○ Don't know

Project Retain Institutional Survey

Organisational policies - rights retention

35. Which of the following policies does your organisation have which cover rights retention? (please select all that apply)

- [ ] Rights retention (ie dedicated policy)
- [ ] Copyright of research publications (ie dedicated policy)
- [ ] Copyright or intellectual property (ie general policy)
- [ ] Publishing
- [ ] Open Access
- [ ] Open Science
- [ ] Open licensing
- [ ] Reuse of research publications
- [ ] Don't know
- [ ] Other (please specify)

36. Please provide links to polices covering rights retention.

37. When were policies covering rights retention first introduced by your organisation?

Organisational policies - rights retention

38. Does your institution monitor whether researchers are complying with policies regarding rights retention?

○ Yes

○ No

○ Don't know

Project Retain Institutional Survey

Organisational policies - rights retention

39. To what extent do researchers comply with your organisation's policy on copyright of research publications? (please select one)

- ○ Almost always
- ○ Often
- ○ Sometimes
- ○ Rarely
- ○ Almost never
- ○ Don't know

Project Retain Institutional Survey

Organisational policies - rights retention

40. Please describe in as much detail as you can the current status of the policy on author rights retention, when you expect it will be published, and why it has not been to date.

Project Retain Institutional Survey

Organisational policies - rights retention

41. Please tell us in as much detail as you can as to whether your institution has considered introducing policies relating to author rights retention and why to date it has not done so.

Organisational policies - open licensing

* 42. Does your organisation have a policy or policies which address open licensing?

○ Yes

○ In development

○ No

○ Don't know

Organisational policies - open licensing

43. Which of the following policies does your organisation have which cover open licensing? (please select all that apply)

- [ ] Open licensing
- [ ] Copyright of research publications (ie dedicated policy)
- [ ] Copyright or intellectual property (ie general policy)
- [ ] Publishing
- [ ] Open Access
- [ ] Open Science
- [ ] Reuse of research publications
- [ ] Don't know
- [ ] Other (please specify)

Organisational policies - open licensing

44. Do your organisation require authors to publish using Creative Commons or equivalent licenses?

○ Yes - we require them

○ Yes - we recommend them

○ No

○ Don't know

Organisational policies - open licensing

45. Which licenses do you specify? (please select all that apply)

☐ CC0

☐ CC BY

☐ CC BY-SA

☐ CC BY-NC

☐ CC BY-NC-SA

☐ CC-BY-ND

☐ CC-BY-NC-ND

☐ Don't know

☐ Other (please specify)

Organisational policies - open licensing

46. Please describe in as much detail as you can the current status of the policy on open licensing, when you expect it will be published, and why it has not been to date.

Organisational policies - open licensing

47. Please tell us in as much detail as you can as to whether your institution has considered introducing policies relating to open licensing and why to date it has not done so.

Project Retain Institutional Survey

Organisational policies - reuse of research publications

* 48. Does your organisation have a policy or policies which address reuse of research publications?

- ◯ Yes
- ◯ In development
- ◯ No
- ◯ Don't know

End of the survey

49. Please tell us what would help your organisation to strengthen its position on rights retention and copyright of research publications. (word missing)

In particular, we are interested to hear:

- whether there are any internal barriers or challenges to introducing policies
- what can funders and / or publishers do to provide support

50. Thank you very much for taking the time to complete this survey - is there anything else you would like to add?

Appendix C – Institutional policies reviewed

Country	Institution	Policy Title	URL
Germany	Leibniz University Hannover	Open Access Policy at Leibniz University Hannover	https://www.uni-hannover.de/en/universitaet/profil/ziele-strategien/open-science/open-access/open-access-resolution
Iceland	Bifröst University	Open Access Policy	https://www.bifrost.is/english/about-bifrost/policies-and-regulations/open-access-policy
Ireland	TU Dublin	Open Access Policy for Publications & Data for Technological University Dublin	https://arrow.tudublin.ie/open_access_policy.pdf
Norway	UiT The Arctic University of Norway	Principles for open access to academic publications at UiT	https://uit.no/Content/762228/cache=1643633369000/PRINCIPLES%20FOR%20OPEN%20ACCESS%20TO%20ACADEMIC%20PUBLICATIONS%20AT%20UIT.pdf
Norway	NTNU: Norwegian University of Science and Technology	Self-archiving and Rights Retention Strategy	https://i.ntnu.no/wiki/-/wiki/English/Self-archiving+and+Rights+Retention+Strategy
Norway	University of Bergen	The University of Bergen Policy for Open Science	https://www.uib.no/en/foremployees/142184/university-bergen-policy-open-science#open-access-to-research-publications-and-artistic-research
Sweden	Stockholm University	Open Science Policy	https://www.su.se/staff/organisation-governance/governing-documents-rules-and-regulations/research/open-science-policy-1.628566
Sweden	Chalmers University of Technology	Open Access Policy	https://www.chalmers.se/en/about-chalmers/policies-and-rules/Pages/open-access-policy.aspx
Sweden	Lund University	Open access policy for publications and artistic works	https://www.staff.lu.se/sites/staff.lu.se/files/2021-09/Open-access-policy-for-publications-and-artistic-works.pdf
Sweden	University of Skövde	Riktlinjer för öppen tillgång och registrering av publikationer i DiVA (translated: Guidelines for open access and registration of publications in DiVA)	https://www.his.se/globalassets/styrdokument/utbildning-forskarniva/riktlinjer-diva.pdf

UK	The University of Edinburgh	Research Publications & Copyright Policy	https://www.ed.ac.uk/information-services/about/policies-and-regulations/research-publications
UK	University of Cambridge	Rights Retention Pilot / Self-Archiving Policy	https://www.openaccess.cam.ac.uk/funder-open-access-policies/rights-retention/rights-retention-pilot
UK	Birkbeck University of London	Open Research Policy	https://www.bbk.ac.uk/about-us/policies/open-access-research
UK	Sheffield Hallam University	Open access and rights retention	https://libguides.shu.ac.uk/OpenAccess/rightsretention
UK	The University of Manchester	Intellectual Property ("IP") Policy	https://documents.manchester.ac.uk/display.aspx?DocID=24420
USA	Harvard University (included for reference)	A Model Open-Access Policy	https://osc.hul.harvard.edu/policies/ https://osc.hul.harvard.edu/assets/files/model-policy-annotated_12_2015.pdf

Appendix D – References

Articles and Reports

European Commission, Directorate-General for Research and Innovation, Angelopoulos, C., *Study on EU copyright and related rights and access to and reuse of scientific publications, including open access : exceptions and limitations, rights retention strategies and the secondary publication right*, Publications Office of the European Union, 2022, https://data.europa.eu/doi/10.2777/891665

Morrison, Chris, Secker, Jane, Vezina, Brigitte, Ignasi Labastida I Juan, & Proudman, Vanessa. (2020). *Open Access: An Analysis of Publisher Copyright and Licensing Policies in Europe,* 2020. Zenodo. https://doi.org/10.5281/zenodo.4046624

Plan S Implementation Guidelines for Repositories Results of COAR Repository Platforms Survey (no date). Available at: https://www.coar-repositories.org/files/Results-of-the-Repository-Platforms-Survey1.pdf (Accessed: 4 July 2022).

Guibault, L., Owning the Right to Open Up Access to Scientific Publications (February 16, 2012). L. Guibault & C.J. Angelopoulos (eds.), *Open Content Licensing: From Theory to Practice*, Amsterdam: Amsterdam University Press, pp. 137-167, 2011, Amsterdam Law School Research Paper No. 2012-25, Institute for Information Law Research Paper No. 2012-20, Available at SSRN: https://ssrn.com/abstract=2006318

Commentaries

Eglen, Stephen J. (2021). Primer on the Rights Retention Strategy (v0.23). Zenodo. https://doi.org/10.5281/zenodo.4668132

Eglen, Stephen J. 'How Will the Rights Retention Strategy Affect Scholarly Publishing?' *Impact of Social Sciences* (blog), 10 September 2021. https://blogs.lse.ac.uk/impactofsocialsciences/2021/09/10/how-will-the-rights-retention-strategy-affect-scholarly-publishing/.

Harington, Robert. 'Plan S Rights Retention Strategy, Copyright and the Academic Community – Part One'. The Scholarly Kitchen, 18 February 2021. https://scholarlykitchen.sspnet.org/2021/02/18/plan-s-rights-retention-strategy-copyright-and-the-academic-community-part-1/.

https://scholarlykitchen.sspnet.org/2021/02/19/plan-s-rights-retention-strategy-copyright-and-the-academic-community-part-2/

Janicke Hinchliffe, Lisa. 'Explaining the Rights Retention Strategy'. *The Scholarly Kitchen* (blog), 17 February 2021. https://scholarlykitchen.sspnet.org/2021/02/17/rights-retention-strategy/

Khoo, S.Y.-S., 2021. The Plan S Rights Retention Strategy is an administrative and legal burden, not a sustainable open access solution. *Insights*, 34(1), p.22. DOI: http://doi.org/10.1629/uksg.556

Morrison, C. and Secker, J. (2019) Copyright briefing paper on the Hargreaves exceptions

https://www.sconul.ac.uk/sites/default/files/documents/SCONUL%20copyright%20briefing%20on%20Hargreaves%20exceptions.pdf

Shieber, S. and Suber, P., 2012. Good practices for university open-access policies. *Berkman Klein Center for Internet & Society.*

https://cyber.harvard.edu/hoap/Good_practices_for_university_open-access_policies

Suber, P. (2021) *Author rights under University Rights-Retention OA policies*, *Google Docs*. Google. Available at:
https://docs.google.com/document/d/1FPYtSrjX93sIOMMyNMgHhpUlTw-TfvuYPyY_7DI3fuc/edit# (Accessed: October 30, 2022)

Suber, P. (2021). Author rights and the Harvard open access policies: a response to Patrick Alexander. *Insights*, *34*(1), 8. DOI: http://doi.org/10.1629/uksg.543

Suber, Peter. 'Rights Retention and Open Access'. ERC: European Research Council, 25 October 2021. https://erc.europa.eu/news-events/magazine/rights-retention-and-open-access.

Suber, P., (2022) "Publishing Without Exclusive Rights", The Journal of Electronic Publishing 25(1). doi: https://doi.org/10.3998/jep.1869

Webinars

Rooryck, Johan, Rumsey, Sally, Lopez de San Roman, Alea, Brennan, Niam, Reilly, Susan, Schalken, Arjan, & Vezina, Brigitte. (2021, March 8). International and national copyright policy action for OA. Zenodo. https://doi.org/10.5281/zenodo.4600688

Caso, Roberto, & Dore, Giulia. (2021). Academic Copyright, Open Access and the "Moral" Second Publication Right. In European Intellectual Property Review (1.0). Zenodo. https://doi.org/10.5281/zenodo.5764841

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Phil Hurst	Publisher	Royal Society
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Malavika Legge	Chair	Society Publishers Coalition
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Dominic Tate	Head of Library Research Support	University of Edinburgh
Niamh Tumelty	Head of Open Research Services	University of Cambridge
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Appendix F – Endnotes

1 https://sparceurope.org/what-we-do/open-access/copyright/project-retain/

2 https://www.knowledgerights21.org/

3 https://cyber.harvard.edu/hoap/Drafting_a_policy

4 10.5281/zenodo.4046623

5 https://www.knowledgerights21.org/

6 https://sparceurope.org/what-we-do/open-access/copyright/project-retain/

7 More details are provided below in 'Appendix - Background & methodology'

8 https://www.eurodoc.net/

9 This is set out clearly and in much greater detail in the Berlin Declaration text agreed in 2003 https://openaccess.mpg.de/Berlin-Declaration

10 More details are provided below in 'Detailed context'

11 European Commission, Directorate-General for Research and Innovation, Angelopoulos, C., Study on EU copyright and related rights and access to and reuse of scientific publications, including open access : exceptions and limitations, rights retention strategies and the secondary publication right, Publications Office of the European Union, 2022, https://data.europa.eu/doi/10.2777/891665

12 Some policies would not meet a strict definition of rights retention. For example:
Policies which set out the copyright and rights policy of an institutions' in-house publishing activities
Self-archiving policies that encourage or mandate researchers to make their articles available in an institutional policy in a manner compliant with publishers' policies on embargoes, reuse or licencing
Not all policies are publicly available so it is impossible to be clear how many fall into these categories.
More analysis of the way policies vary is included in *Detailed findings.*

13 This list closely mirrors one developed by Peter Suber of Harvard University in a Google Doc to accompany talks he gives on the topic. We share it here with his permission.
'Author rights under Harvard-style rights-retention open-access policies, Peter Suber
https://docs.google.com/document/d/1FPYtSrjX93sIOMMyNMgHhpUlTw-TfvuYPyY_7DI3fuc/edit

14 https://cyber.harvard.edu/hoap/Good_practices_for_university_open-access_policies; specific features of policies to be found at https://cyber.harvard.edu/hoap/Drafting_a_policy

15 https://ukscl.ac.uk/

16 https://cyber.harvard.edu/hoap/Drafting_a_policy

17 https://library.harvard.edu/about/news/2018-10-31/harvard-exempts-its-librarian-scholars-work-hire-doctrine

18 https://www.coalition-s.org/rrs-resources-librarians/#:~:text=cOAlition%20S%20Rights%20Retention%20Strategy,to%20their%20Author%20Accepted%20Manuscripts.

19 https://oaspa.org/open-post-the-rise-of-immediate-green-oa-undermines-progress/

20 https://oaspa.org/oaspa-members-output-in-fully-oa-journals-is-accelerating

21 Morrison, Chris, Secker, Jane, Vezina, Brigitte, Ignasi Labastida I Juan, & Proudman, Vanessa. (2020). *Open Access: An Analysis of Publisher Copyright and Licensing Policies in Europe,* 2020. Zenodo. https://doi.org/10.5281/zenodo.4046624

22 https://oaspa.org/open-post-the-rise-of-immediate-green-oa-undermines-progress/

23 See the Society Publishers Coalition responses to consultations - https://www.socpc.org/action

24 This is set out clearly and in much greater detail in the Berlin Declaration text agreed in 2003 https://openaccess.mpg.de/Berlin-Declaration

25 https://cyber.harvard.edu/~psuber/wiki/Peter_Suber

26 Baldwin, J. and Pinfield, S. (2018) The UK Scholarly Communication Licence: Attempting to cut through the Gordian Knot of the complexities of funder mandates, publisher embargoes and researcher caution in achieving open access. Publications, 6 (3). 31. ISSN 2304-6775
Available at: https://eprints.whiterose.ac.uk/133383/

27 Rumsey, S. (2022, November 2). Reviewing the Rights Retention Strategy – A pathway to wider Open Access? Impact of Social Sciences.
https://blogs.lse.ac.uk/impactofsocialsciences/2022/10/26/reviewing-the-rights-retention-strategy-a-pathway-to-wider-open-access/

[28]Khoo, S.Y.-S., 2021. The Plan S Rights Retention Strategy is an administrative and legal burden, not a sustainable open access solution. *Insights*, 34(1), p.22. DOI: http://doi.org/10.1629/uksg.556

[29] More details are provided below in *'Detailed findings*

[30]Morrison, Chris, Secker, Jane, Vezina, Brigitte, Ignasi Labastida I Juan, & Proudman, Vanessa. (2020). *Open Access: An Analysis of Publisher Copyright and Licensing Policies in Europe,* 2020. Zenodo. https://doi.org/10.5281/zenodo.4046624

[31] https://blog.doaj.org/2020/03/09/our-application-form-is-changing/