



## AOASG response to Productivity Commission Intellectual Property Arrangements, Draft report

*Prepared by Dr Virginia Barbour, Executive Director, on behalf of the Australasian Open Access Strategy Group, (AOASG), June 2, 2016*

### General comments

The AOASG (<https://aoasg.org.au/>) welcomes the Productivity Commission report. We limit our response to Chapter 15: IP and Public Institutions, though we note the comment on p4 that “Open access repositories can further assist in the dissemination of ideas generated through publicly-funded initiatives.”, which we agree with for all outputs of research.

#### **We particularly welcome:**

##### **DRAFT Recommendation 15.1**

**“All Australian, and State and Territory Governments should implement an open access policy for publicly-funded research”**

We also believe there is an opportunity with this report to bring some clarity to the issues surrounding copyright and license as applied to research outputs.

### Specific comments

#### **Page 401**

*Paragraph entitled “Key points”*

#### *Response*

The dissemination of research findings does not have to be limited by IP applied on the work that it reports.

We agree that journals remain an important mechanism of dissemination, but they are now just one part of a rapidly evolving ecosystem of publishing and the same issues apply to all outlets for dissemination of research, and which include not just research articles but also data, code, software, etc.

Copyright per se does not limit dissemination – it is the retention of copyright, coupled with restrictive licenses as applied by subscription publishers that limit dissemination. We feel it is essential to separate out these two issues.

## Page 404

*Paragraph beginning “The key relevant questions for this inquiry relate to:*

- where the IP system frustrates the achievement of the underlying goal for public funding
- changes to the IP system that would accentuate the benefits of such public funding.

### *Response*

For scholarly publishing we already have the tools to hand to ensure that authors retain rights to and get credit for their work while allowing for maximum dissemination. The two tools required are proper application of copyright in conjunction with Creative Commons Licenses.

However, the current inconsistent and largely publisher-driven application of these tools does *“frustrate the achievement of the underlying goal for public funding”*.

This is to be expected when publishers are operating under a subscription model. In this situation the long term practice has been to require the transfer of copyright to journals, and also require that restrictive licenses agreements are signed.

However, restriction of author rights is not now limited to subscription publications. For articles that are apparently open access, Elsevier, for example, requires that authors grant Elsevier an exclusive license (<https://www.elsevier.com/about/company-information/policies/copyright>) to publish for article published under a CC BY license (intended to be the most liberal of the licenses). This is direct contradiction of both the spirit and the letter of the Creative Commons license (<http://creativecommons.org/licenses/by/4.0/>).

Furthermore, a number of publishers are seeking to assert rights over earlier versions of articles, an area where they have no jurisdiction. Rights being asserted include requirements for citation of articles to which a preprint may relate ([http://media.wiley.com/assets/7320/85/eOAA-CC-BY\\_sample\\_2015.pdf](http://media.wiley.com/assets/7320/85/eOAA-CC-BY_sample_2015.pdf)). This is an example of a meaningless and probably unenforceable requirement, but which may nonetheless have a stifling effect on authors seeking to share research before formal publication.

## Page 405

*Paragraph beginning “A major mechanism for diffusion of ideas is through academic journals”*

### *Response*

The models of dissemination of scholarly outputs are changing very substantially and though journals remain at the core, as above we note that there are other important mechanisms now such as preprint servers, repositories (for data as well as for research manuscripts) etc. Despite the diverse array of outputs and their routes of dissemination the issue in relation to IP are largely the same.

- Copyright needs to remain with the generators of the work (if work is not owned by the Government or is otherwise in the public domain);
- Generators of work must be credited for that work;
- Licenses applied to the work should maximize its discoverability, dissemination and reuse.

Copyright does not per se limit reuse, but it will do if coupled with restrictive licenses. For example, an author may retain copyright but grant an exclusive license to a journal which could then restrict reuse (see above); conversely an author may assign copyright to another body (e.g. their institution) but if that is coupled with a non-exclusive license that allows reuse, dissemination is not impeded.

We therefore suggest that the Commission separates out the issues of copyright and licenses and makes the following recommendations

1. Authors (or their institutions) should retain copyright to research outputs.
2. Outputs should be licensed under the most appropriate, usually the least restrictive, internationally accepted license from Creative Commons, preferably CC BY.
3. Publisher-specific licenses, even supposedly “open access” ones such as those from Elsevier (<https://www.elsevier.com/about/company-information/policies/open-access-licenses/elsevier-user-license>), should not be supported as they lead to further confusion.
4. These terms should apply to all research outputs wherever they are stored and wherever they are in the lifecycle of the research including but not limited to; preprint, author's accepted manuscript, published article, data etc.

#### **Page 406**

*Page beginning Copyright for publically funded research*

#### *Response*

We believe copyright over research articles should not be mixed up with IP rights over the subject of the research itself. In particular, copyright itself, whether held by authors or publishers, does not limit the visibility or accessibility or reusability of articles or associated data. What does limit accessibility and reusability is the license associated with those works (see above) and which was previously most commonly denoted as “All rights reserved”

With the technology now available to us, the role of copyright has changed. As Jan Velterop said in 2005,

([http://www.budapestopenaccessinitiative.org/pdf/open\\_access\\_publishing\\_and\\_scholarly\\_societies.pdf](http://www.budapestopenaccessinitiative.org/pdf/open_access_publishing_and_scholarly_societies.pdf)) “copyright can [now] be used for what it is meant to in science, not to make the articles artificially scarce and in the process restrict their distribution, but instead, to ensure that their potential for maximum possible dissemination can be realised”

#### **Page 407**

*Paragraph beginning “universities and some publishers”*

#### *Response*

The fact that universities are able to provide access to journals may be seamless, but it is at great cost. In fact the vast majority of research journals require a subscription. In 2014, Australian universities paid AUD 221 million (data from the Council of Australian University Librarians, CAUL) for access to electronic journals. While it is true that open access journals are increasing, currently they remain in the minority and the proportion of work that is fully open access is around 12-15%, though many more articles are free to access at some point.

**Page 407**

*Paragraph beginning “Recognising that further incentives”*

*Response*

This is indeed a hugely active area of policy development globally. It is clear that there is a number of different approaches to open access, with some countries favouring it via journals primarily (e.g. the UK and most recently the Netherlands) and others such as the US and Australia approaching it via the route of repositories - usually institutional. What is currently unclear, however, is the copyright and license status of much of the material within institutional repositories and this has led to difficulties in promoting seamless dissemination via these venues.

**Page 408**

*Paragraph beginning “A similar trend”*

*Response*

We agree that there is no one policy now covering all publicly funded research and we therefore support Recommendation 15.1 on page 409. We particularly welcome the insightful comment on page 409 that precedes it: “It is important when crafting policy in relation to open access to delineate exactly what is meant by the term” As noted above, the interchangeable use of phrases open access and free access, without clear indication of what these terms mean with regard to copyright and licenses has led to much confusion among authors in particular. We would urge caution therefore in the use of these terms, including in this recommendation. We do not recommend the development of different policies at national, state and territory levels. Rather, we believe the opportunity should be taken to craft one overarching policy that is applicable nationally.

**Page 408**

*Paragraph beginning “encouragement of different ways”*

*Response*

We welcome the recognition that new models of publishing will need to be supported and that funds must be allocated for this purpose as the transition occurs. However, a fundamental aim of a transition to new publishing models must be that costs are lowered. Schimmer and colleagues (<https://www.mpg.de/9202262/area-wide-transition-open-access>) have modelled this (via the “flipping” of journals from subscription to open access for three countries, including Germany. Whether this can be replicated elsewhere remains to be seen. It is not yet clear the flipping projects will reduce costs over a sustained period if pricing decisions remain in the hands of the established vendors. What will be crucially important is the encouragement of a diversity of publishing models from a variety of players, not just the five large publishers (<http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0127502>) who currently dominate scholarly publishing.

Furthermore, such innovation and openness should be specifically rewarded - not just “treated neutrally” as on the bottom of page 408.