

## Copyright in universities: overview

It is internationally recognised that education, research and access to information are public goods that need to be balanced with copyright protection for authors and publishers. Ten years ago, an Australian Law Reform Commission inquiry recommended action to remove complexity and confusion surrounding the copyright rules that apply in education.<sup>1</sup> Australia has ended up with laws and practices that are far more restrictive than those that apply in comparative jurisdictions, including Canada, Singapore, UK and USA. This increases the costs of teaching and research. Recent research shows that Australian university staff find managing copyright difficult, and that although they write, peer review and edit journals for free, they are unable to negotiate contracts with publishers on fair terms.

Copyright material created in an employment context belongs to the employer. The Copyright Act is clear on this point, and most university intellectual property (IP) policies and employment contracts reinforce this, along with provisions for students, adjuncts, visitors and others involved in creating copyright material, to enable universities to fulfil their roles as teaching and research institutions. Related university regulations have developed in a piecemeal way within and across institutions, and interact with multiple other instruments including those dealing with data management, open access, authorship, research ethics, commercialisation and other policies. Due to confusion and lack of understanding of rights retention, researchers frequently enter into contracts which thwart research objectives and may delay or restrict publication and open access. One difference between Australia and overseas jurisdictions where Open Access is more advanced is the assertion of rights retention at a systemic level. While rights retention is becoming a standard policy globally, in practice poor management of knowledge ownership and dissemination can act as a barrier to open access, engagement with audiences and the impact of Australian university research.

Copyright ownership and use can be divided up in many ways and it is common to allow academic staff to retain aspects of copyright in the material they create as part of their work lives. The position with respect to scholarly material for teaching purposes is usually clear and framed around unrestricted use of that work for university purposes. However, publishing arrangements with respect to research outputs are frequently in breach of university and funding body rules and policies. Researchers are unable to apply the complex web of policies which have often been developed in Research Offices and Libraries by Policy Officers attached to Executive teams, by Offices of Commercialisation, and with input from Legal Counsel. All these personnel have limited practical exposure to author-publishing agreements presented day-to-day to employees. Historically there is also very limited record keeping by institutions about the contractual terms that employee authors have entered into, with the author not understanding the implications of the agreement and not even keeping records.

Although assignments, licences, waivers and exclusions are used in IP Policies to retain university rights to use works by employees and minimise the requirement to pay for copyright licences to publishers, Australian authors are routinely offered non-compliant contracts that do not respect these legal restrictions on their freedom to assign copyright via contract. Where an author is asked to assign their copyright to a publisher, there are real doubts whether their university would retain a licence that subsequently allows them to use the work for education and research or retain a copy of it in the institutional repository. There is no doubt that the Australian research community may pay multiple times for the same output authored by academics, whereas a clear understanding that the work done as an employee (or other associate) of an institution should be the determinant of payment for that work.

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<sup>1</sup> ALRC. 'Chapter 14. Education', [Copyright & the Digital Economy Final Report](#) (2014)