

# Grey Literature Supporting the Right to Knowledge

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## Abstract

*One of the principal areas of interest of the Library of the CNR Area in Pisa is in authors' Rights Retention. Indeed, the staff regularly supports the personnel in the publication process, from choosing the publication venue to depositing their products in the institutional archive, finding that many researchers need to be made aware of their rights and how to retain them. For this reason, the library staff participates in the CLAKP and Right2Pub initiatives. CLAKP (Copyright Law and Access to Knowledge Policies Group) is a research group aiming to strengthen the right to knowledge as essential for education, innovation, and cultural access. Right2Pub (The Authors' Voice from the Italian Research Community) project aims to build an awareness of the importance of Secondary Publishing Rights and Rights Retention in the Italian Research Community.*

*In our work, we describe the two ongoing initiatives and the contribution of our library to them. We also illustrate the first results of a preliminary study on the role of Grey Literature on this topic and how some European countries approach it.*

**Keywords:** *Right to knowledge, Rights retention, Secondary Publishing Rights, CLAKP, Right2Pub, KR21*

## 1. Rights Retention: the context

*The human right to science is defined in some crucial norms of international law, specifically in Article 27 of the Universal Declaration of Human Rights and Article 15 of the International Covenant on Economic, Social and Cultural Rights. One idea emerges from both norms: the balance between intellectual property rights (exclusivities) and rights to access, exploit and develop scientific knowledge. Maintaining this balance is a fundamental aspect of fully democratic societies<sup>1</sup>.*

The Open Science movement upholds the principle that the entire process and all results of publicly funded research should be publicly available. It is based on the cooperation and sharing of all research outputs, from literature to data, software to protocols and technologies. *Open Access to scientific publications and Open Science are [therefore] integral parts of the human right to science<sup>2</sup>.* The major cultural shift introduced by the Open Science movement significantly accelerated deep reflection on maintaining authors' rights to their works in scientific research carried out within universities and research institutions.

Scientists do not publish to receive compensation but to communicate the results of their research. To do so, researchers usually publish articles in scientific journals, often owned by major commercial publishers. Indeed, with the advent of the digital age, the editorial market has become oligopolistic because a few influential publishers primarily run it. In return for the service offered, these publishers make the authors sign a publishing contract that entrusts all economic rights to the publisher. In contrast, only the moral right of authorship remains to the author<sup>3</sup>.

One problem authors may face is that changing a publisher's standard contract could be difficult. If the authors are not lawyers (and, in some cases, it may be difficult for the lawyers themselves if they are not experienced in the subject matter), it may be challenging to know exactly what revisions to request. If successful, a scenario will likely

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<sup>1</sup> Binda F., Caso R. (2020). *Il diritto umano alla scienza aperta*. Trento Law and Technology Research Group. Research Paper n. 41, p.1. <https://zenodo.org/records/4053531> (the English translation is ours).

<sup>2</sup> *Ivi.*, p. 3 (the English translation is ours).

<sup>3</sup> It is worth mentioning that Italian copyright splits the authors' rights into moral (or intellectual) and property rights.

show different situations between authors who know how to negotiate and those who do not. As Peter Suber said<sup>4</sup>, the author's addendum was introduced around 2004 as the first solution to authors' Right Retention. It is a proposed amendment to the contract with the publisher. Lawyers write the addendum and, in this way, negotiation between the publisher and authors becomes unnecessary.

### **1.1. Rights retention: the Italian context**

Before entering more details, we must make an initial consideration: the Italian law on copyright does not imply that authors must cede all their rights to the publisher. Therefore, we should ask ourselves why they agree to sign contracts that transfer all economic rights to a publisher, granting them complete control over their work.

First and foremost, scientists must publish to circulate their ideas in prestigious venues, i.e., journals with a high impact factor or labelled as "excellent". This action is essential to advance in their careers and meet the criteria used in research evaluation exercises. To assess the quality of research, the Evaluating Agencies rely on commercial bibliometric evaluation services. These services measure it through mathematical and statistical indices based on the number of citations received by an article or journal rather than on the actual relevance of that research and its spin-offs on science and society.

These evaluation criteria primarily increase the bargaining power of large oligopolistic publishers because they own the prestigious publishing venues to which authors turn.

A need for more awareness and attention and a lack of sensitivity to the problem compounds the first factor mentioned above. Indeed, it is not necessarily the case that authors, especially younger ones, know that by transferring commercial rights to the publisher, they implicitly authorize the publisher to make different uses of the manuscript without the author's permission, such as modifying it for commercial purposes, rearranging the content to publish it in another type of source, translating it into other languages. In most cases, the authors' institutions of affiliation do not have a role in the author-publisher contractual relationship, so they are unaware that their researchers are voluntarily transferring their copyrights at the expense of themselves, the institution, and the general public. Moreover, these same institutions must pay publishers expensive subscriptions to allow access to scientific results produced by their authors. Finally, the closure of science makes it inaccessible to society and other scholars who operate in less economically fortunate settings and who cannot afford to pay to learn about the work done by their peers.

In this context, it has become imperative to draw the attention of all actors to the issue of authors' retention of rights. It is crucial to retain the right to publish one's work in open access to further the principles promoted by open science.

Two prominent "actions" at the center of European and international debate are identified to achieve this goal: the Rights Retention Strategy and Secondary Publishing Rights.

Rights retention refers to applying strategies that allow authors to retain certain fundamental rights over their work, such as the right to reproduce, distribute, and reuse for noncommercial purposes, when they sign a publishing contract with a publisher. On the other hand, the term Secondary Publishing Rights implies action to change national intellectual property laws so that authors are guaranteed the right to re-publish their work, freely and free of charge, in open access repositories.

Universities and research institutions in Italy have long issued policies supporting open access. However, they are often not mandatory and specific policies on copyright

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<sup>4</sup> More on: <https://erc.europa.eu/news-events/magazine/rights-retention-and-open-access>

retention are not detectable. To facilitate the transition to open access and protect authors' rights, Italian institutions have adopted the model of transformative contracts, which has spread throughout Europe, i.e., agreements between libraries and publishers that include a fee for publishing in open access, in addition to the reading one.

Italy has published the National Plan for Open Science<sup>5</sup> and participated in defining the European Agreement for the reform of research evaluation, which currently represents a significant obstacle to affirming the right to knowledge, as stated before. Important open access publishing initiatives have also been implemented as viable alternatives to the commercial publication of journals and series. These are no-profit publishing systems run by academic or research institutions, which take charge of the entire publication process. In such publishing systems, the rights remain with the author, and there are no costs to the authors or readers.

Regarding legislation on Secondary Publishing Rights, there is already a proposal for a law in Italy rooted in the 2016 proposal of the Italian Association for the Promotion of Open Science (AISA<sup>6</sup>). The proposal aims to amend Italian law on copyright by including a specific article that gives the author the unwaivable and inalienable right of republication in open access, following a regulatory model already adopted in other European countries.

The transitional nature of transformative agreements, the high costs they require, and which prevent institutions from totally covering their scientific production make it necessary to think about different forms of opening science, such as the implementation of strategies or norms that intervene in authors' rights and which, as we will see below, are still totally absent in the Italian landscape.

## 2. The Library of CNR in Pisa

### 2.1. The interest in Rights Retention: supporting researchers in the publication process

The Library of the CNR Area in Pisa collects the bibliographic and documentary resources of the Institutes located in the Area. It supports the informational needs of the scientific community. The principal tasks of the service focus on library automation, digital libraries, Open Science and Open Access, Grey Literature, and web-based information services<sup>7</sup>.

The library's main activities include managing scientific production, supporting the authors for publication, and depositing their works in the institutional archive.

In this respect, the library staff:

- provide authors information about the publication venues (e.g., metrics, APCs, etc.);
- guide authors in the deposit of their scientific production in the institutional archive;
- verify the compliance of the deposited versions with either funders' or publishers' policies on self-archiving;
- inform authors about the various strategies for green OA;
- inform authors about good practices for Open Science;
- support authors in the research evaluation exercises.

Such actions require us to be constantly updated about the evolution of publishers' policies and the strategies authors may adopt to retain their rights. Thus, over the years, we have developed a growing interest in the issues concerning authors' Rights Retention and the informational resources and strategies that may guide this difficult purpose.

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<sup>5</sup> [https://www.mur.gov.it/sites/default/files/2022-06/Piano\\_Nazionale\\_per\\_la\\_Scienza\\_Aperta.pdf](https://www.mur.gov.it/sites/default/files/2022-06/Piano_Nazionale_per_la_Scienza_Aperta.pdf)

<sup>6</sup> <https://aisa.sp.unipi.it/>

<sup>7</sup> <https://library.isti.cnr.it/index.php/en/library>

## 2.2. The Italian approach to Rights Retention: the initiatives CLAKP and Right2Pub

Secondary Publishing Rights, Rights Retention and, more in general, fair access to knowledge are at the core of the international initiative Knowledge Rights 21 (KR21), which focuses on *bringing about changes in legislation and practice across Europe that will strengthen the right of all to knowledge*<sup>8</sup>.

The programme, sponsored by IFLA, IFLA Foundation, Arcadia, LIBER, and SPARC Europe, aims to mobilise the potential of Europe's knowledge institutions, particularly libraries, to engage with others across the spectrum of the access to knowledge movement to build momentum towards long term copyright reform that benefits library users and researchers in the 21st century<sup>9</sup>.

KR21 supports and finances national actions to improve public awareness on the issues of access to knowledge, publishing rights, and promoting substantial changes in law.

In Italy, two initiatives can be included in this framework: *CLAKP* and the project *Right2Pub - Balancing Publication Rights. The Authors' Voice from the Italian Research Community*.

CLAKP<sup>10</sup> is a national research group created within IGSG-CNR to reinforce the right to knowledge as an essential component of education, innovation, and cultural participation. This is also implemented through the support for regulatory reform of copyright for the benefit of libraries, users, and researchers.

CLAKP's main areas of interest concern the retention of rights by authors of scientific content, open norms, Secondary Publishing Rights, e-books, and controlled digital lending.

The IGSG research group works within the KR21 initiative, supporting the national coordinator for Italy (Avv. Deborah De Angelis) in collaboration with the Creative Commons Italian Chapter and the Libraries of the CNR Research Areas of Pisa and Bologna.

The project Right2Pub<sup>11</sup> aims to build an awareness of the importance of Secondary Publishing Rights and Rights Retention among the Italian Research Community. Its primary objectives are:

- to strengthen advocacy for the formal recognition of Secondary Publishing Rights at the legislative level;
- to direct attention toward the inherent limitations of current national legislation, which does not explicitly confer Secondary Publishing Rights upon authors;
- to enhance awareness within the national research community regarding Rights Retention.

In the project, the role of the two libraries lies in supporting and advising researchers on how to exercise their rights as authors and accompany them during the publishing process.

## 2.3. The contribution of our Library to CLAKP and Right2Pub

In CLAKP, our principal interest is how strategies for rights retention are currently approached and how they may be implemented. Accordingly, our contribution focuses on collecting policies, strategies, and experiences adopted in the field of Rights Retention. We mainly rely on grey materials to understand how authors can protect their rights.

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<sup>8</sup> <https://www.knowledgerights21.org/>

<sup>9</sup> <https://www.knowledgerights21.org/about/>

<sup>10</sup> <https://www.igsg.cnr.it/progetti-2/clakp/>

<sup>11</sup> <https://www.right2pub.eu/>

More into practice, a series of videos<sup>12</sup> on the main topics of CLAKP have been realised so far, as well as a preliminary study on how grey literature approaches the subject and how it is managed in some countries.

In Right2Pub, the two libraries involved in the project are expected to collect existing resources on Rights Retention and Secondary Publishing Rights and to produce informative materials useful for the authors when choosing the publication venue to guarantee their rights.

In addition, two training sessions, one in Pisa and one in Bologna, are planned to provide authors with an overview of these topics and practical information on how to maintain their rights and make Open Access, e.g., depositing their materials in an open repository and being compliant with the publisher policy on Green OA.

As in CLAKP, we will count on grey materials (e.g., infographics, videos, reports, etc.) that have been realized to achieve our purposes.

### **3. The methodology**

At the beginning of our analysis, we looked for any kind of material (both published and grey) concerning Rights Retention and collected them. We also examined how laws in some European countries act in that regard. In addition, we considered initiatives such as the *Retain* project sustained by SPARC Europe, which focuses on the topic, and assessed some of its grey outputs (e.g., reports and whitepapers).

We found grey materials at four levels: the legislative level, the institutional level, the funders' level, and the initiatives/projects level.

Finally, we reviewed a list of funders and institutional policies in different countries. We compared them in our analysis to understand how grey materials could support Rights Retention and the Right to Knowledge.

### **4. How Rights Retention is approached in (some) EU countries and how GL supports the Right to Knowledge**

Letting authors<sup>13</sup> to retain fundamental rights to their publications helps them and promotes Open Access because to make Open Access and re-use their publications, authors must remain owners of their rights. The policies of funders and universities can make maintaining rights automatic and much easier than it would be for a single author in a negotiation with a publisher.

The analysis of the materials listed in the previous paragraph led us to group the strategies and documentation supporting authors to retain their rights into four categories. Indeed, grey materials on Rights Retention may be addressed at the legislative, institutional, funder and initiative/project level.

In the following sections, we will describe each scenario in more detail and illustrate how grey materials are fundamental in building and disseminating such strategies. There are four manners - supported by grey materials - to help authors retain their rights: at a legislative level, through some international initiatives, through the intervention of funders, and through authors' institutions. Analyzing the different approaches to Rights Retention in various countries, we found examples of national laws and grey materials that may help authors retain their rights during the phases of the publication process.

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<sup>12</sup> [https://www.youtube.com/playlist?list=PLmW\\_xhy00luZhOQP3Nm\\_Gn9BvIMkLeL36](https://www.youtube.com/playlist?list=PLmW_xhy00luZhOQP3Nm_Gn9BvIMkLeL36)

<sup>13</sup> More on: <https://erc.europa.eu/news-events/magazine/rights-retention-and-open-access>

#### 4.1 The legislative level

The already cited AISA (Italian Association for the Promotion of Open Science) in paragraph 1, produced an analysis, at a legislative level, to search laws in some European countries<sup>14</sup> regarding Rights Retention and provides also, in some cases, a translation in English and Italian. For example, European countries already have operational laws dealing with authors' Rights Retention:

- Germany<sup>15</sup>
- France<sup>16</sup>
- Belgium<sup>17</sup>
- The Netherlands.

In Germany, “Copyright is not transferrable<sup>18</sup>” by law; Section 15 of the German law on Rights Retention, states that “the author has the exclusive right to exploit his or her work in material form; this right includes:

1. the right of reproduction (section 16),
2. the right of distribution (section 17),
3. the right of the exhibition (section 18)<sup>19</sup>”.

First, the *Right of reproduction* stands for the right to produce copies of the work, whether on a temporary or permanent basis, regardless of the process or quantity in which they are made. Accordingly, transferring the work to devices for repeated communication of video and sound sequences (video and audio recordings) also constitutes reproduction, regardless of whether it is the recording of the communication of the work on a video or audio recording medium or the transfer of the work from one video or audio recording medium to another.

Instead, the *Right of distribution* means offering the original or copies of the work to the public or putting them into circulation. The German law states that if the original or copies of the work have been put into circulation by sale with the consent of the person authorized to distribute them in the territory of the European Union or another Contracting Party to the Agreement on the European Economic Area, their dissemination is permitted, except for rental. For German law, rental is defined as a transfer for a fixed period for use that serves directly or indirectly for profit. However, the rental does not include the transfer of originals or copies

1. of buildings or works of applied art or
2. used in the context of an employment or service relationship for the exclusive purpose of fulfilling obligations resulting from the employment or service relationship.

*Right of exhibition* means the right to publicly display the original or copies of an unpublished artistic work or an unpublished photographic work. By specifying each type of right, German law leaves no room for misunderstanding regarding preserving rights.

On the other hand, in France, article L. 533-4.-II-III-IV, it is stated that (II) data resulting from a research activity that is at least half-funded by grants from the state, local authorities, public institutes, subsidies from national funding agencies, or EU funds may be freely re-used as long as a specific right or regulation does not protect them and have been made public by the researcher, institute or research organization. (III) The publisher of a scientific publication may not restrict the re-use of research data made public as part

<sup>14</sup> <https://aisa.sp.unipi.it/attivita/diritto-di-ripubblicazione-in-ambito-scientifico/testi-di-riferimento/>

<sup>15</sup> <https://www.gesetze-im-internet.de/urhg/>

<sup>16</sup> <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000033202746>

<sup>17</sup> [http://www.ejustice.just.fgov.be/cgi/article.pl?urlimage=%2Fmopdf%2F2018%2F09%2F05\\_1.pdf%23Page81&caller=summary&language=fr&pub\\_date=2018-09-05&numac=2018031589](http://www.ejustice.just.fgov.be/cgi/article.pl?urlimage=%2Fmopdf%2F2018%2F09%2F05_1.pdf%23Page81&caller=summary&language=fr&pub_date=2018-09-05&numac=2018031589)

<sup>18</sup> Section 29. Transfer of copyright, in German Rights Retention Law: <https://www.gesetze-im-internet.de/urhg/>

<sup>19</sup> *ivi*.

of its publication. (IV) The provisions of this article are a matter of public policy, and any clause to the contrary is deemed unwritten<sup>20</sup>.

The situation in Italy is different because copyright could be transferable. As anticipated in paragraph 1, the Italian Gallo Law has never been approved. The foreseen<sup>21</sup> authors' Secondary Publishing Rights remain to them unless the publisher and authors have a different agreement.

Specifying every issue by law - or by a policy - could let people better understand authors' Rights Retention and may help authors raise their awareness. Authors' Rights Retention is concerned with how authors use repositories for self-archiving. We found several examples regarding grey materials on Rights Retention and Secondary Publishing Rights. Among them, we searched different types of documentation on authors' Rights Retention and Secondary Publishing Rights produced in some countries, also at an institutional level, intending to verify if and how the grey literature may support these topics.

#### 4.2 The Institutional level and Policies

As this paper states in different sections, some examples of grey literature are policy documents or organizational reports. At a national level, in note 9, we have already mentioned several policies (by AISA) concerning Rights Retention strategies. Instead, at an institutional level and following the University of Harvard policy (the first IARPP: Institutional Author Rights Retention Policies<sup>22</sup>), other universities<sup>23</sup> adopted the same approach. IARRPs (Institutional Author Rights Retention Policies) are an initiative that produces essential policy instruments to support researchers in the phases of the publication process. The Harvard Faculty of Arts and Sciences did the first university-level rights-retention OA policy. Other universities followed this model.

In addition, the *UK Research and Innovation* (UKRI)<sup>24</sup> produced an OA policy (August 2021), a rights-retention provision on the Plan S<sup>25</sup> model.

Also, in the UK, researchers are covered by different Open Access policies of funders and publish in journals with various OA policies, sometimes different depending on who is funding the research. This variety of policies is complex, causes confusion, and is difficult to manage. Researchers run the risk that their results will not be eligible for submission to the UK Research Excellence Framework post 2021 (REF2021)<sup>26</sup>. In the UK, policy development and connection among institutions, funders, and publishers is overseen by a steering group of experts representing various aspects of Open Access publishing.

<sup>20</sup> II.-Dès lors que les données issues d'une activité de recherche financée au moins pour moitié par des dotations de l'Etat, des collectivités territoriales, des établissements publics, des subventions d'agences de financement nationales ou par des fonds de l'Union européenne ne sont pas protégées par un droit spécifique ou une réglementation particulière et qu'elles ont été rendues publiques par le chercheur, l'établissement ou l'organisme de recherche, leur réutilisation est libre.

III.-L'éditeur d'un écrit scientifique mentionné au I ne peut limiter la réutilisation des données de la recherche rendues publiques dans le cadre de sa publication.

IV.-Les dispositions du présent article sont d'ordre public et toute clause contraire à celles-ci est réputée non écrite. In the already cited <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000033202746>

<sup>21</sup> By the existing law (the above cited n. 633/1941 Law).

<sup>22</sup> <https://osc.hul.harvard.edu/policies/fas/>

<sup>23</sup> [https://cyber.harvard.edu/hoap/Additional\\_resources](https://cyber.harvard.edu/hoap/Additional_resources)

<sup>24</sup> The *UK Research and Innovation* (UKRI) is a non-departmental public body of the UK government that directs research and innovation funding, financed through the science budget of the Department for Science, Innovation and Technology. Established on 1 April 2018 by the Higher Education and Research Act 2017, the UKRI merged nine (Arts and Humanities Research Council, Biotechnology and Biological Sciences Research Council, Engineering and Physical Sciences Research Council, Economic and Social Research Council, Medical Research Council, Natural Environment Research Council, Science and Technology Facilities Council, Innovate UK, Research England) organizations into a single body. The UKRI was created following a report by Sir Paul Nurse, President of the Royal Society, who recommended the merger in order to increase interdisciplinary integrative research. More on [https://en.wikipedia.org/wiki/UK\\_Research\\_and\\_Innovation](https://en.wikipedia.org/wiki/UK_Research_and_Innovation)

<sup>25</sup> <https://www.coalition-s.org/>

<sup>26</sup> <https://results2021.ref.ac.uk/>

The Harvard model is different, as Peter Suber states:

*On the Harvard model, faculty vote to grant a set of nonexclusive rights to the university, which uses the rights to authorize OA through its institutional repository. At the same time, it grants the same set of nonexclusive rights back to the faculty authors<sup>27</sup>.*

The Harvard model showed that institutional Rights Retention Policies are more effective than asking authors to retain rights independently. Indeed, institutions have more negotiating power than a single author in a contract with publishers. The Harvard-style Rights Retention policies represented a successful model for more than 80 universities or college units worldwide, which voted to adopt similar strategies. We also found that preserving a broader set of nonexclusive rights may be more useful than retaining only those necessary to comply with Open Access policies. In the *Good practices for university open-access policies*<sup>28</sup> some points are fixed:

- *The institution must have an institutional repository or participate in a consortial repository. Most schools launch a repository before adopting a policy to fill it, but some do it vice versa.*
- *Institutions with the kind of policy recommended here will want the grant of nonexclusive rights in the policy to prevail over a later publishing contract inconsistent with the policy. Adopting the policy may suffice to attain that goal. However, to be more certain, practically and legally, that the policy license survives any later transfer, US institutions should get authors to sign a “written instrument” affirming the policy.*
  - *Here’s why: Under US copyright law (17 USC §205(e)), a “nonexclusive license...prevails over a conflicting transfer of copyright ownership if the license is evidenced by a written instrument signed by the owner of the rights licensed or such owner’s duly authorized agent.”*
  - *This provision doesn’t say that a written instrument is the only way to make a nonexclusive license prevail over a later contract inconsistent with the policy. The nonexclusive license in the policy may prevail in any case, especially if the university policy is sufficiently well known. But to be safe, it’s best to get a written affirmation of the grant of rights (or license) as specified by 17 USC 205(e)<sup>29</sup>.*

This is the main difference between the Harvard model and the others. The Harvard model is centralized, and, above all, the nonexclusive licenses prevail over a conflicting transfer of copyright ownership if the license is evidenced by a written instrument signed by the owner of the rights licensed.

A report from the *Retain* project states<sup>30</sup>:

*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.*

The same report contrasted Harvard-style Rights Retention Policies and those developing in Europe. In the Harvard model, there is a centralized system. The European model has different approaches based on every institution’s culture, procedures, laws, and history.

<sup>27</sup> Suber P. (2021) *Rights retention and open access*, European Research Council magazine, October 28, 2021: <https://erc.europa.eu/news-events/magazine/rights-retention-and-open-access>

<sup>28</sup> [https://cyber.harvard.edu/hoap/Good\\_practices\\_for\\_university\\_open-access\\_policies](https://cyber.harvard.edu/hoap/Good_practices_for_university_open-access_policies)

<sup>29</sup> [https://cyber.harvard.edu/hoap/Implementing\\_a\\_policy](https://cyber.harvard.edu/hoap/Implementing_a_policy)

<sup>30</sup> SPARC EUROPE, *Opening Knowledge: Retaining Rights and Open Licensing in Europe in the RETAIN PROJECT*, June 28, 2023: <https://zenodo.org/records/8084051>



Analyzing some IARPP (Institutional Author Rights Retention Policies), the *Retain* project states:

*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<sup>31</sup>.*

#### 4.2.1 Institutional Policies List

As mentioned above, we found grey materials such as laws and institutional policies. The following table contains a list of institutional policies representing examples of IARPPs:

Nation	University	Policy	link	last visit
Germany	Germany, Leibniz University Hannover	Open Access Policy at Leibniz University Hannover	<a href="https://www.uni-hannover.de/en/universitaet/profil/leitbild-und-strategien/forschung/open-science/open-access/open-access-policy">https://www.uni-hannover.de/en/universitaet/profil/leitbild-und-strategien/forschung/open-science/open-access/open-access-policy</a>	January 18, 2024
Iceland	Bifröst University	Open Access Policy	<a href="https://www.bifrost.is/english/about-bifrost/policies-and-regulations/open-access-policy">https://www.bifrost.is/english/about-bifrost/policies-and-regulations/open-access-policy</a>	January 18, 2024
	TU Dublin	Open Access Policy for Publications & Data for Technological University Dublin	<a href="https://arrow.tudublin.ie/open_access_policy.pdf">https://arrow.tudublin.ie/open_access_policy.pdf</a>	January 18, 2024
Norway	Tromsø, UiT, The Arctic University of Norway	Principles for open access to academic publications at UiT	<a href="https://uit.no/Content/762228/cache=1643633369000/PRINCIPLES%20FOR%20OPEN%20ACCESS%20TO%20ACADEMIC%20PUBLICATIONS%20AT%20UIT.pdf">https://uit.no/Content/762228/cache=1643633369000/PRINCIPLES%20FOR%20OPEN%20ACCESS%20TO%20ACADEMIC%20PUBLICATIONS%20AT%20UIT.pdf</a>	January 18, 2024
	NTNU, Norwegian University of Science and Technology	Self-archiving and Rights Retention Strategy	<a href="https://i.ntnu.no/wiki/-/wiki/English/Self-archiving+and+Rights+Retention+Strategy">https://i.ntnu.no/wiki/-/wiki/English/Self-archiving+and+Rights+Retention+Strategy</a>	January 18, 2024
	The University of Bergen	The University of Bergen Policy for Open Science	<a href="https://www.uib.no/en/foremployees/142184/university-bergen-policy-open-science#open-access-to-research-publications-and-artistic-research">https://www.uib.no/en/foremployees/142184/university-bergen-policy-open-science#open-access-to-research-publications-and-artistic-research</a>	January 18, 2024

<sup>31</sup> *Ivi*, p. 2.

Nation	University	Policy	link	last visit
Sweden	Stockholm University	Open Science Policy	<a href="https://www.su.se/staff/organisation-governance/governing-documents-rules-and-regulations/research/open-science-policy-1.628566">https://www.su.se/staff/organisation-governance/governing-documents-rules-and-regulations/research/open-science-policy-1.628566</a>	January 18, 2024
	Chalmers University of Technology	Open Science Policy		
	Lund University	Open access policy for publications and artistic works	<a href="https://www.staff.lu.se/sites/staff.lu.se/files/2021-09/Open-access-policy-for-publications-and-artistic-works.pdf">https://www.staff.lu.se/sites/staff.lu.se/files/2021-09/Open-access-policy-for-publications-and-artistic-works.pdf</a>	January 18, 2024
	University of Skövde	Guidelines for open access and registration of publications in DiVA	<a href="https://www.his.se/globalassets/styrdokument/utbildning-forskamiva/riktlinjer-diva.pdf">https://www.his.se/globalassets/styrdokument/utbildning-forskamiva/riktlinjer-diva.pdf</a>	January 18, 2024
UK	University of Edinburgh	Research Publications and Copyright Policy (2021)	<a href="https://www.ed.ac.uk/information-services/about/policies-and-regulations/research-publications">https://www.ed.ac.uk/information-services/about/policies-and-regulations/research-publications</a>	January 18, 2024
	University of Cambridge	Rights Retention Pilot / Self-Archiving Policy	<a href="https://www.openaccess.cam.ac.uk/publishing-open-access/self-archiving-policy-guidance">https://www.openaccess.cam.ac.uk/publishing-open-access/self-archiving-policy-guidance</a>	January 18, 2024
	Birkbeck University of London	Open Research Policy	<a href="https://www.bbk.ac.uk/about-us/policies/open-accessresearch">https://www.bbk.ac.uk/about-us/policies/open-accessresearch</a>	January 18, 2024
	Sheffield Hallam University	Open access and rights retention	<a href="https://libguides.shu.ac.uk/OpenAccess/rightsretention">https://libguides.shu.ac.uk/OpenAccess/rightsretention</a>	January 18, 2024
	The University of Manchester	Intellectual Property ("IP") Policy	<a href="https://documents.manchester.ac.uk/display.aspx?DocID=24420">https://documents.manchester.ac.uk/display.aspx?DocID=24420</a>	January 18, 2024
USA	Harvard University	A Model Open-Access Policy	<a href="https://osc.hul.harvard.edu/">https://osc.hul.harvard.edu/</a>	January 18, 2024

 Figure 1: a list of IARPP<sup>32</sup>

### 4.3 The funders' level

At the funders' level, the cited *Retain* project report explains:

*Having strong Open Access positions of national research funders and national policy - or lawmakers can both have a decisive influence on the national level<sup>33</sup>.*

The Horizon Europe funding program for 2021-2027 differs from Horizon 2020 in part by adding a rights retention requirement<sup>34</sup>. Unlike the initiative cOAlition S, Horizon Europe does not require grantees to apply for an open license to their accepted manuscripts upon submission. Horizon Europe only encourages grantees to notify the publisher of their obligations under the grant agreement.

<sup>32</sup> All the links of the institutional policies are also listed in the finale webibliography.

<sup>33</sup> *Ivi*, p. 13.

<sup>34</sup> [https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/common/guidance/aga\\_en.pdf#page=152](https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/common/guidance/aga_en.pdf#page=152), p. 278, in article 17.

#### 4.4 The initiatives/projects level

Other initiatives/projects aimed at protecting authors' rights are:

- cOAlition S Rights Retention Strategy<sup>35</sup>: cOAlition S has released its Rights Retention Strategy (RRS) to allow authors to retain their rights and to enable compliance with their funders' OA policy through dissemination in a repository. cOAlition S has developed a Rights Retention Strategy to give researchers - supported by a cOAlition S organization - the chance to submit their manuscripts for publication to journals of their choice, including subscription journals while remaining fully compliant with Plan S. As part of this strategy, cOAlition S organizations modified their grant conditions to ask the application of a Creative Commons Attribution (CC-BY<sup>36</sup>) license to all Author Accepted Manuscripts (AAM) or Versions of the Record (VoR).
- Ouvrir la Science<sup>37</sup> (France); the rights retention strategy is part of France's Second National Plan for Open Science. The Plan, supported by the European Union, concludes with research evaluation and strategies to implement Open Science, favoring authors' Rights Retention, allowing them to comply with several funding agencies' mandates.
- The already cited - in paragraphs 3 and 4 - *Retain* project (a KR21 funding program project<sup>38</sup>), 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 empowering authors to refuse to transfer their rights. They carried out research to provide a solid and informed basis for this change and then campaigned and supported a transformation in copyright policy that embraces OA amongst publishers, funders, and institutions.

The project Right2Pub and the CLAKP group have planned to produce grey materials to provide authors with powerful and practical instruments to inform on Rights Retention and Secondary Publishing Rights. Examples are toolkits, leaflets, infographics, reports on the results of surveys and Focus Groups, and more videos in the wake of those already published. For example, a recent survey about Rights Retention and Secondary Publishing Rights was administered to the CNR scientific community in November 2023. In December 2023, two Focus Groups were held in the CNR Research Areas of Pisa and Bologna. The data analysis is ongoing, and the results will be published on the project website<sup>39</sup>.

#### 5. Conclusions

Rights Retention is closely connected to Open Science as it favors more transparency, allowing the authors to share their research. Consequently, avoid expensive duplicates and accelerate scientific progress for a more inclusive society. On the other hand, Open Science represents a fundamental component of the right to education, an essential element of a democratic society, as highlighted by the UN 2030 Agenda<sup>40</sup> in the statement, *No one will be left behind*.

In paragraph 1, we already mentioned that when publishers hold fundamental rights, they decide on OA. On a practical level, the retention of rights by authors allows not only access to the literature but also guarantees the possibility of extracting and reusing content in different contexts and for different purposes. When authors want OA and hold their rights, they avoid the delays and efforts required<sup>41</sup> to obtain permission. They also avoid the risk of a negative response.

<sup>35</sup> <https://www.coalition-s.org/rights-retention-strategy/>

<sup>36</sup> <https://creativecommons.org/licenses/by/4.0/>

<sup>37</sup> <https://www.ouvrirlascience.fr/release-of-the-english-version-of-the-rights-retention-strategy-guide/>

<sup>38</sup> Retain Project and Right2Pub project are both funded by KR21 programme, sharing objectives and strategies.

<sup>39</sup> <https://www.right2pub.eu/>

<sup>40</sup> <https://sdgs.un.org/2030agenda>

<sup>41</sup> Suber P. in <https://erc.europa.eu/news-events/magazine/rights-retention-and-open-access>

Adopting institutional Rights Retention policies is more effective than asking, encouraging, or requiring authors to retain rights independently. In this way, authors benefit from greater protection when negotiating with publishers to retain their rights, thus overcoming the restrictions imposed.

Adopting institutional Rights Retention policies is more effective than asking authors to retain rights by their own. In this way, authors benefit from more protection when negotiating with publishers to retain their rights, going beyond the restrictions imposed. At a legislative level, grey materials are the stronger instruments supporting authors' Rights Retention. At an IARPP level, grey materials are stronger if they use a national law, too. Regarding this kind of instrument, every nation (and every IARPP) must follow its way according to its laws, procedures, and culture.

CLAKP and the Right2Pub project are important initiatives in Italy aiming to raise interest in the topic. Much grey materials have been produced on this topic, and much more will likely settle in the future. It would be worthwhile to collect and systematize it so that the international scientific community can easily reuse all the valuable outputs to support the right to knowledge. The use of grey material is the basis of the regulatory mechanisms for maintaining such a fundamental right as free access to knowledge.

*Note: This paper's cited links were revised on January 18, 2024.*

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