

## Compliance Steps to Ensure Public Access with Reuse Rights

**Goal:** Ensure scholarly publications subject to the 2022 OSTP Memorandum, [Ensuring Free, Immediate, and Equitable Access to Federally Funded Research](#), are openly licensed to maximize global public reuse.

**Strategy:** Provide agencies, universities, and authors with a menu of compliance steps/options that retain the rights needed to openly license the publications.

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This document provides recommendations to ensure that public access is provided in a manner that is consistent with copyright law and the obligation under Section 5(j) of the *2022 OSTP Memorandum* to make these publications “findable, accessible, interoperable, and re-useable, to the American public and the scientific community in an equitable and secure manner.”

This document provides agencies with recommended policy language, contract language, and operational steps to ensure that grantees comply with the obligation to make agency-funded peer-reviewed scholarly publications publicly accessible.

For reference, that obligation in Section 3(a) is that “all peer-reviewed scholarly publications authored or co-authored by individuals or institutions resulting from federally funded research are made freely available and publicly accessible by default in agency-designated repositories without any embargo or delay after publication.”

Under longstanding policy, agencies already receive a license to any copyrighted work created with federal funds that authorizes the agency to make broad use of the work for federal purposes and to authorize others to do so. This language likely already provides agencies with sufficient authority to require that publicly accessible copies of scholarly publications are provided to the public with reuse rights.

To avoid any doubt on this issue, the policy language below recommends that the most straightforward means by which a grantee can provide public access is to require that as part of the grant agreement, the grantee provides the agency with an additional copyright license that is analogous to the longstanding federal purpose license. The scope of this additional license directly correlates to the agency’s public access obligation under the *2022 OSTP Memorandum*.

The recommended policy language is stated generally. We also recommend more specific language that an agency can use in its contracts with its grantees to ensure that copyright is properly managed to provide public access with broad rights of reuse.

The legal effect of this contract language is that the agency receives its additional license at the moment the scholarly publication is created, which is how the longstanding federal purpose

license operates. In this way, even if an author from the grantee's institution signs a publication agreement that conflicts with the agency's license, the agency's license remains intact.

Finally, it is important that information about this license is communicated to the public with any copy of the scholarly publication that is made publicly accessible to comply with the agency's public access policy.

The most straightforward method to achieve this is to create a required template that is attached to copies of scholarly publications that are deposited in agency-designated repositories or otherwise in compliance with the agency's public access policy. The contents of this template can include information about the copyright license along with other useful information, such as the funding agreement number, perhaps the author's ORCID ID and any other information that the agency may want to require. The template would ideally be attached by the author, but it also could be attached by the repository manager or a publisher in cases in which the publisher agrees to deposit public access copies in an agency-designated repository.

The following language is limited to the license required to make the work publicly accessible with reuse rights. It does not include language on other areas covered by the *2022 OSTP Memorandum*, such as mandatory deposit in agency-designated repositories, mandatory metadata, and so on.

### **(1) Agency Policy Language**

*In the event that it is deemed not already provided for by the license reserved by the agency to all copyrighted works subject to the requirements of [2 C.F.R. § 200.315\(b\)](#), the agency reserves an additional license in any peer-reviewed scholarly publications covered by the 2022 OSTP Memorandum to apply a public license to such publications. The terms of the agency's public license authorize members of the public to exercise all rights under copyright and related or neighboring rights in any covered peer-reviewed scholarly publication subject to the condition that they provide attribution as required by the agency.*

### **(2) Agency Contract Language (Terms & Conditions of an Award)**

#### **License Grant**

*In the event that it is deemed not already provided for by the license reserved by the agency to all copyrighted works subject to the requirements of [2 C.F.R. § 200.315\(b\)](#), the agency reserves an additional license in any peer-reviewed scholarly publications covered by the 2022 OSTP Memorandum to apply a public license to such publications. The terms of the agency's public license authorize members of the public to exercise all rights under copyright and related or neighboring rights in any covered peer-reviewed scholarly publication subject to the condition that they provide attribution as required by the agency.*

*The "additional license" reserved by the agency is a worldwide, royalty-free, non-exclusive, perpetual, irrevocable, standard open copyright license granting the public permission to access, reproduce, publicly perform, publicly display, adapt, distribute, and otherwise use the work and adaptations of the work for any purpose, conditioned only on the requirement that attribution be given to authors and rights holders as designated. The "additional license" must be widely adopted and must contain (i) a symbol that readily communicates to users the permissions granted concerning the use of the copyrightable work; (ii) machine-readable code for digital resources; and (iii) readily accessed legal terms.*

### **Obligation to Communicate**

*The grantee agrees to take all necessary actions to ensure that the publicly accessible copy of the article will conform to the template for policy-covered works.*

*"Publicly accessible copy" means any copy of the peer-reviewed scholarly publication that is made freely available and publicly accessible to comply with the 2022 OSTP Memorandum.*

### **(3) Template for Covered Works**

Policy-covered works must include the language from one of the two options below when deposited in agency-designated repositories or distributed by any other means in order to meet the grantee's public access obligation.

#### **Template Option 1**

"Research reported in this [publication] was supported by [name of the Institute(s), Center, or other agency offices] of the [federal agency] under award number [specific agency grant number(s)]. Pursuant to [cite specific agency policy] and [relevant university policy], this work is made available under the [CC BY 4.0 license](#)."

#### **Template Option 2**

"Research reported in this [publication] was supported by [name of the Institute(s), Center, or other agency offices] of the [federal agency] under award number [specific agency grant number(s)]. Pursuant to [cite specific agency policy] and [relevant university policy], the authors of this work provide the [federal agency] with a worldwide, royalty-free, non-exclusive, perpetual, irrevocable, standard open copyright license granting the public permission to access, reproduce, publicly perform, publicly display, adapt, distribute, and otherwise use the work and adaptations of the work for any purpose, conditioned only on the requirement that attribution be given to the authors and rights holders as designated."

#### **(4) Agency-designated Repositories**

Agencies should instruct agency-designated repositories to check submissions for compliance with the agency template. When policy-covered submissions do not contain the language specified in the template, repositories should add the language before the works are made public. Agencies may instruct repositories to add template language Option 1 or Option 2, at their discretion.

#### **(5) Universities**

Most university IP policies allocate copyright ownership in works of scholarship to individual creators, not the university. However, most university copyright or IP policies also already contain language that will enable compliance with this licensing requirement by modifying that default allocation of rights. This is typically accomplished by university policy ensuring that either the university owns all rights in works created under a grant,<sup>1</sup> or by stating that the university will retain whatever slice of rights is necessary to comply with grant or contract obligations.<sup>2</sup> Retaining those rights is necessary so the university holds the requisite rights to apply the CC BY 4.0 license or functional equivalent.

Universities also have other options to comply. For example, some universities retain a broad license that allows it to reuse all scholarly works produced by university employees. Others have adopted institutional rights retention policies aimed specifically at public availability and reuse. It is important, particularly for universities with policies that hold that individual creators are the initial owners of rights, to ensure that PIs and other creators under the grants affirm their compliance and agreement with the applicable IP policies.<sup>3</sup>

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<sup>1</sup> See, for example, The University of Texas IP Policy, which provides that “Intellectual property resulting from research supported by a grant or contract with the government (federal and/or state) or an agency thereof is owned by the Board of Regents.”

<https://www.utsystem.edu/board-of-regents/rules/90101-intellectual-property>.

<sup>2</sup> See, for example, Stanford University’s IP policy, which provides that rights are typically held by individual creators but that “Copyrightable works that are subject to sponsored research agreements or other contractual obligations of the University shall be owned by the University, so that the University may satisfy its contractual obligations.” See

<https://doresearch.stanford.edu/policies/research-policy-handbook/intellectual-property/copyright-policy>.

<sup>3</sup> For example, the University of Wisconsin requires PIs to attest that they will adhere to the University IP policy and license using this form: <https://kb.wisc.edu/images/group156/33081/ipagreement.pdf>.