

**ECP-2006-DILI-510001**

**NEEO**

## **First Report on IPR issues**

<b>Delivery date</b>	<i>29 February 2008</i>
<b>Status</b>	<i>Final</i>
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This project is funded under the *eContentplus* programme<sup>1</sup>,  
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<sup>1</sup> OJ L 79, 24.3.2005, p. 1.

## Introduction

This report describes the IPR issues encountered by the project and the work undertaken to resolve them.

The project has built on experience from the preceding Economists Online pilot project and other Open Access initiatives in identifying IPR issues and their role in institutional repositories and self-archiving activities. These have shown how ownership and the consequent control of copyright in academic work influences the ability of authors to self-archive material, while a lack of understanding of how IPR works and ignorance about their rights have the potential to inhibit authors' provision of content to repositories.

The project has tackled these issues by developing an IPR Toolkit consisting of documents providing guidance and advice on copyright as well as links to relevant work produced by other projects and sample documentation. The Toolkit has been developed primarily for library and repository staff to use in advocacy, content gathering and advice work but has been written with the needs of authors in mind and attempts to address the full range of issues and concerns they are likely to raise when approached to provide content to the repository.

The specific issues tackled in the documents were identified from a survey of existing repository copyright advice documentation combined with substantial input from project partners. This took the form of a workshop and brainstorm on IPR issues held at the Project Kick-Off Meeting in Tilburg on 3<sup>rd</sup> September 2007 combined with on-going input from partners via email. The issues are laid out in the Table of Contents of the Toolkit reproduced below and in the associated documents in this document.

A particularly innovative feature of the project's IPR work has been the need to tackle the variation in copyright laws across the eight European countries represented by the project partners and how to provide effective copyright advice which is both sufficiently generic to be widely applicable but which also deals with the specifics of different legal systems. This has been achieved by partners identifying a legal or copyright expert in each jurisdiction who is prepared to review and comment on the documentation provided by the Toolkit and provide advice on the details of their own copyright system to project partners.

The IPR Toolkit will continue to be developed during the course of the project to take on additional IPR issues which arise and as well as changes in national copyright laws and international agreements.

## IPR Toolkit Table of Contents

<b>1.</b>	<b>Information</b> .....	<b>4</b>
<b>1.1</b>	<b>Guide to copyright and repositories for authors and information specialists</b> .....	<b>4</b>
	A short guide to copyright - basic principles & how they relate to institutional repositories. This also includes information on authors' rights - what is permitted and what is not.	
<b>2.</b>	<b>Advice</b> .....	<b>9</b>
<b>2.1</b>	<b>Copyright - Frequently Asked Questions</b> .....	<b>9</b>
	FAQs which authors have concerning IPR to support NEEO in retrieving content.	
<b>2.2</b>	<b>Further Information</b> .....	<b>15</b>
	Where to go for further information on specific topics, including link to SHERPA-ROMEIO list of publishers copyright policies	
<b>3.</b>	<b>Useful documentation</b> .....	<b>16</b>
<b>3.1</b>	<b>Model letters/emails to publishers requesting full-text deposit</b> .....	<b>16</b>
	Model letters to publisher requesting permission to deposit in repository	
<b>3.2</b>	<b>Links to model licences/agreements with publishers, e.g. JISC/SURF</b> .....	<b>6</b>
	(See also Further information. 2.2)	

# 1 INFORMATION

## 1.1 Guide to copyright and repositories for authors and information specialists

### Introduction

Copyright and intellectual property can appear to be a confusing and complicated subject. However, it is one that all those involved in institutional repositories, from authors to librarians and repository managers need to understand as it has a fundamental impact on what can and cannot be included in a repository. Accordingly, this guide aims to explain the basic principles involved and show how authors can manage and control the copyright in their work to ensure that it can be deposited and self-archived.

### Basic principles

Copyright is part of the system of legal protection that exists over the products of intellectual and creative activity. It is one of a group of legal controls called intellectual property rights (IPR) which each protect different forms of intellectual property, the others being patents, trademarks, design right and database right. Copyright is concerned with original literary or written work, as well as musical, dramatic and artistic works, films, sound recordings and broadcast programmes, and consequently it is the type of IPR most often involved in the publication of academic work and has to be considered when depositing material in institutional or subject repositories.

Certain criteria have to be fulfilled before a work qualifies for copyright protection. However these are relatively basic and are likely to apply to all work produced by academics and economists. Firstly, the work must exist in material form, as it is impossible to protect ideas or intellectual activity until it has been recorded in some way, and secondly it must be original, which means not copied from something which already exists. Once these criteria have been met copyright protection applies automatically. There is no registration procedure as is the case with patents or designs.

### How copyright protection works

Copyright functions by designating a series of acts which only the owner of the copyright can perform. These are known as restricted acts and include making copies of a work, issuing copies to the public, renting or lending the work, performing or broadcasting the work and making an adaptation of a work (including making a translation). These exclusive rights do not last indefinitely but are limited for a variety of different periods depending on the type of work involved. For original written work, which is the type of output most economists produce, this is for the life of the author plus a further 70 years. These rights can be transferred to others, given away, and bought and sold and are in effect treated as a form of property which can be controlled and economically exploited by its owner. The key point to note is that this means that the owner of the copyright in a work has the legal right to control what happens to it.

In addition to economic rights, copyright also designates a number of moral rights. These are concerned with the integrity of the work and give the author of a work the right to be

acknowledged as the author or creator, the right to object to false attribution and the right not to have their work subjected to derogatory treatment. Unlike economic rights, moral rights cannot be transferred; they always remain with the author.

## **Ownership**

Ownership is the key position in the copyright system as the owner determines what can and cannot be done with copyright protected work. The author or creator of a work is the first owner of the copyright unless the work has been produced during the course of employment, in which case the employer is the owner. However, this does not usually apply in higher education as universities generally waive their rights as employers and do not attempt to claim ownership of copyright in the research, articles and books which academics produce. In practice there is some variation across Europe and between intuitions and so to be certain what the situation is authors should check their institution's IPR policy or their employment contract. In most cases, however, the academic author will be the first owner of copyright in any material they produce.

Authors can transfer their rights but they should be aware that once they sign these away and pass ownership on to another party they are no longer free to do what they want with their own work and may be prevented from doing things which they subsequently wish to with it, including depositing it in an institutional or subject repository.

## **Publishing agreements**

As authors own copyright in their work publishers must enter into some form of agreement with them in order to publish it. These agreements are legally binding contracts which specify what can and cannot be done with a work. Traditionally these have required authors to transfer ownership of the copyright to the publisher. Unless there are clauses in the agreement specifying what an author can subsequently do with the work, this will prevent an author from reusing it.

Academics may wish to reuse their work in number of ways, for example, in a classroom, lecture theatre or e-learning environment in the institution in which they work or they may wish to share it with peers via an email list, to self-publish on a personal or departmental website or deposit it in an institutional repository. The only way to ensure that they can do these things after their work has been published is to make sure they are included in the terms of the publishing agreement. Authors need to be aware that they can negotiate with publishers and be encouraged to take the following practical steps to ensure they retain essential rights:

- Read any agreement carefully before signing
- Talk to the publisher if the agreement seems restrictive as it is often possible to negotiate exceptions
- Amend the copyright agreement to ensure the necessary rights are retained

In general authors should be encouraged not to transfer copyright ownership to publishers but to licence rights instead. Under a licence ownership is retained by the author and the publisher given permission to exploit the commercial rights.

## Model licences

When negotiating with publishers about the terms of the publishing agreement there are a number of model licences available which provide the text of additional clauses and complete agreements which can be used to ensure the appropriate rights are retained:

- JISC and SURF have produced a Copyright Toolbox at: <http://copyrighttoolbox.surf.nl/copyrighttoolbox/>
- SPARC (Scholarly Publishing and Academic Resource Coalition) has produced an addendum which can be attached to publishing agreements. See: <http://www.arl.org/sparc/author/>
- The Copyright Management Center Indiana University Perdue University also has an addendum for publishing agreements. See: [http://www.copyright.iupui.edu/nego\\_doc.htm](http://www.copyright.iupui.edu/nego_doc.htm)

## Deposit in repositories

Depositing work in an Open Access repository is one of the major uses that academics may wish to make of their work. There is no restriction on doing this with material that has not yet been published, as there will have been no publishing agreement entered into limiting the author's control over their work.

However, academics are often more concerned with depositing or self-archiving material that has been peer-reviewed. This most commonly happens with material published in journals or by existing scholarly publishers and consequently usually involves a publishing agreement. Where current material is being submitted for publication authors are advised to check the publishing agreement they are being asked to sign to ensure it permits self-archiving in a repository and, if it does not, to use one of the model licences or addenda referred to above to amend the agreement so that it does.

The situation is different where authors want to deposit material that has already been published. In this case the author will already have entered into a publishing agreement and consequently whether the material can be deposited or not will depend on the terms of that agreement. If the author has retained a copy of the agreement then they will be able to check this, however if they have not then they, or any library or repository staff who are assisting them, will need to find out what is the policy of the publisher concerned. This can be done by consulting the database of publisher's copyright and self-archiving policies produced by the SHERPA RoMEO project (<http://www.sherpa.ac.uk/romeo.php>). While this list is not comprehensive it does cover 130 leading publishers including Elsevier and Springer and is the best starting point for enquiries about a publisher's policy. If a particular publisher is not covered by RoMEO then it may be possible to find the information on the publisher's website or to write to them directly requesting permission to deposit the articles concerned. A template for writing to publishers to request permission to deposit is provided here [link to template]. Authors should be aware that library or repository staff will usually be able to assist with getting permissions and they are advised to contact these staff if they have any questions or need any assistance.

Authors should be aware that 93% of the journals listed in RoMEO allow self-archiving and so it should be possible to deposit the majority of journal articles that have already been published.

## Versions

The version of the article or piece of published work that can be deposited or self-archived should be specified in the publishing agreement or in the publisher's copyright or self-archiving policy and this is basis of the classification of publishers' policies in the RoMEO database.

RoMEO uses the terms pre-print and post-print to describe the different versions or stages in the development of a published article. The term pre-print is used to describe the version of the paper before peer review and post-prints the version of the paper after peer-review, with revisions having been made. This means that in terms of content, post-prints are the article as published. However, in terms of appearance this might not be the same as the published article, as publishers often reserve for themselves rights in their own arrangement of type-setting and formatting. It is the post-print that is preferred for the NEEO project.

Other terms are also used by authors and publishers for different versions of a work and may be encountered when checking policies or agreements. The Versions Project (<http://www.lse.ac.uk/library/versions/>) also suggests using the following terms for the different stages of a work: draft – early version, circulated as work in progress; submitted version – the version submitted to a journal for peer review; accepted version – the author created version which incorporates referee comments and is the version accepted for publication; published version – the publisher created published version; updated version – a version updated since publication.

Some publishers insist that authors use the publisher-generated PDF - often because the publishers want their material to be seen as a professionally produced PDF that fits with their own house-style. However, such a formatted file is the copyright of the publisher and cannot be used without explicit permission. Often, this means that the author cannot use the publisher-generated PDF file, but must make their own PDF version for submission to a repository.

## How to ensure IPR issues do not prevent deposit

Copyright may appear to be an obstacle to depositing published work in an open access repository, however, if the following steps are followed this should not be the case

Material being submitted for publication:

- Before signing any copyright agreement ensure that it permits deposit in a repository
- If deposit is not permitted, negotiate with the publisher
- Contact library or repository staff for assistance with negotiations
- Amend any copyright agreements that do not permit deposit by using a model licence or addendum agreement

Material which has already been published

- Check the publishing agreement to see what rights have been retained by the author and if this includes deposit
- If a copy of the publishing agreement is not available contact library or repository staff for assistance.

Repository or library staff will then:

- Check the RoMEO database of publishers' policies to see if deposit is permitted
- Check any conditions, including which version of a paper can be deposited
- If deposit is not permitted, write to the publisher to request permission
- Check national copyright rules to see if scanning and deposit of older material is permitted.

For further information on copyright see the NEEEO Copyright FAQ document and links to useful websites or contact the local repository manager or library's copyright advisor.

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## 2 Advice

### 2.1 Copyright - Frequently Asked Questions

#### Introduction

The aim of institutional repositories is to make research more freely available. However, authors are often concerned that this approach may involve problems with copyright and could disrupt relationships with publishers.

This guide is intended to provide answers to some of the most frequently asked questions relating to repositories and intellectual property rights (IPR) that authors may have, as well as suggestions about how to deal with the most common problems.

Authors should be aware that your institution's library will also be able to provide advice and assistance with copyright issues and all authors are strongly encouraged to contact their local library or institutional repository manager for additional help with IPR matters.

Please note that this document is for guidance only and should not be relied on for legal advice.

#### **Who owns the copyright in my paper?**

As the author, you are the first owner of the copyright. This gives you the right to do what you want with the paper including posting on a web site or depositing it in an institutional repository. This is sometimes referred to as self-archiving. However, once your paper has been accepted for publication you may be asked by the publisher to sign a publishing agreement which transfers ownership of the copyright to them. Therefore, to be certain who owns the copyright in papers which have been published you must check the publishing agreements you signed.

#### **Is there a difference between copyright and moral rights?**

Yes, copyright is primarily concerned with control and exploitation of your work. Moral rights are your rights to be identified as the author of a piece of work. It is possible to transfer your copyright but not your moral rights.

#### **Is it legal to deposit a copy of my paper in an institutional repository?**

You can only legally deposit items in a repository where you are the copyright owner and you have not accepted any contractual restrictions which prevent deposit.

#### **What kind of contractual restrictions might be in place?**

Any funding or publishing agreements that you have signed in respect of your research or article may include restrictions on what you can subsequently do with it, including preventing you from depositing it or imposing an embargo upon self-archiving for a specified time period. You will need to check the terms of any agreement you have signed to be sure.

### **Do I have to accept the terms of a publishing agreement if it prevents me from depositing my paper?**

No. Most publishers are willing to discuss copyright agreements with authors. It is true that some refuse to publish a paper if an author is unwilling to sign a copyright agreement as it stands, but many are willing to accept amendments to existing agreements or alternative agreements. A number of publishers now offer “licence to publish” agreements as alternatives to “copyright transfer” agreements and these are often more liberal and may permit authors to deposit their papers in institutional repositories. For advice on amending agreements and model licenses which can be used in negotiating with publisher see the Copyright Toolkit [link to relevant section of the Toolkit when completed] and ask your institution’s library or repository manager for help.

### **If I have transferred copyright to the publisher can I still deposit my paper?**

This will depend on the terms of the agreement you have signed. You should check the agreement to see what you are allowed to do. You can also check the RoMEO database and post material where the publisher’s policy is listed as allowing deposit without prior request.

### **How can I find out if I am allowed to deposit my paper if I do not have a copy of the publishing agreement?**

If you do not have a copy of the publishing agreement you signed or the agreement does not address the question of self-archiving you can check the RoMEO database [[www.sherpa.ac.uk/romeo.php](http://www.sherpa.ac.uk/romeo.php)] which lists the copyright and self-archiving policies of a large number of publishers. However, this is not a comprehensive list. If the publisher of your paper is not covered by RoMEO then you may be able to find details on the publisher’s own website. This information is often contained in the section on guidelines or instructions for authors and contributors.

Your library should also be able to provide help in checking publishers’ policies.

### **What can I do if the publisher does not allow self-archiving or deposit?**

Where a publishing agreement does not permit self-archiving it is possible to contact the publisher directly and request permission to include your paper [link to sample request letter]

### **If a publisher’s policy on self-archiving changed since my paper was published does the new policy apply to me?**

Some publishers have changed their policies as acceptance of self-archiving has become more widespread and extended permission to deposit to all authors regardless of when their papers were published. However, if it is unclear if new rights are to be applied retrospectively it will be necessary to contact the publisher to check if this is the case. Contact you library or repository manager for assistance to do this.

## **Which version of my paper can I deposit?**

This should be set out in the publishing agreement you signed or in the information on the publisher's website. Agreements refer to different versions of a paper using specific terms. These are:

***Pre-print or Submitted Version:*** this is usually defined as the author's final draft of a paper before peer-review. Many publishers allow authors to place pre-prints in a repository. Check the RoMEO database.

***Post-print or Accepted Version:*** this is the version of the paper as published following peer review. As author, you will probably have your own version of this final draft in the composition and editing format which you normally use, such as MS Word. Some publishers allow authors to place the Accepted Version in the repository but some do not. Check the RoMEO database.

***Publisher PDF or Published Version:*** This is the formatted PDF file that appears in the journal. Whilst some publishers allow Accepted Versions to be deposited, some do not allow the deposit of the final PDF. In these cases you are only allowed to deposit an earlier version of the paper. However, some publishers may actually prefer the final PDF version to be used as this is a clear indication that an article in a repository is the final version and may also promote their role in its publication. Check the RoMEO database

## **Do different copyright conditions apply to material included on personal or departmental websites?**

The same copyright rules apply to repositories and websites, namely you may only include material on or in either if you are the copyright owner or you have the owner's permission. However, some publishers apply different conditions to websites and repositories. For example a publisher may permit the Published Version (PDF) to be posted on a personal or departmental website immediately after publication but only allow the same Published Version (PDF) to be included in a repository after an embargo period of 12 months. Check the publishing agreement or the RoMEO database.

## **Do different copyright rules apply to different types of publication such as books, journal articles and working papers?**

No, the basic legal position is the same for all types of publication – you are the owner of the copyright until you transfer it to someone else. However, because of the different ways in which they are produced, there is in practice usually a difference between what you can do with working papers and with books and journals. In most cases you will have entered into a publishing agreement with a publisher for books or journal articles and consequently your ability to deposit that material is determined by the terms of that agreement. In contrast, working papers are normally produced by university departments which do not generally seek transfer of copyright ownership. You therefore usually retain the copyright in working papers and are free to deposit them. For journal articles check the RoMEO database to see if deposit is permitted.

### **Do different copyright rules apply if my paper is published in a different country?**

It is possible. Publishing agreements usually contain a clause specifying which country's legal system applies. If there is no clause about applicable law in that agreement then it is likely to be the copyright regulations of the country where the journal is published that will apply to your paper. This can have an effect on what you are allowed to do with your paper as there are differences in the copyright regulations in countries within Europe particularly in relation to exceptions and exemptions. However, the basic principles of copyright are the same in all countries, namely that the author is the first owner of copyright and permission from the copyright holder is required to deposit material in a repository. Contact your local institution's library or repository manager for further advice.

### **Can I deposit papers that have been written with other people?**

Yes, you can deposit articles that have been written in collaboration with members of other institutions, provided you have their permission and no agreement with a publisher or funding body prevents you from doing so.

### **Can I deposit papers that contain copyright protected material produced by others (third party copyright material)?**

You must have the permission of the copyright owner to reproduce any copyright protected material in your paper. Unless this permission explicitly allows for the material to be reproduced in an institutional repository you will need to obtain separate written permission to do this. Your institution's library or repository manager will be able to help with this.

### **If I do not have a copy of my paper, can I scan it from the printed journal and deposit the scanned version?**

In general you will need to ensure that any self-archiving permission from your publisher allows you to scan the work. However, copyright rules in some European countries do allow material published before a certain date to be scanned and deposited without any permission from the publisher. This is because in these countries the law takes the view that it not possible for authors to transfer rights which did not exist at the time of the agreement. As digital versions of journal articles were not generally produced until the mid-1990s, the digital rights in articles published before then will not have been transferred and will remain with the author. This means that in certain countries the author can scan or give permission to others to scan these older articles and include them in a repository. Contact library or repository staff for further advice and information.

### **What form should copyright permissions take?**

There is no standard form for copyright permissions. They should be in writing but can vary from a simple email from a rights holder in response to a specific request to a more formal letter or contract. Whatever form any permissions that you have obtained take it is advisable to retain a copy as evidence in case of subsequent dispute.

### **Will depositing my work affect my ability to get it published?**

This will depend on the publisher of the journal in which you wish to publish. For some it is a condition of publication that they will not consider any papers which have already been made publicly available. Some specify that making a paper available in a repository constitutes prior

publication and they will not accept it. If you have any doubts about the publisher's policy you should check with them directly.

### **Do I have to sign over any rights in my work to the repository when I deposit?**

This will depend on the terms of the deposit agreement required by your institution's repository. You should check the terms with your institution's repository manager. However, in most cases you are asked to grant the repository a non-exclusive licence to make digital copies of your work available via the repository, as well as giving the repository permission to alter the format of the electronic copy as necessary and to remove it subject to its takedown policy. In all cases you retain full ownership of your work and the copyright in it.

### **What responsibilities do I have when depositing my paper?**

You are responsible for ensuring that you have the right to deposit your paper in the repository. If you are not certain if deposit is permitted check the RoMEO database of publishers' policies and contact your institution's library or repository manager for assistance. You are also responsible for ensuring that you have any permission required for third party material in your paper to be included in the repository. Your institution's library or repository manager will be able to help obtain any permissions that are required.

### **What are users of the repository allowed to do with my paper once it has been deposited?**

This will be determined by the policy of the repository but in most cases users are allowed to download, print out and pass on copies of your paper in any format or medium for personal research or study, educational, or not-for-profit purposes without charge provided that author, title and full bibliographic details of the article are given. Check with your local institution's library or repository manager for the details of the policy for use of deposited material.

### **Can I withdraw my paper from the repository?**

This will depend on the policy of the repository. In general repositories do not encourage authors to withdraw papers once they have been deposited unless legal or security issues, copyright violations or plagiarism is involved. Check the repository's deposit agreement and preservation policy or contact library or repository staff for further advice.

### **What is Creative Commons?**

Creative Commons is a form of copyright that aims to offer a flexible range of copyright protections that complements the 'all rights reserved' associated with traditional, automatically assigned, copyright.

It allows creators of copyrightable works (books, websites, blogs, photographs, films, videos, songs and other audio & visual recordings, etc.) to release them under a 'some rights reserved' license. This license 'travels' with the work in question and makes it explicit to users of the work what they can and cannot do with the work. It is not one license but a range of licenses. Creators can choose among a number of options that allow or prevent users of the work from making commercial use of it, or from making derivative copies.

It has a number of benefits for educational establishments. It allows creators of educational materials to make them available for reuse or adaptation while protecting their right to be attributed as the original author and without stifling creative use of the work. And it allows users of third party materials (e.g. within Virtual Learning Environments) to know exactly where they stand with respect to usage of a work, without having to identify the author, and then obtain permission.

The Creative Commons webpage is available at: <http://creativecommons.org/>

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## 2.2 Further Information

Further information on copyright, IPR and institutional repositories:

- **JISC-SURF Partnering on Copyright**  
<http://www.lboro.ac.uk/departments/dis/disresearch/poc/pages/infointro.html>  
Provides a comprehensive guide to copyright issues and Open Access and repositories.
- **JISC-SURF Copyright Toolbox**  
<http://copyrighttoolbox.surf.nl/copyrighttoolbox/>  
Provides model licences and wording for use in publishing agreements and for negotiating with publishers
- **SPARC (Scholarly Publishing and Academic Resource Coalition)**  
<http://www.arl.org/sparc/author/>  
Addendum which authors can attach to publishing agreements to retain key rights
- **SHERPA/RoMEO database of publishers' self-archiving policies**  
<http://www.sherpa.ac.uk/romeo.php>
- **JISC Legal Information Service**  
<http://www.jisclegal.ac.uk/ipr/IntellectualProperty.htm>  
General information on intellectual property rights from the UK legal advisory service for higher education
- **Creative Commons**  
<http://creativecommons.org/>  
Suite of licences that can be used to retain rights but allow reuse

### 3. USEFUL DOCUMENTATION

#### 3.1 Model letters/emails to publishers requesting full-text deposit

*3.2 Where there is no explicit permission given to mount full-text on a repository, it is often worthwhile writing or emailing directly to the publisher. This template can be used to form a letter to a publisher requesting permission to mount material on a repository on behalf of an academic author.*

Dear [insert name of publisher's rights manager or similar],

I am contacting you on behalf of Professor/Dr [insert name of author] who is a contributing author to one of your journals.

Professor/Dr [insert name of author] is a member of staff here at the University of [name of institution] and would like to deposit the full text of the following article(s) from [insert journal name] in the University's institutional repository. Professor/Dr [insert name of author] has authorised me to do this on [his/her] behalf and to contact you to seek permission to do this.

Article:

[authors names] , [date], [title]

[journal name], [volume or number], [pages]

The institutional repository is a not-for-profit service for our academic authors, providing access to the full-text of their publications. Full bibliographic details are given for each article, including the journal of original publication, etc.

If possible, it is preferred to archive the finalised pdf version as it appears in print. The pdf version has an advantage over mounting the author's own version, in that it maintains consistency in appearance of the article wherever it is read. This also maintains a closer association of the article with the Journal, through the header-title and journal house-style.

I would be grateful if you could contact me to give your permission for including this article and to pass on any conditions that are associated. If it would be possible to use the published pdf version of the article for this purpose, then please confirm this.

Thank you for your attention with this and I look forward to hearing from you.

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**3.3 *Some publishers insist on the author writing or emailing them directly to request permission to mount eprints in a repository. In such cases, it may be useful to provide the author with a template such as the one below to help them construct their request.***

Dear [insert name of publisher's rights manager or similar],

I am writing to ask permission to mount a copy of an article of mine which was published in one of your journals in my institution's repository.

The article is:

[authors names] , [date], [title]

[journal name], [volume or number], [pages]

The institutional repository is a not-for-profit service for academic authors, providing access to the full-text of their publications. Full bibliographic details are given for each article, including the journal of original publication, etc.

If possible, I would like to use the finalised pdf version as it appears in print. The pdf version has an advantage over mounting my own version, in that it maintains consistency in appearance of the article wherever it is read. This also maintains a closer association of the article with the Journal, through the running headers and the journal house-style.

I would be grateful if you could contact me to give your permission for including this article and to pass on any conditions that are associated. If it would be possible to use the published pdf version of the article for this purpose, then please confirm this.

Thank you for your attention with this and I look forward to hearing from you.