



Succession Rights and IP Working Group

Initial Report

9/23/13

Charge to the Working Group:

A key distinctive for DPN is the desire to secure the succession rights for the data deposited within the system. This working group will be responsible for identifying best practices and developing a framework to ensure that whatever IP rights depositors have when they deposit works in DPN are transferred under specified conditions to DPN. Essentially the goal is to use DPN to create a framework for ensuring that rights owned by members of the academy are retained by the academy in the event that the original rights holder disappears. The core idea is to leave the depositors in control of rights and uses as long as they are actively exercising those rights, but to allow the academy via DPN to hold stewardship of the rights over the long haul. To be clear, while the ideal is to have clean IP soup to nuts, the requirement is that whatever rights the depositor controls (might only be fair use access, for example) are held in escrow by DPN.

Members of the Working Group

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The DPN Context

The Digital Preservation Network (DPN) serves as a preservation backbone for digital information of interest to the academy. DPN Members and other depositors add digital assets to the Network by working with an individual DPN Node to ingest and preserve content. This content is then replicated to other DPN Nodes, which together form a heterogeneous network of secure, trustworthy digital archives, each operated under diverse geographical, organizational, financial, and technical regimes. Robust (bit) auditing and repair functions ensure the fixity of content over time. Intellectual property agreements ensure the succession of rights to use of the content through the Network in the event of dissolution or divestment of content by the original depositor and/or archive.

Contacts with Other Organizations

The Working Group identified a number of organizations, government agencies, library and data archives and other initiatives that directly relate to the work of DPN. The goal was to understand how organizations and institutions have instituted – or not – succession rights policies and practices in various settings. Examples of organizations contacted include Science Commons, the Research Data Alliance, ICPSR, DataOne, the University of New Mexico Library, HathiTrust Digital Library, Duraspace, the Ohio Supercomputing Center and more. Federal agencies contacted included the National Science Foundation, the National Institute of Standards and Technology, the National Library of Medicine, NITRD, and the White House Office of Science and Technology Policy among others.

The draft DPN agreement is based on a number of resources. These include: Data-PASS Deposit Agreement <http://www.data-pass.org/>; Data-PASS Preservation Alliance for the Social Sciences MOU <http://www.data-pass.org/sites/default/files/deposit-agreement.pdf> ; Portico Archive License Agreement, http://www.portico.org/digital-preservation/wp-content/uploads/2009/12/portico_journal_archive_license_agreement_int.pdf; the Ohio State University Institutional Repository agreement http://library.osu.edu/documents/knowledge-bank/Knowledge_Bank_License_Agreement_2010.pdf and a former Dspace Agreement <https://github.com/DSpace/DSpace/blob/master/dspace/config/default.license>.

The review of these resources and the conversations with other entities led members of the DPN Succession Rights Working Group to craft a solution that meets the needs of DPN and its members. Although there are many useful agreements in use today, there is no existing solution that fully meets DPN interests. As a result, the Working Group gleaned pertinent language from

these resources and included additional language to produce a draft DPN succession rights deposit agreement.

Repository Agreement Guidelines

The Working Group felt that it was important that there be clarification in the rights needed to deposit materials with the Digital Preservation Network (DPN). To that end, two documents were created for the consideration of the full committee. The first document is an agreement between a repository and DPN. The second agreement is between a depositor (who may be an individual) and a repository. The documents are meant to illustrate that DPN should have an understanding of what rights it needs and what repositories request to insure that the rights are those needed to deposit material with DPN.

These documents were created to give an idea of the types of rights needed to deposit with DPN. It is anticipated and expected that DPN's legal counsel will create final functional documents for use when it is appropriate. The final documents should reflect the language used in the promised DPN glossary (depositor, repository, First Node, etc.). Additionally, DPN should work with its counsel to create language regarding what would happen to deposited materials in the event that DPN ceases to exist.

Repository Agreement with Digital Preservation Network

Repository: Institutional, discipline, or format- specific repositories, that aggregate content and control the rights to the content for the purposes of access and preservation, deposit in First Node, and subsequent replication in other preservation nodes in DPN.

Repository will deposit digital assets to DPN, through one of its First Nodes, in order to preserve such assets. The Repository will, at its discretion, select the digital assets to be deposited.

Repository acknowledges that they have the appropriate rights, ownership or permission to enter into this agreement and share their digital assets with DPN.

Repository provides a non-exclusive, perpetual, irrevocable license to DPN for the following purposes without limitation:

1. To describe, catalog, validate and document the digital assets
2. To store, translate, copy, share, or re-format the digital assets in any way to ensure its future preservation and accessibility
3. To re-disseminate copies of the digital assets to others willing to disseminate them in the event that the IR is no longer able or willing to provide public access to the digital assets.

In the event that the Repository is no longer in existence or ceases to serve the purpose for which it was created, DPN will retain the digital assets already deposited and will remain subject to this agreement.

In preparing the digital assets for public archiving and distribution, the Repository has removed all information directly identifying the research subjects in these assets, and have used due diligence in preventing information in the collection from being used to disclose the identity of research subjects.

Additional terms about third party content:

“The original depositors assume full responsibility for the use of any third party content which may be copyright protected. It is their responsibility to clear any necessary permissions for third party content included that is not in the public domain or otherwise available for use.”

If the Repository’s agreement does not cover succession rights then the following can be added to the agreement they already have in place.

Depositor to Repository

In addition to the rights described above [this is referring to the agreement that the Repository has already established] I hereby grant authorization to [Repository] to take whatever steps that they deem necessary to preserve my work in perpetuity. Such preservation methods include, but are not limited to,

1. To re-disseminate copies of the work in formats now known or later developed
2. To store, transmit, copy or reformat the work in any way to ensure its further preservation and accessibility
3. To enter into agreements with external entities for preservation
4. To make copies of my work to be deposited in external preservation networks

In the event that [Repository] is unable to provide preservation and/or access to my work, external preservation networks that are in possession of my work as the result of an agreement with [Repository] may authorize others to make my work available under the same terms as this agreement.

Additional term if the Repository agreement does not include statement about third party content:

“I assume full responsibility for the use of any third party content which may be copyright protected. I understand that it is my responsibility to clear any necessary permissions for third party content included in my materials that is not in the public domain or otherwise available for use.”