

# ETD Release Policies in American ARL Institutions: A Preliminary Study

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## ABSTRACT

The advent of electronic theses and dissertations (ETDs) has improved access to graduate level research, but with these new opportunities come new challenges. Institutions that host ETD collections must develop release policies that meet the requirements of intellectual property law and balance the needs of multiple stakeholders. These include graduate students, faculty, universities, and commercial publishers. Despite functioning in similar legal and cultural environments, analysis reveals that institutions have implemented a diversity of release policies. This lack of consistency suggests a lack of information and lack of standards in the ETD community. An improved understanding of the issues and options can encourage a new culture of cooperation and help inform institutions that are planning or have implemented ETD programs. This paper provides a preliminary analysis of policies that are currently in place at American institutions that are members of the Association of Research Libraries (ARL). The study was conducted by analyzing release policies that are posted on publicly accessible web sites.

## 1. INTRODUCTION

While the electronic theses and dissertations (ETD) movement has made tremendous gains since Virginia Tech first began accepting ETDs in 1996, challenges remain. Perhaps the most fundamental problem is that ETD systems are far from being universally implemented among all degree-granting universities. But challenges are not limited to expanding the ETD universe. In fact, challenges exist within the community of early ETD adopters as well. This paper addresses one of those challenges: are the release policies currently implemented by active ETD programs sufficient to meet the needs of ETD stakeholders?

Universities share common values, goals, resources, and environments. Fundamentally, they seek to create new knowledge and disseminate that knowledge to benefit humanity. But this utopian goal is pursued within constraints, including the cultural landscape, limited budgets, and legal jurisdictions. Despite sharing similar operational contexts, there is anecdotal evidence that we have failed to develop our ETD release policies in a sufficient and consistent manner, and that these failures have potentially negative consequences for institutions that accept ETDs as well as the greater ETD community. This paper will describe the results of a preliminary analysis of ETD release policies and will suggest areas for research and action in the ETD community.

## 2. RESEARCH QUESTION AND METHOD OF STUDY

### 2.1 Research question.

The goal of this study was to determine if existing release policies are sufficient to meet the needs of stakeholders in the ETD community. Because of the breadth of this question, the study was designed as a preliminary analysis that sought to lay the groundwork for future research. In order to determine if ETD access policies are sufficient, a number of narrower

questions were analysed. First, considering that questions of intellectual property are involved, what is the relevant law that pertains to ETD collections? Second, who are the stakeholders in the ETD community and what are their needs? Third, what are the characteristics of current ETD release policies at individual universities? Fourth, are these policies meeting the needs of the stakeholders?

## 2.2 Research method.

The research question was analyzed by reviewing the existing literature and ETD release policies posted on publicly accessible web sites of members of the Association of Research Libraries (ARL). The population was limited to American institutions in order to limit the study to a single legal jurisdiction. Furthermore, the study analysed libraries which currently accept and host born-digital ETDs. Because the study was oriented towards universities which host their own collections, universities which have a hosting arrangement with ProQuest were not included in the study. Table 1 lists the twenty-eight institutions that met these criteria.<sup>1</sup>

Table 1. Universities evaluated in this study

Boston College	Pennsylvania State University Libraries
Brigham Young University	Texas A&M University Libraries
Case Western Reserve University	Texas Tech University Libraries
Cornell University	University of Cincinnati Libraries
Florida State University Library	University of Florida
George Washington University	University of Georgia
Georgia Institute of Technology	University of Kentucky
Kent State University Libraries	University of Missouri - Columbia
Louisiana State University	University of Notre Dame
Massachusetts Institute of Technology	University of Pittsburgh
North Carolina State University	University of Tennessee - Knoxville
Northwestern University Library	University of Texas - Austin
Ohio State University	Vanderbilt University
Ohio University	Virginia Tech

The study focuses on the options that institutions allow for future access. Access levels are defined as *open access*, *restricted*, and *withhold*. *Open access* is defined as perpetual free access to ETDs without requiring user authentication. *Restricted* is defined as access limited to a specific population, such as students and faculty on a certain campus or those who have paid a subscription fee. *Restricted* access typically requires user authentication in order to view an ETD. *Withhold* refers to ETDs which are completely restricted from all public view, usually to allow for patent application or copyright protection in the case of prior or intended commercial publication. *Duration* is defined as pre-arranged expirations on an access level, resulting in a reclassification to new, less-restrictive access level. The release policies were analysed for inter-institution consistency. This preliminary study focused on evaluating examples of inconsistency as evidence for the need for further research rather than compiling comprehensive empirical data on all policies.

## 3. INTELLECTUAL PROPERTY ISSUES

The two major factors that may influence the access level of ETDs are copyright and patent. Other factors that may influence the access level of an ETD include national security and privacy concerns, but these problems are less common.

**Copyright considerations.** The origin of copyright in the United States is the Constitution of the United States. Article I, Section 8 provides that “The Congress shall have Power...To promote the Progress of Science and useful Arts, by securing for limited Times to Authors

and Inventors the exclusive Right to their respective Writings and Discoveries.” The current copyright law of the United States is Title 17 of the United State Code. This law gives the owners of copyright the exclusive right to decide how a work is distributed and reproduced. In the case of ETDs, the copyright owner is generally the student. However, in cases in which the student has published a portion of an ETD as an article with a commercial publisher, the agreement between the student and publisher may entail a transfer of copyright to the publisher. In this case, the copyright of the student is limited and may influence the future distribution of an ETD. The author agreement may restrict the conditions under which the student may release the ETD. Alternately, the student may be able to significantly change the content of the ETD to distinguish it from the previously published material. Author agreements are further discussed later in this paper.

**Patent considerations.** A patent is the grant of property right to an inventor. Some ETDs, by presenting discoveries or new knowledge, contain patentable material. Because of the resources that universities provide to graduate students in order to conduct research, it is typical for universities to require students to assign resulting patents to the university. Universities typically allow ETDs to be *withheld* during the patent application process.

#### 4. STAKEHOLDERS

There are multiple stakeholders in the process of ETD publication, namely graduate students, faculty, universities, and commercial publishers. Each of these stakeholders have unique motivations and goals, many of which are often in conflict.

**The graduate student.** Graduate students have decided to pursue advanced study in a scholarly discipline with the expectation of reward. These include recognition for scholarly work, career advancement, and monetary reward. The thesis, besides being merely a requirement for graduation, is an original scholarly work that is recognized by American law as an intellectual property. The thesis may also have commercial value for commercial publishing or for patentable technologies. Although graduate students are often ignorant of their rights, they possess a degree of legal rights with regards to their theses. The type of rights they possess depends on many variables, such as sources of research funding, university policy, and research collaboration. At the very least, students have a strong interest in the distribution of their theses.

**The faculty.** Faculty serve as graduate advisors and members of thesis committees. They have an interest in promoting their scholarship, attracting research funding, and enhancing the reputation of their department. They have an interest in the socialization and professional success of their graduate students. With regards to the body of research literature, Crews (2000) has noted that faculty want to have strong protection for their own literature, but easy access to the literature of others.

**The university.** The university exists as the legal entity that establishes the procedures for earning a graduate degree. These procedures include regulations for research, requirements of thesis preparation, and the method of distribution of ETDs. Universities often stipulate that *publication* of the thesis is a requirement for graduation so that the knowledge created by the student is added to the body of scholarly knowledge. When theses were produced in the paper format, this requirement was often met by depositing a bound copy of the thesis in the library and a microfiche copy on deposit with UMI. Intellectual “access” was provided through UMI’s Dissertation Abstracts. With the advent of the world wide web, distribution was no longer limited by physical format. Rather than being physically distributed, ETDs may be placed on a web server and accessed via network so that time and distance are eliminated as barriers to access. Costs of distribution are sunk into the development of networks. As a result, rapid, worldwide distribution of ETDs is marginally inexpensive. Despite enabling rapid access from an economic perspective, other reasons for limiting access have emerged, such as copyright compliance and patent protection. Universities which host ETD collections take

on the legal burden of the publisher, and must provide a minimum level of protection of intellectual property rights. This will be discussed further in a later section.

**Commercial publishers.** Publishers of commercial scholarly journals (those that derive revenue from subscriptions) also have an interest in the publication of ETDs. Some journal author agreements transfer copyright from the author to the publisher and limit the rights of the author to publish the scholarship in other forms. Students who have published a portion of their thesis in a journal may be required by copyright and contract law to limit access to their ETD, if it contains content identical to the published article. Other students seek commercial publication after graduation. The question of whether prior “open access” publication of an ETD has a chilling effect on commercial publication has been debated in the literature, for example by McMillan (2000, 2001) and Semans (2003). The standard agreements of some publishers are very clear on the transfer of copyright and limitations on web publication. An example of a rigid agreement is the standard author agreement of the American Chemical Society, which states that the author transfers “the exclusive copyright interest...including the published version in any format...to the American Chemical Society.” It also states that the only information about the paper that can be posted online is the title, abstract, tables, and figures.

## 5. RELEASE POLICIES AT UNIVERSITIES

### 5.1 Common features of release policies

An analysis of the twenty-eight institutions included in this study reveal that release policies vary widely in multiple dimensions.

**Communication of policy.** Twenty-five institutions provide information regarding release policies on a website. Release policies were not found for three institutions.

**Implementation of policy.** Fifteen institutions implement the policy through the use of a printable form which allows the student to select an access level and requires the student’s signature. Six institutions integrate the selection of the access level into a web submission process. (Five of these institutions use Virginia Tech’s ETD-db system for hosting ETDs and one uses DSpace.) The method of implementation is unknown for seven institutions.

**Terms used for access levels.** The access levels that were previously defined (*open access*, *restricted*, and *withheld*) are common among the twenty eight institutions, but there is a lack of standardized terminology. *Open access* is variously referred to as “open access,” “open communities,” “world wide access,” “unrestricted access,” “freely available,” “release to web,” “general access,” and “immediate public distribution.” *Restricted access* is variously referred to as “restricted access,” “available to the university,” “release to campus,” and “university only.” *Withheld* is variously referred to as “delayed release,” “hold,” “no release,” “restricted access,” “secured,” “embargo,” “withheld,” “closed community,” and “sequestered.” It is particularly noteworthy that some of the terms are used in inconsistent ways. “Restricted” is used to refer to ETDs that are available to a limited population as well as ETDs that are not released at all. Because of this, analysis of the release policies required interpretation of terminology.

### 5.2 Availability and duration of access levels.

The options available to students vary tremendously among the institutions. For purposes of analysis, the policies were placed in six categories. Each category is based on a “menu” of access levels. Institutions with similar menus are grouped in the same category.

**Category 1: General non-exclusive right to reproduce.** Category 1 policies are relatively simple. They require that the student grant the institution a non-exclusive right to reproduce the ETD without specifying an access level. One institution has a category 1 policy.

**Category 2: Open access only.** Category 2 policies specify that the institution only provides *open access*. One institution has a category 2 policy.

**Category 3: Open access or withhold for limited duration.** Category 3 policies provide students with the option of *open access* or *withhold* for limited duration. Eleven institutions have a category 3 policy.

**Category 4: Open access, restricted, and withhold.** Category 4 policies provide students with options for all three levels of access. There are many variations on this type of policy in terms of the duration of the *restricted* and *withhold* access levels. This category gives the student many options for release but may be more complex to administer by the institution. Ten institutions have a category 4 policy. At least one institution in this category allows students to choose *restricted* or *withheld* in perpetuity.

**Category 5: Restricted or withheld for limited duration** Category 5 policies provide students with the option to *restrict* or *withhold* the ETD for limited duration. Only one institution has a category 5 policy. This institution does not provide *open access* for any ETDs, but allows the general public to purchase ETDs using a web form.

**Category 6: Unknown.** Category 6 consists of the four institutions which did not provide information regarding ETD release policies. In some cases, the ETD programs were in their initial stages. In other cases, the reason for the lack of information could not be determined.

Table 2. Summary of release policies

Categories of release policies	Number
1: General non-exclusive right to reproduce	1
2: "Open access" only	1
3: "Open access" or "withhold" for limited duration	11
4: "Open access," "restricted," and "withhold"	10
5: "Restricted" and "withhold" for limited duration	1
6: Unknown release policy	4

## 6. IMPLICATIONS OF CURRENT RELEASE/ACCESS POLICIES

Some significant conclusions can be drawn from this analysis. Within the ETD community, we have failed to develop a standard vocabulary for access levels. This is a major problem because it is an inhibition to sharing information within the community as well as a barrier to expanding ETD programs.

The variations in the policies of these ETD early adopters is even more troubling. These release policies vary greatly in terms of access level offered to students and durations of *restricted* and *withheld* levels. Some policies provide less protection for student's intellectual property, some provide more. Some of the policies that tend to favour *open access* may lead to negative consequences such as violation of copyright, breach of author agreements, or failure of patent applications. These variations may also have negative consequences for the expansion of the NDLTD. Variations in practice may lead to the development of multiple incompatible repositories, contrary to our goal of creating an interoperable network.

Considering that these universities share the same goals and operate in the same legal jurisdiction, these wide variations are difficult to reconcile. There are many possible explanations for this failure, all troubling. Fundamentally, it seems to demonstrate that we have not developed a sufficient understanding about what kind of release policy is best given our shared goals.

## 7. CONCLUSION

### 7.1 Recommendations.

The challenges identified in this study deserve consideration by a consortium of ETD adopters. An in-depth discussion of the issues would result in a better understanding of the needs of the stakeholders and the methods required to meet those needs. Improved communication is needed to develop a standard language for release policies and the development of a “best practice” that can be promoted to new ETD adopters. In particular, the legal implications of release policies deserve much more scrutiny that they have experienced in the past.

### 7.2 Areas of future research.

Because this study was limited to institutions which are members of ARL, further study is needed to determine release policies among all ETD repositories. The method used for this study, navigating the web for freely available information, had limitations. A followup study would do well to make use of other research methods, such as a survey. Also, because this topic has a legal component, further analysis would benefit from an investigator with legal training.

Another interesting topic for further research would be an evaluation of the information systems used to host ETD repositories. Progress is being made in the area of digital rights management (DRM). Many of the emerging techniques and technologies of DRM will be applicable to managing access in ETD collections.

## 8. REFERENCES

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U.S. Const., art. I, § 8.

## 9. NOTES

1. The complete data set of the study, including URLs to the release policies of each institution, is available at <http://di.tamu.edu/bsurratt/ETDPolicies/index.htm>.