

Conference - ABSTRACTS

Open Access to Digital Archives and the Open Knowledge Society

David S. FERRIERO

Andrew W. Mellon Director and Chief Executive of the Research Libraries of the New York Public Library

The Google-ization of American Libraries

In December of 2004 Google launched the Google Library program following quickly on the heels of Google Print and Google Scholar announced in October and November respectively. Google Library partners, Stanford University, the University of Michigan, Harvard University, Oxford's Bodleian Library, and the New York Public Library are engaged in a massive digital scanning project to make the books in their collections available to the world.

Ferriero will present the rationale for participation by the New York Public Library; describe the context, process, and long-term goals of the project; and the nature of the collaboration between Google and the library partners. In addition, he will address the issues of Google and the publishing communities, as well as the European community's reaction to the initiative. Finally, he will present a series of discussion points for what this means for the future of libraries and information seekers.

Readings:

"The World's Most Intriguing Company"

<http://www.csmonitor.com/2005/0627/p13s01-stin.htm>

"Google Library Project"

<http://print.google.com/googleprint/library.html>

"Google and Research Libraries Launch Massive Digitization Project"

<http://www.infotoday.com/newsbreaks/nb041220-2.shtml>

"Google's Library Project: Questions, Questions, Questions"

<http://www.infotoday.com/newsbreaks/nb041227-2.shtml>

"Google Library: Beyond Fair Use?"

<http://www.law.duke.edu/journals/dltr/articles/2005dltr0010.html>

"European Libraries Fight Google-ization"

<http://www.dw-world.de/dw/article/0,1564,1566717,00.html>

"European Libraries Back Alternative to Google Library Project"

<http://www.webrankinfo.com/english/seo-news/topic-4280.htm>

Jean-Claude GUÉDON

Department of Comparative Literature, University of Montreal

Digital Incunables and Open Access: Remarks About the Evolution and Future of Publishing in the 21st Century

Most discussions about open access focus on extremely short term issues and often expect to demonstrate the validity of one business plan over another in a matter of a very few years. This approach largely reflects the narrow range of concerns of publishing businesses who must report to their stock owners every six months or even more frequently. It completely overlooks the fundamental fact that moving from print to a digital context is as fundamental, difficult and probably as slow as moving from manuscripts to print: a long period of several decades marks the earlier transition and the word "incunable" is often used to characterize part of this process.

This suggests looking at the debates as belonging to a phase of digital incunables - a thesis that places all the present solutions being debated into a much wider perspective. There is no doubt that the shift from print to a digital context will generate extremely fundamental changes in the ways in which documents are produced, stored, how they circulate and how they are received and read or used. The appearance of licensing in lieu of outright sales of material objects such as books or magazines is a strong indication of the profound nature of the changes that are beginning to affect the world of publishing once it is caught in the digital civilizational wave.

It will be argued that open access is symptomatic of these profound changes, that it will remain a relatively stable objective for the next few decades; however, the precise economic and institutional modalities making open access possible remain opaque. Institutional archives and open access journals are probably nothing but the first two scenarios that are being tested to move into this uncharted territory. More will undoubtedly develop as bandwidth and software tools continue to expand. The recent and spectacular development of wikis, blogs and peer-to-peer technologies is another sign of this deep, on-going, transformation of our means of communication and publication.

Some cautious forays into possible futures will then be sketched out, some positive, others far more sinister. They will all demonstrate that we need to think in terms of three or four decades, to say the least, and not five or six years. They will also demonstrate that once the digital incunables are clearly behind humanity, digital publishing will keep on evolving, but in a less chaotic manner, in a more "paradigmatic" fashion, so to speak, if we lean on Thomas Kuhn's concept of paradigm. But saying this points to another difficult problem: is it possible that some of the present forms of open access might play a role vaguely similar to Cartesian mechanistic philosophy, while others could be remotely compared to the Newtonian brand of mechanism. We all know the latter ultimately won the day, but we also know how paradoxical Newtonian mechanism really is. What might be some of the paradoxes displayed by the future forms of digital publishing?

Michael HUTER

Member of Directorate, Austrian Publishers Association

Publishing Companies and Open Access

In promoting OA the leading figures explicitly create a negative image of publishers, sometimes implying that human progress came about *despite* the activities of commercial publishers. The leading principles of OA seem to be rooted deeply in religious or utopian thought.

In my paper I will plead for a reasonable debate on the benefits and problems of OA, which avoids the obvious pitfalls. I will highlight a few aspects of what publishers actually do to develop and disseminate content and, by doing so, create awareness about their contributions to the whole publishing process.

From the publishers' point of view, OA is to be considered a business model rather than a philosophy. It should by no means be mistaken as publishing quality without cost.

The core argument advanced against commercial publishing, as opposed to OA, is that authors are being expropriated of their rights. Moreover, publishers are alleged to prevent publications from circulating freely by charging high subscription fees for them, thus denying free access to human knowledge to huge audiences. The fees charged for so called STM-journals (science, technology, medicine) are only too good a proof in this rationale.

The shortcomings are obvious: in the first place, it is not taken into account that publishing has its cost. Publishing is not a matter of a few oligopols which can afford to dictate prices, either. Moreover, as everyone should know, writing is not publishing. Publishing is a complex process of adding value to content by revising, editing, coding, creating awareness, and archiving it. Last but not least, the rise of prices for STM journals are the result of an ever increasing production of scientific content rather than the price policy of a few global players (and if this were the case, why does it apply only to STM?).

In my opinion, it is wrong to reduce a highly complex situation to a matter of moral questions. It is, however, only natural that authors, now having the means of production and mass dissemination, tend to make their part an absolute. (It is a matter of course, though, that there is no publishing without authors.) On the other hand, publishers may have failed to create awareness for their part in the publishing process. Publishing never was, and will never be, merely a matter of technology and media. It is a matter of developing, disseminating and protecting content in the most general meaning. (I will give a short account of what publishers really do.)

There are, however, certain fields where OA is an appropriate, if costly, model of publishing which someone has to pay for. The venturing of commercial publishers into OA projects, as well as successful models of institutional and other not-for-profit publishers, are a proof thereof. Once again, I will plead both for a *de-construction of myths*, as well as for *finding adequate models of co-operation*.

Readings:

Georg Siebeck: *Freibier für die Wissenschaft? Open Access. Die öffentliche Hand verhindert einen fairen Wettbewerb*, in: *Börsenblatt* 43 (2004) 11.

Georg Siebeck: *What Publishers Really Do for the Academic Worlds. Paper presented at the XX. Congress of the International Publishers Association, Berlin June 2004.*

Albrecht Hauff: *Open Access - A Brave New World? Paper presented on a symposium on open access to knowledge and scholarly communication in Zurich, October 2004.*

(This paper is online on www.demokratiezentrum.org – module CREATIVE ACCESS)

Christa MÜLLER

Austrian National Library

ANNO (AustriaN Newspapers Online) – A Mass-Digitization Initiative of the Austrian National Library

AustriaN Newspapers Online brings historical Austrian newspapers and journals online. The Austrian National Library started its mass-digitization initiative ANNO in 2003. Within the last two years, more than 3 million pages were scanned and put online as images - about another million will be added every year. Students, teachers, researchers, pupils as well as the public can read these newspapers – free of charge – 24/7, from every computer that is linked to the World Wide Web. Material, which could only be used within the premises of the library, is now accessible worldwide. When readers had to come to the library, nowadays the library tries to come to them, and initiatives like this try to reach people who never before went to the library. This is a way to democratize knowledge.

Newspapers are a type of text that many people are used to reading. Therefore, they are an original historical source, easier to read than others. Different newspapers have a more or less explicit political tendency; they are not objective. But journalists report directly what happened yesterday, not knowing what will be written in the history books about the event, making newspapers the first written version of history.

For ANNO, a workflow and an application were developed that are most efficient.

Due to copyright-legislation, material published after 1935 can only be brought online with the permission of a right-holder.

Link: <http://anno.onb.ac.at>

Michael NENTWICH

Institute of Technology Assessment, Austrian Academy of Sciences

Knowledge Base Copyright Law: An Innovative Resource for Open Access Archives

When it comes to implementing digital archives etc., the legal framework is crucial. In general, all elements of archives are protected under intellectual property (IP) law. Hence, creators of such archives have to check and obtain the rights before they are allowed to make them publicly available. The problem with IP law is that there are no uniform rules for various media elements (research paper, newspaper article, photograph, audio, video file, software, database etc.). Furthermore, most of the answers to practical implementation questions are in the case law, that is, in court decisions. National IP statutes are slowly becoming harmonised (World Intellectual Property Organization, European Union), but will never be uniform. In the meantime, both the users and creators of such archives are left with a rather messy legal situation. There is no authoritative, low-cost, short-term information source for practical legal advice. The result is both legal uncertainty and the risk of being sued by owners of the material. Often, promising projects are not carried out at all. Given this central place of IP law for those collecting and making available the products of the creators, a Vienna-based team of lawyers, a social scientist and a programmer WP 2 set out to produce an IP law knowledge base, called "Knowledge Base Intellectual Property Law (KB©Law)".

In this presentation, I shall explain the background, structure and content of KB©Law. It will be a dynamic, multidimensional, scalable text database in hypertext format containing the legal provisions and the relevant parts of judgements and commentaries in a question-and-answer format designed for the general public's benefit. The target group of KB©Law are the people working in the creative sector (researchers, artists, multimedia specialists, compilers of archives). Therefore, the language will be non-technical and easily readable. The structure will be multi-layered and give access to different kinds of material in different parts of the database (general answers, further details, examples, legal texts etc.). Access to the KB©Law database will be provided via both a search-engine and a hierarchical interface. The latter will contain typical questions asked by practitioners and grouped according to typical problem situations or target groups. KB©Law will provide answers not only applicable to the Austrian legal situation, but also provide information about other countries (e.g. Germany, USA). Given the dynamic character of the legal framework, KB©Law will allow for updates and will be able to furnish answers for different points in time. KB©Law will be scalable: Although the current focus is on digital archives, the structure should be flexible enough to be extended to various other IP law issues as they emerge in the evolving e-Society.

The pilot KB©Law software is about to be implemented during summer 2005 and will be available for online presentation during the conference.

References:

Trybus, P. und Nentwich, M., 2005, KB:LAW – Eine Wissensbank für juristische Themen im Entstehen, in: Schweighofer, E., Liebwald, D., Menzel, T. und Augeneder, S. (Hg.): Tagungsband IRIS'05, Internationales Rechtsinformatik Symposium, 24.-26.2., Salzburg; Boorberg, im Erscheinen.

Trybus, P. und Nentwich, M., 2005, KB:LAW – Eine Wissensbank für juristische Themen im Entstehen, IRIS'05, Internationales Rechtsinformatik Symposium, 24.-26.2., Salzburg
http://www.oeaw.ac.at/ita/ebene5/MN_IRIS05.pdf

Peter RANTASA

mica (music information center austria), Vienna

Cultural perspectives of digital music

The Musical Rights, promoted by the IMC-International Music Council of the UNESCO point out:

- The right for all children and adults to *express* themselves musically in all freedom
- The right for all children and adults to *learn* musical languages and skills
- The right for all children and adults to have *access* to musical involvement through participation,
listening, creation and information
- The right for musical artists to *develop* their artistry and *communicate* through all media, with proper facilities at their disposal
- The right for musical artists to obtain just recognition and *remuneration* for their services

None of these rights are obvious, especially when we think about the current situation of Austrian schools and universities (right to learn). As the access to musical involvement is mentioned, even international intellectual property issues are concerned.

Since 1996/1997 the global music sales are in a constant decrease. Many blame download-platforms for this development. Others say that there must be additional reasons.

When we look at current Music Retail Sales, Austria is on the 15th position worldwide (with more than 282 Mio USD made by Music-Sales). At the first sight that indicates a very healthy situation. But only 10% of this money is made by domestic productions, 90% are taken by multinational cooperations, which speaks a very clear language about the Austrian market-situation.

In the last years business relationships have changed rapidly. The traditional content value chain was destroyed by the evolution of digital formats. Today the whole interaction between creators, aggregators and consumers is based on technical systems, devices, and licenses. Interaction only works, when the systems are working. As far as the traditional value chain was not benefiting the creator in a satisfying way, the new digital value chain could at least be the artist's chance for a fair trade. But is the new system really contributing to cultural diversity?

Not at all! Take the iPod: Those who succeed are the ones who serve these devices and not the ones who create music. Within the new digital value chain the artist often finds himself lost between mobiles, device and media.

In terms of globalisation, knowledge has become a new asset. Cultural goods have a dual character. When we speak about solidarity within the music industry and among creators not only economical but also humanitarian (like shown in the following draft proposal) values take place. Both, cultural identity and economy, have to be taken into account.

The Music Rights promoted by the IMC exactly point out the aims of the mica - music information centre Austria.

To realise these Musical Rights the international system of intellectual property needs a careful revision:

First of all we need more evidence on the impact of intellectual property rights on culture, creative work, art an innovation. Then we need better relations to protect artists and the collecting societies as a model, which should be improved, but not destroyed.

Furthermore we should avoid DRM (digital rights management) to be seen as a solution and not as what it really is: law transformed into code with a lack of democracy.

To strike a new balance between artist and industry, other instruments – for instance creative commons – are of a much bigger importance.

Links:

<http://www.unesco.org/imc>

<http://www.oecd.org/dataoecd/13/2/34995041.pdf>

Oliver RATHKOLB

Democracy Center, Vienna

“Old Europe” and the Power of a Knowledge-Based Society

When Google first announced in December 2004 to develop and execute the large scale Google Library Project, especially in France resistance started. The French minister of culture Renaud Donnedieu de Vabres proclaimed that “Google is not the end of history”. The primary argument was that Google did not really care in the early stage about the intellectual property rights of the authors, but the main fear was that in the future only books in English – from the Anglo-Saxon world – will be read and thus define European culture, history and thus European identity (which still by the way is primarily driven by national identities).

“Definitionsmacht über Geschichte und Kultur” – power to define history and culture – became a strong argument in the European reaction. Jean-Noel Jeanneney, director of the French National Library, therefore feared in "Le Monde", that only the US will decide over the “image of the world for future generations“. On September 29, 2005 Viviane Reding, EU Commission for Information Society and Media decreed a new digitization initiative. More than 2.5 billion books and newspapers and magazines in EU libraries and millions of hours of video and film should be made available on the internet – for all and free of charge.

This is quite a different policy compared to previous efforts of the EU to push knowledge society. The primary push factor in the EU was – and in many cases still is – a knowledge-based economy which needs a knowledge-based society, but a society strongly influenced and framed by alleged and concrete economic needs.

The Google initiative – in the original version – deprives the author of his/her rights to decide about the use of a publication since economic factors prevail. This conflict about the Google initiative is a conflict which we find all over the debates about copyrights and the rights of the publishers, the interests of the information distributors vis à vis the interests and rights of the creators.

On the one hand, we observe a growing tendency towards commodification of knowledge repositories. The Internet is not “for free” any more when it comes to content of high academic level including the potential of application for the economy. Archives and databases are increasingly turned into commercialised products. On the other hand, a forceful development is gaining ground under the guise of open access, see for example the Open Archives Initiative (www.openarchives.org). Initiatives inside and outside academia ask for free and unlimited access to the cultural heritage of our societies (e.g. BioMedCentral and PloS in the life sciences, ELSSS in economics, Berlin Declaration and Budapest Initiative for Open Access, ECHO project, DOAJ, etc.). As the digital media allow the authors and creators to appeal to their audiences directly, many authors try to present their works on the internet. Still a key problem from the point of view of scientific standards is that only a few of these institutionalized repositories or journals have a similar peer review system like sophisticated academic journals.

Christian RECHT

Austrian National Library

Copyright Law and Libraries in the European Debate

On December 14th of 2004, Google announced its arrangement with several major, mainly American, research libraries to index their book collections and thus make offline information searchable online via Google Print. This ambitious library project immediately brought to attention copyright and licensing issues, which have hampered mass digitisation projects of libraries ever since.

In August 2005, after opposition from right holders and the European Union, Google announced a pause of the scanning of books protected by copyright, until November 2005.

On a political level, the European Union is currently uniting in an effort to avoid "American domination in the definition of how future generations conceive the world" (as France's National Library President Jean-Noel Jeanneney has expressed it), and - as an emergency measure to resist American cultural hegemony - considers the funding of a rivalling alternative European library digitisation project.

On a legal level, the European Union has made considerable efforts in the past fifteen years to harmonise copyright laws within Europe. These efforts have resulted in a number of Directives affecting library activities, such as the "Directive concerning the Rental Right and Lending Right" (19 November 1992), the "Term of Copyright Protection" (29 October 1993), the "Legal Protection of Databases" (11 March 1996), the "Copyright Directive" or "Information Society Directive" (22 May 2001) and the "Directive concerning the Enforcement of Intellectual Property Rights" (29 April 2004).

One of the latest, most prominent legal texts of the European Union in the quest for the harmonisation of copyright law is the "Information Society" (or "Copyright") Directive of 2001, which aimed at a common standard of legal protection for works made available in digital formats. Being a "Directive", this legal text is not binding by itself, but had to be transposed into binding national laws until December 22nd of 2002. As a result of strong lobbying and controversial viewpoints when adopting the Directive, it lists a catalogue of various options to transpose the Directive into national law, which has substantially undermined this harmonisation attempt at the European level. A methodology and terminology which is not consistent with most national copyright laws provided a further aleatory element as to its implementation in national law.

Initiatives such as Google Print for Libraries are able to focus political activities. On a legal level though, harmonisation proves to be a more difficult task. A lack of public awareness of copyright issues in general and the diversity of library services such as document delivery, copying, digitisation and long term archiving is complicating the task for lobbying institutions such as EBLIDA to promote the objectives of libraries – including objectives that are beyond the scope of Google.

References:

http://europa.eu.int/comm/internal_market/copyright/documents/documents_en.htm

http://europa.eu.int/comm/internal_market/copyright/infringements/infringements_de.htm

<http://www.eblida.org>

Falk RECKLING

Austrian Science Fund

The Berlin Declaration and Public Research Funding – The Perspective of the Austrian Science Fund

The "*Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities*" and associated campaigns have convincingly asked the question why publicly funded basic research should freely be available via Open Access.¹ For the daily running of a funding agency, however, the question of the practical execution of Open Access is more important, particularly under the conditions of a limited budget.

As a consequence of a survey commissioned by the German Research Foundation (DFG), German research recently recommended some important points for promoting Open Access.² According to these recommendations, funding agencies should:

- actively convey information about the advantage of Open Access for researchers.
- coordinate their actions with the institutions involved in research (e.g. Rectors' Conference, Academies, Ministries).
- fund quality-proofed (peer reviewed) Open Access publications.
- impose pressure upon publishers to allow a secondary use for Open Access publications.
- archive quality-proofed publications of research projects.
- provide infrastructure for Open Access (funding archives, Open Access Journals or Open Access Publishers, etc.).

What did the Austrian Science Fund do so far?

- The FWF signed the *Berlin Declaration* as the first organisation in Austria in November 2003.³
- In the beginning of 2004, the FWF launched the first systematic information campaign on the importance of Open Access. We also offered guidance and links on how to use Open Access in science and the humanities.⁴
- We have committed ourselves to fund all refereed articles in Open Access Journals that are outcomes of funded projects up to three years after the project in question has been finished.
- Grant recipients of the FWF hold a global budget including 5 % additional project costs. They are advised to use this financial flexibility also for Open Access activities.
- In the guidelines for Stand-alone Publications (=book), the FWF has recommended to negotiate conditions with book publishers that enhance at least a secondary use for Open Access.

¹ Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities: <http://www.zim.mpg.de/openaccess-berlin/berlindeclaration.html>, Bethesda Statement on Open Access Publishing: <http://www.earlham.edu/~peters/fos/bethesda.htm>; Budapest Open Access Initiative: <http://www.soros.org/openaccess/index.shtml> or by the economic analyses of the Wellcome Trust: <http://www.wellcome.ac.uk/node5210.html>

² DFG 2005: "Publikationsstrategien im Wandel? Ergebnisse einer Umfrage zum Publikations- und Rezeptionsverhalten unter besonderer Berücksichtigung von Open Access", http://www.dfg.de/dfg_im_profil/zahlen_und_fakten/statistisches_berichtswesen/open_access/download/oa_ber_dt.pdf

³ The Austrian Rectors' Conference did the same in November 2004, but no other Austrian institution followed us until now. See: <http://www.zim.mpg.de/openaccess-berlin/signatories.html>

⁴ See: <http://www.fwf.ac.at/de/news/oai.html>

- Following the initiative by the Berlin Declaration, the FWF has recently asked their Project Investigators to align themselves to a "Voluntary self-commitment to Open Access", i.e. all refereed publications funded by FWF projects should be made available via Open Access, either via postprints or via publications in peer reviewed Open Access Journals.⁵
- Additionally, we invited all relevant Austrian institutions involved in research funding to support the Open Access Initiative together with the FWF (Rectors' Conference, Ministries, the Austrian Academy of Science, Austrian Council for Research and Technology Development, etc.).
- We are in an ongoing discussion with international partner organisations to ensure in the near future that Open Access becomes an obligatory publishing mechanism for all research outcomes that are publicly funded.⁶
- I recently had the opportunity to publish an article addressed to a broader public in the ORF Science Channel about the FWF activities concerning Open Access.⁷

Did all these activities work? Although this short period of time may serve to scale down expectations, it has to be stated frankly that the use of Open Access could be better. But what can be improved?

1. The need for competitive overheads and research infrastructure

- As the Austrian Science Fund is a funding agency and not a research institute, our capacity to influence Open Access activities is therefore rather limited. FWF grants at present cover only project-relevant costs.
- If the FWF were allowed to fund overhead costs and infrastructure we would be able to trigger significant initiatives endorsing Open Access. We could for instance equip research institutions with relevant resources and could issue stipulations to enforce Open Access systematically (e.g. by archives, platforms, etc.). This, however, should exclusively be done on the basis of quality and competition.

2. The need of promoting Open Access initiatives

- As the costs of the classical publication system are mostly indirect, there is still a lack of awareness, especially as regards the economic importance of Open Access.⁸ We should therefore emphasize that publication costs are research costs, and that exploding publication costs will in the long run reduce budgets available for funding basic research.
- Direct publication in Open Access Journals is still the exception to the rule⁹ although postprints are very common and increasingly published especially in the natural sciences, biology and medicine and in some fields of the social sciences. This is due to the fact that young researches in particular, having their career development in mind, must still pay tribute to the incentives provided by the traditional publication system (reputation, impact factors, e.g.). Therefore, endorsing Open Access means first of all persuading senior scientists to publish their articles in Open Access Journals and thus helping to increase the reputation of the Open Access system.¹⁰

⁵ See: http://www.fwf.ac.at/de/aktuelles_detail.asp?N_ID=125

⁶ It will be discussed, for example, at the meetings of the European Heads Of Research Councils (EUROHORCS): <http://www.eurohorcs.org/>

⁷ See: <http://science.orf.at/science/news/136840>

⁸ This is supported by the fact that no other relevant player in the Austrian research system reacted to the initiative by the FWF.

⁹ So far, the offer by the FWF to finance publications in Open Access Journals have scarcely been used.

¹⁰ The main problem for the enforcement of Open Access is that most of the senior scientists were socialised in the traditional system. However, when they support Open Access, the models are enormously successful, as the examples of "Public Library of Science" (www.plos.org) and "Annals of Mathematics" (<http://www.math.princeton.edu/~annals/>) show.

3. The need for regarding the humanities

- In the humanities it is still very common to publish books rather than journal articles, and it is obviously much more complicated and user-unfriendly to publish a book rather than journal articles via Open Access.¹¹
- Although scientific books can often only be published by (increasing) subsidies and grants from funding agencies or other public resources¹², professional book publishers are still more than reluctant to allow their authors a secondary use, including Open Access.
- For all these reasons, one has to be creative in looking for solutions that allow both book publications and Open Access. As a solution to this problem, the model of the Hamburg University Press, initially supported by the DFG, appears to be a promising example: It provides (1) a peer review process; (2) the books or parts of them can freely be downloaded; and (3) the books can be ordered by Books On Demand. This model helps to reduce the costs for subsidies and is significantly faster than the traditional publication model for scientific books.¹³
- That does not mean that Open Access publishing cannot be provided by private publishers as well as that the public funding agency should not subsidise them. But it does mean that funding agencies, administering public money, have the obligation to ensure that results of funded research are made available to everybody for the best value for money achievable. That is true for scientific articles in journals as well as for scientific books.

¹¹ Scientific books are not novels; very often only parts of them are interesting for the community and, more importantly, research results must be published as soon as possible.

¹² The subsidies for scientific books demanded by professional publishers in Austria are exceptionally high in comparison to Switzerland and Germany.

¹³ Hamburg University Press, see: <http://cmslib.rz.uni-hamburg.de/hamburg-up/content/home.xml>

István RÉV

Open Society Institute, Budapest

The Open Access Movement in the Central and Eastern European States

In my talk I will try to provide a speculative answer to the dismal state of the open access movement in the former Communist part of the world. I will argue that the possessive attitude towards knowledge is a massive barrier in the way of secularizing knowledge. Knowledge can be considered open only when it is not only publicly available, but when it is "transparent, open to review and criticism". The lack of open, unbiased, non-partisan scholarly debates make it almost impossible for open access to take roots in East and Central Europe.

Suggested reading:

Amos Funkenstein: The Disenchantment of Knowledge: The Emergence of the Ideal of Open Knowledge in Ancient Israel and in Classical Greece In: *Aleph. Historical Studies in Science & Judaism*, Number 3, 2003, pp. 15-82.

Andrey RZHETSKY

Columbia Genome Center and Department of Biomedical Informatics, Columbia University, New York

Translating Content – Text Mining

Picture a tribe of bright, but ignorant, cave people trying to understand the work of a modern car by analyzing a collection of damaged cars produced by various makers. After many hours of hard manual labor, the cave people disassemble the cars into myriad small parts. Some parts are damaged, whereas some are intact. A few interact with each other, while others do not. Some pieces are different in different cars, yet apparently have the same function. The leap to understanding the whole from knowing the parts requires compilation of many pieces of information into a comprehensive "computable" model. Researchers in the field of molecular biology are in a situation similar to that of the junkyard cave people, save that they are contemplating a collection of diverse pieces of cellular machinery – the number of those cellular components is way greater than the number of parts in a typical car – the number of nodes in human molecular networks is measured in hundreds of thousands when all substances (genes, RNAs, proteins, and other molecules) are considered together. These numerous substances can be in turn present or absent in dozens of cell types in humans – clearly, the complexity is too great to yield to manual analysis.

The information overload in molecular biology is a mere example of the status common to all fields of the current science and culture: An ever-strengthening avalanche of novel data and ideas overwhelms specialists and non-specialists alike, unavoidably fragments knowledge, and makes enormous chunks of knowledge invisible/inaccessible to those who desperately need it.

The help of relieving the information overload may come from the text-miners who can automatically extract and catalogue facts described in books and journals.

My talk will touch the following six questions: What is text-mining? In what ways is text-mining useful? What can large-scale analyses of scientific literature tell us about both active and forgotten knowledge? What can such analyses tell us about the scientific community itself? How do mathematical principles help us to differentiate true and false statements in literature? How will text-mining help us to find cures for human and non-human maladies?

Readings:

Andrey Rzhetsky et.al., GeneWays: a system for extracting, analyzing, visualizing, and integrating molecular pathway data, in: *Journal of Biomedical Informatics* 37 (2004) 43–53.

Andrey Rzhetsky et. al.: Of truth and pathways: chasing bits of information through mirads of articles, in: *Bioinformatics*, Vol. 18, Suppl. 1 (2002), 249-257.

Andrey Rzhetsky et. al.: Molecular triangulation: Bridging linkage and molecular-network information for identifying candidate genes in Alzheimer's disease, in: *PNAS*, October 19, 2004, vol. 101, No. 42, 15148–15153.

(This articles are available on www.demokratiezentrum.org in the module CREATIVE ACCESS.)

Thorsten SCHILLING

Federal Agency for Civic Education, Bonn

The Wikipedia Model

In my short presentation I will strive 3 questions:

- What are main characteristics of the wikipedia experience/model, leading to its success?
- What are limitations of this experience/model?
- How could that experience/model be further implemented, adopted for other educational and communicative purposes?

My answers will rather be approaches to further discussions than fixed statements.

Selected links:

Problem of quality in relation to academic sources:

<http://www.kuro5hin.org/story/2004/12/30/142458/25>

<http://meta.wikimedia.org/wiki/Academics>

Political process:

Voting goes on if a "wikiversity" should be founded

<http://meta.wikimedia.org/wiki/Wikiversity>

This appears especially in the context of starting a printed version of wikipedia, with specially validated articles. Some say it is too early and propose to use the wiki material for open schoolbooks.

James Jimbo Wales has started a new project of community based wikis:

<http://www.wikicities.com/wiki/Wikicities>

Politics of wikis

http://www.opendemocracy.net/globalization-accountability/wikipedia_2882.jsp

Sociology of wikis

http://en.wikipedia.org/wiki/Wikipedia:Sociology_of_Wikipedia_via_Rorty_and

Examples

for

wiki-hosting

<http://pbwiki.com/>

<http://www.jot.com/index.php>

<http://www.myoo.de/>

<http://www.socialtext.com/customers/customerdrkw/>

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Open Source, Open Access and Legal Problems

1. IT development and legal frictions

The development of information and communication technologies provides new ways of communication and exchange. The features of this new medium have developed on the background of a legal framework that was apt to *conventional technologies* but did not quite fit the characteristics of the internet. The internet has also changed the economics that underlie the copyright balance between providing incentives and securing adequate distribution.

The response of the legal system has been on the one hand to adapt existing rules to the new technologies. The second feature of legal policy has been to *extend protection*. The EU created a new database law not directed at creativity in collecting and arranging data but in the investment of drawing up a database. While this grants no right in data as such, in some cases it comes close to that, as it grants producers control of access to a particular database. While the Directive provides for an exception for copying for scientific purposes, its application remains unclear.

A second example relates to the extension of patent protection into the area of *basic research*. Nowadays, the path from basic research to applicable technology becomes ever shorter. As a consequence protection is increasingly being sought for basic research results. This coincides with an increasing tendency to switch university research funding, from public subsidies to private funding, by exploiting intellectual property like patents.

The EU Directive on copyright in the Information Society has been quite *restrictive* with respect to the interests of science and other information users. E.g., libraries may use digital networks without permission only in-house and are thus cut off of the advantages of online delivery. The EU did not want to create public competition to commercial information service providers. Technical protection measures are legally protected and no private copying can be effectuated against these measures. If online use is based on a contract, the contractual provisions are pre-emptive of any copyright exceptions.

Open Access can be seen as an effort to use the advantages of new technologies to *improve scientific exchange* and progress while seeking to avoid negative effects of intellectual property. Open Access is a concept not necessarily in contrast with intellectual property but makes avail of the means of copyright to sustain its principles.

2. Licensing models and legal issues

At the core of *Open Access* principles is free of charge online access to the material deposited in standard electronic format in a repository that is supported by an institution that seeks to enable open access. Open Access to a great extent makes use of the *CC attribution license*. Use of open source and open content licences entails some legal problems.

The validity of the license agreement and thus its usefulness as an instrument to effectuate open access has to be judged on the background of the respective *national legal system*. This may lead to differences and uncertainty with respect to the pertinent legal rules.

The author may effectively grant a *license to anyone* that is being accepted by making use of the work or downloading it. There is no legal obstacle to including standard license agreements if these are easily available on the net and clear and unambiguous reference to it is made.

While often information on the license is provided in form of a "Commons Deed" it must be clear for the user that only the Legal Code is determinative of the contract provisions.

Any user is permitted to perform any lawful reproduction and distribution. Permission of *derivative works* under the condition of free access for subsequent users ensures perpetuation of free access. In the case of OSS the open source principle will be extended to proprietary software combined with OSS ("viral effect"). Considerable difficulties arise in drawing the line in these cases. This problem is not present to the same extent with respect to open content.

Open Access definitions leave room for permitting or limiting *commercial re-use* of the materials. On the basis of German or Austrian law restrictions on commercial re-use cannot be made on an in rem basis with effect against any third party but are only valid between the contracting parties.

Rights are granted under the *condition* that the open content restrictions are being followed. If a user breaches in these, he loses any right granted under the license and may be sued for copyright infringement.

The restrictions imposed on the user are rooted in *droit moral*, namely attribution to the author. A core of *droit moral* may not be waived pursuant to the concept of continental copyright law. Further restrictions are being discussed, e.g., on modifications or associations with products that could damage the reputation of the author. A problem of including these into the standard CC license is that no moral rights are acknowledged in Anglo-American copyright.

The CC license model is largely incompatible with the *collective licensing* scheme in force for conventional works. If the work is subject to collective licensing any licensing under CC is not possible. A solution would be to have opt-out clauses for individual works or to exclude non-commercial distribution and use from collective licensing. Collective licensing is now under scrutiny of the EU with respect to competition law.

National legal systems differ on the question of who may sue as a *rightholder* in case of copyright infringement of a work created in collaborative work. For OSS a solution is for any contributor to grant a fiduciary license to the Free Software Foundation that in turn grants the user a right to use (www.fsfeurope.org/projects/fla/fla.de.html).

Finally, legal *liability* or warranties can to a certain extent not be excluded under national law. Even if the standard agreement refers to exceptions under national law this may not hold before a national court. This also includes liability for infringement of third party intellectual property rights.

3. Conclusions

Open source and open content licences are legally valid and seek to secure access on a contractual basis. Concomitantly, the European legislator left the extent of granting access to works shielded by technical measures almost entirely to contractual regulation. This shift to the contractual level seems to hint to the core of the problem. Due to the characteristics of information goods and the resulting market failures their use cannot be left entirely to the rules of the marketplace. The *legislator* has to strike the balance between protection sustaining the incentive function and free access to ensure sufficient distribution. This includes a delineation of the public domain. This balance may be shifted on the basis of online communication. But the legislator cannot retreat from this task.

There are constitutional reasons for an active role of the state as well. A complete commercialization of the information sector cannot be regarded as compatible with *the fundamental right of freedom of information*. While efforts to secure access on a contractual level are meaningful and make use of leeways left by national copyright laws it remains the task of the legislator to strike an appropriate balance between the interests involved. The European

legislator has in the past years, to a certain extent, neglected the interests of access. A revision, e.g., of the Information Directive seems necessary to restore an appropriate balance.

References:

District Court of Munich, Decision of 19 May 2004

http://www.jbb.de/judgment_dc_munich_gpl.pdf

http://www.ifross.de/ifross_html/lizenzcenter.html (collection of open source and open content licenses)

Overviews:

Peter Suber, Open Access Overview: <http://www.earlham.edu/~peters/fos/overview.htm>

Lawrence Liang, A Guide to Open Content Licences:

http://pzwart.wdka.hro.nl/mdr/research/liang/open_content_guide/

Policy analyses:

Reichman/Uhlir, <http://www.law.duke.edu/journals/lcp/articles/lcp66dWinterSpring2003p315.htm>

Open Society Institute,

http://www.soros.org/openaccess/pdf/open_access_publishing_and_scholarly_societies.pdf

Some critical voices:

http://www.indicare.org/tiki-read_article.php?articleId=118 (collecting society)

http://www.freesoftwaremagazine.com/free_issues/issue_05/commons_without_commonality/

(Free Software movement)

<http://dosemagazine.blogspot.com/2005/07/04/stallman-et-al-at-copyright2005/>

(Richard Stallman)

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Creative Commons – Science Commons

Science depends upon the ability to observe, learn from, and test the work of others. Without effective access to data, materials and publications, the scientific enterprise becomes impossible. Yet recent studies show a disturbing trend; increasing secrecy, cumbersome materials transfer agreements and complex licensing structures have made more difficult the sharing process on which science relies. A recent article in the Journal of the American Medical Association reports that, "because they were denied access to data, 28% of geneticists reported that they had been unable to confirm published research." And that is published research.

The problem here is not simply the commercialization of science; roadblocks to sharing hurt the development of commercial products, too. Nor is it only a matter of expanded intellectual property rights and curtailed "research exemptions." The problem is more complex than that, and the solution must be as well. Our goal is to solve a specific part of the problem: the creation of a larger "Science Commons" built from private agreements, and technical standardization. It is founded upon the same "some rights reserved" approach adopted by Creative Commons, our parent organization.

We will present a case study on the utility of standard, open licensing in the context of open access to the scientific literature, with specific examples both in open-access journals and institutional repositories. Impact on the developing world will be a specific focus.

For more information, please visit <http://science.creativecommons.org/>