

Open Source, Open Access and Legal Problems

Open Access to Digital Archives and the
Open Knowledge Society
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IT and Legal Frictions

- Copyright adapted to conventional technology
- Changing economics of copyright
- Response of the legal system
 - Adaptation of existing rules
 - Extension of protection
 - Examples
 - Database right
 - Copyright exceptions

➡ Open Access as a „third way?“

Open Access Principles

- *Free of charge online access to material deposited in standard electronic format*
- *User is permitted to perform any lawful reproduction and distribution*
 - *Proper attribution of authorship*
 - *Control over integrity*
- CC attribution license
 - Use only under terms of license
 - Include a copy
 - No technological protection measures
 - Name of author and title provided
 - Request to have credit to original work removed

Legal Issues of licensing

- National legal systems – national CC´s
- Contract conclusion – „Commons Deed“
- Scope of license – derivative works
- Commercial re-use of materials
- Conditional license
- First sale doctrine
- Acknowledgement of moral rights
- Incompatibility with collective licensing
- Who is rightholder under the license?
- Exclusion of legal liability

Freedom of Information Acts and its implications

- Access to information stored in public administration
 - Exception of intellectual property
- EU Directive 2003/98/EC
 - Private re-use of documents held by public bodies
 - Numerous exceptions
- U.S.: Access to publicly funded research results

Perspectives: No privatization of information protection

- Open Access licenses are valid, but:
- Shift from copyright to contractual level
- Balancing of interests is legislative task
- Information sector cannot be left entirely to the market
 - Economic reasons
 - Constitutional Law reasons
 - Institutional side of Freedom of Information – securing preconditions for fundamental right

Perspectives: „A2K Initiative“

- Draft Treaty on Access to Knowledge
- Example „Knowledge intermediaries“
 - Exception for search engines:
 - „The use of works in connection with Internet search engines, so long as the owners of works do not make reasonably effective measures to prevent access by Internet search engines, and the Internet search engine service provides convenient and effective means to remove works from databases upon request of the right owner“ (Art. 3-1(IX))
- Promote Enrichment of knowledge sector