

OAPEN/ENCES Expert Workshop “Copyright and Open Access book publishing” Amsterdam 15 February 2010

- 10.00-10.10 **WELCOME BY THE CHAIRPERSON** (Lucie Guibault – IViR)
- 10.10-10.30 **INTRODUCTION TO ENCES AND OAPEN** (Rainer Kuhlen – University of Konstanz; and Saskia de Vries – Amsterdam University Press)

Rainer Kuhlen introduced ENCES (European Network for Copyright in support of Education and Science), which aims to coordinate the lobby for copyright regulation in the interest of science and education on a European level. They want to provide a platform for organizations and individuals which also supports comparable efforts in the European member countries. They have a twofold strategy which is first of all based on the assumption that knowledge and information in its digital form should be made available for everyone under fair conditions. Next to that they want to make concrete proposals in the public interest of science.

Saskia de Vries introduced OAPEN (Open Access Publishing in European Networks), which aims to develop a publication model for Open Access Books in the Humanities and Social Sciences accompanied by a OA publication process and an OA library for books in HSS. Part of this project is also the development of a licensing toolkit. With this OAPEN wants to respond to a need felt in the digital world for new viable publishing models based on the open sharing of information, in particular digital monographs, in an international context.

- 10.30-11.00 **KEYNOTE SPEECH: WHAT MAKES ‘OPEN ACCESS’ ‘OPEN’?**
(Jean-Claude Guédon – Université de Montréal)

Nine years ago a milestone in the Open Access Movement was reached with the signing of the Budapest Declaration. The text, essentially written by Peter Suber, started with the sentence ‘An old tradition and a new technology have converged...’ This mirrors the old utopia of the *Republic of Letters*, the idea that people can establish networks of minds in an open way based on the sharing of thoughts. Scholars want to establish visibility and

authority and to achieve this they give away the results of their work as gifts. Around this an economy of reputation has been established which until today is still part of the scientific ethos in the Mertonian sense. This old tradition has inspired the cycle of publishing and has been developed on an ever larger scale into the current world system of sciences. In this new world, governed by new technology (networked computers on the Internet), the publishing cycle has changed, where the marginal costs of copying have gone down to (almost) zero. The question is now more focused on how to finance the production of knowledge. In the scientific publishing cycle, most of what is needed to fund this production is already in place. There is funding of the authors, of the libraries, of basically everything that is needed to produce knowledge; only the dissemination and (print) production needs additional money. However, established institutions and traditions still reign and the commercial sector is still very much entrenched into this publishing structure. Publishers want to maintain a particular role, one they are used to. When we want to achieve Open Access we need to negotiate around these obstacles where in Utopia everything is already in place.

Now what is exactly open about Open Access? What Google is doing for example is *not* Open Access, although they allow us to read books that are available in the Public Domain. However, they only offer a static, passive document which has all the qualities of paper. In the digital world this is too little, you can search it but can you check it, can you re-use it? Next to that our dependence on one (commercial) company can be dangerous, just as the dependence on Garfield’s Science Citation Index contributed to the inelastic market for journals and the rise of journal prices. Google claims to ‘do no harm’ but can we believe them?

What is an open document when it is digital? For one it can be much more open than a printed document. As Clifford Lynch has stated, ‘there is no Open Access without Open Computation’. This offers a whole range of possibilities to anyone with a computer to manipulate and do things with a text. Amongst this is the invention of new forms of reading: we need (new) reading machines! The period after Gutenberg also saw the development of new reading machines: the library can be seen as a reading machine as well as machines like the book

wheel. D.F. McKenzie shows how the sociology of texts has created organization tools (bibliographies etc). Now that we are entering the digital world, we need to develop new reading machines, we need access to the computational potential of texts, to the source; we need access to mark-up, tweak, change, improve, and correct them. The openness of digital texts involves this particular dimension. This openness also rests on the framework that we will discuss today based on rules, regulations and laws and in particular on copyright. Digital documents are virtual but still material enough. When thoughts materialize you end up with something copyrighted.

The modern creation of copyright in the late 17th century is an emanation of print; it was constructed within the print world. Now they are trying to carry over the framework of copyright from the old era into the digital world. This is where copyright meets a large problem where in the print world the technology and the law somehow supported each other. To be a book pirate in those days also required quite some effort and it was controllable; in the new system this balance doesn't work any more. In the digital world these technical barriers have been lowered enormously, digital protection has failed in a system where you can copy easily. This has led to the development of systems and business models no longer based on the selling but on the licensing of material, which can be seen as a way for publishers to get around the use of traditional copyright in the digital world. New forms of licensing are needed in the digital age. Creative Commons is also based on this idea of licensing. The problem lies in the transfer of rights from authors to publishers: authors have to retain some rights, but which ones? If authors were more of a united front against publishers, copyright would not be a problem where they could just give them 'so-much': a non-exclusive license. Now only very reputable scholars can make strong demands in this respect, this situation does, however, not equally apply to younger scholars.

When we want to open-up documents we want to do more than just read them online, we want to do things with the document, we want to make derivatives. Open Access is in a way built upon the nature of digital documents: in Heideggerian terminology, we want to find out how these documents are in-the-world, we want to explore the

way they live in the world, to learn how to enrich the notion of Open Access: what are these documents about? The Open Access movement should, like the OAPEN project does, also focus more on books and the HSS. The great value and item of exchange in the HSS is the monograph. A very essential problem in this respect is that there is an integrity to the monograph. In the digital world we need to find out what is important enough about the monograph to keep. It includes a thesis, an argument, a viewpoint that gives integrality to the work. It will guarantee the integrity of knowledge in an environment of fluid information. When it concerns Open Access to books what is apparent is that putting an Open Access edition online is a way of providing a digital publicity for the paper version too, where the sales of paper tends to increase (see for instance Yochai Benkler's *Wealth of Networks*). Open Access books are in a different situation from articles, tools are being developed at the moment which will change the situation a lot. But a good e-reader should not only be designed only to read books, it should also be able to support videos, games etc. and become a truly universal kind of e-reader. This will probably happen within 5 years and in this context this will also have consequences for the context of books: these digital files cannot be protected forever, we need to start looking differently at them from the moment we produce them. When it comes to the monograph, the integrity of the monograph and the traditional business models build upon this pose huge issues which need to be resolved before we can establish a model around the book that is both viable and open!

11.00-12.30 **SESSION 1: SECURING RIGHTS FOR THE PRODUCTION OF OPEN ACCESS BOOKS** (Lucie Guibault – IViR)

This session focused on the legal issues between authors and publishers, the "upstream", where the next session will focus on the issues between the publisher and the user, the "downstream". We need to create the legal setting which allows scholars to be able to communicate. This starts with the author. We should look at the Berlin Declaration to see what should be understood as Open Access. The central sentence about what OA should imply in the Berlin Declaration is: "... a license to copy, use, distribute, transmit and display the work publicly and to make and distribute derivative works ..."

Concerning the Golden and the Green Road, the declaration mostly encapsulates the principles of the Golden Road. The author should emphasize the copy, use and make derivative parts, for this is what we are aiming at. This should be seen as the starting point for OAPEN because it encapsulates what the ideal should be where the further discussion should focus on whether and in which amount this ideal is feasible. How should OAPEN members go about it? Contrary to the traditional publishing model, a transfer of rights or exclusivity is not necessary (nor workable or desirable!). Open Access is based on a non-exclusive, irrevocable, world-wide license of rights for the duration of the copyright protection. Open Access publishers should obtain the following rights of their authors: the right of reproduction, including the right to make adaptations, translations etc.; also the right of communication to the public including the right of 'making available' should be secured. What this means in practice is that for new digital born works the simplest solution would be to ask for a non-exclusive license. This allows OAPEN members to fully live up to the principles of the Berlin Declaration where authors retain all the rights to remix their work etc.

Integrating also pre-existing works within the framework of Open Access book publishing is a more problematic situation because of the status of rights of these works. Who is the rights holder? The author, the university, the publisher? Are the rights transferred or exclusive? What is the scope of this license? There may be some restrictions in this respect on the further reproduction and communication of the work. This means OAPEN might have to implement a two-tier model: Golden Road for new works, Green Road for old works. The question remains what counts as a 'minimum' or the 'lowest denominator' for a truly OA publishing model? What is the ideal to strive for? How does one go about securing the copyrights to reach this ideal?

Discussion

JC Guédon: We should not distinguish the Green and the Golden road too much. Paradoxically, the more restrictive copyright legislation is, the better for Open Access, because if the author has got a strong position, he can give away more rights. For new works we should focus on Creative Commons licenses.

S. De Vries: The peer review system should also be more transparent and described. With regards to copyright, what should OAPEN ask its partners to implement or do?

If OAPEN is too strict, it might not gain momentum! If it's too loose, there might be other complications.

R. Kuhlen: Our problem is not how to get publishers on board but how to make books publicly available under the Open Access paradigm.

W. Mossink: SURF has more experience with journals, the problem does not seem to be with publishers, they are OK to make it as open as possible as long as they get money. The problem lies with the authors, they do not want to give their rights away. Do we need to change the mentality of the authors?

J. Engelen: OAPEN should be open, entirely open without any restrictions. We need a paradigm shift, both the author and the publisher need to be convinced. And publishing needs to be paid for as well. NWO will stimulate OA journals (and books in certain cases), and if that will not work, we will oblige OA.

C. Bruch: We first need to distinguish what is desirable and then we need to look at the political dimension. What do we want to achieve in the very end? OAPEN needs to persuade funders and they need to offer them a standard model so that they know what they are getting. This means OAPEN needs to establish a minimum level of Open Access. What kind of rights should we need for the future? What about a right for unknown future uses?

W. Mossink: Data and text-mining are very valuable for the future, this should be possible.

E. Ferwerda: Does the Green Road have different legal context from the Golden Road?

W. Mossink: If you use a repository, you still need to have the rights to make a work available. The problem at the moment is that the repository manager does not manage those rights.

S. De Vries: the problem is that if you want to apply the right to modify an author's text, you will run into big problems. Authors are very much afraid their works will lose their integrity.

JC Guédon: This concerns the whole issue of versioning. Some versions should become the authoritative versions, but derivatives should also be possible.

J. Yeomans: Authors have a fear when it concerns licensing and copyright, they want publishers to manage these rights. They are cynical about university mandates where they see it as

universities handling against their interest. But only the author can handle in its own interest.

C. Bruch: We need to think about ways to still be able to contact the rights holder, keep databases of authors etc.

W. Mossink: The memory of universities is very bad, something should be possible in the metadata to define the copyright license and who the author is.

JC Guédon: The ideal of a number for authors (stable ID numbers) needs to be solved. The metadata issue is solved in CC licenses, where they are machine readable. The model used in the US is to mandate by giving the institution a non-exclusive right to publish. Publishers have to abide to this otherwise they will lose very good authors. We need to distinguish between the public domain (no ownership) and the commons. Open Access is about the commons, there is still an author who is an owner there.

C. Maracke: The problem is, we want a CC-BY license from the author, where the author wants a CC-BY-No Derivative license.

E. Ferwerda: Publishers have to think about the sustainability of their business. For older works the Berlin Declaration might not be achievable in all cases. We should be looking for ways to get publishers involved without threatening their business too much!

W. Mossink: You could go for temporary exclusive licenses: after a period it then becomes a non-exclusive license. Within this period the publisher could recoup some of its investments. That could be a solution in a transitory phase.

S. de Vries: But we still think about a situation in which a publisher sells the content. We should go towards a situation where the funder pays for the research.

JC Guédon: We need to create incentives to be as open as possible. We could take the example of SHERPA-ROMEO, which lists which possibilities the publisher offers to the author. OAPEN members could have colors.

14.00-15.30

SESSION 2: LICENSING RIGHTS TO USERS OF OPEN ACCESS BOOKS

(Benjamin White – British Library; and Wilma Mossink – SURF)

Wilma Mossink introduced SURF, a Dutch organization that works in the interest of education and research. They want to establish a balanced approach to management of rights, where there should be a maximum access to scholarship. SURF

conducted a survey together with Creative Commons Netherlands in which they compared open content licenses (Berlin Declaration, GFDL, Open Educational License, Creative Commons). One of the findings was that the sharing of one's own material as well as re-use of third party material is already quite accepted. There is however a greater willingness to reuse material than there is an enthusiasm to share one's own material. Except for raw research data, here the enthusiasm for use and re-use was the highest. Another conclusion was that there was not much knowledge in Higher Education about open content licenses.

From this research SURF concluded that it would recommend a CC-BY license, where there is no impediment for future use and re-use and it increases traceability. Creative Commons is also a worldwide standard. They do not recommend using a non-commercial option, where services which can be built on top of the free content could have a commercial component. They further concluded that the CC-BY license is also acceptable for Open Access books, where these are equally part of the scholarly communication process and they have the same needs where it concerns broadening access and sharing and re-using. Next to that the use of the same license also simplifies things. The report can be downloaded from www.SURF.nl

Benjamin White looked at Open Access books from the perspective of the British Library. They have legal deposits and they host UK PubMed Central. He explains how in an online world libraries are increasingly acting like publishers. Libraries like Open Access, it saves costs – especially as monograph budgets shrink -, and it gives clarity of re-use where theoretically it offers a clear license. Librarians are also very familiar with Open Access where research shows that nearly 90% of the librarians are either familiar or very familiar with Open Access. Libraries are agnostic where it concerns which open content license to use, but they do need clarity to allow use and re-use. This is a problem where the large majority of Open Access journals are not clear about the kind of license they are using. It is thus very difficult to find the licenses of the OA material.

Another big problem for a library is how to discover Open Access books and journals. The British Library is not cataloguing OA material, nor do many other libraries, because they don't have to buy it; only the purchase of material would start the

workflow which leads to cataloguing. At the moment the libraries' workflows are thus still based on the purchasing of content. That means it is unclear to what extent OA material is prioritized. The material only becomes visible to the library when it is purchased. So there is a lot of stuff sitting on the web which is not collected. The data is not being actively managed. Libraries will have to switch to a workflow that deals with digital documents; the question is how the OA publications get into the libraries.

Discussion

R. Kuhlen: When it comes to modification and commercial use, the consequences are that they are given rights, you cannot change them afterwards. With a non-commercial right you can still negotiate about certain commercial rights.

S. De Vries: How is the OAPEN collection going to get into the library when the system is based on the buying of material?

HW Hilse: The problem is the workflow and the specificity of the media. The digital material should be connected via the workflow of the publisher. This needs to be done by OAPEN too; they need to establish the workflow.

JC Guédon: OAPEN should focus on the creation of services, the management of the content, and they should ensure that the Open Access material gets into the library.

Á. Téglási: Libraries do not have the budget to have two workflows, a traditional one and an Open Access one.

E. Ferwerda: OAPEN made contact to OCLC for integrating the OAPEN collection.

M. Lhotak: The problem is: how are we going to get this situation to work?

W. Mossink: Authors want to publish in High Impact Factor journals. We need to convince authors that there are other mechanisms to make their work available.

S. De Vries: In the HSS they are also looking into how to develop impact factors for books.

JC Guédon: Impact factors are based on a very selective set of journals. The impact factor is for the journal not for the single article. You could compare this with impact factors for publishers and not for single books.

Á. Téglási: There is always the problem of native languages in the HSS, how can this be fitted into an international assessment?

E. Ferwerda: We need to establish what the minimum requirements are. OAPEN should be seen as an effort to establish a road towards Open Access books. OAPEN should be seen as a brand and a step towards an ideal: the Berlin Declaration. What about establishing a few steps, where the Berlin Declaration should serve as the ideal. What are the meaningful next steps that we could work to in terms of licensing?

L. Guibault: The real bottleneck is not necessarily the author, they need to be educated. If we want to deal with the licenses, we need to have a scale of options but no more than say four.

S. De Vries: Best would be a restrictive CC license, but with a different name (because commercial publishers don't like CC).

C. Bruch: We also need an agreement about measurement. If you have produced a license (or licenses) of some sort you need to be able to establish whether another license fits into which specific type. This categorization or labeling/ranking is also transparent for the funder. He needs to understand what he needs to fund.

B. White: Please do not construct another license, please use Creative Commons

S. De Vries: But we need to think about this because we are talking about older books with other kinds of licensing.

L. Guibault: For new books we should use CC licenses. For old books we need to translate the contracts of the upstream for the downstream.

E. Ferwerda: For new books OAPEN should do CC-BY.

C. Maracke: The question is, do we need something in between copyright and the most restrictive form of CC-license? In other words, is it worth developing something new or should you just take the most restrictive CC-license?

W. Mossink: The effort to go beyond CC will prove too much.

15.45-16.45

SESSION 3: STIMULATING OPEN ACCESS
BOOK PUBLISHING

(Christoph Bruch – Max Planck society)

What is a book? A stand-alone publication. Should the Berlin Declaration be the starting point? The declaration is mostly a policy document and should be used by an organization as a way to communicate its commitment to Open Access. This does not mean they will be able to realize it. There is a discrepancy between the commitment and the actual implementation process. We should go for both

green and gold, they are not contradictory. Also the individual needs of the funder might lead to different preferences. Organizations need to decide what kind of flavors of Open Access are worth paying for. A funder might not want to pay for only a PDF on the publishers' website. The publication also needs to be kept in a public institutions repository, preferably at a national library. This is a very important prerequisite for funders too. Funders are predominantly concerned with quality and not with accessibility. Research organizations could also consider changing their work contracts. We need to gain the support of the researchers and this can also be done by mandates. Mandates can only be soft mandates. Mandates should help researchers to negotiate with the publishers, not force them into anything they don't want to do. Mandates must not hamper careers. Standard publishing models for books (like the one used by the Austrian Science Fund FWF) would be much easier for funders, offering a standardized offer for the funder.

Discussion

A problem of more restrictive licenses is that they limit what you can do with the rest of the material in a collection too. This is another reason why to go for the broadest licenses.

R. Kuhlen: In Germany a mandate is difficult, where the official legal estimation is that it is not possible that the institution forces the author to deposit (against moral rights) so they can only request.

L. Guibault: Are there figures for the voluntary deposits of OA? There is also the problem of authors with multiple affiliations. To which institution or country does a publication then belong?

S. De Vries: It is not only about putting up a infrastructure it is also about the preservation (and the costs of that!).

JC Guédon: What about the LOCKSS model? National libraries have all these problems; if the solution could evolve a network solution then it will be a problem of many shoulders.

M. Lhotak: Example of the Czech library: they cannot trust their own infrastructures. It also depends on the budgets of the libraries.

JC Guédon: It is a dynamic system. It is about issues of preservation and infrastructure. Problems can be solved by common tools.

S. De Vries: Funders also need to think about the infrastructure: we need to make them aware of that.