

OPEN ACCESS –recent developments and topical issues

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Recent developments in the Open Access sphere

In the last few months Open Access (OA), in various manifestations,¹ has been gaining ground and exposure. It is commonly held that exponential growth in research output and toll-access (TA) journal prices, amid diminishing university library budgets, necessitate OA.² Calls are increasingly made for removing price barriers as well as relaxing licensing and copyright restrictions on scholarly journal articles³ and for further OA experimentation with scholarly monographs and edited works.⁴ OA activism is not limited to scholarly material but extends to OA teaching and learning materials ('open education resources' and 'open courseware').

A useful entry point to explore the current debate – and OA's ramifications and complexities – is recommendations of the Working Group on Expanding Access to Published Research Findings (the Finch study) published in June 2012 as well as their reception.

The Finch study recommended that peer-reviewed journal articles funded by research councils and the Higher Education Funding Council of England must be published in journals that make research publicly available. This seems sensible and in line with the commonly-held belief that publicly funded scholarship should be freely available and that its reach should be as extensive as possible.

For peer-reviewed journal articles, Finch favours the Gold OA or a hybrid system, where journals derive all, or some⁵ revenue by collecting article processing charges (APCs), varying from journal to

¹ Apart from Gold and Green OA discussed in this document, a distinction is made between *gratis* OA (ie the removal of price barriers) and *libre* OA where price, copyright and data-mining barriers are removed. The level of functionality also comes into play, for example, access to user-friendly HTML compared to downloading a flat PDF. OA involves more than access to articles and also tools to analyse, navigate, organise, link and manipulate material.

² The Finch study notes that the number of articles is growing by roughly 4% a year and that in 2010 over 1.9 articles were published in accredited journals globally. Proportionally, library spend in the UK fell from 3.9 to 2.7 between 1999 and 2009.

³ At the Berlin Open Access Conference in November 2012, SA Minister of Science and Technology Derek Hanekom endorsed OA for SA in broad strokes.

⁴ See for example the Open Access Publishing European Network (www.oopen.org), an initiative to 'develop and implement a sustainable Open Access model for academic books in the humanities and social sciences', endorsed by, amongst other publishers, Amsterdam University Press.

⁵ Finch does not prohibit 'double dipping', the practice where publishers of hybrid journals receive both subscriber fees and Article Processing Charges (APCs) for the same content.

journal from the author's side.⁶ For university employees, the intention is that the university or research sponsor would pay the APC to the publisher. Articles would be immediately accessible online and presented free of charge to users.

Alternatively, and second prize according to Finch, is that peer-reviewed articles must be published in TA journals and post-print versions (author final versions) archived in repositories. These should be made freely available after an embargo of a maximum of 12 months for humanities and social sciences.⁷

Some commentators believe that Finch would weaken the UK research system. Universities have balked at the additional expense of Gold OA in the context of limited government funding for the programme and the reallocation of university funds, mainly from library budgets.⁸ Learned societies have expressed qualms about their sustainability in light of their TA journals subsidising wider charitable and learned objectives.

Academics and the untenured have raised concerns about academic freedom. University managers, by rationing and allocating APCs, would exert control over submissions and decide on access to publishing in leading journals (Jones *et al*: 2013). An APC system would be to the detriment of poorly-funded universities. Scholars, furthermore, take umbrage with Research Councils UK's decision to only accept publication in compliant journals for assessing academics. This would limit opportunities to publish in journals outside of the UK that do not subscribe to an OA model. Research Councils UK's insistence on a Creative Commons CC-BY licence, allowing commercial re-use, re-mix and republication – with author attribution – is also far reaching and jeopardizes the integrity of material and the scholarly record.⁹

The Scholarly Publishing and Academic Resources Coalition (SPARC) has criticised Finch for advancing the status quo of publisher revenues and for relegating well-established institutional and

⁶ Research Councils UK and the European Commission place Green and Gold OA on equal footing. Publishers favour Gold because it presents a sustainable business model and Green is seen as 'complex, labour intensive and far from ideal' (Mabe: 2011). Green OA has the potential to undermine the business model on which it relies. It also reduces publisher's scope to charge for back issues. The PEER report, released in May 2012, states that researchers find repositories complimentary and not a substitute for traditional dissemination methods. It also shows that immediate (ie embargo-less) Green access does not harm subscription publishers (Wallace: 2012).

⁷ For some disciplines, such as history, a 12-month embargo would put the underlying publishing model under strain. The embargo period has to take half-life into account. Finch proposes that rules and policies should be kept under review and changed as evidence manifests.

⁸ The idea is that subscription savings would offset costs.

⁹ The Berlin Statement holds that for work to be OA, the copyright holder must consent in advance to let users 'copy, use, distribute, transmit, and display the work publicly and to make and distribute derivative works, in any digital medium for any responsible purpose, subject to proper attribution of authorship.'

subject repositories to the realm of data sets, grey literature and complimentary services and digital preservation. This is out of step with international developments and coordination across territories. According to SPARC, Finch does not chime with research users wanting ‘barrier-free access at their workspace on machines that run across, collect, manipulate, mash and modify digital information’ (SPARC 2012).

Open Access and copyright

Neither Gold nor Green OA necessitates local copyright-law reform.¹⁰ It is rooted in existing law and is underpinned by copyright owners permitting users to access work, granting additional rights and removing barriers. Evidently, Green OA does also not constitute an ‘exception’ in terms of the Berne Convention’s three-pronged test.¹¹ Archiving articles in repositories, and enabling data-mining, clearly would also exceed ‘fair use’.

It is up to publishers and authors to negotiate the plurality of rights constituting copyright and reach agreement on which rights to waive, retain and acquire on publication. In their choice of journals and negotiations, authors would be impelled by research funders’ and institutional mandates,¹² their own preference as well as the responsiveness of publishers in granting permissions.¹³ AS OA becomes even more pervasive, publishers would be compelled to adjust their operations to secure coveted content.

Open Access and the role of publishers

Publishers of scholarly journals have expressed commitment to ‘wide dissemination of and unrestricted access to their content’ (Mabe: 2011). OA calls for publishers’ engagement with authors

¹⁰ In South Africa, where WIPO Copyright Treaty (WCT) measures have not been enacted, the Electronic Communications and Transactions Act 25 of 2002 criminally sanctions unauthorised access to digital copyrighted works. This creates a relatively harsh regime where existing copyright infringement privileges do not apply and where WCT measures such as needs of beneficiaries and exceptions and limitations compatible with fair practice, are not taken into account. In other jurisdictions such as Australia, the European Union and the United States, Art 11 of WCT (addressing circumvention of technological protection measures, such as access control) has legal force (See Jansen:2005).

¹¹ The test requires that an exception must be limited to ‘certain special cases that do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rights holder’ (Art 9(2) Berne Convention, Art 13 TRIPS, Art 10 WCT). Arguably Green OA does not satisfy any of these requirements.

¹² According to Registry of Open Access Repositories, 54 research funders and 161 institutions have adopted strong OA policies. University of Pretoria, Stellenbosch University and Unisa have institutional mandates. Accredited Open Access Journals of SA (<http://www.library.up.ac.za/aoajsa.htm?>) lists OA journals accredited by the Department of Higher Education and Training. Sabinet offers a service that links through to 46 OA journals <http://www.sabinet.co.za/?page=open-access-journals>.

¹³ SHERPA/RoMEO lists publishers’ allowances for different forms of OA (<http://www.sherpa.ac.uk/romeo/>).

and research funding institutions. In these discussions it's imperative to foreground publishers' role in scholarly publishing. Not limited to dissemination, publishers are also responsible for

- quality assurance;
- facilitating peer review;
- filtration;
- presentational enhancement;
- metadata crafting and maintenance;
- management of authoritative versions;
- marketing and promotion as well as outreach;
- investments in gateway and navigation systems; and
- handling relationships between books, articles and other publications and integrating it with underlying data.

Industry bodies such as PASA and the International Association of Scientific, Technical and Medical Publishers (STM) have also stated that publishers intend to serve the public good and

- support business models as long as they are sustainable;
- engage with funding agencies to ensure they develop robust sustainable funding mechanisms;
- engage in developing policies for Green OA regarding versions, embargo periods and infrastructure;
- support access models that ensure the integrity and permanence of the scholarly record;
- do not support unfunded mandates that constrain authors or affect sustainability;
- upholds authors' right to publish in journals of their choice, while complying with funding agency policies;
- support philanthropic initiatives that make biomedical, agricultural and environmental research available for free or at low cost to developing countries;
- help funding agencies to track and measure the research they fund;
- adopt copyright policies that enable re-use of content;
- work as an industry to facilitate text mining of Gold content; and
- take into account APC and other revenue streams and costs when setting subscription prices for hybrid journals.

OA and key actions for publishers

OA calls for publishers to engage with other stakeholders. Further, practically speaking, it requires that

- publishers negotiate with institutions and TA consortia to establish publishing deals;
- billing systems must be adjusted to process APCs;
- pricing for hybrid journals should be adjusted;
- rich metadata containing information on rights, permissions and funding bodies should be developed that convey indicators of OA availability to search engines and indexed search services and aggregator services;¹⁴ and
- policies on Green OA (for example, blanket permissions or case-by-case permission on request) should be adopted.

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¹⁴ The Open Archives Initiative Protocol for Metadata Harvesting (PMH) could be a good point of departure.