CHAPTER 30

Open Access as Tool for a Fair Copyright Management for Scholarship

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[*Special note from the author Antonella De Robbio:* This article is a tribute to the memory of the Indian librarian **Mr. Venkatrao Lakshmanrao Kalyane,** who was the founding E-LIS repository editor in India (2004-2006), who passed away in 2010. He was Scientific Officer of SIRD unit of BARC, Mumbai and has published more than 100 publications in scientometrics in national and international journals.]

"*Alas*," said the mouse,
"*the whole world is growing smaller every day.*
At the beginning it was so big that I was afraid,
I kept running and running, and I was glad when
I saw walls far away to the right and left,
but these long walls have narrowed so quickly
that I am in the last chamber already,
and there in the corner stands the trap that
I must run into".
"*You only need to change your direction*",
said the cat, and ate it up.

[**Franz Kafka. A Little Fable (**Kleine Fabel**)]**

Abstract. *Inside of the Academic World, librarians first understood that the copyright management system represented a critical mass. The main goal of Open Access is to remove all the economical, legal and technical barriers to scientific information, with benefits for everyone. So copyright represents the main obstacle, but it is manageable by making aware the authors don't grant all the rights to the publishers, through the implementation of copyright policy inside the Universities, but first of all is a duty for all the Governments to pass laws taking care of research and not of economical lobbies' interests. Authors should be aware of the importance to keep their rights preventing them to release copyright to publishers. It is fundamental that authors know how it is important to keep copyright for their own purposes and both the universities and the governments should create policies in order to protect and guarantee scientific copyright and the world of research. By managing of scientific copyright it is possible to reform the knowledge economy too.*

Keywords: Open Access, Copyright, Intellectual Property, Rights Management

1. Open Access and intellectual property

Talking about author's rights, we are led to think about all the situations in which those rights are violated, particularly in the digital contest: acts that are called "*piracy*". The common approach to the matter reflects a vision based on a consumer society rather than on knowledge based society, a vision that doesn't respect the needs of scientific communication and the interests of authors.

The concept of intellectual property, traceable to the different normative systems (copyright, royalties or something different) should necessarily be extended beyond the boundaries of every single State and it should include, in its

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possible free uses or rights restrictions, all the connected entities, including the whole body of citizens. Nevertheless, one must keep in mind that often, despite the efforts of WIPO (World Intellectual Property Organization), the legislative system of many countries in the world about intellectual property does not have an organic and consistent legal structure, but it is made of different rules put together in normative bodies that are not harmonized in a global context. (Bill Strong), in the 1999 has used a brilliant metaphor in order to give a comparison between the normative international system which resembles the railroad system at its beginning, when a train could not pass the limit of one concession, because the next had tracks of a different caliber. To these differences must be added that almost all the national normative systems regulate intellectual property concerning "*on paper*" contents.

Scholarly communication is the process of dissemination of the outcomes coming from research in universities, private organizations or institutions or research centres. These results are presented in the form of intellectual outputs. Each barrier to the dissemination of scientific research is a barrier to the access to knowledge. There is a clash between the aim of research and the access to its outcomes in journals where you are allowed to information only through the payment of subscription fees. Nowadays 11 publishers hold and manage the 75% of the publishing market and the 90% of the published articles can be accessed only through the payment of fees. As far as copyright is concerned, authors have to gain awareness that they don't have to release copyright to the publisher because they could need it back again in case of publishing their works in an open access archive or using them for educational purpose. So, the issue of copyright is not an obstacle to open access, but authors should be aware of the importance to keep their rights preventing them to release copyright to publishers.

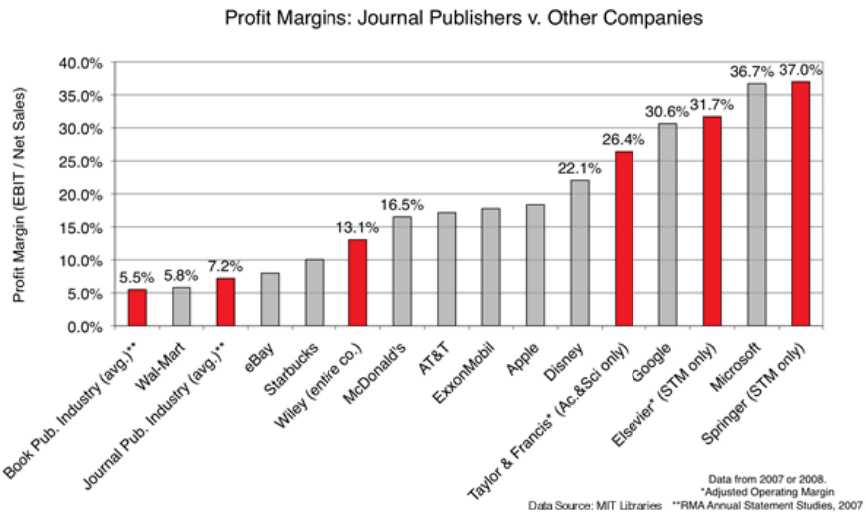
Open Access is an approach to carry back the right balance between different interests and to reaffirm the essential aim of the author's right: "*The first objective of author's right is not to remunerate the work of authors, but to promote the progress of science and useful arts. For this purpose, author's right grants rights to their original work, but encourages people to build freely, being inspired by ideas and information contained in a work. This result is not unfair or inappropriate. It is the way by which copyright helps to accelerate the progress of science and arts*". This was Sandra Day O'Connor's, judge of U.S. Supreme Court Justice, thought on dissemination and elaboration of the work of other authors, referring to the "*IP Clause*" of the Constitution of the United States (Clause 8 of the US) which is based on an utilitarian philosophy and underlines the instrumental aspect of the protection of intellectual property, recognized by the industrial inventions (patents) and by other creative works (copyright) (IP clause of the European Chart of Fundamental Rights).

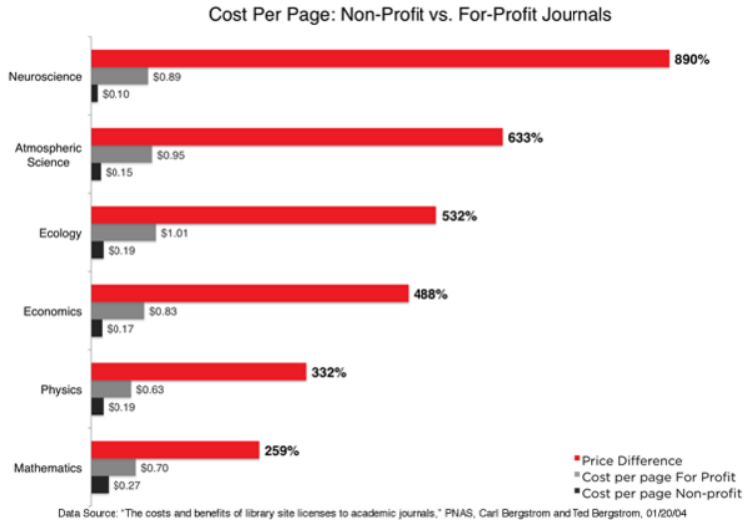
If, from one side, the system of intellectual property ensures publishers great profit margins, Universities and research centers, instead, are undergoing gradual reductions in their budget due to the decrease of funding and to the high rising of prices in the scientific literature. It is an inelastic market (the research can not do without the scientific literature and publishers who own the so-called "*core journals*" can impose them at any price) not controlled by the actual producers (authors) and characterized by the international mergers of great publishing companies.

Open access solutions (IR self-archiving and open access publishing) are therefore a factor of balance in favour of scientific authors and users, restoring a suitable environment to the circulation of ideas and the preservation of knowledge as a common good (C. HESS and E. OSTROM, 2006). Rights as a common good and common good as a right.

Over time, copyright has taken shape as a proprietary right on the work (intellectual property) which is born from the original producer (the author) and can be transferred wholly or partially by him with appropriate contracts. As a consequence, the property aspects related to the concept of ownership transferable to others, have always been the focus of the international debate over the moral rights, connected to the authorship of the work as a creative expression of the personality of the author. Moreover, in some jurisdictions of the English-speaking world it has never taken place a single category of moral rights linked to copyright: these issues are included in the property field, so they can be sold (R. PASCUZZI E R. CASO. Padova, CEDAM, 2002).

The gradual improvement of the private (self) control on the work has mainly favored publishers and others





2010/2011 Profits for Commercial Publishers

	Profits	Revenues	Profit Margin
• Elsevier	$1.2B	$2B	36%
• Wiley	$106M	$253M	42%
• Springer	$467M	$1.4B	34%
• Informa	$74M	$230M	32%
• Apple			24%
• Google			27%

From LIBR 200: Smart Publishing in Education: Rights, Impact, and Social Justice. Berkeley Library

operating profit	*company*	*industry*
7%	Woolworths	supermarkets, pokies
12%	BMW	automobiles
23%	Rio Tinto	mining
35%	Apple	premium computing
34%	**Springer**	**scholarly publishing**
36%	**Elsevier**	**scholarly publishing**
40%	**Wiley**	**scholarly publishing**

The fees publishers charge to access research articles make scholarly publishing one of the most profitable industries around, while denying the public access to taxpayer-funded research.Numbers compiled by Alex Holcombe. Details here: http://bit.ly/Wxo4VA

intermediaries, leading to some unintended and unforeseen consequences for authors and users, particularly in the research world when occurs the following situation: public institutions finance much of the research; the research results are published for everyone to promote themselves. For this reason authors and / or funding agencies grant exploitation rights to publishers without remuneration and often also bearing the costs incurred from publishers. In addition, according to a recent British report, 66% of investments in scholarly communication are granted on public funds (RIN).

Publishers sell their publications, or, to be more precise, grant licenses to them, usually very restrictive, at prices not proportioned with production costs less and less sustainable by the libraries, which are the main buyers. If authors and their institutions of reference have sold all the rights on their work to publishers, they have to pay to use it. When the work is out of the market, or when the publisher has no interest or possibility to make it accessible (although with a fee), the work and its author are deprived forever of the opportunity to be known, cited and used. This situation is more paradoxical in a technological context, like that of the Internet and World Wide Web, which is born to make easier communication and scientific research (G. BLASI, 1999). And where the fundamental rights of users and the social purpose of copyright have to be protected and guaranteed by law; this crucial task cannot be left to the discretion of the parties.

In 2006 a study on scientific journals commissioned by the Directorate General for Research of the European Commission has highlighted some of these situations, drawing some specific recommendations to the actors involved, including one addressed to public agencies that fund research, to provide results of scientific research in special archives accessible to everyone a short time after the publication, by agreement with the publishers, as a condition of profiting by public funds (<http://ec.europa.eu /research /science -society /pdf /scientific -publication -study _en.pdf> [PDF 829 k]). Afterwards, the European Union has come back several times speaking in favour of Open Access. But the adoption of a directive or other legal binding instrument for the Member States has never been reached. In the United States a law has been approved in the biomedical field, at the end of a long and hard travel and with a fierce opposition from associations of publishers. This rule requires the submission to open access to the works financed by the National Institutes of Health (Division G, 2008).

In the debate over intellectual property system the economic analysis has a decisive role (G.B. RAMELLO, 2003). The author's right has been seen as a legal remedy for the failure of the market of knowledge, which is by its nature a public good, non-rival and non-exclusive (J. E. STIGLITZ, 2001) the fruition of the work of one does not affect the fruition by others. In addition, no one can be excluded from knowledge. In this situation, which advantage can take the author from his work? The legal instrument of intellectual property should be used to provide remuneration to authors, meant as an incentive for them to continue creating new original works, useful to the society. In other words, copyright is the price that society pays to the author or his successor in order to continue to have access to new ideas. However in practice this "*incentive to create*" turns out to be rather inconsistent for several reasons. First of all, because the authors gain a small portion of this fee. Second, because not every author write for a charge; it happens that many famous authors obtain prestige and fame only after death. Scientific authors can write for different reasons,

maybe related to career, but not always. Third, because the intellectual creation, whether or not scientific, needs a cultural and professional background that the author must build over time, at his own expenses, and that are rarely considerated in the publication costs. Fourthly, because the remedy of intellectual property introduces artificially a monopoly on the work, which duration and intensity have created another type of market failure, setting access barriers.

2. Author's right as an European system

The legal sources of copyright are divided into three levels: the global level, that of treaties and international conventions; the European level (for our purposes), where we find nine directives and several studies, technical reports, and recommendations on intellectual property.

Transposition of European directives and the conformance established in international treaties, agreements and conventions in national laws could be difficult. Different regulations on intellectual property find at least a common denominator in the international action of WIPO (World Intellectual Property Organization).

It is necessary to emphasize that the actual legislation - oriented to Content providers guarantee - considers exceptions and limitations to copyright is affecting the fundamental right of rights holders to exploit their works and should only be introduced, if they are necessary in order to achieve a higher social objective. This vision is completely in conflict with research and academic interests.

As regards scientific and research community outputs, a distinction should be made between works that have been created and put in the market precisely for teaching and research purposes, and those that have a different commercial appeal.

Recently we have had the opportunity to comment on the Commission's Green Paper *Copyright in the Knowledge Economy*, which we view as an important contribution to the debate over the development of an EU strategy for IP management (Green Paper on Copyright in the Knowledge Economy). We fully agree with the Commission that a "*wider dissemination of knowledge contributes to more inclusive and cohesive societies*". In such direction all use for purposes which comply with fundamental rights and are socially relevant have to be allowed provided that their scope does not significantly prejudice the interests of the rightholders.

The Green Paper focuses on the role of copyright in fostering dissemination of knowledge for research, science and education. Copyright policy has increasingly emerged as a transversal issue, involving not only the internal market and cultural policies but also information society, competition and consumer interests. The Green Paper is an attempt to organise this debate and point to future challenges in fields that have not been a focal point up to now, e.g. scientific and scholarly publishing, and the role of libraries, researchers and the persons with a disability. On the other side the digital "*dematerialisation*" of content presents great opportunities for Europe, but also a number of challenges. First of all, obstacles still stand in the way of digital distribution of cultural products and services.

From the perspective of the Lisbon strategy, this holds particularly true with respect to educational or scientific uses, which express fundamental rights and are of high public interest. In many cases these uses do not encroach on the economic interests of rightholders at all. Quite on the contrary they contribute to economic and social growth.

At the national and international level, it is fundamental that authors know how it is important to keep copyright for their own purposes and both the universities and the governments should create policies in order to protect and guarantee scientific copyright and the world of research. To date this awareness is still missing. The transfer of rights can be carried out in subsequent phases through diversified contacts, over which the author doesn't have any control.

The owners of the copyright are originally the authors. They acquire it when they produce their work. It is not always

easy to identify the authors of a work, which often is the product of teamwork, where each member is responsible for a specific segment. Authors may give up all or part of the property rights that form the intellectual property of the work. In fact, they often give away rights contractually to third parties (publishers or others). They can also authorize intermediaries or users to make only certain utilisation on which they have maintained the right to dispose. The difference between the cession of the right to use the work and the authorization to make any use of it, is that in the first case the holder is deprived of the right transferring it to a third party, in the second case the right remains with the owner.

Both the cession and the authorization may be in a contract or a unilateral act. In the first case (contract) provisions may be ordered at no charges or with a fee, in the second case (unilateral act) they are always free of charge (a cession made by a unilateral act seems like a renunciation). All these dispositions are often called licensing, although this term is appropriate only in case of authorization, not in the case of cession. Authorisation may be limited or unlimited and may allow the exclusive or non-exclusive exercise of the right. Authorisations that provide at the same time unlimited and exclusive exercise of an author's right can exclude all the other subjects including the settlor ("*licensor*", who grant a license / authorization to a "*licensee*") from the benefit of that right. These authorisations correspond in fact to forms of cession. In the next sections we'll discuss the licenses that regulate relations between all the parties involved in depositing works in the IR. The author and the public and/or universities and public, author and/or universities and publisher, author and university (or research institute).

The subject matter of author’s right is any type of creative work, meant as the product of an intellectual work fixed and identified in a particular original and innovative idea, regarding to other information or legacy data. The object of protections are not ideas, concepts or feelings but their organization and representation, the set of selected signs combined by the author to express them, whatever is the linguistic code (text, figure, etc..). The work protected by intellectual property (corpus mysticum) should not be confused with the framework used to convey it (corpus mechanicus): the buyer of a book obtains the ownership of it on the material support, but on the work he has a non-exclusive license, because the property on the intellectual content remains with the author and/or to the publisher. Another matter regards the elements that make up the package work: layout, graphic composition, etc. These elements, referring to the editorial work and not the author, are protected because they are part of the image of the corporate brand ("*brand*").

Over time, the author's right has been structured in a variety of rights: the right to publish (or not to publish: inedited right); the right to reproduce, which is divided into different forms depending on the purpose of reproduction (purpose of study, for illustration or educational aim, for library service or for private copying) and on the type (books, databases, musical scores, sound and video works) and format (analogue or digital) of the document and right of transcribe (from oral to written); right to perform, display and act in public; right to communicate to the public (related to the remote communications and telematics); right to distribute (to sell or circulate); right to reprocess (translate, parody, etc..); rental right; right to library loan; right of extraction and re-use (referring to the contents of a database); right to be cited as author and to claim to intellectual work; right to the integrity of the work.

For each one of these rights specific provisions are possible and every right has a specific protection. In our and other systems, however, moral rights are inalienable (non transferable) and inprescrible (not die out after a certain period of non-exercise or non-resale). Moral rights are, for example, the right to the unpublished, the right to integrity and to the proper contextualization of the work, particularly the right to be recognized as the author.

3. Rights management and open archives

The first utilization that should always be allowed to users of the works deposited in an institutional repository is the whole reproduction in every support (download, print, archiving on one's PC or on other local memory) for personal use, of course, and in addition to utilizations always permitted by each country's law. In other words, the work deposited in IR should always be fully and freely accessible to everyone without technological protection measures. If the work is freely accessible on the web, but it does not have a specific license, the user can consult it, download it,

print it etc. For everything else we apply the existing rules on copyright. For example, we can distribute and communicate to the public only abstracts or short pieces of the work, for illustration or teaching aims, citing the source and excluding any purpose of profit. To explain or to expand utilizations granted to users, it's appropriate to enclose in the works deposited appropriate licenses, issued by the author and/or by the institution that manages the open archive. With these licenses, the author retains all utilization rights indicated, but share them with other users and he waives the sole right.

In the meantime, the author (or the institution that manages the archive) may allow the public to certain uses of the work. That can happen if he has effective legal rights on it and has not given exclusive rights to publishers. But if the work is derived from other work (for example, if it is a translation), you need the permission to dispose both of the main work and the derived one. The same applies to works including substantial parts of other works.

Another important aspect to considerate is related to intellectual property on the archive as a database created and managed by an institution using certain software. The rights to the software and on the database have special protection according to the rules of copyright, since they are considered creative intellectual works or otherwise because of the economic investment on them. With regard to the software, the international scientific community has developed several tools to build and maintain open archives. These are all created with free software, released under licenses inspired by the philosophy of copyleft discussed previously. Regarding to the rights on the database, they are made available to the public without restriction. Nevertheless, it being understood that the rules set by licenses on individual works contained in the database remain valid, by the law is forbidden the extraction and the reemployement of all or of a "*substantial part*" of the database, or even of extraction of insubstantial parts when extraction and reuse are systematic. The protection also concerns the configuration of the database (indexes, precoordinate and postcoordinate lists etc.), graphic and images used in interfaces, especially metadata associated with the works. It's in the philosophy of open access that institutions IR holders allow metadata harvesting in their content by search engines, both specific to the OA world, such as those based on the OAI / PMH, such as not specific. Indexing metadata within search engines increases the availability of works, supporting the aim of open access. A problem arises when metadata created in the IR is embedded in commercial databases or distributed with fee, increasing the economic value of these databases. As IR owner, the institution can choose to define specific policies for the utilisation of metadata, for instance by denying any commercial use or making this kind of use under fee.

The results of RoMEO investigation have shown that academics wish to find their research in open access repositories. The development of an appropriate solution for the right concerning to metadata was feed with these results. The issues related to the collection of metadata from data providers within the service providers have been analyzed, under OAI protocol (http://www.openarchives.org/.), and some developments for solutions for the protection of metadata have been supposed. Every development activity took the emerging standards into account. These activities received informations from a continuous consultation with the community through conferences, discussion lists, and consultations with experts and members of scientific committees.

According to a following research sponsored by JISC, most of academic authors are glad to allow the utilisation of their research work much more liberal than copyright law or licenses for electronic journals with fee (Esther Hoorn, 2005). As users they make a use of the work less liberal than when they are in the role of authors. It is significant that the perception of the author about the reuse of their material is very different from reality. The authors are sure that the management and the grant of permission for the reuse of their material belongs to them (72%). In reality most of the time the author loses this control after the transfer to the publisher. 29% of the authors assert that they do not ask the publishers the permission to reuse their material, while 18% think they do not reuse the material because of the difficulty to ask the publisher for permissions or authorizations.

4. Permission or right of deposit?

Usually, the author holds copyright on material that has not been submitted to review or to some form of peer-review for publication yet (preprint or pre-refereeing preprint). This material can be freely self-archived because the author

owns the rights and this is so until he transfers it. The situation is different when a work has already had a scientific validation or it has been sent to an editorial committee for publication, or finally it has been realized on commission.[1] From the moment of submission of the work to the editorial board, the author must know the publisher copyright policies in order to be aware of them.[2] On these materials (refereed postprint), the author usually gives up some or all the rights of economic utilization through a contract proposed by the publisher. To maintain the possibility of self-archiving of the postprint in open repositories, the author will have to make sure that the contract doesn't prevent communicating to the public for not for profit purposes; or shall propose the modification making special mention of the storage in the IR. Some publishers can officially forbid self-archiving, but they may be available to negotiate, at the moment of drafting the contract. It should always be remembered that the authors are the most significant resources of a publisher and therefore publishers are usually sensitive to their demands.

When the publisher does not agree with the change proposed by the author for the purposes of self-archiving of postprint, the refereed final draft of the work cannot be self-archived. The author, however, can deposit a corrigenda file in an open archive, linked to previous versions of the preprint already deposited in the same archive, listing the changes made in the preprint, so that the end user is able to recreate the postprint in its final version. Nevertheless, it should be considered that a publisher may refuse to publish a previously self-archived paper, or even presented at a conference or somehow publicized. Publishers who want to ensure that the work has not been previously released are a small part and do not exceed 25%. It is therefore advisable to self-archive before sending the contribution.

One solution, proposed by SPARC (Scholarly Publishing & Academic Resources Coalition) and by Science commons (a project linked with Creative Commons CC, the culture of open access), is to ask the publisher to integrate the publishing contract with a special agreement add ("*Addendum*") (http://scholars.sciencecommons.org/). Other instruments are the JISC and the SURF Copyright toolbox (http://copyrighttoolbox.surf.nl/copyrighttoolbox/authors/licence/) with the License to publish available in English, French, Spanish and Dutch. This license is hark back by various European projects (License to **Publish:** http://www.nordbib.net/Projects/License-to-Publish.aspx).

5. License to publish and user licenses

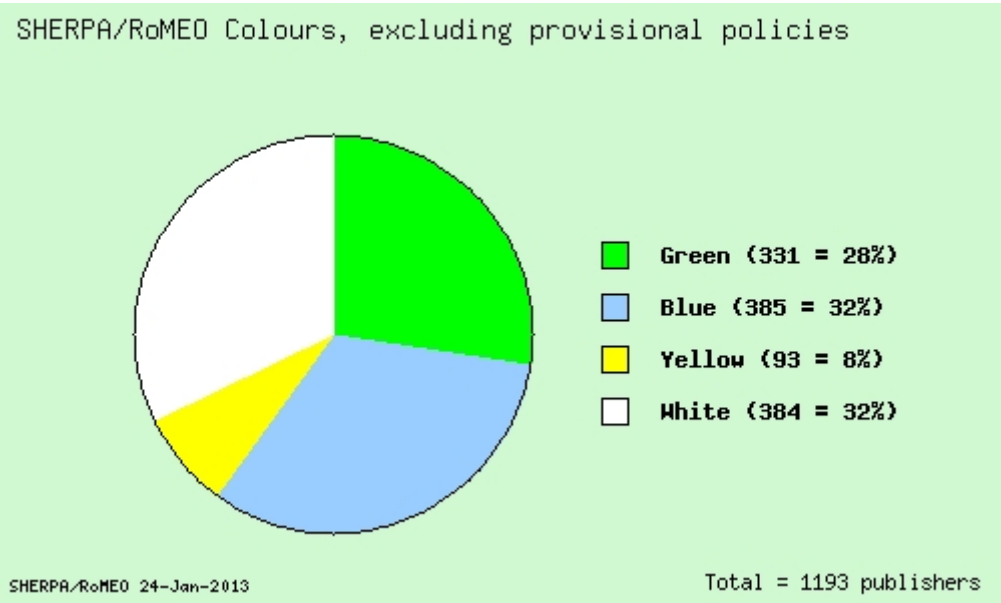
A very useful framework to understand this issue is offered by the table how can I self-archive AND get my paper published, developed by the Project RoMEO (Rights on Metadata for Open Archiving) (http://www.lboro.ac.uk/departments/ls/disresearch/romeo/), born to investigate the rights issues that revolve around self-archiving of research works deposited in open archives of the United Kingdom, and implemented between 2002 and 2003. As part of this project, studies have been carried out on expectations and attitudes of authors and publishers. Within the project RoMEO, among the studies cited above, editorial policies about self-archiving on the authors' side have been examined. This study has merged into the project that gave rise to the database SHERPA / ROMEO.

[1] In the classic model of scientific publishing the work has got a commercial value only in its refereed version.

[2] For the Italian law the submission of a paper to an editorial committee to be validate for the publication is the same of giving to the publisher a licence to publish with its own rules. The rights return fully available to the author only one month after the publisher does not answer the submission (Law 633/1941, art. 39), or six months after the delivery if the accepted paper has not been published. The Italian law assures the publisher the exclusive o the first publication of an unpublished paper, but this exclusive is limited and cannot be prolonged endlessly. After the publication of the paper, the author keeps the right to re-use it except if different agreements have been made with the publisher (Law 633/1941, artt. 38 e 42). In any case, the duration of the exclusive established by publishing contracts cannot exceed twenty years, on pain of nullity of the contract (art. 122). By this rule, which forbids the complete transfer to the publisher of the publication right, are excluded some categories of works as encyclopaedias.

In particular, analysis was performed on contracts for the sale of intellectual property (CTA, the Copyright Transfer Agreement) to publishers of periodicals. This investigation has shown an increasing trend in the percentage of publishers in the database SHERPA (http://www.sherpa.ac.uk/romeo.php) that formally allows forms of self-archiving. The results of the analysis of the Copyright Transfer Agreement (CTA) on periodicals show something to reflect on. In particular, some considerations are interesting: for more than 80% of the journals it is expected the cession of all the rights of utilisation which involves, among other things, the inability for the author to exercise the right of publication or translation (for example the chance to publish elsewhere, or even to translate their work into other languages, something very tricky in some cases and in some countries); the 60% of publishers are ready to publish works in the public domain, such as the United States government (this shows that publishers have no real need of the exclusive benefit of the publication); whereas the institutions where the authors work hold the copyright, often they get from the Copyright Transfer Agreement (CTA) a better treatment than individual authors.

To check which publishers have got self-archiving friendly policies, the best instrument is the database SHERPA/RoMEO (2002 and 2003). At 24 January 2013, of 1193 publishers surveyed (of which 31 from India (http://www.sherpa.ac.uk/romeo/search.php?country=IN&la=en&fIDnum=|,&mode=simple&version=)) 68% permit self-archiving divided as shown in the chart below:



- Green: the author can deposit in an open archive both the preprint and the postprint (331 publishers, the 28%)
- Blue: the author may deposit in an open archive only postprint (385 publishers, the 32%)
- Yellow: the author may deposit in an open archive only the preprint (93 publishers representing 8%)
- White: deposit not formally supported (384 publishers, the 32%)

Most «green» publishers allow self-archiving in the author's personal website or that of his institution, not in a disciplinary deposit, probably because they consider the greater impact of disciplinary archives, rich in relevant materials for their respective scientific areas and coming from all over the world. In India only 3 on 31 publishers fall in the white area.

Among publishers that allow self-archiving in IR, some do not put time or other limits, while most of them allow it only after a certain period from publication (called "*embargo*", ranging from 3 months to over 4 years), or admit self-archiving only after an expressed authorization or under the payment of a fee.

Finally, almost 400 publishers allow the use of the editorial version, and some of them even require it explicitly, as a good advertising for their image of innovative publishing. Without any specific authorization of the publisher,

postprint will never be deposited as they appear in the editorial layout of publication, it will be never recovered PDF files or other versions from the publishing website for the purpose of storing in an archive, but it will have to be used in the final version of postprint as drafted by its author. The use of editorial formats carries a violation, not related to copyright, but connected to the unfair competition (use of editing work, layout, restyling, where there has been an investment of the publisher). It is as well forbidden the imitation of the heading of a magazine, not only as a title, but also as a graphical approach, as this replication is a form of competition to the original source. There can be some exceptions to this rule when, for example, there is a special agreement between the managers of the magazine or the publishers and those of the open archive. Usually this happens a certain period after the publication of the dossier for all those magazines that are part of the band known as "*delayed open access*". Some arrangements can be stipulated, so after six, twelve or eighteen months (or another period of time agreed between the parties) the papers will be submitted - through more or less automatic practice – in an archive, usually a disciplinary archive. In these cases there will not be self-archiving and there will therefore be a process suitable to identify preprint versions of papers that come from these channels.

Some kind of licenses applied in the Open Access world has roots in the world of free software and in the model of copyleft (The project GNU/GPL). Copyleft means one copy left, set free, that is: you don't need to pay any fee for its utilization. The idea of copyleft consists in granting the permission to copy, modify and distribute the software, and publish an improved version of it. Inspired by this philosophy, the most popular licenses for the management of the rights in open access works are those developed as a part of the Creative Commons initiative (hereafter: *Creative Commons*). Promoted by international jurists, among them stands out the name of Lawrence Lessig, a professor first at Stanford and now at Harvard, CC was founded with the purpose of increasing the number of creative works which can be freely shared, distributed and, depending on the choice of their author, changeable. Through licenses and other instruments, CC allows authors to legally protect their works while they grant more freedom to users than those imposed by law or by the trade licensing. From a technical point of view, CC is based on a system that, with appropriate metadata, should allow to express the characteristics of the work and the authorized utilizations of it, so that this information is associated with the work and highlighted within the search engine on the web.

Different patterns of CC licenses have been realized so that the author can choose which one suits the best his intentions. The "*minimum*" license provides the possibility for the user to reproduce, and also to share with others, the work (for example, by an eLearning platform or a social network), without modification and citing the source. The more "*open*" license provides the possibility for the user to make any use of the work, including a commercial one and reprocessing, with the condition that the source is cited ("*attribution*"). Every license is expressed in three languages: for the common user, for the lawyer and for the machine (to read the metadata in a standard format by the metaengines).

This is a project of international and multilingual aim. There is also an Italian version of the website (First official Italian version, 2004). The original version, created for the U.S. copyright rule, is now in its third release. Version 3.0 includes six types of licenses (http://creativecommons.org/about/licenses/):

Attribution Noncommercial No Derivatives (By-NC-ND)
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in the version of the publisher (version 3) in the archive of his institution; the deposit is done together with the paper's publication; there is the possibility of an embargo for a maximum period of six months.

6. Institutional policies on copyright

As stated by Policy Working Group inside DL.org project (DL.org, 2008), policy concept represents the set or sets of conditions, rules, terms and regulations governing interactions between the Digital Library and users, whether virtual or real. Examples of policies include acceptable user behaviour, digital rights management, privacy and confidentiality, charges to users, and collection delivery.

In general, it seems that it's too early to expect formally-encoded digital library policies in actual digital libraries. There is no standard policy language for the Web. So in such dimension (in this paper) we mean policy as something of very simple, but determinate action to give correct impact some decisions.

If we can affirm as a general rule that intellectual property is born in the author's mind, there are nevertheless some cases in which the employer or the institution is the direct holder of the rights of utilization. These cases are ruled by laws, regulations adopted by institutions' governments, by working or professional collaboration contracts, and finally by specific agreements with authors.

In Europe, by law, under certain conditions, it is the employer who is entitled of the exclusive rights on the so-called "*useful works*", realized with resources and instruments owned by the institution while the authors are accomplishing their institutional activities: industrial inventions (ruled by patent laws), and, as of works under copyright, industrial design, software and databases. Beside this, the 1941 Italian law entitles for twenty years public institutions and no-profit private bodies all the rights of utilization on works published in their name, on their behalf and expenses; this period is reduced to two years in case of memoirs published by academies and cultural public bodies. These periods expired; the intellectual property goes back to authors.

As to the working contracts, these can have as object the realization of certain works and the relating transfer of rights of utilization to the employer (but this is the case in general of contracts entrusting occasional works), or they can refer to a specific copyright policy adopted by the institution with specific regulations are indicated where the cases in with the intellectual property is due to the employer. It is the case of American universities where the work-for-hire doctrine is in force (*Cornell University Copyright Policy*). In principle, the work-for-hire circumstance does not differ substantially from laws which assign the intellectual property to the employer.

As a matter of internal regulations, these can establish the cases in which the intellectual property is due to the institution (always to be considered exceptions to the rule by which the property is due to the author) and are the reference frame for all who are in terms with the institution.[3]

Finally, the author can voluntarily give up to the institution all or part of the rights on his work, for example when the same institution is the publisher, autonomously or in partnership with others.

Hitherto, we are still in the sphere of economic relations between the author an the institution, where the system of intellectual property is based upon principles of private law, not influenced by the specific social destination of academic and scientific institutions, which is to take care of progress and knowledge dissemination by means of research and education.

This purpose appears instead in those regulations where the institutions keep a permanent and non exclusive right of reproduction and communication to the public through the open access deposit in IR, in order to carry out its institutional mission of knowledge dissemination. Beside that, the keeping of the right to open access deposit allows

[3] As we shall see, the cases in which the institution keeps only some non exclusive rights of utilization are more frequent.

the institution to be a guarantor of the transaction by which the results of research funded with public resources are made public. Even if we stay within a strictly economic vision, we can say that open access promotes the defense of the market "*as a check parameter of operators' behavior between them and towards consumers*" (L. AMMANNATI, Diritto e mercato, 2003).

In Italy, the more frequent case of regulations which require a mandatory deposit is that regarding PhD thesis. With such regulations, the candidate knows in advance that he will discuss his thesis only if he will deposit it into the open archive. Always more universities and research institutes all over the world are adopting rules imposing the deposit of all research products carried out within the institution as a condition of accessing funds. As one can see, this kind of regulations does not fix a real obligation for the author, rather it settles a duty to which he must comply with if he wants to obtain some benefits (access fundings; be admitted to thesis discussion to complete a degree carried out using the institution's resources…). The author can be the sole judge of the decision over the deposit, providing by himself to the self-archiving, supplying it with a proper license (CC or other), or the institution will ask him to provide a licence (whose recipient is the same institution and where relations with the author are set) and only after this authorization it will provide for the deposit. After the self-archiving or the deposit licence released by the institution, the author remains the holder of all rights on the work and will be able to sign any publication contract which do not exclude the right to deposit in IR. However, institutional regulations and publishers' agreements with universities and research institutes can foresee the possibility of not respecting the deposit obligation (opt-out options), or to narrow the access to later given some specific motivations.

In the presence of institutional policies providing for a mandatory deposit in IR, the contractual position of the author towards commercial publishers is enhanced when he asks for keeping some right of reuse on his works, because he is not seen anymore as a holder of an isolated interest in the dissemination without barriers of his works, but he expresses the position of a whole academy or research institution, and of all the authors who work for them. It is desirable a division of institutional policies of this kind or, better, the achievement of the principle open access at a ruling level.

To educate to copyright also means to speak about a correct treatment and management of rights, it does not mean to make terrorism with information to stop piracy, which is limited to some market sectors well-defined. On the other hand, we need to stress how some movements based on the complete denial of respect of copyright and of its main philosophy results to be really hindered the achievement of a serious and rigorous approach to these matters.

It should be avoided a complete cession of economic rights to publishers. Recently, a growing number of authors have started to be interested in keeping copyright. The result is the trend of preferring Exclusive Licence Agreement (ELA) to Copyright Transfer Agreement (CTA).[4] But a lot of attention should be placed on Exclusive Licence Agreement, which can be as restrictive as Copyright Transfer Agreement. It is advisable to stipulate licences in a written form, as a contract. I this way, the parts identify contractual conditions, avoiding following misunderstandings on the terms of agreement.

The publishing mediation within the circuits of knowledge production and diffusion stays fundamental (above all its functions of qualitative validation), but it is important to ensure a good balance between the interests of the scientific community (the access must be the most wide as possible) and those of traditional publishers (the economic reward), avoiding to identify reproductions and exchanges with a scientific and educational aim, which are the core of the research, with piracy phenomena which are connected to forms of undercover commerce. The problems we are facing today are those connected to the sustainability of a commercial and juridical model which has encouraged concentration, sharp rise of prices, and loss of information and has slowed down the development of the knowledge

[4] As we saw earlier (note 26), the Italian law considers invalid any exclusive and unlimited cession of the right of publication. This nullity concerns the contracts for works published in Italy, while for Italian works published abroad the laws of that country are applicable (territorial principle of protection, valid for intellectual property and for any form of property of nonmaterial goods in terms of international private law; principle of assimilation, valid in terms of art. 5 Berna Convention).

market by hindering access to all potential actors. We are talking about a market which bears on the essential needs of the whole society and for this reason this market, more than other else, cannot accept exclusions.

References

Publisher copyright policies & self-archiving, http://www.sherpa.ac.uk/romeo. The database, realized between 2002 and 2003 within the project RoMEO, is now managed and updated within the Project SHERPA.

http://www.creativecommons.it/. The first official Italian version of CC dates to 2004.

The most spread are those developed within the project GNU/GPL for the free software, http://www.gnu.org//GPL.

Creative Commons, http://www.creativecommons.org/.

Joint Information Systems Committee, http://www.jisc.ac.uk/.

Scholarly Publishing and Academic Resources Coalition, http://www.arl.org/sparc/.

DL.org (Coordination Action on Digital Library Interoperability, Best Practices, and Modelling Foundations) is an EU FP7 Co-ordination Action co-funded by the "*Cultural heritage and technology enhanced learning*" Unit that will start in December 2008. It aims at creating a framework where key representatives from major initiatives and ongoing digital library and repository infrastructure related projects may collaborate, discuss experiences, exchange expertise, work on interoperability of their solutions, promote shared standards, and provide the research community with a deeper understanding of key issues and new directions. The Policy Working Group (WG), one of the six working groups co-ordinated by DL.org (Content, User, Functionality, Policy, Quality, Architecture) http://www.dlorg.eu/

See a san example the Cornell University Copyright Policy:
http://www.dfa.cornell.edu/dfa/cms/treasurer/policyoffice/policies/volumes/governance/upload/Copyright.html.

L. AMMANNATI, Diritto e mercato: una rilettura delle loro attuali relazioni alla luce della nozione di '*transaction*' di Commons. "*Siena memos and papers on law and economics. Quaderni SIMPLE*". SIMPLE 1/2003. http://www.unisi.it/lawandeconomics/simple/001_Ammannati.pdf.