Journal of Librarianship and Scholarly Communication

Volume 1 | Issue 2 eP1045

Up from Under the "Open Access" Bus

Paul Royster

Royster, P. (2012). Up from Under the "Open Access" Bus. *Journal of Librarianship and Scholarly Communication* 1(2):eP1045. http://dx.doi.org/10.7710/2162-3309.1045

© 2012 by the author(s). This open access article is distributed under a Creative Commons Attribution License, which allows unrestricted use, distribution, and reproduction in any medium, providing the original author and source are credited.

JLSC is a quarterly journal sponsored and published by Pacific University Library | ISSN 2162-3309 | http://jlsc-pub.org

ISSN 2162-3309 JLSC

COMMENTARY

Up from Under the "Open Access" Bus

Paul Royster *Coordinator for Scholarly Communication, University of Nebraska-Lincoln*

For most of the past seven years I had thought I was working to promote open access to academic scholarship and creative works. I helped place more than 40,000 articles and documents in a freely accessible repository, from which they could be (and were) browsed, downloaded, saved, printed, and linked to.

But I find now that these efforts failed to meet the standards of the open access advocates as represented by (among others) SPARC, the Scholarly Publishing and Academic Resources Coalition, a library membership organization formed and sponsored by the Association of Research Libraries. As was made excruciatingly clear at the March 2012 SPARC meeting in Kansas City, providing unlimited free access to materials is not enough to constitute "open access:" one must also supply unrestricted rights to re-use the materials. I left the convention in a huff, feeling that those of us who operate institutional repositories under the present ground rules had just been thrown under the bus.

According to open-access publisher Jan Velterop (2012), "It is about time to stop calling anything Open Access that is not covered by CC-BY, CC-zero, or equivalent. Open Access is well-defined in the Budapest Open Access Initiative..."

And truly, it is. Mr. Velterop was among those who issued the Budapest declaration in 2001, so he knows whereof he speaks. The text reads:

> By "open access" to this literature, we mean its free availability on the public internet, permitting any users to read, download, copy, **distribute**, print, search, or link to the full texts of these articles, crawl them for indexing, pass them as data to software, **or use them for any other lawful purpose**, without financial, legal, or technical barriers other than those inseparable from gaining access to the internet itself. The only constraint on reproduction and distribution, and the only role for copyright in this domain, should be to give authors control over the integrity of their work and the right to be properly acknowledged and cited. [Emphasis added]

And the 2003 Berlin Declaration echoes this same language:

> Open access contributions must satisfy two conditions:
>
> 1. The author(s) and right holder(s) of such contributions grant(s) to all users a free, irrevocable, worldwide, right of access to, and **a license to 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 (community standards, will continue to provide the mechanism for enforcement of proper attribution and responsible use of the published work, as they do now), as well as the right to make small numbers of printed copies for their personal use.
>
> 2. A complete version of the work and all supplemental materials, including a copy of the permission as stated above, in an appropriate standard electronic format is deposited (and thus published) in at least one online repository using suitable technical standards (such as the Open Archive definitions) that is supported and maintained by an academic institution, scholarly society, government agency, or other well-established organization that seeks to enable open access, **unrestricted distribution**, inter

© 2012 Royster. This open access article is distributed under a Creative Commons Attribution 3.0 Unported License, which allows unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

> operability, and long-term archiving. [Emphasis added]

Such re-use requirements exceed what is in my ability to deliver for our repository content; more importantly, they exceed anything that I would even recommend or desire to deliver.

If an unrestricted license to re-use, re-distribute, and create derivative works is to be the sine qua non of open access, then there is little hope that the institutional repository I manage can ever present itself as an outlet for open access. Certainly those contents that are already in the public domain may be considered "open access" under the stricter definition, as well as those contents published originally under some (but not all) of the Creative Commons licenses. Yet the most valuable mission of our IR has been to provide free public access to content still encumbered by publishers' copyrights but now posted online by permission of the copyright holder or controller.

Unrestricted re-use and distribution is not part of the permissions ordinarily granted to self-archiving authors by publishers, and it is not sought in our permissions requests. In most cases the author has either retained the right (or we have secured permission) to post a copy in the institutional repository of the author's own institution. The copyright remains in force, and it is an infringement to re-post the content elsewhere or to re-distribute it, freely or commercially. For those authors who have chosen to publish original materials in our repository, we prefer to have the copyright remain with them, and we distribute the works under a non-exclusive "permission to publish" agreement.

I could not in good conscience recommend to our faculty depositors that they apply a Creative Commons license allowing unrestricted re-use to either previously published or original work because 1) it would not be valid under any pre-existing copyright or publishing agreements they had already entered, and 2) it would severely "disincentivize" their participation to know that they were renouncing all control over the use of material they had authored.

My imagination runs wild over the possible uses of my own material that I would seek to prevent, but could not under an unrestricted re-use license: it could be set to music and recorded by Justin Bieber; it could be made into a syndicated cartoon series promoting children's toys and sugary cereals; it could be used as dialogue in an episode of "C.S.I. Omaha;" it could be excerpted and re-licensed to Georgia State by Oxford UP, Cambridge UP, or Sage Publications. (See Table 1 for a list of users I would probably prohibit.)

In fact, whenever approached for permission to re-use my materials, I have either granted free permission or, in the case of a commercially-published anthology, accepted a modest (two-figure) fee. And I am aware that my materials have been frequently re-posted without permission at various Internet sites, and I have not sought to force them to be taken down, even though some seemed to be rather

Table 1. People or organizations that I would not allow to re-use my copyrighted materials

Henry Kissinger	National Rifle Association
Microsoft	Philip Morris
Disney, Inc.	Kim Kardashian
Westboro Baptist Church, Topeka, Kansas	Rush Limbaugh
Al Qaeda	Bashar al-Assad
State of Texas	Fox News
Federal Bureau of Investigation	British Petroleum / Exxon / Transcanada Keystone Pipeline
Federal Bureau of Prisons	Academi/Xe Services LLC/Blackwater USA
Newt Gingrich / Sarah Palin	Antonin Scalia
Dick Cheney / George W. Bush / Karl Rove	Pakistan Inter-Services Intelligence
Ku Klux Klan	Heritage Foundation
Focus on the Family	Vladimir Putin
National Right to Life	The person who fired me from my last job
Mullah Mohammed Omar	John Wiley & Sons
Federation for American Immigration Reform	Boston Red Sox
Aryan Nation	Bill Lambeer
Posse Comitatus	

"fringe-y" types of places (e.g., Hermetic Order of the Golden Dawn, Arctic Beacon, The Black Vault). But just knowing that I could prevent uses that were offensive to me has been a comfort.

Some institutions have not been content with the permissions given by publishers or other holders of copyrights and have, usually with the faculty's approval, asserted an

> irrevocable, non-exclusive license previously granted by the author to the [institution]. Under that license, [the institution] may make the article available, and **may exercise any and all rights under copyright** relating thereto, in any medium, provided that the article is not sold for a profit, and **may authorize others to do the same**. (MIT, 2009)

And indeed, it is reported that this does facilitate deposit of works into the institutional repository. Leaving aside the issue that authors who are not careful may make conflicting representations to their publisher and their institution regarding the encumbrances on their works, I would point out that this language gives the institution incredible powers. Whether this variation constitutes "open access" under the strictest definition would seem to depend on how widely the institution authorizes others to exercise any and all rights under copyright. If they authorize everyone by default to do so, it would seem to meet the definition, though I am not aware of any institution having done this.

TAKING BACK "OPEN ACCESS"

More recently, I see that there is some debate over the proper definition of "open access," and it is being carried on in the context of the LIBLICENSE listserve, effectively between two of the "founders" present at the original Budapest moment. Notably, Steven Harnad has taken up the cause of so-called "gratis" open access (meaning accessible without cost) versus the insistence of some others on "libre" open access (meaning reusable without restrictions). Dr. Harnad has cogently (in my view) argued that the insistence on "libre" (i.e., unrestricted) open access is an unattainable distraction from the more achievable goal of widely available (though not necessarily reusable) "gratis" open access.

And so, we come back to Mr. Veltop's assertion, "It is about time to stop calling anything Open Access that is not covered by CC-BY, CC-zero, or equivalent." The "It is about time" portion of this somehow reminds me of what my dear mother used to say: "Enough is enough, and too much is nasty." While I feel rebuked and intimidated, I am nonetheless emboldened and resolved not to give up "open access" without a struggle. Indeed, it seems everyone insisting on the strict reuse-allowing definition of open access is either a Gold OA publisher or an associate of the Creative Commons organization, groups that might have motives beyond just getting scholars access to the materials they want to see.

> "When I use a word," Humpty Dumpty said in rather a scornful tone, "it means just what I choose it to mean— neither more nor less."
>
> *-Through the Looking-Glass*

So I will continue to think of my work and our repository as "open access," and to present it to campus faculty as such, and meanwhile to reassure them that they (or the publishers to whom they have ceded their rights) can still maintain some control over the unauthorized reuse of their copyrightable materials.

Paul Royster serves on the JLSC editorial board. The opinions expressed here are those of the author, and do not necessarily reflect JLSC's position.

REFERENCES

MIT Libraries. (2009). MIT amendment form. Retrieved from http://libraries.mit.edu/sites/scholarly/mit-open-access/open-access-at-mit/mit-amendment-form/

Velterop, J. (2012, March 16). Re: Predatory OA journals in CHE. LIBLICENSE-L [listserv]. Retrieved from http://listserv.crl.edu/wa.exe?A2=LIBLICENSE-L;37cefcb.1203

CONTACT THE AUTHOR

Paul Royster
Coordinator for Scholarly Communication

306 Love Library
P.O. Box 884100
University of Nebraska-Lincoln
Lincoln, NE 68588-4100

proyster2@unl.edu