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Open Access: avoiding unforeseen consequences

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Open Access: avoiding unforeseen consequences

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Abstract

The open access movement has gained momentum and is now considered one of the mainstream models of scholarly communication. Whilst the western model of subscription-access is likely to remain dominant for the near future, the growth of available information in the digital environment is changing expectations. However, the situation is not without some unforeseen consequences. This article will consider two disappointing developments associated with open access, and suggest some ways in which legitimate editors and publishers can circumvent them. The first issue is that of author and user rights. In the print environment copyright and user rights were fairly straightforward and well understood, however the digital environment has led to uncertainty and misunderstanding amongst authors, publishers and users and led to some legitimate (e.g. republication with full attribution) and some illegitimate (e.g. republication without attribution) behaviours both of which are considered unacceptable by some people. The second issue is the effect of money and how this has led to some ill-advised or fraudulent behaviour amongst editors and publishers.

Keywords

Predatory-publishers; licensing; rights; finance

The potential of online publishing

The opportunities offered by online publishing have contributed to continuing growth in the numbers of research articles and a dramatic rise in the available literature that can be accessed across the world (Royal Society, 2011; Morrison, 2015). The output of articles closely tracks investment in Research and Development (R&D), and as this has grown, so have the number of published articles. Global expenditure on R&D has doubled during the first decade of the 21st century, and indexed publications grew by a third (Royal Society, 2011). During 2013 alone 2.2million articles were produced globally according to the Elsevier index, Scopus (NSF, 2016).

Into this mix it is notable that there is greater participation from the developing and emerging nations. The US National Science Foundation (NSF) report found that US researchers accounted for just under 20% of total output, and there has been considerable growth in output from nations such as China and India. The output from China has almost reached the same level as the USA, and although output from the USA continues to rise, its share of total articles has declined whilst those

of emerging nations has largely increased. India is now the sixth largest producer of articles (NSF, 2016).

One important caveat is all available figures (including the ones used in this article) rely on “indexed” publications. A large (but unknown) percent of global publications are not indexed, so we can only guess at the numbers – however it is reasonable to assume that output in the non-indexed area is growing at the same rate as that within the indexed environment.

In parallel with this growth in global output, the potential of online distribution was realized back in the late 1990s, and there arose a concern that it would be controlled by commercial interests and the potential public benefit would not be gained. This led to some governments and research funders calling for an opening up of online publications so that the potential of unfettered dissemination could be realized (Ware, 2006).

The main calls for open publications came from the medical and life sciences with the Wellcome Trust being a principal advocator of open access (Wellcome, nd b). It is estimated that now there are about 770 mandates across the world (ROARMAP, 27 January 2016) that require grantees and employees to ensure that their content is made available through either Gold or Green routes.

The majority of mandates stipulate a Green route for open access. This requires the researcher to make their work freely available in a repository after publication. Most of the mandates stipulate the version of work that must be made available, and the length of time after publication that it must be made available. For example, the Wellcome mandate (initiated in about 2005, see Wellcome, nd c) requires researchers to make the accepted (not final published) version publicly available in the PubMed Central (PMC) repository within 6 months after publication. To facilitate this all of the large publishers deposit the work in the correct format into PMC on behalf of the researcher-authors. However for Wellcome grantees whose works are with publishers that do not offer this service, it becomes their duty to deposit the work with PMC, and then PMC creates the right file format and makes the work available. In 2012, concerned about non-compliance with its open access policy the Wellcome Trust announced that it was enforcing its policy by checking compliance, and reserving the right to withhold funding to researchers who did not comply (Wellcome Trust, 2012).

A few other mandates, most notably the one from the UK Research Councils (RCUK, 2013) require the researchers to make their works open either via the Green route or within a Gold OA journal. A Gold OA journal is one that makes the articles open at the date of publication (i.e. with no delay). If the authors are unable to publish in a Gold OA journal, then they are required to immediately post their article into an institutional repository, and for it to be made publicly available after publication – the embargo period ranging from 6 months after publication for life sciences to 24 months for humanities.

Apart from the funder mandates, there is also a move within academia to make works more readily available, and this has led to a rapid growth in the number of journals that either publish entirely Gold (i.e. all their articles are openly available at the point of publication) or offer a hybrid option (some articles are openly available, but others remain behind a subscription barrier). It should also be noted that outside the commercial publishing environment many – if not most – journals are published with free distribution: in print this was often restricted to members and partner libraries, but the online version is made available to anyone. Since the cost of publishing an online journal may be marginal for some institutions there appears to be a growth in new publications across the world, and these are

contributing to the wealth of information and the availability of free or open access research.

There are many benefits of open access publications, and these will not be discussed here as they are widely discussed elsewhere. This article is particularly concerned with some of the unforeseen confusions and behaviours associated with free or OA publications because they have an impact on the efficiency, success and value of open access within the wider research community and to the world public.

The two issues that this article will consider are those of rights and of financial models.

Rights

Within the print environment the concept of copyright protection is widely understood by most individuals, however the online environment has started to challenge this. It is notable that in the 2011 Hargreaves assessment of UK copyright law (a report that has been widely adopted by other countries), Lord Hargreaves stated:

“Could it be true that laws designed more than 3 centuries ago with the express purpose of creating economic incentives for innovation by protecting creators’ rights are today obstructing innovation and economic growth? The short answer is yes.” (Hargreaves, 2011).

It is notable that millenials (those born from the mid 1980s), have a lesser regard for the protection offered by copyright and see sharing as a natural activity that should be allowed without restriction. This, and the problems associated with managing and controlling rights in an online environment are having an impact worldwide, and – of course – are impacting on journal publishing.

The rights of authors are enshrined within most national copyright laws, and cover both moral and commercial rights. Within a traditional journal, it is naturally assumed by most authors that they assign publishing rights to the journal, but retain a moral right (attribution and integrity) in their work. It is also generally understood that they can reuse their own works for personal use so long as it does not conflict with the commercial rights of the journal. Likewise it is assumed that to reuse content from another publication requires permission – often with an assumption that no charges will be made so long as correct attribution is given.

The publisher, as copyright owner takes control of managing the copyright: challenging anyone who infringes the rights of the owner and the author, and ensuring that reuse is controlled and only for reputable purposes.

Challenging the status quo, one of the drivers for OA has been to reduce barriers to use and reuse: to enable free exchange and use of scholarly information without the need to request permission (and perhaps be asked to pay for that reuse).

Therefore the grant funders and governments have been keen to promote publication of scholarly content under a licence that allows the reader (and anyone else) freedom to reuse the content for any purpose without seeking special permission. See for example the FAQ document issued by the Wellcome Trust (Wellcome, nd a).

Early in the development of OA policies, the publishing community adopted Creative Commons licences (<https://creativecommons.org/licenses/>). These are generic licences that were developed for the music and creative media industries and offer

a range of easy-to-understand licences for any online work. The licence preferred by funders is CC BY which is the most unrestricted licence and allows users to use and reuse a work for any purpose, including for commercial purposes and making derivative works. The only stipulation is that the work is properly attributed to the original creator (Kim, 2007).

There are other CC licences that restrict use to non-commercial purposes and that do not permit modification, but these are generally not favoured by the research funders. As the chart "HowOpenIsIt" developed by PLOS, SPARC and OASPA shows (PLOS, 2014), open access journals exist across a Continuum, and not all of them use the same licences.

In addition to misunderstandings about what OA means for reuse, there are often confusions between (1) the assignment of copyright and permission to publish, and (2) the licence under which the article is published. Authors are not copyright specialists and explanations given by publishers are either not read or not understood by many researchers. This has led to some problems throughout the publishing workflow and cases of complaint from authors leading to considerable time and effort on the part of publishers in managing behaviour and expectations.

Copyright assignment versus reuse licence

In my experience, authors rarely read their agreements with the publisher (which are often written by lawyers and fairly impenetrable), and there are frequent confusions regarding the "contract" between the publisher and author, and the "contract" between the publisher and reader.

When an author publishes a work they need to grant the publisher the rights to publish their work – either assigning copyright over to them, or granting them a licence to publish. The publisher in turn publishes the work under a licence that grants the reader certain reuse rights. The traditional licence granted to readers allows for personal reuse for non-commercial purposes, and which will not undermine the commercial rights of the publisher (nor the moral rights of the author). This is often called "Fair Dealing" or "Fair Use" or "Exceptions".

If the article is then published under a CC BY licence (the publisher-author "contract") anyone (including the author) can re-publish the content elsewhere. Publishers usually ask for the right to be the first (and initially the exclusive) publisher (so that their works contain the original content).

Most good publishers make the licence under which the work is to be published clear in the publisher-author agreement – but unfortunately not all agreements make this clear (and they may not be read by the authors) and many authors do not fully appreciate the implications of the licence under which they are publishing.

In the OA environment it is common for authors to retain copyright and assign a licence to publish to the publisher. However there is no reason why a publisher could not require the authors to assign copyright to them – even for a work to be published under CC BY. It makes no difference to the reader who owns the copyright in the article that they read/use – what is important for them is what they are allowed to do with the content. However, if an article is to be published under a non-commercial CC licence, then there is a rationale for the publisher to require copyright assignment, so that they can make money out of the article through selling commercial reuse permissions. However, currently this does not often seem to be required by most publishers.

Copyright ownership and the licence under which an article is published are often conflated by authors with a lack of understanding the relationship between the two. An author recently complained to me about a journal that required its authors to assign copyright to the journal although it published under a Creative Commons licence. To her mind the issue over copyright ownership and the licence that the work is published under were intertwined and it was nonsensical to require copyright assignment. In this case the publisher was publishing under a non-commercial licence and owning copyright allowed it to make income from commercial rights requests without the individual permission from the authors. The author had not understood the implications of the agreement that they had signed with the publisher, nor the implications of the licence under which their work was being published. However, it is worth noting that she was untroubled by the fact that the publisher could make money through commercial permissions, and felt that it was a reasonable financial reward for their efforts in publishing her work (there were no author charges made) – but other authors may feel differently.

Money

Most people feel slightly uncomfortable with the idea that someone unknown can make money from their works without their permission. In my experience many authors are very unhappy with this part the CC BY licence once it is pointed out to them that someone can make money out of their works without notification to the author. One example recently came from an author who paid her APC to publish in an OA journal, and was horrified to find her article being sold by an article harvesting site. Her email stated that she had paid for her article to be made freely available, and asked how it could be legal for someone else to sell access on their own site. Unfortunately, since she had published under a CC BY licence, this is exactly what she has allowed someone to do, and there was no way of preventing the harvesting site from selling her article. However, it must be pointed out that her article remained free for anyone to download from the original journal site.

Another example of problems has recently emerged from large publisher sites where standardized systems are used for permissions. One large publisher has recently been criticized on a ListServ for apparently selling OA articles. Against each article they have a RightsLink button that can be used by anyone seeking permission to use an article. Every article has this button, and it leads to an automated site which provides an “online shop” for different uses (charges vary according to the use, so – for example – a trainer wanting to use an article in a commercial course may be charged one fee, but a pharmaceutical company looking to use the article within its promotional packs sent worldwide will be charged a different fee). When the button is clicked the opening screen states clearly that all users must check if the article is OA or not – if it is they may not need to pay depending on which licence the article is published under. However, because the button (and link to the online shop) appears on all articles it appears as if the publisher is attempting to sell something that is already free.

In another example authors from an international organization published a series of articles in an OA journal. The organization was then planning to reformat and reissue the articles as a formal guideline. However before they could do this someone downloaded the articles from the journal and gathered them into a book now for sale in Amazon. The organization is very unhappy with the situation as it was hoping to sell the (revised) articles itself, but now feels that there is no further market for it.

There are also some subtleties about what constitutes “commercial” use. For example if a commercial website makes a CC BY-NC article available on its site but

it does not charge for it is this a commercial infringement? (The answer according to one publisher is yes.)

Derivative works

Another potential area of concern with the Creative Commons licences lies with the decision whether to allow derivative works or not. Most authors would consider it entirely reasonable for someone to reuse a figure, table, or block of text from their published article within a different work (fully cited). However few would be happy if their work was re-worked to make it appear to say something different. Creative Commons does state that any derivative works must make it clear that all changes have been made without authorization of the copyright owner, however the fact that the original article is cited will lead some readers to assume that the new article endorses the ideas of the source article.

An international organization for whom I have provided some consultancy services is very concerned about their content being used within derivative works due to the political sensitivity surrounding some of the content that it publishes. The organization is under pressure to make all its content freely available under a CC BY licence but currently feels that it cannot do so because it needs to know what use its works are going to be put to. The organization has particular concerns about information being repurposed out of context for political purposes. The concern is that if this is done, with the origin of the content being attributed to it, then it will be accused of bias and affiliations which would undermine its credibility as an impartial source of unbiased information. The organization is keen for people to make use of their (freely available) content, but wants to know to what purpose it is being put.

Permissions

In the traditional licence-protected environment there was general understanding about when permissions would be required: without permission reuse of content could only take place for personal, non-commercial purposes. In a fully OA environment, with all content published under a CC BY licence there will equally be easy understanding and a lack of bureaucracy surrounding the reuse of content. However in the current situation some articles are protected by traditional fair dealing licences, others are published under CC BY licences, and others – still open access – published under slightly restrictive licences. This adds to confusion and also to the administration required when content is reused. Because of the variety of licences every source needs to be checked in the same way that it did in the traditional licence-protected environment: however many authors (and publishers) make assumptions about OA articles and think that no permissions will be required.

Take the following example: an author reused an image from an OA article published under a CC BY licence. Since the article was fully OA the author assumed that no permission was required. However, the figure in the OA article had come from another publication, not published under a CC BY licence. Therefore the author should have obtained permission from the publisher of the original source.

In another example an author reused a block of text and image from an article published OA. However the author did not realise that the article had been published under a non-commercial licence, and because the author's article was published in a book available for sale this represented a commercial reuse and so permission was required.

And a third example: an author reused a figure from an OA article published under a non-derivative licence. To use only a part of an article within a new work

constitutes the creation of a derivative work, and therefore the author should have obtained permission.

The financial model

Journal publishing is an expensive business although much of the cost is absorbed by committed individuals - authors, reviewers and editors. In addition to these hidden costs there are many other direct and indirect costs that need to be funded. These include (in an analogue environment) the cost of typesetting and design, and printing the journal. Within online-only journals there are the cost of developing and managing support systems and processes such as online submission and content management, and, of course, online hosting. Looking holistically at the entire publishing process, online publishing has saved little – if any – costs. This is partly due to the expenses of creating (and updating) file formats needed for online publishing (including XML as needed for indexing systems and data exchange), and for the considerable staff costs required to support journal development. A detailed breakdown of what publishers do (or should be doing) and the relative expense of this can be found in the blog posting “96 things publishers do” (Kent Anderson, 2016).

Financial models

The commercial model largely relies on income from subscription, mostly paid by libraries. In addition to covering costs, commercial companies also look for profit in the same way as other companies. Nonprofit publishers (e.g. Learned Associations) may also seek a “profit” (or surplus) from their publishing activities to support the association activities (see Johnson and Fosci, 2015). In addition, many journals across the world are supported through institutional funding and support (e.g. free space on the institution website and access to the institution's IT staff). In some cases this subsidises the journal publication, and in other cases it removes any need for subscription (or other) income.

In addition to subscription income, journals often make money from advertising, licensing their content to other companies, from article charges and various other avenues – although these tend to be small compared to subscription revenues. Some journals are supported through the other activities of the organization, see for example *MedWave* (<http://www.medwave.cl/link.cgi/>, supported by the commercial training activities of its parent organization), and *ecancermedicalscience* (<http://ecancer.org/journal/journal.php> supported by charitable donations and a wide variety of activities of its parent organization).

In the drive for open access, alternative funding models have been introduced to replace subscription income. These usually rely on income at the point of publication rather than at the point of distribution, the predominant model being Article Publication Charges, or APCs. The model is based on the argument that global (open access) distribution is central to the purpose of any publicly funded research, and therefore that the cost of publishing should be funded along with the research.

Payment from research funds is potentially worrystome since it reduces the funding available for the research itself. However, this should, in the long term, be balanced by a reduction in the cost of obtaining the information needed to inform the research (see Anderson, 2014 and Bjork and Solomon, 2014).

One effect of payment “up-front” of greater concern is that it permits unscrupulous publishers to behave unethically (Beall, 2012). If authors are paying to publish,

then it is in the interest of publishers to allow as many as possible to publish, regardless of quality, because this brings in the greatest revenues. Conversely, in the subscription model it is more advantageous for publishers to require selectivity so that the quality (and value) of their product is increased and can obtain higher revenues (Singleton, 2014).

A reduction in editorial selectivity may not (of itself) be a bad thing, and the world's largest journal, PLOS ONE, has stated that it will publish (almost) any article that falls within its wide subject base that is methodologically correct (see its Criteria for Publication, PLOS, undated). It argues against selectivity as this can delay publication of valid articles, and introduces editorial bias into publications.

Unfortunately, however, the APC financial model has provided an opportunity for fraudulent publishers. There are two types of misbehaviour: fake journals and hijacked websites. Hijacked websites are launched to mimic credible journals and mislead authors to submit articles and pay an APC to the fraudulent publisher.

Fake journals promise quality validation of articles, but in fact will publish any article where the author pays their APC – and this is often combined with aggressive marketing tactics to obtain submissions. Their problem lies in the fact that they potentially fill the Internet with dubious quality content, and they can also undermine the career of the authors whose works appear in them.

With increasing pressures for academia to publish, these fraudulent behaviours will inevitably dupe some naive authors into believing they are publishing in reputable journals – and potentially jeopardise their careers. In other cases authors themselves are aware of the quality problems but are willing to publish regardless of the quality of the journal because of the demands being made on them to “publish or perish” (Anderson, 2015).

In the longer term the growing wealth of poor quality open access content available is of great concern. Because it is freely available content will be accessed, read, and referenced by inexperienced academics and researchers who do not realise that it has been published without quality checks. In an age of information wealth there is a growing challenge for researchers across the globe in determining quality and what to trust (Mudditt, 2015; Nwagwu, 2015).

Jeffrey Beall, a librarian in the USA, retains a website on which he posts the names of publishers and journals that he has identified as operating inappropriately, and which he refers to as predatory. Over the years that he has retained this list the number has grown alarmingly, from 18 in 2011 when he started the list, to 923 in 2016 (Beall, 2016). The issue of predatory, naïve and unsuitable publishers has become a hot topic in the publishing and research industry, and has grown partly because of the potential money to be made out of an open access environment where authors pay to publish, and partly because a growing body of researchers (Royal Society, 2011) need to have their work published and the number of suitable publishers is lacking.

Responding to concerns about publishers not adhering to good practice guidelines (or being unaware of them), in 2014 the Directory of Open Access Journals (DOAJ) became concerned that it was indexing some journals that may be considered predatory because they do not conform to international standards of good practice and reviewing validation. To improve the quality of its index and promote good practice it recently issued a set of principles that all journals have to comply with if they are to be indexed. It has also taken the decision to review and re-evaluate all the journals that it indexes to ensure compliance - almost 10,000 journals (DOAJ, 2015).

Another response to these concerns has recently been launched by a group of supporting organisations including open access and other publishing associations, and independent publishers. The Think.Check.Submit. campaign (<http://thinkchecksubmit.org>) is aimed at researchers to help them identify trusted journals for their research. It provide an easy checklist of what to look for to check the credentials of a journal or its publisher.

It must be remembered that much predatory behaviour cannot be considered the fault of, or a result of, open access. The opportunities of online publication would have inevitably led to new publishers that do not conform to traditional norms either for fraudulent or naive reasons. However the APC financial model has provided a financial incentive for fraudulent individuals to enter the environment.

Remedies

Whilst there is no easy solution to these two issues for the scholarly research community there are steps that publishers, librarians and academia can do to mitigate the problems.

Publishers need to ensure that not only are they complying with international guidelines and norms, but that they are transparent about their practices on their website. Peer review is considered a normal good practice, but if a journal decides not to use peer review this is quite acceptable so long as they are honest about it and their policies are clearly explained (on the website) so that both authors and readers know what to expect from the publication and no false promises are made.

Publishers also need to be extremely clear and explicit about licensing terms – to authors as well as to readers. Copyright and licensing terms should be explained in an obvious part of the website – not hidden away as they are usually are.

Librarians and academia need to increase education of researchers and scholars to help them evaluate information that they find on the web, and understand what they may and may not do with any content they discover. See for example the guidelines provided by the University of Manchester (<http://www.library.manchester.ac.uk/services-and-support/staff/research/services/open-access-at-manchester/check-your-journal/advice-on-predatory-journals/>)

Authors need to take care of their own reputations by ensuring that they only publish in known, reputable journals, and that they make appropriate publishing decisions.

And finally, all national, regional and international organisations working with the scholarly communication environment (e.g. DOAJ, and other publishing and editorial associations) should increase efforts to educate and inform all people involved in the scholarly communication environment to raise awareness and increase good practice and quality controls.

Conclusion

Whilst OA remains an ideal for the distribution of research information, and as a practice it is becoming mainstream, the financial models and licensing agreements remain areas of confusion and potential opportunities for fraudulent or poor practices. We can only hope that education and pressure to conform to good standards will minimize negative implications.

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Short biography

Pippa Smart is a publishing consultant with over 25 years' experience of working within scholarly publishing. She now advises publishers (particularly non-commercial associations) and editors on the development of their publishing programmes and journals – particularly on editorial strategy. She also advises and trains on copyright and intellectual property issues. She is the Editor-in-Chief of *Learned Publishing*, writes a monthly newsletter for the publishing industry, is Vice President of the European Association of Science Editors and a non-Executive Director of Practical Action Publishing.