

Copyright Reform: for Whom?

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A WORKSHOP ON ADDING COPYRIGHT REFORM TO THE OPEN ACCESS AGENDA

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Overview

- 1 Why copyright should be made simple
 - Public education
 - Does science still need commercial publishers?

- 2 Statutory licensing: a backward-looking solution?

Copyright in the age of printing

Richard Stallman, 2001

Copyright in the age of the printing press was fairly painless because it was an **industrial regulation**. It restricted only the activities of publishers and authors. Well, in some strict sense, the poor people who copied books by hand may have been infringing copyright, too. But nobody ever tried to enforce copyright against them because it was understood as an industrial regulation.

Copyright in the Internet age?

Richard Stallman, 2001

Copyright law is now a Draconian restriction on a general public. It used to be a restriction on publishers for the sake of authors. Now, for practical purposes, it's a restriction on a public for the sake of publishers. Copyright used to be fairly painless and uncontroversial. It didn't restrict the general public. Now that's not true. If you have a computer, the publishers consider restricting you to be their highest priority. Copyright was easy to enforce because it was a restriction only on publishers who were easy to find and what they published was easy to see. Now the copyright is a restriction on each and everyone of you. **To enforce it requires surveillance – an intrusion – and harsh punishments.**

Why "copyright" should be made simple

- It does not concern just publishers and researchers but
- it affects everyone's everyday conversations
- it interferes with the freedom of speech and of learning
- its enforcement requires a pervasive surveillance

Article 1, Section 8, Clause 8 - U.S Constitution

The Congress shall have Power ... to promote the *Progress* of *Science* and useful Arts [end], by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.[means]

Enlightenment was not just about "scientific production" [Willinsky, 2022, 66-69]

It involved:

- public education
- spread and diffusion of science (Malla Pollack)
- popular information as basis of popular government (Madison)

Enlightenment as personal emancipation [Kant, 1784]

*Enlightenment is man's emergence from his self-incurred immaturity. Immaturity is the inability to use one's own understanding without the guidance of another. This immaturity is *self-incurred* if its cause is not lack of understanding, but lack of resolution and courage to use it without the guidance of another. The motto of enlightenment is therefore: *Sapere aude!*¹² Have courage to use your *own* understanding!*

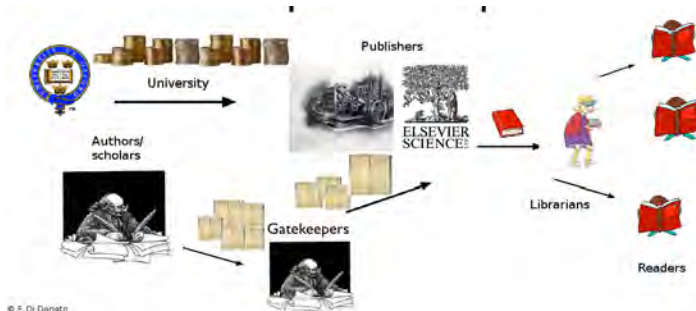
Enlightenment as public conversation

There is more chance of an entire public enlightening itself. This is indeed almost inevitable, if only the public concerned is left in freedom. For there will always be a few who think for themselves, even among those appointed as guardians of the common mass. Such guardians, once they have themselves thrown off the yoke of immaturity, will disseminate the spirit of rational respect for personal value and for the duty of all men to think for themselves. The remarkable thing about this is that if the

Monopoly

- Monopoly was just a means to an end, in the age of printing.
- In the Internet age, can we pursue the same end without resorting to it?
- Can we promote a public use of reason without making texts difficult to access?

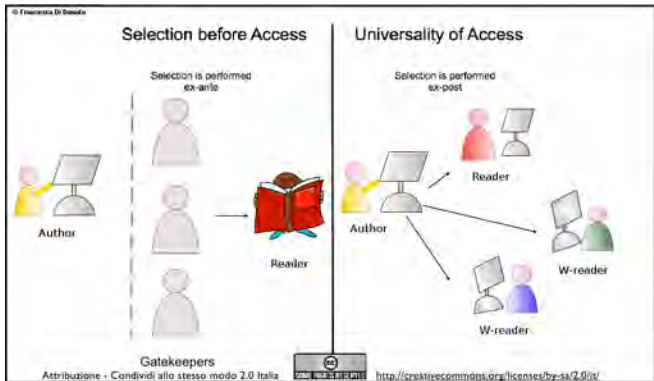
Publishing in the age of printing



Evaluating research in the age of printing



Evaluating research in the age of the Internet?



Unbundling research evaluation from publishing



<https://open-research-europe.ec.europa.eu>

ORE: open science without monopoly

- all the content is under a CC-by license
- a publisher is hired just as a (replaceable) provider of publishing services (i.e services making research public) without any copyright transfer
- the peer review process is public (rather than secretive and private)

And yet...

[timeshighereducation.com](https://www.timeshighereducation.com)

Nature's OA fee seems outrageously high – but many will pay it

Dorothy Bishop Twitter: @deevybee

On 24 November, Twitter exploded with outrage at [the announcement](#) that the publisher Springer Nature plans to introduce an open access (OA) option for its *Nature* research journals, with an article processing charge (APC) of a whopping €9,500 (£8,290 or \$11,390).

Particular scorn was heaped on a subsidiary pilot scheme called "guided OA", whereby authors can pay £2,190 in exchange for peer review, an editorial assessment and a recommendation of which journal in the *Nature* hierarchy their article is suitable for.

The publisher's [announcement](#) starts: "We are fully committed to open research." However, it is fair to say that this commitment has been very long in coming. And while the longer-term plan is to transform the *Nature* stable into fully OA journals, from the start of 2021 they will still only be hybrid. Thus, their lucrative traditional business model will remain, whereby readers and libraries pay to access work given to the journals for free by their authors.

`https://www.timeshighereducation.com/blog/natures-oa-fee-seems-outrageously-high-many-will-pay-it`

Monopoly: of what?

Why paying € 9500 to publish an article on "Nature", when we could publish it in a Diamond OA journal for free?

- We do not need "Nature" to do a public use of reason.
- We can find cheaper publishing services elsewhere.
- But we cannot do without its branding value
- ... because of the current administrative research assessment system.

J. Willinsky's proposal of copyright reform

"I suggest that the Copyright Act recognize "research publications" as a **distinct category of work**, which it currently does not do, and that it subject such publications to statutory licensing. This licensing will qualify the publishers of research to royalty payments from its principal institutional users (universities, industry research and development, research institutes, etc.) and the sponsors of this work (foundations and government agencies). The rate will be set by **copyright royalty judges**, much as happens with the licensing of music—only in this case, the publishers will be required to make these research publications immediately open access." [Willinsky, 2022, 9]

Breakdown

- ① Recognizing “research publications” as a **distinct category of work** by means of a **scholarly publishing review board** curating a **Research publications registry**
- ② **tracking** the usage of publications included in the registry
- ③ distributing royalties accordingly
- ④ on the basis of a statutory but non compulsory licensing system (publishers may **opt out** at any time).
- ⑤ Excluded publishers have the right both to petition the board and to resort to a **judicial review**

Saving publishers, stiffening science?

- ① Starting new "scientific" publishing initiatives would be a leap in the dark for publishers and a tricky bet for authors
- ② The very presence of the list would increase the amount of court litigations - for who can afford them
- ③ the need to track usage would make (or continue to make) acceptable a pervasive surveillance system
- ④ the possibility of opting out might make difficult to lower the prices of royalties, or it could contribute to preserve a parallel commercial system involving high APCs.

Italian crazy lists

Listing wildly

Weary of cronyism, many in Italy welcomed a metrics-based research evaluation - until they saw the catalogue of approved publications, 'crazy lists' that ignored many journals in favour of provincial newspapers, religious circulars and yachting magazines. Massimo Mazzotti writes

November 8, 2012

Like many countries, Italy is trying to reshape the way resources are allocated across its system of public universities - a task made all the more urgent by the economic crisis of the past few years.

A broad plan to reform the education system was approved two years ago. One of its key components was the creation - under the aegis of the Ministry of Education, Universities and Research - of the National Agency for the Evaluation of Universities and Research Institutes (known as Anvur).

Le riviste "scientifiche" dell'ANVUR: dal sacro al profano e dalle stelle alle stalle

Di Redazione ROARS - 21 Settembre 2012 174

<https://www.timeshighereducation.com/features/listing-wildly/421723.article?storycode=421723>

The stiffening of science in Italy

The Italian research assessment authority is maintaining a list of "scientific journals.

- when it tried to be inclusive, it became an object of jokes ("Anvur's crazy lists")
- when it tried to be exclusive, it was sued

Is the medium actually the message?

Does the quality of being scientific depend on the literary category of its containers?

For instance: how should the *Legend of the Grand Inquisitor* be listed? Just as a part of a novel or as a philosophical work?

Libraries would become a tool of the capitalism of surveillance

When your journal reads you

14 April 2021 | doi:10.5281/zenodo.4683778 | No Comments



Renke Siems on user tracking on science publisher platforms, its implications for their individual users and ways to face this issue

<https://elephantinthelab.org/when-your-journal-reads-you/>

Would Springer-Nature accept royalties lowering its current profit margin, or would it take advantage from the possibility of opting out because of its dominant position in the research assessment game?

Copyright reform: for whom?

- The statutory license system would guarantee scientific publishers an income.
- The possibility of opting out would preserve the high profit margins connected to dominant positions in the research assessment system.
- Institutions and funders would keep on paying publishers fees not necessarily reasonable.
- Libraries would become parts of a surveillance capitalism system.
- The transaction costs would affect everyone - but more the poor than the wealth.

(Open) science could be much more, much worse *and* much better than an administrative system of royalties and lists

"We should have hope, however, that **the participants in networked science understand far better, by virtue of their participation, how science actually works.** This reaches beyond those who directly participate in online science projects. The sense of scale and the inevitability of disagreement that the Net makes manifest to most of its participants are in fact characteristics of the eternally humble scientific outlook: The universe is vast and impossible to know perfectly. At its best, however, our experience of the Net will educate more people about the real nature of science as a grand, continuing collaboration among fallible humans. At its worst, the Net will enable us to be more emphatically wrong about the methods, attitudes, and results of science. Which will happen, the best or the worst? Both." [Weinberger, 2011]



John Willinsky (2022)

Copyright's Broken Promise. How to Restore the Law's Ability to Promote the Progress of Science



David Weinberger (2011)

Too big to know



Immanuel Kant, 1794

An Answer to the Question: what is Enlightenment?