

The University and its Libraries: Reactions and Resistance to Scientific Publishers

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Abstract. This paper addresses the relationship of copyright and the right of universities on scientific production. Information and Communication Technologies (ICTs) are causing many changes in the system of scientific communication, such as the creation of Institutional Repositories that aim to gather scientific production in digital format. The University needs quicker ways of spreading academic production and many questions are emerging due to contexts such as the Open Access movement. Thus, this paper questions the positioning of Universities, especially Public Universities, which despite having policies related to intellectual property to protect the transferring forms of research results to society; many times do not have a positioning or a mechanism that regulates the self-deposit of scientific production in these Institutional Repositories. In order to develop this paper, the following issues are addressed: lack of interest of the University in storing scientific production; reports on the relationship of the library with scientific publishing houses; the participation of faculty members and students in supporting the Free Access movement; and initiatives aimed at greater flexibility of copyright to the context of scientific production. In order to follow the development of these issues at international level, it was opted for qualitative research with non-participating direct observation to carry out the identification and description of copyright policy of important publishers from the ROMEO SHERPA site; therefore, it can be observed that there are changes regarding the publishers' flexibility before self-archiving of authors in open access institutional repositories in their universities. Given this scenario, we present reflections and considerations that involve the progress and mainly the integration of the University and its faculty members; the institution should recommend and guide its faculty members not to transfer their copyrights, but to defend their right of copy to Institutional Repositories along with Publishing Houses.

Keywords. Institutional Repositories, Copyright, Electronic Scientific Communication, Public University, Open Access Movement

Introduction

The university, in its mission of disseminating knowledge to the advancement of society, is inserted today in a new scenario in which the communication and information technologies provide changes in the scientific communication system, presenting a new form of storage, retrieval and dissemination of its scientific production by means of Institutional Repositories.

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In the context of scientific communication, Institutional Repositories are aimed at gathering the University scientific production in digital format in order to preserve and enhance access to such production and, consequently to reach the desired visibility and recognition.

However, the scientific production developed by faculty members and students of Universities continues to be protected by copyright law, requiring the permission/authorization from the author to deposit it in Institutional Repositories of Universities and, despite the scientific production is carried out in the field and by members of the University itself, it continues without rights regarding the storage of results of their research.

This situation demonstrates apathy of Universities by not requiring some kind of right on this production for storage in their repositories; except when patents are involved.

In this sense, this paper questions the positioning of Universities that, despite presenting policies related to intellectual property to protect the transfer forms of research results, many times do not have a positioning or mechanism that regulates the self-deposit of scientific production in these Institutional Repositories, nor a participation policy that would strengthen the process of negotiation and acquisition between libraries and publishers.

Such a proposition is needed because of some aspects to be addressed, since a significant portion of scientific production can only be accessed by purchasing the materials offered by major publishers at high prices in the context of libraries and universities. Considering that the purchased material is produced within the University and by its own faculty members and students that give their copyrights to the publishers, the other part of scientific production not published by major publishing houses often becomes gray literature due to lack of dissemination and access. Thus, once the author has the right over his creation, the University – especially the Public University – should also have the copyright of this production, strengthening the storage and representation of informational scientific content in their Institutional Repositories.

In order to develop this work, questions related to the lack of interest of the University in storing scientific production are addressed, as well as the relationship of libraries with publishing houses, the participation of faculty members and students in the Open Access movement; and also the identification of the current position of major international publishers and universities in face of open access institutional repositories to obtain subsidies to chart a future outlook on these issues before the current scenario.

1. The University and Its Libraries in the Context of Scientific Communication

The change in the information scenery resized the use and definition of time/space relationship in communication networks which allowed the large flow of interactions that shaped an unprecedented multicultural interaction. Thus, there is a large network of collective knowledge that multiplies and expands itself in every exchange of information between the individuals themselves.

The reflection of this change can also be observed and compared before the traditional model of scientific communication that continues focused on knowledge generation, while the model of electronic scientific communication expands its focus to

dissemination and access, but with distinct pathways that involve the periodical subscriptions and open access.

Guédon [1] mentions the transition movement from the subscription model to the open access model through two reactions of the scientific community that are related to resistance against high prices of scientific magazine subscriptions and the emergence of consortia. According to the author, these are defensive resistance moments that do not change the context. The Budapest Declaration of 2001, which pioneered the Open Access Movement and triggered a series of integrated movements around the world to support the transition to the so-called open access paradigm, has not yet reached part of its propositions.

During these eleven years, The Open Access movement has been broadening its discussions guided by researchers through marking positioning that reinforce it; however, opposing to Open Access mandates we have been observing contrary and resistant actions against the movement by members of the United States Representative Chamber that created the bill [2] in October, 2011 called Stop Online Piracy Act (SOPA) or H. R. 3261 that enlarge the legal ways to fight against the online traffic of protected property and of falsified articles; but, due to the polemics related to the law, users began to boycott companies that did not support the law that was suspended in January 20 this year.

We highlight the protests that motivated the boycott to Elsevier [3], guided by reputable researchers that decided not to send their articles to be published at this publishing house because of Elsevier' support to the bill sent to the White House representatives in the United States in December 16, 2011, denominated as Research Work Act (RWA), also known as H. R. 3699 regarding the prohibition of open access mandates to researches financed by the federal government, with support of the Association of American Publishers (AAP).

Therefore, by means of movements and boycotts promoted by the scientific community, it shows the change in the scientific communication flux that allows greater interaction between the producer and the user of information. In this context, the University, mainly the public University, is inserted in the scope of generation and transmission of knowledge, promoting the circulation of social, technological and scientific conquers. Such advancement offers the knowledge of universal culture in various sciences and the university can fulfill its mission: teaching, research and extension contributing to the country development.

The Open Access in the context of scientific production of Universities is to Guédon [1], a powering system of the use of all minds, that is, system that extends and shares the results already achieved in our Universities, offering support and making them known by the impact of knowledge.

Even with so many differences, in the scope of universities, the Institutional Repository detains itself in some aspects that interfere with its consolidation, for example, the legal aspect that covers copyright and in particular, the right of copy for these environments.

In this context, the libraries also face difficulties not only /in terms of the high cost of subscriptions and renewals of periodicals with the publishing houses, but also in the agility to provide information to its users regarding authorizations to use the materials that are under publishers' right, which impedes the progress of researches as if publishers would lose something by releasing their contents after publication.

To illustrate how publishers are resistant to cede their information we present some case reports that occurred at "Universidade Estadual Paulista" (UNESP) and the first

one is a research group that requests to a certain publisher authorization to translate to Portuguese an specific article published in one of its journals, to which the university pays subscription so that, via library, information is made available to its users.

By making contact with the manager of the publisher headquarters, three questions related to the use of the article were posed: What purpose are you translating the article for, i.e. is it for a new book or dissertation? Which language are you intending to translate it into? What rights would you require; i.e. Print Regional (Brazil only), Print World, Electronic World or Print & Electronic World?

The publisher said that it would be happy for you to translate this article; however, it would incur a permission fee. For the right to translate the article into Portuguese (Electronic World), the fee would be £ 210.00 GBP + Tax, if applicable. If you wish to proceed, please let me know and I will raise the appropriate invoice.

As mentioned previously, the university has a subscription with the publisher and for this reason it was asked for a discount or even exemption from that tax to the representatives of Brazil office because according to the conversion the value would be around R\$ 530,00. However, according to Brazil officials, the headquarter requested further clarification on the possible translation which, in accordance with the considerations of the research group leader would be of great importance aiming the Portuguese publication of the concepts pointed by the author at the time of presenting ideas in the Information Science area and especially, because the author himself would be present in the main event of the area in the same year. Thus, the researcher sent new answers pointing the characteristics of magazines in the area that would receive the translation, for example, the kind of publication, language (original + translation or only translation), title of the journal, if the journal is academic or commercial, if it will be a printed or online version, with public or restrict access, how many readers the journal has.

Only in October, the eve of the event, the researchers received the answer from the publisher that after looking through the journals website (which took a while as citrix was being its usual useless self), then there are 2 options:

1. The article can be translated and given to the 20 or so researchers who will be attending the lecture free of charge providing that the following statement appears on each copy. This article is © Group Publishing Limited and is provided for your own personal use only. It may not be used for resale, reprinting, systematic distribution, emailing, web hosting, including institutional repositories/archives or for any other commercial purpose without the permission of the publisher, this is because it is only a small number of people.

2. If they still wish to proceed with the translation for the journal, then because it is a registered journal and it is open access and electronic (and therefore a potentially wide audience) then the translation fee of £ 155 (+ tax if applicable) for the electronic rights will have to stand.

Because of the importance and necessity of translating the article to the research group, the requested amount by the publisher was paid, showing that in this case it makes no difference to be a subscriber or not to any publisher's product, or even the value of the account that the institution keeps/funds annually, and even less the use for academic purposes, since what really becomes important now is the fact of the publisher not miss any opportunity to do business for profit.

When publishers began marketing electronic periodicals, many libraries considered that somehow they could optimize the university's budget; the units that had the same course could adopt the electronic subscription rather than pay for each printed

subscription of the same title. At the time, the price was much lower compared to the value of the electronic subscription.

Today, publishers, in order not to lose their profit margin, bind or condition the lower value of the electronic periodical only if the institution subscribe to the printed form.

UNESP adopted the policy of not subscribing to printed periodicals, but unfortunately this option is not always available to Latin America, and if the title is part of a basic nucleus of the university periodicals we once more acquire what is offered by the representative in this country, even knowing that by consulting the publisher's website there is the information that the title exists in both electronic format and in printed form.

Another situation that causes certain indignation is to realize that Brazilian institutions still hold in their collection printed and electronic formats increasing three times the institution budget; however, by communicating the publisher about the discontinuance of printed titles, the value of the electronic title increases absurdly, making the agreement to purchase printed titles remain.

All these cases demonstrate how librarians need to be attentive not only regarding management issues and services offered to users, but also in relation to commercial practices involving the complex relationship with scientific publishers.

2. The Copyright and the Right of Universities on the Scientific Production

The scientific production can be understood as an invaluable resource to promote the development of science. The generating source of this production is the University which has the important mission of disseminating knowledge, providing not only access to information, but also transforming it into service to the community. Thus, access to scientific production serves the social interests and needs, becoming a right of society which is funding the Universities. Therefore, the Universities, especially Public Universities, have an important role in the use of knowledge for the social, political, economic and technological development of the country.

Regarding this issue, Law [4] states that Universities have no other purpose except the creation, dissemination, understanding and knowledge development, and it is inevitable that the management of intellectual property be an area of growing concern.

The current legislation that regulates the intellectual property, in turn, points out deficiencies based on a monopoly system that privileges some for others, something that has been implicitly incorporated by society over the years and that can be observed in the reflection of Mark Rose [5]:

The institution of copyright is of course deeply rooted in our economic system, and much of our economy depends, in turn, on intellectual property. But, not less important, the copyrights are deeply rooted in our conception of us as individuals... and it is associated with our sense of privacy and our belief, at least in theory, that it is essential to limit the power of magnificence. I think that we are not prepared to abandon the notion of whom we are.

Complementing the author's reflection, in fact we are not prepared to abandon the notion of who we are. The feeling of privacy, even utopian, is still necessary. Moreover, the laws of copyright protection, emerged in the early eighteen century, are

no longer appropriate to the context of publications and reproductions in the scenery of digital networks of collaboration, which requires open communication among people.

According to Hughes [6], the academic nature is supported by open communication, on the assumption that teaching and research are processes that require sharing for the construction of new knowledge. In addition, one of the hallmarks of the scientific production can be verified at the moment its value increases from the growing number of accesses and from the addition of new ideas for interpretation. The author also points that researchers need to keep the possibility of depositing their work in repositories even when they give up their rights to publishers.

The contractual issue may be considered really important to establish the rules to govern rights and duties of the author, publisher and the University itself regarding copyright. However, the lack of knowledge about the contractual content demonstrates the weakness of the author in relation to his effective right on production.

However, the lack of interest of Universities regarding the domain of scientific production copyright is related to the custom and practice; the academic freedom and the lack of financial gain.

Due to technological advances, today there have appeared new ways to improve the management of copyrights created at research Universities, such as the Open Access movement, which claims a greater flexibility in copyright for the Universities, considering that the authors should not give the rights to publishers; and publishers should not have the power to sell to Universities access to materials protected by copyright at very high prices.

Some high education institutions, aware of this issue, are now proposing a license model for academic use only with the publisher, which demonstrates that this concern starts to affect and influence people involved in this process that continues to be motivated by the desire of establishing Institutional Repositories of electronic publications. However, even with the increased number of proposals submitted to Universities, they still take time to manifest, showing a total lack of concern with the issue.

To Fujino [7], Law [4] and Oppenheim [8], this issue has been addressed in academic research as one of its features because the very freedom of research and the change in performance policy could be seen as a form of censorship, control and ownership of copyright by the University, including when and where they could publish.

Thus, to claim copyright on research publications in the context of Universities becomes something quite complex: since this possibility can interfere with the “academic freedom” or because of the fact of not achieving any return on own rights; or because Universities acquire copyright on these publications and they are forced to license them to third parts.

The researchers are so interested in having their papers approved by publishers that they do not care about the implications of the signed contracts, and in many cases, what happens is an ownership transfer of all copyrights including the digital right to the publisher.

Therefore, Universities bear the costs of acquiring the work of its own faculty members in the form of subscriptions at very high prices that are traded through secret contracts between publishers and, most of the times, with libraries; and for electronic publications, for example, it is paid a kind of lease with restricted access that is tightly controlled by the owner copyright.

In this case, so that Universities effectively have possession of these informational contents, it is required the backfiles purchase, that is, the archiving purchase of retrospective content published by certain publishers.

The following is a critical reflection on the attitude of Universities regarding the storage and preservation of their own scientific production in institutional repositories.

3. The Integration Between the University and the Researcher: The Search for Flexible Policies and Initiatives for the Storage of Scientific Production in Institutional Repositories

Currently, discussions on the short and long term effective benefits of the creation and maintenance of Institutional Repositories in universities, stimulated by the Open Access movement, are usual. They are often led by faculty members with entrepreneurial profile, in a context where the departments have a more administrative and trading posture. In this sense, the university could be a support so that the researcher can extend the recognition and visibility of his production from the moment when the university itself manages, stores and preserves its production.

In contrast, there are the faculty members with a more conservative profile that associate the quality of their scientific production with the subject of their discipline, which makes these faculty members feel as the copyright owners of journal articles and books that they wrote, prior to publication.

In this context, if universities continue to refuse some kind of manifestation in favor of the storage and preservation of their scientific production in institutional repositories, only faculty members will have the ability and decision power to the self-archiving in these environments. And the changes regarding copyright and obligation to deposit in Institutional Repositories should be implanted so that the Universities fulfill their missions and the knowledge circulation is freer and more democratic.

The work of the Zwolle Group [9], bringing together many researchers, was a very important initiative not only for the redefinition of policies and procedures, but also for the formulation of new systems in various parts of the world that are rapidly integrating their work with established channels of scientific communication.

Another important initiative was the Romeo project (Rights Metadata for Open Archiving) founded by the Joint Information System Committee in order to detail the issues related to transfer of copyright to publishers of scientific periodicals and to the self-archiving of researches by the community of United Kingdom in repositories based on the Open Access; currently, the continuity of this project happens through the SHERPA/ROMEIO basis that presents the policies of publishers in various knowledge areas in relation to self-archiving.

In Brazil, the motivation for the use and adoption of institutional repositories can be followed by an initiative of Instituto Brasileiro de Informação, Ciência e Tecnologia (IBICT), that aiming to promote the construction and implementation of institutional repositories, has been offering a larger visibility of scientific information produced in Brazil through the use of Dspace software.

According to the IBICT website [10], there are 66 registered repositories benefited by this initiative; among them, 44 belong to national universities and regarding the policies established by these universities, especially public universities, the user is released from deposit of objects that have contractual restrictions of copyright; thus,

demonstrating how universities actually fit the policy established by the publishing industry.

Another initiative worth mentioning is Books SciELO [11] that is aimed at online publishing of academic books in order to maximize visibility, accessibility, use and impact of researches, essays and studies they publish. The books published by SciELO are digital texts formatted according to international patters that allow the control of access and citations and that are readable in eBooks, tablets, smartphones and computer screens. This program is financed by a consortium formed by the publishers of Universidade Estadual Paulista Júlio de Mesquita Filho (UNESP), Universidade Federal da Bahia (UFBA) and Fundação Oswaldo Cruz (FIOCRUZ).

In order of identify the degree of acceptance of each publisher in relation to self-archiving, colors are used for such identification, according to Table 1. Thus, we have green for publishers that accept to archive pre-print and post-print. With this permission, there are publishers such as Springer Verlag, Biomed Central, Harvard University/Harvard Law School, Kluwer, IP Publishing, Cambridge University Press; the blue color for editors that accept to archive post-print. With this permission, publishers such as Thompson Reuters, Rockefeller University Press; the yellow color for publishers that accept to archive pre-print. Publishers such as Oxford University Press, Blackwell Publishing, Wiley-Blackwell, Taylor & Francis and Nature Publishing Group have this permission; and the white color for not supporting the filing. American Medical Association has this permission.

RoMEO colours

We have used different colours to help highlight publisher's archiving policies. These colours are a development from the original RoMEO project list, and differentiate between four categories of archiving rights:

RoMEO colour	Archiving policy
green	can archive pre-print and post-print or publisher's version/PDF
blue	can archive post-print (ie final draft post-refereeing) or publisher's version/PDF
yellow	can archive pre-print (ie pre-refereeing)
white	archiving not formally supported

Each publisher's entry is coded according to one of these colour categories.

The entry for each publisher also lists conditions or restrictions imposed by the publisher which govern archiving rights or activities. *Conditions* are taken as terms which can be easily accommodated and which do not hinder an author in archiving their work. A typical condition is to acknowledge the publisher's copyright in the work. *Restrictions* are more prohibitive, typically requiring some additional action on behalf of the author. Where a *Restriction* effectively blocks access to the eprint, such as in the case of an embargo on its public release, or requiring password-controlled access, then the partial archiving right is noted but the full colour categorisation does not apply.

Sometimes open access discussions talk about "gold" publishers. This is a later development independent of RoMEO categories, and is used to describe publishers of open access journals. For the purposes of archiving, all open access journals allow archiving and can be taken as RoMEO "green".

Some of the larger publishers have different archiving rights for different journals. This is particularly the case where they publish learned society journals on behalf of the society. A learned society might insist on a more liberal, or more restrictive archiving policy than the general publisher's copyright agreement allows. The RoMEO colour coding relates to the overall permissions given by a publisher. For example, a publisher has to apply the "green" archiving rights across all of their journals for their code to be "green".

Figure 1. RoMEO project colours

By analyzing the copyright policy of the publishers in this site, it is observed both the permission for unrestricted deposit of payment or seizure and the permission of publishers to deposit the PDF version or of the article itself in an Institutional

Repository after permission obtained by the publisher; or after payment and seizure period or even, publishers with payment options for open access, considering that these policies do not always permit the deposit in open access repositories.

The information contained in the website demonstrates how some publishers are becoming more flexible in relation to the transfer of copyright to institutional repositories.

4. Final Considerations

Influences arising from economic, political issues and largely determined by technological changes have interfered in our attitudes regarding access to scientific information. Thus, on one hand, there is the scientific publication divided between the commercial publishers and involving the paid access of subscriptions, the authors, libraries and their universities, besides all the people that have the right to scientific information produced within the university. On the other hand, there are the scientific societies and groups of scientists that cast a growing number of scientific initiatives that provide open access to knowledge.

Given this profile, we still have commercial publishers dominating the flow of scientific information, making it clear that we are still denying equal opportunities of scientific research access to several countries with lower purchasing power, because this is the scientific publication aspect that still moves the world publisher system with very high charges. Today, these costs often need to be shared among consortia of libraries to provide access to updated scientific production.

By submitting scientific articles to paid access magazines we contribute to a knowledge distribution system in which Universities and Research Institutes are required to buy back at a very high price something that many times was produced by their own faculty members or students.

Today, the investment made by universities and institutions that finance researches can be considered negligible compared to the return earned by the financial investment from commercial publishers; therefore, only changes in the current system, in which the academic community is inserted, will make this movement gain strength so that a greater number of universities would join the open access movement by means of incentives geared to their institutional repositories.

Another way to join the academic community may be by the increase of access possibilities as it is possible to deposit in more than one repository; through search of repositories that facilitate survey time and also offer the possibility of being linked to other providers, increasing access, unlike the access achieved only by the publisher page; some repositories also offer value-added services providing links to publishers' pages.

However, despite the number of proposals submitted to the Universities, individually and associatively, they have been slow to respond. To integrate the University and the faculty members, the institution should recommend and guide them not to surrender their copyright, but to struggle for the right to copy for Institutional repositories with publishing houses.

The University, in turn, should claim the right to copy and not the copyright on scientific production. It should also require flexible counterparts for nonprofit use of periodicals and database aiming not only the development of the global educative community, but also stressing the future importance of science in the world.

From the moment we have the diversity of forms and technical/practical resources combined with the involvement of the academic community toward the desired changes, we will find the most appropriate way to global access to scientific information.

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