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Abstract

Support and demand for researchers to publish in open access (OA) journals has been growing steadily among funding agencies, research organizations, and institutions of higher education. The Wellcome Trust and the Research Councils UK OA policies have begun imposing more finite restrictions, like publishing only under CC-BY licenses, on researchers. CC-BY, or Creative Commons Attribution, is one of several, and the most open, of all creative commons licensing. It most closely embodies the definition of OA, as established by the Berlin Declaration and Bethesda Statement on Open Access, by allowing for the most reuse, including the unrestricted creation of derivatives. Scholars have voiced concern that CC-BY may not be the best license for all disciplines. Libraries, as OA publishers, custodians of institutional repositories, facilitators of scholarly research, and organizers of information, are well-positioned to enhance a discussion on balancing the needs of scholars for minimum control over their work with the goal of OA publishing to most widely disseminate information and scholarship to the public without barriers of country, class, access, or financing.

Background to the Question

Open access has gained momentum as a movement but it is far from mature. Universities, funding agencies, and governments have begun to adopt open access policies for a variety of reasons. This variety of purpose has been criticized by industries research analysts as the reason why open access hasn't grown faster (Aspesi, 2014). For librarians and academic scholars, open access is a new way for researchers to share work that they have traditionally given to publishers for free, while having to pay for access. Open access also allows researchers from all countries and agencies the opportunity to access up to date information and scholarly discourse. For small businesses and economically challenged countries, open access is a way to keep more abreast of scientific discovery than previously possible. For governments and the public, open access is a way to deliver on tax dollars devoted to research funding (Aspesi, 2014). Yet, meaning something different to everyone may actually be a strength in that possible disappointment to some will not stop the greater development of OA.

In addition to the different purposes for OA, there are different methods of achieving OA. Gold open

access, where authors publish directly into open access or hybrid journals to make their work immediately available, is often favored by STEM disciplines (Research Councils UK, 2015). gold open access can sometimes require steep author publishing costs (APCs) that many authors and institutions are unprepared to fund (Peterson, Emmett, & Greenberg, 2013). These APCs have also thrown suspicion on hybrid journals that facilitate gold open access publishing within normal subscription journal titles and are receiving money from authors without subsequently altering charges to subscribers for issues with both OA and non-OA articles. On the other hand, Green open access, where authors publish with mainstream subscription publishers and commit to self-archiving their work in a subject or institutional repository, is free of APCs. Access to Green OA publications is not immediate; the research normally becomes available after an embargo period of 12-24 months. This embargo period, and the tendency for authors to lack follow-through on loading their articles into a repository after publishing, lead some to conclude that Green open access does not accomplish the goals of the open access movement (Darley, Reynolds, & Wickham, 2014).

Existing open access policies uphold different ideals on the purpose and execution of OA. Researchers working under these policies, either by institutional affiliation or grant funding, are expected to comply whether or not the specific method or flavor of OA publishing makes sense to them. The RCUK's OA policy requirement that researchers receiving financial support for author publication costs (APCs) must publish under a CC-BY license heightened this discussion on open access publication flavors and how different disciplines function within the OA publishing landscape (Research Councils UK, 2015). Central to this argument is the concern by humanities disciplines that CC-BY publishing, the most open of all creative commons licensing, is not appropriate for scholarly communication in their field (Darley et al., 2014).

Our panel consists of LeEtta Schmidt, Resource Sharing and Copyright Librarian at the University of South Florida, Tampa Library and Editor of the *Journal of Interlibrary Loan, Document Delivery & Electronic Reserve*; Kyle Courtney, Copyright Advisor, Harvard University Office of Scholarly Commons and creator of the Harvard Copyright First Responder Network; and Calvin Manning, Managing Editor for Library and Information Science catalog for US and UK journals at Taylor & Francis.

The panel members were asked to address three questions to further explore the issues that humanities and social sciences have with OA CC-BY and the different ways various disciplines approach open access.

Questions

1. The RCUK's requirement of CC-BY for all researchers receiving article funding costs generated a lot of interest and debate among scholars, particularly in the humanities. Many of these concerns are addressed in the Open Access Journals in Humanities and Social Science Report by the British Academy. What do you perceive are the primary concerns of humanities and social science scholars in regard to OA publishing?
2. In your experience, how do different disciplines react, interact, and respond to OA; what are their differing goals and approaches to OA?
3. In light of these disciplinary differences, what obstacles must OA policy makers consider in order to ensure the future growth and adoption of open access?

Panel Discussion

Kyle

Primary concerns in the humanities and social sciences regarding CC-BY licenses in OA publishing, that I have seen, are the idea of scholarly integrity as well as broader concerns about undesirable activities that could be enabled by what is perceived as lowering the bar of permissions. These concerns break down into three areas, derivatives, commercial uses, and plagiarism. They are elevated by a lack of understanding in this field. In contrast, the sciences have had 20 years of worth of soaking in the open access and CC-BY movement, which has created a greater knowledge and understanding of this particular type of licensing schema. There is no reason why CC-BY should be more harmful or less valuable to the humanities as it is to sciences. I see a lot more misunderstanding on OA itself, CC-BY, and current policies in the humanities than in the sciences. Does this suggest that the humanities people don't read the licenses as carefully as the scientists do? When humanities is derived from reading very carefully? I'm not sure.

Returning to the three areas of concern, a derivative work is something that builds upon an existing work. CC-BY allows others to build upon your work by making a derivative of it. Lawrence Lessig said this is naturally built into the scholarship. The concept is that you build upon what was made before. One of the many benefits of open access publishing in general is that elements such as figures from published research can be reused with attribution as part of teaching material and as part of other published works without having to request permissions. This is the license. This allows article translation, data

mining, text mining, image libraries, and data visualization of humanities. These are new to humanities field.

Normal copyright says you need to seek permissions; CC-BY is a license built on copyright. There is protection built into the CC-BY licenses. CC-BY is not just three bullet points. It's actually a page and a half worth of license. It says that it prohibits uses that would distort, mutilate, modify, or take derogatory action to the work that would be prejudicial to the original author's honor or reputation. We shouldn't just boil it down to the three bullet points of what CC-BY allows. We should introduce notions that yes, there are protections for the authors, but that text mining and data visualization are new and novel ways of exploring humanities research that allow you to examine the academic corpus in a way that we haven't considered before. Sciences have been doing this for a while; my notion is that humanities should be able to do this, too. Allowing derivative works would ensure those that are thinking of such future uses would have a chance to try new experimentation with the technology and data collection. Open licenses are necessary to drive the path forward in digital humanities especially, but humanities and social sciences in general.

CC-BY does allow some commercial uses. There are two key problems to this. The first is that the definition of what constitutes commercial use now a days is absolutely fuzzy. Not one single court has ruled, nationally or internationally, on what a CC-BY license means by commercial or noncommercial use. A German court recently decided that it was just private use that was a commercial activity. We have courts in the US that have, in recent fair use cases, skipped over what is commercial or noncommercial because academics operate in commercial capacities constantly. The sciences do; we have science papers that turn into patents. It doesn't mean the university is suddenly not a nonprofit. There is no clear distinct understanding. In the haze of doubt that overlays this is the idea that if there is a risk of being considered commercial then there is a discouragement to reuse. I would hate to see that. The concept of social sciences and humanities

research is the idea of reuse. It is the idea of investment in the past to build upon that scholarship.

The last concern is that CC-BY would somehow encourage plagiarism of the humanities. Plagiarism is a universal issue that everyone is concerned about and a problem that's going to happen regardless of whether you have a license attached. Plagiarism isn't necessarily a law, it's a scholarly no-no. You can't sue someone in court for it. However, CC-BY suddenly gives you this license that says to the authorized user, "if you use this work and don't give attribution you are in violation of the license." It gives you legal recourse.

In my mind, credit to the original author is the coin of the realm. We want to see the impact of our work. This is what drives the motivation for a lot of folks that are writing in this area. Broadly speaking, CC-BY licenses are attribution, indication of modification, and the right to remove attribution if that is what you want. You are in control. It's a very important aspect of this. CC-BY licensing puts the author in the driver's seat in a different way. As you heard in the intro, often you sign away your copyright as an author to the publisher. With CC-BY and open access journals you're giving them a nonexclusive right and you still retain the copyright. With CC-BY licenses on top of that, you say, "I own the copyright and here's how I'll let you use the material and you must, under the law, cite to me." Citation is a major aspect of when we want to measure our academic impact. If we have a law or a license behind it, I think that puts the author in a much better position to decide how and when they want to use their work as opposed to the traditional method where you have to seek, from the publisher, terms for which you can use your work in the future.

Calvin

To return to the first question, another issue is a lack of funding for the humanities as well, especially when looking at the UK's CC-BY requirement. Funding typically goes to the sciences anyway. There's not much for the humanities. It seems like there's a sort of a

funding gap. This also applies to the third question we have, which is, what future obstacles are there? I'm not sure how to address that, where the focus is more towards science and less towards humanities for funding, but it seems like one of the obstacles that will have to be overcome. Maybe, in the US, there will have to be a top down approach to OA. It might have to come from a federal level. I'm talking broadly OA and not CC-BY, in this case. Publishers are working on ways to use open access, but APCs are another obstacle for a lot of authors.

It seems like publishers in this instance are kind of like the music industry right now, they've put up a wall and then everyone around them, consumers themselves, realize that they don't need to have that wall. They can go around the industry to get the music they want. They can fund directly the artists they want. I wonder if there could be something similar in OA, a grassroots movement, but I don't know how effective that would be. Also, in looking at the publisher and the development of OA, it's like the concept of the impending singularity, and that is the eventual sentience of robots. As humans, the way the singularity works is that we have to become friends with the first sentient robot, because that robot, once it obtains its own independent thought, is going to be the emissary for humanity to all other sentient robots thereafter. So if you can't become friends with the first sentient robot, you've kind of doomed the human race. I feel like publishers, as humanity in this case, may need to have that kind of sensibility when it comes to OA. OA is coming, when isn't clear, but now is the time to facilitate and show your best side to it.

Kyle

I think you're right in that the movement is coming. We've mentioned the RCUK, Horizon 2020, the Wellcome trust—all notable humanities funders that have mandates for forms of open licensing. The Australian Research Council is another moving in that direction. So it will only be a matter of time before this funder licensing addition comes forward and everyone has to make a choice. Would they cut off their nose to

spite their face? Would they say, "well, I really don't like CC-BY so I'm not going to publish with these funding agencies?"

Calvin

I wonder then if it's possible to start a successful Kickstarter campaign? If you had enough people in that community could you say, "I need 10,000 dollars of funding to do this research?" I wonder how you'd go about doing that through something like Kickstarter. I wonder if there is a grassroots campaign to spur more of a top-down approach. When you look at the independent games industry, for games development, and how they're going around the key games publishers to develop the games they want, or the music industry, where people are directly funding tours and albums. There doesn't seem to be a similar movement on OA, where it's really people supporting other people supporting OA, or OA research, or funding, like guerrilla funding.

LeEtta

I think a top-down approach makes the most sense when it comes from funding agencies. Different disciplines will still have issues when the funding agency with a strict OA policy is their only place for funding, but I know that scholars are very sensitive to a top-down approach in institutions and government. Illinois tried it and there were a lot of responses about violated academic freedom (Nelson, 2013). If you're requiring all your faculty to release in OA under a specific license then you are taking away their right to choose where they want to publish.

In some ways I think that a movement in OA needs to be bottom-up to some extent. Most of the issues with the licenses and the movement is just scholar confusion. They don't understand the difference between Green and Gold, they're afraid of predatory journals, they don't know how monograph publishing, especially within the humanities, would fit in the OA environment the way that journal article publishing does. Clearing up this confusion, encouraging faculty to make informed decisions about OA and talk with each other about OA, could begin that bottom up movement.

Calvin

That's something that I've noticed a lot. Working with library and information science most every author I work with understands open access and Green and Gold, but any other discipline I've worked with, sociology, marketing, do not.

Kyle

It's in the DNA of most librarians to understand open access.

Calvin

I was surprised when people didn't understand. I had assumed that all authors did because all authors I work with are librarians. It's interesting that open access seems to have a negative association of an absent peer review system. If you publish open access and are paying an APC you're paying to have your paper published, so people then think there isn't the standard level of peer review scrutinizing for quality control. That's where certain authors aren't aware that it's still the same journal, there's just different funding mechanisms involved.

Kyle

That's because they've had fewer examples. Humanities and social sciences have had fewer examples to prove that the sky does not fall when something goes OA or when the journal gets flipped from subscription to open access. They've had fewer examples to dispel these misunderstandings. It's harder to generate enthusiasm and inspire commitment when you don't have a lot of examples. You get caught in a vicious cycle where slow growth of OA causes slower growth of understanding and good practices. By contrast, to borrow from my colleague Peter Suber, the sciences enjoy not a vicious cycle but a virtuous cycle, where faster growth in OA causes faster growth in understanding. They've had twenty additional years to soak in this, plus the government top-down policy from NIH to test the field. So, to use my gentleman farmer analogy here, this is rocky soil, but we're growing a good crop. There's hope here. There was a time when the growth of OA in the sciences was also slow. It was kept slow by

this vicious cycle. But again, twenty years, which is not very long in the history of scholarship, this vicious cycle in the sciences became the virtuous cycle. That means that the reversal is possible. It requires seeding and good fertilizer. I use fish; I put fish in the soil. Pumpkin next to corn; you've got to get it right. So in this regard, how to seed the field of humanities and social sciences to dispel this fear, I think a lot of it is education and understanding of these licenses and that they're not bite size.

The shift in CC-BY's acceptance in sciences was most profoundly noted most recently in January 2015: *Nature* introduced creative commons attribution license for the open access license adoption on its twenty or so open access journals. The percentage of authors choosing CC-BY across all of *Nature's* open access journals rose from 26% in 2014 to 96% in September 2015. 96% are CC-BY now (Bourke, 2015). That's an amazing stat. But again that's from the sciences that have had the time to steep in this area. I think that there's hope when I look at that, and say "wow that's a tremendous shift in a short period of time." That comes along with the idea that OA helps readers read, retrieve, use, and reuse the research that they need and it helps authors engage with their audience better. The sciences are winning, so let's let the humanities and social sciences take their turn.

Calvin

I wonder, going on your example of *Nature*, it seems like no one similar is stepping up to the plate for the humanities. There is no well-known and well-established leader to wholly accept OA, that I'm aware of, in the humanities section. Societies are another nebulous area. You don't see societies readily accepting OA either, because they still make money on the current schema and depend on that. I think that if we had seen a society taking that approach to OA, there might have been interesting movement, but it's really going to depend on that steeping that you mentioned. Until it becomes the everyday minutia of publishing, opposed to this novel and Wild West where you hear about authors having articles taken and published in books without

permission because they were CC-BY. Right now you only hear about extremes because no one is filling the gap.

LeEtta

A lot of scholar's concern is with reputation, so an established person or name, like *Nature*, could make a big difference. Scholars have to publish in a journal with a good reputation in order to get past tenure and promotion and in order to be well-regarded by their peers. If the OA journals available to them don't carry that reputation because they are too new or because the growth of them is very slow, then scholars are continually going to turn away from open access until a journal with a good title and reputation or a society pushes them that way.

Kyle

I like top-down. You know, they're going to give us money to do this, that's great. But I also feel like there should be a grassroots effort among the authors themselves. Like I said, open access CC-BY puts the authors in a driver's seat in a better way. They can control their own works better. I wonder if, instead of handing over your copyrights to a society or to a publisher, you could dispel the myths and say, "Hey CC-BY says you don't have to hand over your full rights, you give them a nonexclusive license, the authors continue to retain control of their work." It's a license that's built atop their copyright. You're saying, "I retain the copyright here and I give you this license to do with as you please." It gives the authors legal recourse to those taking without acknowledging. It gives you control to put your article elsewhere if you want to in the future. Then you get that coin of the realm, mandatory citation, which shows you where and when you are having impact. I'm going to quote Lisa Macklin from dinner last night: she said, "these people are writing to be read first. That's the first and most important thing." The concept there is that they're not necessarily concerned with commercialization, they want exposure. OA, particularly CC-BY, gives them that exposure.

Humanities and social sciences are going to have to become more interdisciplinary, just like every other aspect of other research. You are going to

see a new and broader audience open up to your works that you hadn't seen before. Not just the people who belong to that society and get two journals a year. When you make it OA CC-BY, you're going to get scientists that are looking in, politicians, and policy makers. A lot more people have access to your work to give you feedback and will maybe open up your ideas of where your research can go. That's another aspect that's important to the conversation. It could be grassroots. The authors could drive it.

LeEtta

That's where libraries could help too. Obviously, we understand OA and we don't have questions of what's Gold and what's Green and we're already liaising with faculty who don't understand, so it's part of our education efforts. We can spur on that grassroots effort and move the faculty to make their own decisions about how they're licensing their own content instead of signing away their rights.

Kyle

Most humanities work is already based upon scholarship of others and derivative works of reading culture and history. Where do they go for that? The library. They'd want to continue that cycle and work with professional researchers, information professionals, like librarians, that have the ability to do this. We already understand that CC is a well-established legal tool that's being used by another facet of another education community: sciences, and STEM. It seems to be working for them. If all the elements of the infrastructure understand CC licensing then we will be able to use our scholarship more effectively in ways that we can't see right now, like data mining, data visualization, anagrams, word searching, and comparative literature analysis. We will be able to examine that corpus in ways that we hadn't seen before.

LeEtta

I wonder if, as with some of the faculty scholars I've dealt with, the question isn't necessarily about any specific CC licensing. Although, with the RCUK policy it is, but in other policies, there are many other licensing options that are not CC-BY.

You can release your work so that it can be used and copied and disseminated without using a license as open as CC-BY. I think that some of faculty confusion is thinking that all CC licenses

are the same. This is also an opportunity to lead faculty to making their own decisions to how they want their work used and what it will mean down the line.

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