Open access in the real world

Confronting economic and legal reality

by Rick Anderson

Open access to scholarly information is a hot-button issue that quickly triggers heated discussion—especially if the topic arises in a mixed group of librarians and publishers. Sometimes the discussion ends up generating useful ideas and practical solutions to real-world problems; too often, it leads to nothing more than facile phrasemaking or spluttering accusation.

Open access has become an increasingly important and potentially divisive issue in recent years as journal inflation rates have increased. For many librarians and scholars, journal price inflation is itself the central problem and open access is the solution. According to this view, the fact that libraries have to pay for access to some scholarly information is acceptable, but prices are too high and are increasing at an insupportable rate; the establishment of competitive open-access journals will force commercial publishers to moderate their profit-seeking behavior.[1]

Some believe that scholarly information is a public good and ought to be available to the public at little or no charge.[2] Others believe that *all* information is inherently free and no one ought to have to pay for access to it.[3] For still others, the primary problem lies in the fact that academics are producing most of the scholarly articles in the journal marketplace, and that those articles are then being sold back to the very institutions that produced them;[4] according to this view, the problem is not that journals cost money, but that the institutions that provide the content are having to pay excessively for access to the very content that they created. Then there is the question of whether access to information that has been created with the support of public funds should be restricted at all.

These and other issues surrounding open access are important, and they deserve serious consideration. Serious consideration however, requires the recognition of certain legal and economic realities. While choices made by authors, publishers, and librarians do have an effect on the information marketplace, their choices and actions have little or no effect on the deeper economic reality in which that marketplace exists. That reality is determined in fundamental ways by two simple facts over which the human players in the information economy have little control, and a productive and intelligent conversation about open access must proceed from a recognition of these facts.

In addressing them here, it will seem to some readers that I am belaboring the obvious, and to them I apologize—but I think a careful treatment of these points is necessary, because while many in the library profession recognize them as self-evidently true, there are some who regard them as blasphemous.

The myth of free information

First, *there is no such thing as free information.* Most people (including most proponents of open access) understand this implicitly, but it might be worthwhile to discuss why this is so. Information is not the same thing as ideas or concepts. Ideas may be free, but they do not become information

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until a person creates a symbolic representation of them. Doing so is a process of labor, and the creator who undertakes that labor is incurring a cost. The creator may then choose to distribute the information at no charge to others, but that does not mean that the information is *free*—it means that its creator has chosen to absorb the costs of creation and distribution rather than try to recover them. When information can be generated and distributed very cheaply, or when unrestricted distribution of it will benefit the creator in some way, he or she might choose to make it freely available to others, and, in fact, people do so every day (on the open Web, in casual conversation, via e-mail, etc.). But the costs of producing and distributing that information have not magically disappeared in these cases; they have been absorbed by the author.

Authors are less likely to give away information that requires a great deal of time and effort to create. One way or another they will usually try to recover their costs or even realize a profit, as will the middlemen who turn the raw information into a publishable product and then distribute that product. Freelance authors usually recoup their costs by trading copyright for money. Scholars (most of whom are paid a salary to create information) usually try to trade their copyrights for enhanced reputation or professional advancement by submitting their writings to prestigious publishing houses or journals. Either way, those who produce labor-intensive, high-quality information usually try to get something in return for their labor.

The cost of creating information, the cost of preparing it for publication, and the cost of distributing it are all quite distinct from each other, and each type of cost may rise or fall independent of the other. When information was published primarily in print format, distribution costs were very high; in the electronic realm, they are relatively low. But even in a publishing system increasingly characterized by online distribution, the cost of *preparing* information for distribution remains significant.[5] In the case of many scholarly journals, it is true that editorial tasks are performed by contributors at no cost to the publisher. However, even when articles and editorial services are provided at no charge, the remaining costs of preparing information for publication are considerable. These include a publisher's staffing and overhead costs, which are often substantial and may actually increase when a journal moves from print to online. Consider, for example, the added costs of robust and long-term archiving (which is integral to the open access concept and not an issue with which publishers typically concern themselves in the print realm), the cost of hiring a Web master and other content maintenance staff, and the costs of acquiring and maintaining servers. A journal publisher that employs its own editorial staff has even greater costs to recover.

One more complicating factor in the scholarly information economy is the fact that many journals, particularly those published by nonprofit societies, bear the weight of recovering other costs in addition to those incidental to their own creation and distribution. Often subscription revenues support legitimate organizational activities that have nothing to do with the journals themselves, such as annual conferences or member services. For-profit publishers have legitimate costs that must be met as well, though in some cases they could lower their prices significantly and still recover those costs with revenues to spare. (What kinds of activities nonprofit societies ought to be funding from subscription revenues and to what degree commercial publishers should be allowed to seek profit in the scholarly-information marketplace are contentious topics best suited to another essay.)

The myth of information as a public good

There is a second basic reality of the information economy that bears on the open-access question, and this one is more controversial than the first: *Information is not a public good.* Too often, commentators on the economics of scholarly information seem to confuse the concept of "a public good" (meaning something that is owned by the public) with "the public good" (meaning the general welfare). The fact that something is good for people, or the fact that its broad distribution would be beneficial to the general public, does not make it a public good. What makes something a public good is legal public ownership. A municipal park is one example of a public good; it is paid for and maintained with public funds, and belongs equally to all citizens. Most of the information in scholarly journals does not fit this definition.

Is it possible for information to be a public good? Yes, if it is created and owned by the public. The information contained in a government document is a public good, which is why government documents are exempt from copyright. Information produced by private individuals and organizations, however, is not a public good.

Whatever its potential benefits to the world at large, however much the public might benefit from its free distribution, most information is nevertheless the intellectual property of those who create it. We can object to that fact if we wish, but it is still a legal fact.

This begs a question, of course, and it is one that bears heavily on the open access issue: What about information that is produced with government funding? If the public is underwriting the creative costs of that information, should it be freely available to the public, as some have argued?[6] Like all "should" questions, this is one that has more than one possible answer. One reasonable answer is, "It depends on how much government funding was involved." Information created at just about any university or college (public or private) can be said to have been supported to some degree by public funds—does it follow that every physics professor's research article and every English instructor's short story collection should pass immediately into the public domain? Perhaps a certain threshold of government funding should be set, such that information created with the substantial support of public funds becomes public property by definition (as Congressman Martin O. Sabo has proposed in H.R. 2613, the Public Access to Science Act, which is still in committee as of this writing). Until such a proposal becomes law, however, there is a legal reality within which we must work: most information created with the support of government funding is, in fact, copyrightable, and the copyright in most publicly funded information is held by the author.

Implications for open access

Both of these facts—that information is inherently costly, and that information is not usually a public good—pose challenges for the idea of open access. For information to be made freely and permanently available to the public, the costs of creation, publication, and distribution must be absorbed by someone other than those who wish to use it. The Internet eliminates most distribution costs, but not all of them, and does not affect creative costs or publication costs to any appreciable degree.

Do these inconvenient facts mean that open access is not desirable or that it cannot work? No. But they do define some limits to our options, and a recognition of those limits should lead us to have patience with publishers that are moving more slowly towards that model than we might like. Any proposal that is built on the premise that information is inherently free, or that online publication can be undertaken without significant cost, will not work in the real world because both of those premises are demonstrably incorrect. If we do not bear in mind the intrinsic costliness of information, we will have a very hard time discussing intelligently the intractable economic realities that govern its creation and distribution, let alone formulating pricing and distribution strategies that will provide maximum public benefit.

Nevertheless, the problems that have led to the current controversy over journal pricing and open access are real and need to be solved in some way. Clearly the status quo is insupportable; if the price of scholarly journals continues to rise at the present rate, research libraries will quickly lose the ability to meet the needs of their patrons. At the same time, it is not reasonable to expect all journal publishers (even nonprofit ones) to move immediately into an open-access model simply because the Internet has lowered the cost of distribution. We who are trying to act in the best interests of the public and maximize access to quality information must balance zeal with reason. Most journal publishers are operating in good faith and need our patience and support, as well as our exhortations, as they work through the difficult process of moving from the old information world into a new one.

Notes

1. "Why is SPARC Needed?," in the Frequently Asked Questions section of the SPARC Web site at www.arl.org/sparc/core/index.asp?page=e0 (accessed March 4, 2004).

2. Richard Edwards and David Shulenberger, "The High Cost of Scholarly Journals (and What to Do About It)," *Change* 35, no. 6 (November/December 2003): 10.

3. John Perry Barlow, "The Economy of Ideas," *Wired* 2, no. 3 (March 1994): 84.

4. Academic Senate Committee on Libraries, Columbia University, "Crisis in Scholarly Communication: Motion re Stanford's Reaction to the Serials Crisis." Version referred to is dated February 19, 2004, library.cpmc.columbia.edu/hsl/scholcom/clibresolution.html (accessed March 4, 2004).

5. Donald W. King and Carol Tenopir, "Economic Cost Models of Scientific Scholarly Journals," paper presented at the ICSU Press Workshop, Kebl College, Oxford, UK, April 1998, www.bodley.ox.ac.uk/icsu/kingppr.htm (accessed March 4, 2004).

6. Edwards and Shulenberger, "The High Cost of Scholarly Journals." ■