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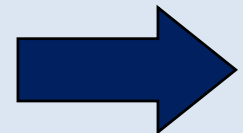


*Will There Still be a Need for
Copyright Regulation When Open
Access Becomes the Default for
Publishing in Science?*



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Questions

- 1. Is there a crisis in copyright?** **yes**
- 2. Is there a crisis of commercial information markets?** **yes**
- 3. Is open access publishing a real competition to commercial publishing?** **yes**
- 4. Will commercial publishers accept the OA paradigm?** **yes**
- 5. Will public institutions be willing to pay for commercial OA publishing?** **yes**
- 6. Will open access(OA) become the default publishing in the foreseeable future?** **yes**
- 7 . Final question: If (5) and (6) - is there still a need for copyright related to science and education?**

1. Is there a crisis in copyright?

Neelie KROES (former EU Commissioner for Digital Agenda)

“When **teachers** are afraid to **share teaching materials online**, how does that help our society? “

“When **museums** have to take out insurance specifically against **the risk of copyright lawsuits**, because it's too complex and costly to figure out – how does that help promote European heritage? “

“When **European scientists** have to **abandon text or data mining** because they can't afford the legal fees – how does that help innovation and scientific progress? And by the way **that restriction is costing our economy tens of billions of euros.** “

What are the reasons for the copyright crisis?

Copyright regulation/laws **still mirrors moral behaviour** towards knowledge and information developed **in analogous environments**

Open unrestricted access to published knowledge is still considered *an exception* to the **exclusive rights of the right holders** (authors and, mainly, exploiters)

Exceptions related to science and education are **severely limited**

Exceptions for science, education (§ 52a German copyright law)

The right of making published work publicly available für education and research

UrhG § 52a Öffentliche Zugänglichmachung für Unterricht und Forschung

§ 52a: Nicht mehr anzuwenden gem. § 137k (F 10. September 2003) mWv 1.1.2007

(1) Zulässig ist,

1. veröffentlichte kleine Teile eines Werkes, Werke geringen Umfangs sowie einzelne Beiträge aus Zeitungen oder Zeitschriften zur Veranschaulichung im Unterricht an Schulen, Hochschulen, nichtgewerblichen Einrichtungen der Aus- und Weiterbildung sowie an Einrichtungen der Berufsbildung ausschließlich für den bestimmt abgegrenzten Kreis von Unterrichtsteilnehmern oder
2. veröffentlichte Teile eines Werkes, Werke geringen Umfangs sowie einzelne Beiträge aus Zeitungen oder Zeitschriften ausschließlich für einen bestimmt abgegrenzten Kreis von Personen für deren eigene wissenschaftliche Forschung

öffentlich zugänglich zu machen, soweit dies zu dem jeweiligen Zweck geboten und zur Verfolgung nicht kommerzieller Zwecke gerechtfertigt ist.

(2) Die öffentliche Zugänglichmachung eines für den Unterrichtsgebrauch an Schulen bestimmten Werkes ist stets nur mit Einwilligung des Berechtigten zulässig. Die öffentliche Zugänglichmachung eines Filmwerkes ist vor Ablauf von zwei Jahren nach Beginn der üblichen regulären Auswertung in Filmtheatern im Geltungsbereich dieses Gesetzes stets nur mit Einwilligung des Berechtigten zulässig.

Exceptions for science, education (§ 52a German copyright law)

only small
parts of works

only for use in
classroom

right to teachers only not
for students

for the use of
defined research
groups

only for registered
students in classes

an *appropriate* remuneration needs to be paid
to collecting societies in any case

without any direct or
indirect commercial
interest

use of copyrighted
material in schools only
with special permission
of rightholders

use of movie/video
material only 2 years
after public performance

UrhG § 52a Öffentliche Zugänglichmachung für Unterricht und Forschung

§ 52a: Nicht mehr anwendbar gem. § 137k (F 10. September 2003) mWv 1.1.2007

(1) Zulässig ist:

1. veröffentlichte kleine Teile eines Werkes, Werke geringen Umfangs sowie einzelne Beiträge aus Zeitungen oder Zeitschriften zur Veranschaulichung im Unterricht an Schulen, Hochschulen, nichtgewerblichen Einrichtungen

2. veröffentlichte Teile eines Werkes, Werke geringen Umfangs sowie Beiträge aus Zeitungen oder Zeitschriften ausschließlich für einen bestimmt abgegrenzten Kreis von Personen für deren eigene wissenschaftliche Forschung

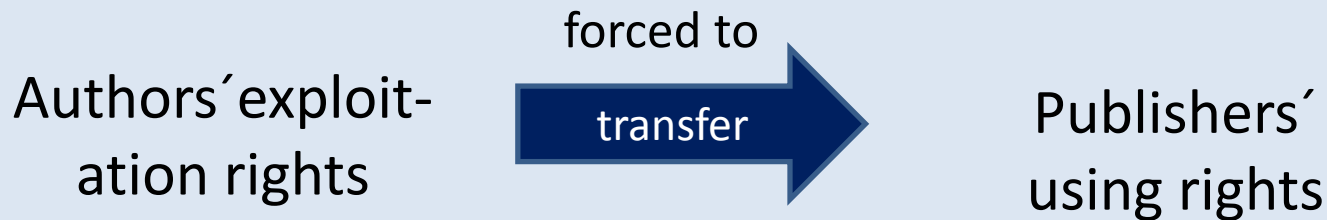
Öffentlich zugänglich zu machen, soweit dies zu dem in den §§ 1, 2 genannten Zweck ge-
Verfolgung nicht kommerzieller Zwecke gerechtfertigt ist.

(2) Die öffentliche Zugänglichmachung eines für den Unterrichtsgebrauch bestimmten Filmwerkes ist vor Ablauf von zwei Jahren nach Beginn der öffentlichen Aufführung in Filmtheatern im Geltungsbereich dieses Gesetzes zulässig.

2. Is there a crisis of commercial information markets?

Intermediate result - 1

Copyright regulation has turned copyright into a *trade law* rather than an author's or user's law



Copyright related to science and education has become a disabling means for invention and innovation

Copyright has become to science and education what environmental pollution has become to the coral reeves

2. Is there a crisis of commercial information markets?

Knowledge economy - STM Market

5000–10,000 journal publishers globally

28,100 active scholarly peer-reviewed journals in mid 20

collectively publishing about 1.8–1.9 million articles a year

about 50 million articles subject to retrieval and download

annual revenues generated from English-language STM journal publishing are estimated at about \$9.4 billion in 2011 - a broader STM information publishing market worth some \$23.5 billion

**still a very
powerful and
profitable
market**

M.Ware/M. Mabe; The stm report . an overview of scientific and scholarly journal publishing.
STM, Third edition November 2012 - http://www.stm-assoc.org/2012_12_11_STM_Report_2012.pdf

2. Is there a crisis of commercial information markets?

Knowledge economy - STM Market

still a very powerful and profitable market

and mainly supported/financed by
public money



the equivalent of approx.
90.000 APC to Elsevier

Contract between Elsevier and France (*Couperin* and *Agence bibliographique de l'enseignement supérieur*)

2014-2018 - 172 Mio. EURO
for **closed access journals**

German science libraries pay
about 600 Mio Euros/y for
commercial publications



Contract between Baden-Württemberg and Springer starting 2015

Free access to 1.917
Springer journals for 51
academic institutions in
B.-W.

2. Is there a crisis of commercial information markets?

Knowledge economy - STM Market

still a very powerful and profitable market

Cost for publications
between 2010 and 2014
In the average 23,9%

<http://bit.ly/1yJgsF5>

but

More and more authors in science frustrated
by publishers' business models **choose open**
access journals and *free licenses*
as the **primary** or at least **secondary** means
of publication



Open access gold



Open access green

3. Is OA publishing a real competition to commercial publishing?

Open access community markets

Increase of Open-Access-Journals

7183 journals, 650.572 articles
(19.10.2011)

7449 journals, 745.962 articles
(31.1.2012)

9411 journals, 1.099.912 articles
(1.6.2013)

9741 journals, 1.592.661 articles
(26.3.2014)

10.068 journals, 1.778.533 articles
5,942 searchable at article level
(26.9.2014)

approx. 4 journals/day
sind 10/2011

but still only 3,5 % of
all commercially
available articles

Directory of Open Access Journals
(DOAJ) – 9/2014

4. Will commercial publishers accept the OA paradigm?

More and more **publishers** (in particularly the four dominating ones) **accept** the **OA-paradigm** and see their future in OA publishing

Elsevier
Wiley
Thompson
Springer

gold

green

enforced by

Markets

Moral behavior

Users, NGOs
science
organisations

Research
funding
organisations

Political
commit-
ment

4. Will commercial publishers accept the OA paradigm?

Open access enforced

markets

green

Publishers increasingly agree to open access

green/self archiving

Sherpa/Romeo

[http://www.sherpa.a](http://www.sherpa.ac.uk/romeo/)

[c.uk/romeo/](http://www.sherpa.ac.uk/romeo/)

About 80 % of all published articles could be open
access available (OA green) – mostly with an embargo
time between 6 and 8 months

in reality probably
less than 30 %

This might change if the right to a second
open publication will be introduced to
copyright law and will be mandated.

4. Will commercial publishers accept the OA paradigm?

markets

SpringerOpen

gold

Open access for authors in all disciplines

SpringerOpen makes it easier than ever for authors to comply with open access mandates, retain copyright and benefit from Springer's trusted brand.

SpringerOpen features

- Rigorous peer review.
- E-only and continuous publication.
- No page budgets or restrictions on color, multi-media, or other supplemental elements.
- Considered by ISI and other abstracting & indexing services; the services apply the same standards as they do for traditional journals.
- Thumbnails of additional files (e.g. embedded movies) shown in the article.
- Quick navigation in article HTML | XML can be downloaded.
- See 'most viewed' articles and articles citing an article.

Open access enforced

Welcome SpringerOpen authors

- Authors retain copyright under the Creative Commons Attribution License.
- Articles freely available online and can be freely redistributed and reused.
- Easy to use submission system allows the upload of manuscripts in various formats as well as multimedia and datasets.
- Personalized website allows users to track manuscripts they are working on as authors, editors or reviewers and even pause and return to task later.
- Authors can supply information about payment by invoice or credit card or indicate their eligibility for waivers.
- Articles by authors from a member institution enjoy centralized payment and/or a discounted fee as well as promotion on a special member page.
- Use of blogs, tweets and social networking for promotion and visibility.

Moral behavior
moral rights

More and more people claim that the **public should have the right to freely access and use scientific work produced in public environments and supported by public money.**

authors

Open access enforced

The Cost of Knowledge

Academics (12.663 – Stand 10092012) have protested against Elsevier's business practices – no longer willing to support Elsevier's publishing procedures

The key to all these issues is the right of authors to achieve easily-accessible distribution of their work.

4. Will commercial publishers accept the OA paradigm?

NGOs

Open access enforced



Coalition for Action “Copyright for Education and Research”

Aktionsbündnis „Urheberrecht für Bildung und Wissenschaft“

In a digitised and networked information society, access to global information for the purposes of education and science must be guaranteed at all times from any place.

Why are the Coalition and its actions important?

Next Relevant Dates

November 17 – 18, 2014

Annual meeting of the Coalition for Action in
Berlin

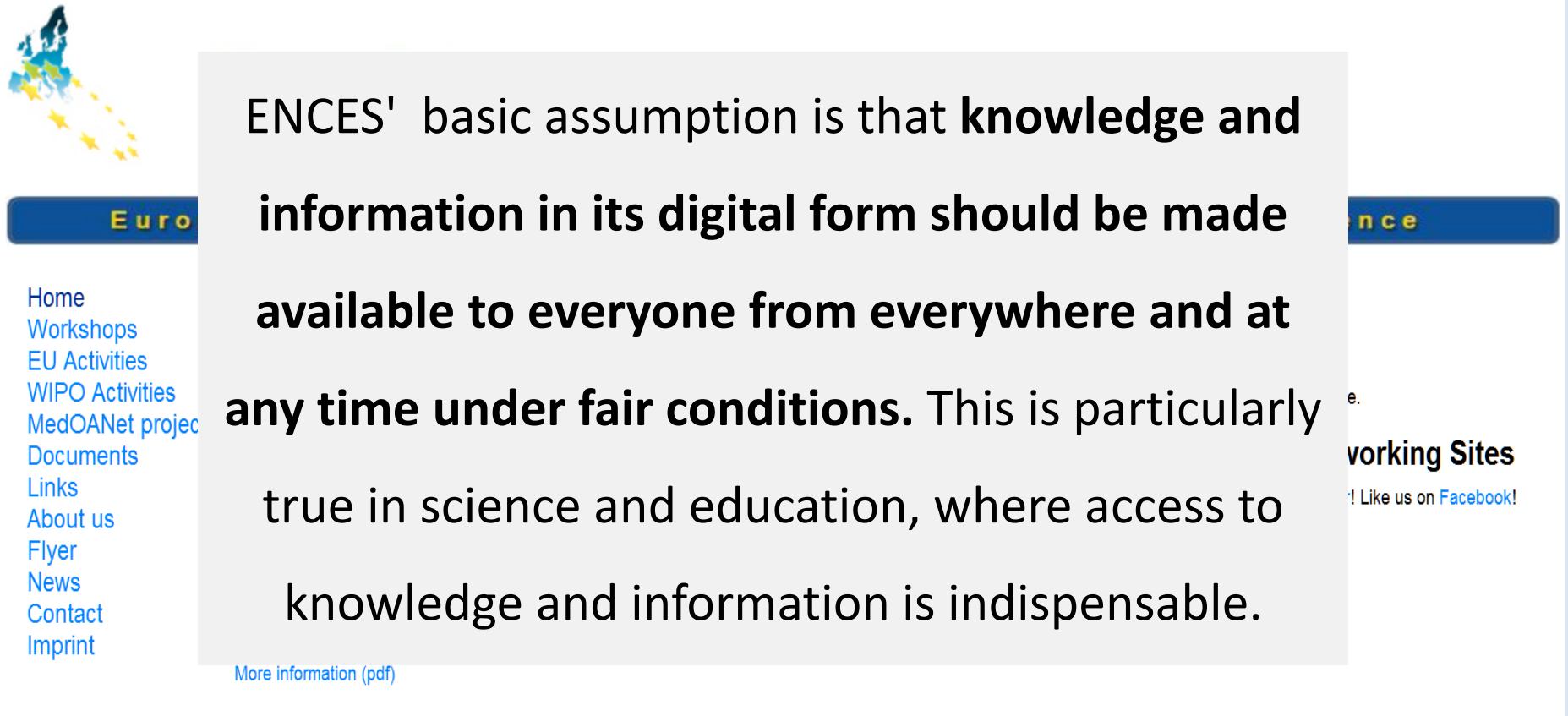
Program and Registration



4. Will commercial publishers accept the OA paradigm?

NGOs

Open access enforced



The screenshot shows the ENCES website. On the left is a navigation menu with links: Home, Workshops, EU Activities, WIPO Activities, MedOANet project, Documents, Links, About us, Flyer, News, Contact, and Imprint. The main content area features a large text block stating: "ENCES' basic assumption is that **knowledge and information in its digital form should be made available to everyone from everywhere and at any time under fair conditions.** This is particularly true in science and education, where access to knowledge and information is indispensable." Below this text is a link for "More information (pdf)". On the right side, there is a section for "Working Sites" and a Facebook link.

ENCES' basic assumption is that **knowledge and information in its digital form should be made available to everyone from everywhere and at any time under fair conditions.** This is particularly true in science and education, where access to knowledge and information is indispensable.

[More information \(pdf\)](#)

Working Sites

! Like us on [Facebook!](#)

4. Will commercial publishers accept the OA paradigm?

Public foundations

NIH

Open access enforced

green

require



The law states:

The [NIH Public Access Policy](#) ensures that the public has access to the published results of NIH funded research. It **requires** scientists to submit final peer-reviewed journal manuscripts that arise from NIH funds to the digital archive [PubMed Central](#) *upon acceptance for publication*. To help advance science and improve human health, the Policy requires that these papers are accessible to the public on PubMed Central no later than 12 months after publication.

The NIH Public Access Policy applies to all peer-reviewed articles that arise, in whole or in part, from direct costs ¹ funded by NIH, or from NIH staff, that are accepted for publication on or after April 7, 2008.

<http://publicaccess.nih.gov/policy.htm>

4. Will commercial publishers accept the OA paradigm?

Open access enforced

Private foundations

gold

require

Wellcome Trust policy tightening (June 2012)

introducing sanctions for non-compliance and a move to CC-BY licenses

4. Will commercial publishers accept the OA paradigm?

**Political
commitment**

golden

green

UK

Policies on open access to scientific research results should apply to all research that receives public funds.

**Free access to British scientific research
within two years**

Radical shakeup of academic publishing will allow papers to be put online and be accessed by universities, firms and individuals

Open access is a key feature of Member States' policies for responsible research and innovation by making the results of research available to all and by facilitating societal engagement.

Open access enforced

**Finch Report of the Working
Group on Expanding Access to
Published Research Findings – the
Finch Group**

[http://www.researchinfonet.org/
publish/finch/](http://www.researchinfonet.org/publish/finch/)

**“Accessibility, sustainability,
excellence: how to expand access
to research publications”**

In Horizon 2020, both the ‘Green’ and ‘Gold’ models are considered valid approaches to achieve open access.

**Political
commitment**

EU

All projects will **be requested to immediately deposit an electronic version of their publications** (final version or peer-reviewed manuscript) into an archive in a machine-readable format.

This can be done using the **‘Gold’ model** (open access to published version is immediate), or the **‘Green’ model**.

In this case, the Commission will allow an **embargo period of a maximum of six months**, except for the **social sciences and humanities** where the maximum will be **twelve months** (due to publications’ longer ‘half-life’)

5. Will public institutions be willing to pay for commercial OA publishing?

Public pays

APC article-processing charge paid by the authors or, mainly by their institutions

APC payed by foundations/funding institutions

APC payed by a library for its scientists or by a flat-rate contract

By nation-wide (flat-rate) contractual agreements

SCOAP-model – a network of domain-specific institutions (High-Energy Physics) pays a remuneration to publishers of pertinent journals on a flat-rate basis

6. Will open access(OA) become gradually the default publishing in the foreseeable future (long-term prospective)?

Closed access journals
(books)



Open access journals
(books)

Commercial open access
journals (books)

Community open access
journals (books)

open access constrained

full open access

mainly by contractual
licences agreements,
e.g. read only

according to principles
of the Berlin Open
Access Declaration

The author(s) and right holder(s) of such contributions grant(s) to all users a **free, irrevocable, worldwide, right of access** to, and a license **to copy, use, distribute, transmit and display the work publicly** and to make and **distribute derivative works**

4. Will commercial publishers accept the OA paradigm?

5. Will public institutions be willing to pay for commercial OA publishing?

6. Will open access(OA) become gradually the default publishing in the foreseeable future (long-term prospective)?

7. Is there still a need for copyright related to science and education?

If the answers to 4, 5, 6 are “yes” then the
answer to 7 is still “it depends”

7. Is there still a need for copyright related to science and education?

If everything will be published in the open access paradigm

Is there still a need for copyright protection for published objects?

yes

protection of moral rights

right to decide when and how to publish

attribution of authorship

protection of works' authenticity

no

With comprehensive community open access

no need for exploitation rights

no need for contractual licensing agreements

Is this a realistic perspective?

7. Is there still a need for copyright related to science and education?

If everything will be published in the open access paradigm

Is there still a need for copyright protection for published objects?

yes

in addition to the protection of moral rights

protection and exceptions for **published works** from the pre-OA-era

protection of new commercially produced **value-added services**

protection and exceptions for **special products in the close access paradigm**

- **multimedia presentation**
- **hypertextification, dossiers**
- **summaries, translations**
- **retrieval and data mining**
- **innovative reviewing models**
- **personal und institutional background information**
- **etc. etc.**

Conclusion

In the foreseeable future there will be still a need for
copyright regulation

and from the perspective of science and education
(the intermediaries such as libraries included):

The fight for a science- and education-friendly copyright
must be continued

with the main objective

to replace the various existing insufficient and obstructive
copyright exceptions by a single comprehensive copyright
clause in favor of science and education

Objectives of a generic clause for science and education (proposed by the German Aktionsbündnis + ENCES)

1. Right to **reproduce** and **making publicly available** published works
 - a) in well defined **user groups in research and education**
 - b) without further authorization or restrictions,**
for the purpose of
 - c) **non-commercial research**
 - d) teaching and learning in **publicly funded** schools and
academic institutions
 - c) **non-commercial communication and intermediary services**
of **culture and memory institutions** such as libraries, archives,
documentation and media centers, and museums
2. Rights mentioned in para (1) cannot be waived.

Conclusion

*Will There Still be a Need for
Copyright Regulation When Open
Access Becomes the Default for
Publishing in Science?*

Yes and no - It depends

***Thank you for your
attention***

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Share — copy and redistribute the material in any medium or format

Adapt — remix, transform, and build upon the material

for any purpose, even commercially.

The licensor cannot revoke these freedoms as long as you follow the license terms.

Under the following terms:



Attribution — You must give appropriate credit, provide a link to the license, and indicate if changes were made. You may do so in any reasonable manner, but not in any way that suggests the licensor endorses you or your use.

No additional restrictions — You may not apply legal terms or technological measures that legally restrict others from doing anything the license permits.



Conclusion

1. **Open access will be the norm**, proprietary commercial publication the exception

2. Open access **does not restrain** commercial publication

3. Open access is fostering **authors' rights and interests**

Why then fighting for copyright reform rather than concentrating on open access either green or golden?

But is the model of financing commercial open access publishing by the public acceptable?

Or is there a need for new open access models by and from science?

Conclusion

Open access will be broadly accepted both of authors and commercial providers



A reinterpretation of the restrictive three-step-test – the holy cow in copyright

Three-Step Test Language and Scope

The three-step test was first enacted in the 1967 revision of the Berne Convention. It provides:

*"It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works [a] in certain **special cases**, provided that [b] such reproduction **does not conflict with a normal exploitation** of the work and [c] does not **unreasonably prejudice the legitimate interests of the author.**"*

1. **Open access will be the norm**, proprietary commercial publication the exception
2. Open access **does not restrain** commercial publication
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libraries, agencies

[SCOAP](#)

golden

In this model, High-Energy Physics (HEP) funding agencies and libraries, which today purchase journal subscriptions to implicitly support the peer-review service, **federate to explicitly cover its cost**, while **publishers make the electronic versions of their journals free to read**. **Authors are not directly charged** to publish their articles OA.

Today, most publishers quote a price in the range of 1'000–2'000 Euros per published article. On this basis, we estimate that the annual budget for the transition of HEP publishing to OA **would amount to a maximum of 10 Million Euros/year, sensibly lower than the estimated global expenditure in subscription to HEP journals**.

Each SCOAP³ partner will **finance its contribution by canceling journal subscriptions**. Each country will contribute according to its [share of HEP publishing](#).

COMMISSION RECOMMENDATION of 17.7.2012
on access to and preservation of scientific
information

**Political
commitment**

golden

green

EU

Cf. Commission Communication (12 Dec
2011) on open data - a proposal for a
Directive amending Directive 2003/98/EC

Policies on **open access to scientific research results** should apply to all
research that receives public funds.

Open access is a key feature of Member States' policies for responsible
research and innovation by **making the results of research available to
all and by facilitating societal engagement.**

Exceptions for free, respectively fair use have been weakened and exploiters' rights have been strengthened

Copyright regulation has given increasingly priority to licensing and contractual agreements have been giving extremely rather than to legally binding copyright exceptions.

4. Will commercial publishers accept the OA paradigm?

**Political
commitment**

golden

green

UK

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within two years**

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Open access enforced

**Finch Report of the Working
Group on Expanding Access to
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[http://www.researchinfonet.org/
publish/finch/](http://www.researchinfonet.org/publish/finch/)

**“Accessibility, sustainability,
excellence: how to expand access
to research publications”**



Professor Dame Janet Finch's recommendations on open access publishing prompted the government's decision.

COMMISSION RECOMMENDATION of 17.7.2012
on access to and preservation of scientific
information

**Political
commitment**

EU

golden

green

result of these policies:

there should be open access to publications resulting from publicly funded research as **soon as possible, preferably immediately and in any case no later than six months** after the date of publication, and twelve months for social sciences and humanities;

licensing systems contribute to open access to scientific publications resulting from publicly-funded research in a balanced way, in accordance with and without prejudice to the applicable copyright legislation, and **encourage researchers to retain their copyright while granting licences to publishers;**

Political
commitment

UK

golden

green

Free access to British scientific research
within two years

Radical shakeup of academic publishing will allow papers to be
put online and be accessed by universities, firms and individuals

“British universities now pay around £200m a year **in subscription fees** to journal publishers, but under the new scheme, authors will pay "**article processing charges**" (APCs) to have their papers peer reviewed, edited and made freely available online. The typical APC is around £2,000 per article.”

"In all cases universities upon receipt of funding should **transfer these charges to their institutional publication fund**" ...

"A university can then **use these funds to pay for APCs** for any article resulting from research council funding."

“cost of the transition, which could reach £50m a year, **must be covered by the existing science budget and that no new money** would be found to fund the process.”



Minister of State
for Universities
and Science

foundations

golden

green

request

require

authors' preference
still commercial first
publication

mandate
require

10 years of fighting for an science-friendly copyright – Is it still worth while?