Legal aspects of scientific publishing in connection with Open Access

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24 mars 2015
PLAN

- Preambule
- General principles of copyright
- OA on the international arena
- Open Access at the University
- Conclusion
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The origins of copyright

- 15th-century: invention of the **printing press**
- The **first copyright laws**: 1710 (England) – 1793 (France)
- The modern copyright system: response to **technological developments** and society’s need – marked by the conclusion of **international agreements**
Scope of copyright protection

• Copyright protects « works of literary, scientific and artistic nature »
• The condition of originality
• The exclusion of the mere ideas
• Protection arises automatically from the act of creation – absence of formalities
Copyright ownership

- Initial ownership vested in **authors** (= the natural person who created the work)
- **Exceptions** in some countries: corporate bodies, legal entities
- **copyright transferable** after death or through contractual agreement
- Copyright in **works created by several persons**: joint works – collective works
Economic rights of authors

- **Exclusive rights** which can be transferred or licensed
- A bundle of prerogatives corresponding to different uses
- **Reproduction rights**: reproduction, adaptation, rental, and lending
- Right of **distribution**
- Right of **communication to the public**
Moral rights of authors

- Protect the **author’s personality**
- Cannot be transferred or alienated
- Right of **attribution** (paternity)
- Right of **integrity**
- Right of **disclosure**
Limitations to copyright protection

• **Protection expires** after a period of time
• Exceptions for certain **legitimate uses**:
  - Freedom of expression
  - Access to knowledge – public interest
  - Private copying
• Concepts and **rules vary from one legislation to another**
Transfert of rights

• Contractual transfert of rights:
  - Concerns only economic rights
  - Each right may be transferred or licensed separately
  - Assignment: the assignee becomes the new owner of copyright
  - License: autorisation to carry out certain acts - exclusive – non-exclusive
• Transfert of rights after death - succession
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OA in the international arena

• Free availability on the public Internet, permitting any users to read, download, copy, distribute, print, search, or link to the full texts of the articles, crawl them for indexing, pass them as data to software, or use them for any other lawful purpose without financial, legal or technical barriers

• Concerns journals as well books

• 3 stages in the publication cycle
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OA at the ULg

- Need for **education**
- **OA only if the author has the required rights**
  - No contrat – general terms and conditions
  - Transfer of rights other than the electronic distribution rights
  - Publisher’s authorisation through SHERPA/RoMEO – additional agreement – specific mailing

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Publisher’s authorisation

• Deposit the **postprint author** and sometimes the publisher’s PDF version
• Respect for a 6 to 24 month’s **embargo period**
• Subject to the requirement to **link back to the original publication**
Access via the University’s intranet

- According to exceptions laid down by the Belgian law in favour of research and education

Exceptions and limitations have not been harmonized
- they may vary from one country to another

- « Request-a-print » system for educational or scientific purposes

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Repository license

• Non-exclusive - granted on a worldwide scale, for all the duration of copyright protection and without any payment of remuneration

• Authors are asked to waive his/her right to integrity to the extent justified by the deposit

• Collective works: all authors-members of the Ulg + the 1st author if not attached to the Ulg + all co-authors for whom an email address was provided
End user’s license

- Click-wrap agreement
- Users are allowed to read, download, copy and print
- **Right to quote** – indication of the source and name of author(s)
- No modification – transformation - adaptation
- No commercial purpose
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Conclusion

- Authors need to be clear about copyright protection and rights management
- Publishers intend to embrace OA and allow self-archiving
- Publishing agreement should be:
  - Well negotiated (eventually with universities)
  - Well drafted – mutually acceptable
Thank you for your attention

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