The Open Access Interviews: Paul Royster, Coordinator of Scholarly Communications, University of Nebraska-Lincoln

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Foreword

In December 2001, 16 people (including two publishers) gathered in Hungary to discuss ways in which the peer-reviewed literature could be made freely available on the Internet, a meeting organised by George Soros' Open Society Institute.[1]

It was at this meeting that the term "open access" was first used, and it was as a result of this meeting that the Budapest Open Access Initiative (BOAI) was launched three months later. In effect, BOAI was the start of the open access (OA) movement, although in reality it was more a case of bringing together a number of pre-existing developments for common cause. And to kick start the movement, OSI provided $3 million in funding.

While the launch of BOAI was undeniably a ground breaking and historic moment, it also sowed the seeds for a great deal of confusion and disagreement.

I make this claim for two reasons. First, by treating publishers as equal partners rather than service providers, the BOAI organisers ceded to them sufficient power to enable them to direct and control the way in which open access develops. As a result, they are now in the process of appropriating the movement for their own ends, at the expense of the research community. Second, in articulating their aspirations, BOAI attendees authored a definition of open access that is at odds with the strategy they proposed for achieving it.

Let's remind ourselves of the BOAI definition of OA. Open access to the scholarly literature, it says, requires, "its free availability on the public internet, permitting any users to read, download, copy, distribute, print, search, or link to the full texts of these 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 other than those inseparable from gaining access to the internet itself. The only constraint on reproduction and distribution, and the only role for copyright in this domain, should be to give authors control over the integrity of their work and the right to be properly acknowledged and cited."

It seems fair to say that while the Creative Commons licences would not be released for another 10 months, this definition prefigures the terms of the CC BY licence.

Having defined OA, BOAI participants then outlined what they characterised as two "complementary" strategies. Strategy I was self-archiving (usually now referred to as "green OA); strategy II was OA publishing ("gold OA"). The problem with this dual strategy, however, is that it is not compatible with the description of OA outlined above.

OA publishing is compatible, since BOAI strategy II states that OA journals would not "invoke copyright to restrict access to and use of the material they publish". Again, this would seem to imply what would soon be known as CC BY.

But what about Strategy I (green OA)? Since most papers deposited in repositories (or "open electronic archives" as BOAI described them) will have been published in traditional subscription journals we must assume that, even if the publisher has not insisted on the author signing over copyright in a paper, it is highly unlikely that that publisher will permit the work to be made available on a CC BY basis — unless it has been published by an OA publisher (which would really make it gold OA, not green). It is, therefore, hard to see how green OA can hope to conform to the BOAI definition of open access.

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[1] OSI was renamed Open Society Foundations in 2010.

Small group of individuals and publishers

Another point to highlight is that the BOAI participants were a small group of individuals and publishers representing no one but themselves (although brought together by OSI). Moreover, they did not seek to acquire any formal authority — by, for instance, creating an official OA organisation and electing representatives from the research community — either at the time of the Budapest meeting or subsequently.

This is important because it means that the BOAI definition of open access has no official status or formal authority. As we shall see, this has helped make open access vulnerable to dilution and appropriation — a point I first made in 2006.

This absence of formal authority, the inherent conflict between BOAI'S definition of OA and its proposed strategy for achieving it, along with the decision to treat publishers as equal partners in the development of OA have, I believe, been the root cause of much of the conflict and confusion that has bedevilled OA over the past 10+ years. Above all, these three factors have conspired to create the conditions to allow publishers to appropriate open access.

With no formal OA organisation in place to shepherd and drive it forward, the incipient movement saw a raft of further declarations and statements being made in succeeding years — most notably the June 2003 Bethesda Statement and the October 2003 Berlin Declaration. The definitions of open access these different initiatives produced all varied to some degree, but what they all shared in common with BOAI was a failure to deal adequately with the role of green OA.

By 2004, the consequences of the informal approach that the movement had adopted were becoming evident. As Suber noted at the time: "More than ever before I'm hearing the complaint that the term 'open access' doesn't have a firm, common definition. This is not true, but it could become true if dilution and misuse of the term continue."

In an attempt to fix this undesirable fluidity Suber proposed a new definition of OA, one that combined the three main statements (BOAI, Berlin and Bethesda), and which he dubbed the BBB definition.[2]

But Suber's intervention was insufficient to stem the tide of confusion, not least because he failed to clarify the status and legitimacy of green OA. It did not help perhaps that he expressed a personal preference for reuse (i.e. CC BY), and implied that green OA was inadequate. As he put it, "All three tributaries of the mainstream BBB definition agree that OA removes both price and permission barriers. Free online access isn't enough … My personal preference … is to permit derivative works and commercial re-use."[3]

Faced with the continuing uncertainty and confusion over green OA, self-archiving advocates became increasingly restive about its status. In 2008, therefore, self-styled "archivangelist" Stevan Harnad called for the BOAI definition to be redrafted to include green OA.

Gratis and libre

This did not happen. Instead, Suber responded by proposing two new types of OA — gratis OA and libre OA. Gratis OA, he explained, removes just the price barriers; libre OA removes both price barriers and at least *some* permission barriers (i.e. copyright barriers).

Explaining the background to his decision, Suber said, "Stevan wanted to recognise the movement's many gratis OA success stories. But because *gratis OA doesn't meet the terms of the BBB*, he felt it necessary to revise the BBB. I wanted to join him in recognising the many gratis OA success stories, but I didn't want to revise the BBB." [My italics]

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[2] Suber had done some groundwork the year before, seeking commonality between some of the different definitions of open access then being used, including those being promulgated by OA publishers BioMed Central and PLOS

[3] We could also note that in his book on open access, Suber describes OA as literature that is "digital, online, free of charge, and free of most copyright and licensing restrictions."

Suber added, significantly, "There are two good reasons why our central term became ambiguous. Most of our success stories deliver OA in the first sense [gratis OA], while the major public statements from Budapest, Bethesda, and Berlin (together, the BBB definition of OA) describe OA in the second sense [libre OA, or more accurately, CC BY]."

Clearly one problem Suber faced was that revising the BBB would have been no easy task. With no official OA organisation to exercise the necessary authority there was no obvious mechanism for redrafting the definition of OA, particularly given that Suber's BBB was a personal amalgam of three different definitions. He conceded, "I'm in no position to legislate. If I were, usage would never have become ambiguous!"

The upshot: green OA had still not been incorporated into the definition of open access.

Needless to say, Suber's second intervention also failed to stem the confusion and squabbling over open access. Indeed, in some ways it worsened the situation. For instance, critics were quick to point out that — whatever benefits gratis OA might or might not provide — it is not conformant with the BOAI definition. In fact, some implied, it is not OA at all.

Others questioned the validity of libre OA. Since it does not require the removal of all permissions, but only some,[4] they argued, libre OA is not OA either. As such, they suggested, the term is inaccurate and redundant, and so should not be used.

My reading of Suber's 2008 intervention is that in trying to retrofit self-archiving into the definition of open access, he sought to expand the definition without actually redrafting BOAI. Interestingly, in doing so he seemed to suggest that the BOAI was no longer the overarching definition of OA, but one of several different types (including gratis OA). As he put it, "BBB OA is one kind or subset of libre OA. But there are others, and not all libre OA is BBB OA".[5]

Either way, it would appear that many OA advocates either did not understand what Suber was proposing with his libre/gratis distinction, or they simply rejected it. In any case, by now most people who were not committed green OA advocates tended to assume that BOAI was *the* proper definition of OA (although in mainland Europe many still view the Berlin Declaration as the appropriate authority[6]). This in turn means that it is widely assumed within the OA movement that only CC BY is sufficient for open access.

Two further developments helped float the CC BY boat: an emerging interest in text and data mining, which most assume is only possible where the mined content has been licensed as CC BY; and the adoption of CC BY by OA publishers.

OA publishers adopted CC BY because they realised that doing so was (for them) a costless way of asserting that they had the interests of the research community at heart. Initially, PLOS used its own attribution licence — the Public Library of Science Open-Access License Version 1.0 August 1, 2001. (See here for instance). In 2003, however, it began using CC BY instead. By contrast, BioMed Central did not adopt the CC BY license for five years (July 2004). Up until then its licensing appears to have ranged from all rights reserved to no license at all. (See here, here, here, here and here for instance).

That is the backstory. But where does it leave green OA today? In light of the BOAI definition, for instance, how can repositories claim to be providing OA?

In the BOAI FAQ Suber states that even where researchers publish in traditional subscription journals the copyright in their preprints remains with them[7]. The implication would seem to be that preprints can be made available as CC

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[4] A point Suber makes clear in the glossary of his book on OA.

[5] It did not help, I suspect, that many did not know about, or attach much significance to, the BBB. By referring to it, therefore, Suber probably added to the confusion.

[6] See, for instance, the recent position paper by the Swiss Academies of Arts and Sciences here.

[7] As he put it, "Authors of preprints hold the copyright to them and may post them to open access archives with no copyright problems

BY. This, we should note, is a disputed claim. In any case, how often do authors attach CC BY to their preprints, and how realistic is it to expect them to do so in any case?

Consider for instance DASH, the institutional repository of Harvard University (where Suber is director of the Office for Scholarly Communication). It seems fair to assume that DASH is better placed than most to make its content available with Creative Commons licences, since Harvard has introduced a series of pioneering OA policies that require faculty to grant to the university "a nonexclusive, irrevocable right to distribute their scholarly articles for any non-commercial purpose."

But how many of the papers in DASH are CC BY? Unfortunately we don't know, because it is not possible to search DASH by licence, and Harvard does not keep track of licences on individual DASH deposits. After browsing the repository, however, I formed the impression that where papers are available on a CC BY basis it is because they have been published by an OA publisher like PLOS, not because Harvard (or the author) has decided to make them CC BY. (Again, this makes it gold OA rather than green).

In any case, in light of the non-commercial terms of the Harvard policies I must assume that DASH can generally only provide CC BY through gold OA.

Reaffirm and repeat

All this suggests to me that the most serious problem facing the OA movement today is the contradiction at the heart of the BOAI, now the most widely cited definition of open access. But how can this contradiction be resolved?

Harnad has several times suggested that the solution is to redraft BOAI. That would certainly seem to be the most sensible and logical approach, and personally I think the first step to doing that would be to create a (publisher-free) OA organisation. Either way, the need to do something is becoming more pressing each year.

As it happens, an opportunity to resolve this problem presented itself in 2012, when Open Society Foundations again assembled a select group of OA advocates in Budapest to celebrate the 10th Anniversary of the 2001 BOIA meeting. This time 29 people attended, including six publishers, four representatives from SPARC, and three from OSF (which by then had provided $6 million in funding to the OA movement[8]).

Rather than clarifying matters, however, BOAI 10 participants chose to reaffirm and repeat the BOAI definition, and to reaffirm and repeat BOAI's two strategies — "OA through repositories (also called 'green OA') and OA through journals (also called 'gold OA')."

In doing so, they reaffirmed and repeated the logical inconsistency at the heart of the BOAI.

Interestingly, while BOAI 10 participants adopted a similar approach to Suber — by implying that the 2008 gratis and libre definitions had been bolted onto the BOAI — unlike Suber they did not appear to view the BOAI definition as a subset of libre OA, but libre OA as a subset of BOAI. As they put it, "[W]e recognise that gratis access is better than priced access, libre access is better than gratis access, and libre under CC BY or the equivalent is better than libre under more restrictive open licenses."

They also produced a set of recommendations. Oddly, however, Recommendation 2.1 states that CC BY should be treated as the optimal licence for both gold *and* green OA — even though, as they acknowledged, OA repositories "typically depend on permissions from others, such as authors or publishers" and so are "rarely in a position to require open licenses."

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whatever. If the preprint is later accepted for publication in a journal that requires authors to transfer copyright to the publisher, then the journal may or may not give permission for the refereed postprint to be posted to an open access archive. If permission is granted, then again there is no copyright problem. If permission is denied, then the preprint may remain in the open access archive because it is a different work from the postprint and the author never transferred the copyright on the preprint."

[8] We could note that in 2004 green OA advocates complained that OSI was awarding a disproportionate amount of its funding to gold OA initiatives, and so discriminating against green — a point I raised with OSI's Melissa Hagemann in 2005.

Once again, one is struck at the logical inconsistency.

Needless to say, BOAI 10 attendees also chose not to create an OA organisation. (In fact, there is no suggestion that they even contemplated doing so).

BOAI 10 was surely a missed opportunity. However, since the participants included a bunch of publishers and gold OA advocates we should not be surprised. Rather than seize the nettle, therefore, they implied that there is a scale of openness that can be ascended, or cumulative steps that can be taken, towards what CC BY advocates now refer to as "full open access" (i.e. a scale that runs: toll access [subscription-based publishing], gratis OA, libre OA, CC BY [BOAI]). This would seem to suggest that green OA is embryonic gold OA, not an alternative way of providing open access. If that is right, then we might wonder how and when green OA evolves into gold OA.

For all its logical inconsistency, the CC BY wing of the OA movement has nevertheless had some success in persuading research funders like RCUK of the validity of its approach, as we shall see.

But am I just being a pedant for fretting over the logical inconsistencies at the heart of the open access movement? After all, OA is growing and it is proving very successful is it not?

Personally, I believe it is important; and I think there are two particular reasons why OA advocates should care about it too. First, the consequent confusion is allowing publishers to bend the movement to their own needs, and against the interests of the research community. Second, the OA movement is in serious danger of alienating the very people who have done most to make open access a success story.

On the second point, we need to consider, for instance, what impact the growing insistence that CC BY is a necessary precondition for open access is having on the perception of green OA. And we need to consider where it leaves all those repository managers who have spent the last decade or so putting as much content as possible into their repositories. If little or none of the content they have released to the world is CC BY, then how can they claim to be operating an OA repository? And how can they claim to be OA advocates? Has the OA movement not put them in an invidious position?

Henceforth disqualified

Consider, for instance, the situation confronting Paul Royster, coordinator of scholarly communications at the University of Nebraska-Lincoln. Royster has dedicated a great deal of time and effort to filling the university repository with scholarly content. Indeed, he has been so successful at this, he says, that the repository is now the second largest in the US by number of deposits.

Yet when he attended a SPARC open access meeting in Kansas City in 2012, Royster came away with a strong impression that the OA movement no longer attaches much value to his achievements. For this reason, he says, he left the meeting "in a huff".

As Royster explains in the Q&A below: "At that 2012 SPARC meeting in Kansas City, it became clear that a more specific definition [of OA] was being insisted upon, and finally SPARC director Heather Joseph declared from the podium in her closing remarks that 'From now on, Open Access means CC BY or equivalent' — stipulating that Creative Commons re-use licensing had become the *sine qua non* of open access."

The implication, he says, was that all his hard work had been rejected by the OA movement, as has green OA more generally. "[O]ur work in promulgating Green OA (which normally does not convey re-use rights) and our free-access publishing under non-exclusive permission-to-publish (i.e., non-CC) agreements was henceforth disqualified."

SPARC's position, he adds, assumes that the future of open access lies not in OA repositories, but in pay-to-publish gold OA journals, a model Royster feels not only devalues the work of repository managers like him, but will enrich publishers at the expense of the research community. "Demoting most Green OA to a lesser status in the 'movement' privileges the paid and paying open access, and it puts the non-'CC BY' work in the back of, if not under, the bus."

While he has no objection to them in principle, says Royster, he is not enthusiastic about Creative Commons licences. And he certainly doesn't believe that CC BY ought to be considered an essential component of open access.

I have discussed the issues that concern Royster on a number of occasions in recent years, but it is only in interviewing him that I have come to fully appreciate the extent of the problem repository managers face as a result of the CC BY gold rush; and it is only after re-reviewing the history of open access that I feel I finally understand why green OA is quite so scorned and undervalued by so many OA advocates. But then given that the major definitions of open access do not cater for green OA (even while declaring self-archiving to be one of the strategies for achieving it!) we might wonder how it could have been otherwise.

The situation is all the more ironic in light of the fact that the major success stories of OA are green successes — a point acknowledged by Suber in 2008 when he proposed the gratis and libre distinctions.

Nevertheless, we need to ask whether Royster might have misunderstood what Joseph said in Kansas City. To try and clarify this, I put Royster's points to Joseph, who replied: "At the 2012 SPARC meeting, there was lots of discussion about concerns that 'definition creep' was beginning to affect Open Access. SPARC has always been careful to note that we adhere to the BOAI's definition of Open Access, which calls for the free, immediate online availability of articles coupled with the rights to use them fully for any lawful purpose. Crucially, the BOAI definition also notes that the only role for copyright in this domain is to give authors control over the integrity of their work, and to ensure their right to be properly acknowledged and cited."

Joseph continued, "However, we were increasingly hearing comments — often from publishers — along the lines of 'there are many different "flavours" of Open Access, each with their own definition.' I felt then (and still do) that this was an incorrect assertion, and one that could seriously undercut the potential benefits of Open Access. In my closing comments, I called on the attendees to be aware of the importance of protecting the full definition of Open Access. I also noted that the CC BY licenses represented the 'gold standard' for expressing the BOAI definition of Open Access."

As I see it, this goes to the heart of the matter: since there is no central formal body to say exactly what open access is, but rather a range of different statements and declarations about it, it is in fact perfectly accurate to say that there are many different flavours of open access, each with their own definition, however much Joseph might wish it were not so. As such, open access remains a slippery concept, and its meaning varies depending on whom you are talking to.

So, for instance, for SPARC and many OA publishers open access implies CC BY/BOAI (or "full open access"). For Harnad, by contrast, open access is "*immediate, permanent online access, free for all on the Web*" (with no reference to, or need for, a specific licence).

Meanwhile, the default description of open access used by most OJS journals[9] says simply, "This journal provides immediate open access to its content on the principle that making research freely available to the public supports a greater global exchange of knowledge".[10]

And if we try to infer the definition of open access implicit in the new model licences proposed by STM (the trade association for academic and professional publishers), we have to conclude that publishers do not view commercial reuse, the creation of derivative works, and other important aspects of CC BY, as inherent to open access.

In short, because of the informal way in which open access has been allowed to develop there are many different flavours of OA and these are expressed in a great many different statements, declarations, and licences.[11]

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[9] Open Journal Systems (OJS) is an open-source software for the management of peer-reviewed academic journals, created by the Public Knowledge Project, released under the GNU General Public License. Currently, OJS is used by over 7,000 journals around the world.

[10] See, for instance, the *Scandinavian Journal of Public Administration* (SJPA), whose papers have a copyright notice attached that might seem to imply an all-rights-reserved licence — e.g. here.

[11] See, for instance, the list on Charles Bailey's web site here, and SPARC Europe's list here.

Harnad's description of OA also reminds us that, contrary to what Joseph says above, the BOAI does not stipulate "immediate" access. It was precisely for this reason that Harnad had made an earlier [call](#) (2005) for the BOAI to be updated. Indeed, we might want to suggest that *had* BOAI stipulated immediacy as a condition of open access publishers would be far less inclined to impose embargoes on self-archiving today. And the fact that BOAI did not do include this is a further example of how the OA movement has failed to cater properly for, or safeguard, green OA.

Joseph did, however, go on to say to me that she does not dismiss anything less than CC BY as unimportant or irrelevant to Open Access. "On the contrary, I — and SPARC — have worked hard to advocate for initiatives and efforts that represent positive steps towards full Open Access but do not require CC BY licenses — such as [PubMed Central](#), and most campus institutional repositories. These are essential efforts, and crucial building blocks. That said, I try to be careful about noting that as great as they are, they are still *steps* towards full Open Access — not the embodiment of the definition."

It is true that SPARC has supported green OA. However, I think Royster's point was that SPARC's new obsession with CC BY and "full open access" is sending a very negative message to repository managers, and significantly underplays the vital contribution that green OA has played, and continues to play, in the success of open access.

It is also worth pointing out that that when below I ask Royster if he might have misunderstood what Joseph was saying, he replies, "I think it would be hard to be more clear than she was, and I don't think there was any confusion or hesitation on her part over what she meant."

We can also be sure that Royster is not the only person working in the library community to be negatively impacted and confused by the multiplicity of definitions of open access. Writing recently on his blog, [Aaron Tay](#), a librarian at the National University of Singapore [said](#), "I freely admit squabbles between open access advocates on the exact definition of open access, on the best way to provide/reach it etc. often threaten to confuse me."

Perhaps, therefore, it is time to for SPARC to give more thought to how its messaging is being received? And perhaps it is time for the open access movement to finally, and fully, clarify the status and legitimacy of green OA.

Journey, process, event, or cul-de-sac?

By now it will be clear that I believe the way in which the BOAI was drafted, and the growing obsession with CC BY that has emerged as a result, is the source of a great deal of confusion about open access. More importantly, it is casting green OA in an increasingly negative light — despite the very significant contribution self-archiving has made to the success of open access.

But let's look at another way in which the OA movement (and many of those now mandating open access) tend to gloss over the problem rather than fix it. As we saw, like the 2012 BOAI 10 document, Joseph characterises open access as a stepped process, or journey, to something that CC BY advocates like to call "full open access".

Now much favoured by CC BY advocates, this trope came to prominence during the controversy sparked by the open access policy announced by Research Councils UK ([RCUK](#)) in 2012. The RCUK policy states that pay-to-publish gold OA is to become the main vehicle for publishing research in the UK, and that gold OA papers must be made available CC BY.

When the UK research community realised that in future it would have to pay to publish all its papers there was [considerable pushback](#), and both RCUK and the UK government were forced to backpedal. And they did this by arguing that while gold OA remained the endpoint, they accepted that green OA could be treated as an acceptable short-term half-way house.

When the then UK Minister for Universities and Science [David Willetts](#) appeared before British politicians to defend the policy, for instance, he repeatedly used the word "journey" in order to finesse the fact that the government and RCUK had had to regroup. So too did senior officials from RCUK and the Higher Education Funding Council for England ([HEFCE](#)) when they were hauled in front of MPs to explain why the research

community was up in arms over the policy. As the RCUK written evidence expressed it, "RCUK fully appreciate the fact that this is a journey not an event."

But what does this emphasis on a journey to full open access mean in practice? It means that gold OA using CC BY ("full open access") is the desired destination, and green OA is some kind of Band-Aid, a half measure, a pale shadow of the real thing.

Understandably, green OA advocates like Harnad do not accept this, and reject the notion of "full open access". There is, they argue, toll access and there is open access, and open access can be provided *either* through journals (gold OA) *or* through repositories (green OA).

The problem Harnad faces, of course, is that green OA can rarely or never conform to the BOAI definition of open access (even, as we noted, where a rights-retention Harvard-style OA policy is in place). It is this that allows gold OA advocates to argue that green OA is, at best, a station on the way, at worst not open access at all.[12]

Certainly it is hard to see how repositories can ever provide "full open access", since they can rarely if ever make papers available CC BY.

It is also worth noting that if one adheres to BOAI (or BBB for that matter) as *the* definition of open access, then no research published in subscription journals can ever become open access (or at least not until the copyright in it expires 70 years after the authors' death, when it enters the public domain)?

More importantly, as Royster points out, in order to provide "full open access" researchers are increasingly going to have to pay an APC. It was in realisation of this that UK researchers rebelled over the initial RCUK policy. This in turn means is that, unlike green OA, full open access will benefit publishers at the expense of the research community.

Why do I say this? I say it because it has become clear that publishers expect the research community to pay an unreasonable price for gold OA. As they begin to embrace open access, for instance, traditional publishers are fixing their APCs at a price designed not to reflect the true costs of providing a publishing service, but at a level that will enable them to migrate their journals to an OA environment without suffering any loss of revenue.[13]

Today it costs around $3,000 per paper to publish in a subscription journal with an OA option (hybrid OA). Generally, OA journals charge less than this, but as traditional publishers move into the OA market and set their prices higher, so OA publishers are increasing their prices in response.[14] As a result, today it can already cost up to $2,885 per paper to publish in an OA journal, a price that will surely only rise. And yet the promise of BOAI was that it would be cheaper than subscription publishing.[15]

Of course, some OA journals charge less; and some levy no APC at all. However, the growing trend for governments, research funders and universities to create OA funds to encourage researchers to make their work freely available suggests that pay-to-publish gold OA (charged at publishers' asking price) will become the norm, certainly in the global North.

Let's as again: What does the journey to full open access mean in practice? If OA is a stepped process, or journey, to a pay-to-publish world in which publishers provide OA for a fee, what will happen to the thousands of institutional repositories that have been created all around the world in the past ten or so years once "full open access" is achieved? Will they become redundant and be dismantled? Will they be gradually phased out? Will they simply become a tool for research assessment and monitoring purposes (where the metadata of articles is sufficient, and full text likely a rarity)? Or will they be frozen in aspic, and kept as historical curiosities?

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[12] We should stress that Suber himself has long recognised the value of green OA. Indeed, it was in recognition of its value that he proposed gratis and libre OA; it is also why he eventually rejected the initial terminology proposed for libre and gratis — "weak" and "strong" OA.

[13] OA advocates frequently point out that the profits of scholarly publishers are already excessive (for some, "obscene").

[14] See, for instance, this blog post by Heather Morrison, assistant professor in the School of Information Studies at the University of Ottawa.

[15] As BOAI expressed it, "[E]xperiments show that the overall costs of providing open access to this literature are far lower than the costs of traditional forms of dissemination."

In short, if repositories are no more than a temporary step on the road to full open access, then green OA begins to look less like a solution, or a strategy, more like an open access *cul-de-sac*.

Bait and switch?

If that is correct, then how can repositorians like Royster be expected to stay motivated? If their hard work is disparaged by OA advocates, and pronounced second best, or even perhaps "not open access" at all — and all in the name of a definition of open access authored by 16 people (including two publishers) thirteen years ago — then why would they want to continue to be associated with the OA movement?

The real issue here, says Royster, is that the OA movement is now alienating its allies. For that reason, he says, "I no longer call or think of myself as an advocate for 'open access,' since the specific definition of that term excludes most of what we do in our repository. I used to think the term meant 'free to access, download, and store without charge, registration, log-in, etc.,' but I have been disabused of that notion."

And as we noted earlier, there is a second problem here too. The OA movement's failure to address the definition problem, and its willingness to "partner" with publishers is enabling publishers to bend and mould OA to their needs rather than the needs of the research community.

We might even want to speculate as to whether publishers' decision to embrace open access and CC BY might not prove to be part of a bait and switch strategy.

Today CC BY is growing. In trying to put a figure on the numbers recently PLOS' Cameron Neylon estimated that there are 720,000 CC BY papers on the Web today.[16] But can we expect this figure to continue growing? If so, at what price?

Let's consider price first. In the wake of the announcement of the RCUK policy, many publishers began to levy a surcharge for CC BY. In 2012, for instance, *Nature* announced that it would charge an additional £100-£400 per article for CC BY.[17]

Likewise, *Science's* upcoming new OA journal *Science Advances* is planning to charge an additional $1,000 per paper for CC BY (on top of the APC of $3,000).[18] In other words, by insisting on CC BY, the OA movement is encouraging publishers to further increase their prices — and without providing any additional value.

At the same time, publishers are seeking to poison the green OA well by introducing new self-archiving embargoes and lengthening existing ones. Essentially, their proposition to researchers has become: pay to publish (at our asking price), or wait for 1-2 years (possibly longer) before your work is made freely available.

Alternatively, could publishers' apparent acceptance of CC BY be no more than window dressing while they devise ways of subverting it — seducing CC BY advocates with the promise of giving them what they want, and then switching to a system that suits publishers better? The recent publication of STM's new model OA licences could certainly be interpreted in this way. These licences have been widely criticised by OA advocates, both for not being CC BY, and for undermining their efforts to standardise on simple, transparent and liberal licences for research papers.[19]

Outlining SPARC's concerns Joseph commented: "[I]t is particularly important to note that the STM set of 'open' licenses does not provide for a corollary to the CC BY license, and that all of the STM licenses further contain significant restrictions on commercial uses and derivatives, limiting how open an article actually can be."

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[16] This, we could note, is a tiny proportion of the circa 100-150 million papers that Neylon estimates have been published.

[17] To the considerable annoyance of CC BY enthusiasts.

[18] This too has sparked a protest by OA advocates.

[19] One blogger has likened this to the strategy Microsoft adopted in order to fend off open source licences — "extend, embrace, and extinguish".

STM's move is particularly striking given that a number of OA publishers are members of STM — including BioMed Central, F1000Research and Hindawi.

Re-enclosure?

Some see a third possibility, one in which publishers encourage the use of CC BY for research papers and then re-enclose them. This is a scenario suggested by assistant professor in the School of Information Studies at the University of Ottawa Heather Morrison. As she explains, "There is nothing in the CC BY license that would stop a business from taking all of the works, with attribution, and selling them under a more restrictive license — not only a more restrictive CC-type license (STM's license is a good indication of what could happen here), but even behind a paywall, then buying out the OA publisher and taking down the OA content."

She adds, "Picture Elsevier buying out Hindawi, for example (is this more far-fetched than Elsevier buying out Mendeley or Springer buying BMC), then including Hindawi content in ScienceDirect and shutting down the Hindawi OA sites. I don't think that this would happen immediately, but rather after the OA movement becomes complacent thinking we have succeeded, when the danger of funder / legislative action seems less."

Morrison continues, "Even *if* all of the content is available through an open access archive, there is nothing to stop publishers from lobbying against public spending on archives (have people really not noticed that governments around the world are listening to such arguments)?"[20]

This may be a somewhat paranoid scenario, but presumably it is in order to avoid this kind of re-enclosure that some of the organisations protesting against STM's new model licences have themselves spurned the CC BY licence. The Association of College and Research Libraries (ACRL), for instance, uses CC BY-NC, and the Wikimedia Foundation uses CC BY-SA. Both of these licences are surely being used in order to guard against the kind of scenario outlined by Morrison?

We might also wonder whether CC BY advocates are fully aware of the implications of using their favoured licence. They are, for instance, often the first to protest when it comes to light that a for-profit company is seeking to make money from research that has been made available with an attribution only licence — see here for instance; or when they feel that a commercial publisher is using the CC BY licence in ways that they are uncomfortable with (e.g. here).

For her part, Morrison has now concluded that green OA is a better option than gold. "What is needed is green OA mandates, not only because that's more feasible in the short term, but more importantly this is the best for security of OA in the medium to long term. It's also the best way to facilitate a transition to a more fully open and effective system, with data as well as articles in the IR and peer-review as an overlay."

I take this to be a reference to the growing calls for the research community to take back ownership of scholarly communication. This suggests that repository managers might be better focusing as much on developing alternative scholarly publications as archiving papers published in subscription journals. And it suggests that, rather than being an open access *cul de sac*, repositories could represent the future for open access — morphing into publishing platforms managed and controlled by the research community. And this, as it happens, is exactly the future that Royster is working towards.

Finally, we might want to explore a couple of the reasons given for why it is essential to licence research CC BY. As noted earlier, CC BY advocates will tell you that it is only possible to engage in text and data mining where the content is licenced CC BY. Yet judging by a recent blog post authored by Creative Commons' Timothy Vollmer this is not strictly correct. As he explained: mining the literature is "covered by an exception or limitation to copyright (such as fair use in the United States), so no permission is needed. Most recently the United Kingdom enacted legislation specifically excepting noncommercial text and data mining from the reach of copyright."

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[20] A reference no doubt to publishers' criticism of the way in which public money is being spent on PubMed Central, and their development of CHORUS in the hope of preventing further PubMed Centrals emerging.

In fact, not only might text and data mining often be possible without infringing copyright, but new techniques and technologies are being developed able to work around any copyright restrictions.

Others argue that CC BY is required for teaching. This too is disputed. "If others refuse to use works not CC BY licensed in their teaching in the belief that it's illegal, and limit themselves to CC BY materials it's fine with me, says Morrison. "I don't restrict myself."

The more important question to ask perhaps is whether researchers are comfortable using CC BY. Judging by a 2014 survey conducted by Taylor & Francis they are not. 52% of respondents indicated that CC BY was the least preferred licensing option for publishing open access, with 51% expressing a preference for an exclusive licence to publish, and 46% preferring CC BY-NC-ND.[21]

We could also note that not one researcher has asked Royster to attach a CC licence (of any flavour) to work he has posted for them in his repository. (Which currently contains more than 60,000 articles, papers, eBooks, documents, presentations, creative activities, master's theses, open-access dissertations).

Ceding influence and resources

Even if we dismiss as too paranoid the possibility that publishers might use CC BY to re-enclose research, we should not doubt that they are increasingly seeking to appropriate open access for their own benefit — e.g. by setting APC prices at levels intended to protect their profits, not to reflect the true costs of publishing research papers, by imposing ever longer self-archiving embargoes, and now by seeking to impose new model licences, presumably with the aim of retaining proprietary rights that can be leveraged in order to earn additional revenue beyond any article-processing charge.

The oddity, says Royster, is that OA advocates are allowing publishers to do this, by ceding "influence and resources to many of the same entities that have been exploiting the university market for so many years. Of course, Springer, Wiley, Elsevier, and others have embraced OA when it means opening up an additional income stream."

It is not hard to see how the research community is enabling this process of appropriation. If one scans the membership of the UK Finch Committee, for instance, one sees that it was top heavy in publishers, with group members that included representatives from Wiley Blackwell, IoP, Springer, Taylor & Francis and OUP. We should not therefore be surprised that Finch recommended that the role of repositories be downgraded to providing access to grey literature and acting as "an effective preservation service". And let's recall that it was the Finch report that led to the controversial RCUK OA policy.

The same process can be observed in the development of OA standards, says Royster. Writing in a recent paper, for instance, he points out that publishers dominate the NISO group currently putting together the guidelines for Open Access Metadata and Indicators. This group, says Royster, consists of "75% representatives of publishers and publishing services, many of whom have opposed, misrepresented, and sought to limit legitimate fair use of published materials … They have been offered a seat at the table while the writers and researchers who create and use scholarship have not."

He adds, "This has the appearance of a self-interested cabal setting up standards that further entrench their control over content on which they have managed to secure a near monopoly."

When I sent the draft of this introduction to Royster he commented: "It seems clear to me in retrospect that the NISO metadata proposals were intended to pave the way for the new STM licensing terms. The need for a 'license_ref' field to link to a publisher's use licensing terms seems all the more clear when one sees the degree to which they seek to unpack all rights and rent them out piecemeal and individually. The rights granted (or more importantly, reserved) cannot be expressed in a single simple statement, but now require a website to distinguish and elaborate."

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[21] See also this commentary by Daniel Allington.

Earlier this year I suggested that, as a result of certain of its actions and its omissions, the OA movement is enabling publishers to appropriate open access for their own ends. Royster appears to have reached a similar conclusion. However, I am now wondering if a more accurate way of expressing it might not be to say that in adopting an informal approach to its advocacy, and by assuming that publishers have the best interests of the research community at heart, the movement has simply been outsmarted. Publishers have greater financial resources than researchers, and they are far more street wise. It is not an even contest.

What we should not doubt, however, is that all those involved in the OA movement are high-minded, well-intentioned individuals who genuinely want to improve the world. Meanwhile, for their part, publishers are only doing what they are expected to do in a capitalist economic system — seeking to maximise their profits.

But it is surely the responsibility of the research community to determine how scholarly communication develops, not publishers. Will the OA movement step up, or is it going to continue to let publishers design the future for it? Right now, therefore, the issue is what happens next. Specifically, how can the OA movement recover the situation? Will it?

Either way, unless it seizes the nettle, the OA movement can surely expect to lose more supporters, who will likely end up saying, as Royster does below: "My current attitude regarding OA is to step away and leave it alone; it does some good, despite what I see as its feet of clay. I am not 'against' it, but I don't feel inspired to promote a cause that makes the repositories second-class members."

The interview begins

Paul Royster

RP: Can you say something briefly about yourself, your institution, and the work you are doing making the University of Nebraska-Lincoln's scholarship publicly available through its institutional repository?

PR: I have been Coordinator of Scholarly Communications at the University of Nebraska-Lincoln since 2005, when the libraries initiated the institutional repository.

Before that, I spent 25 years in publishing, as editor, design and production manager, financial officer, and director, with The Library of America, Barron's Educational Series, Yale University Press, and the University of Nebraska Press. Before that, I earned a PhD in English and Comparative Literature from Columbia University.

Our institution is a land-grant state university with 24,500 students and 1650 faculty, awarding around 300 doctorate and 800 masters degrees annually. It has a total budget of $1.2 billion, a research budget of $250 million, and a library budget of $15 million.

Our institutional repository runs on the bepress DigitalCommons software platform. It holds 73,000 full-text items, of which more than 60,000 are freely accessible to the world. It furnishes around 500,000 downloads per month, with around 30% of those going to international users. It hosts about 20 journals, either as originating publisher or as online backlist archive.

It also is home to a monograph publishing imprint, [Zea Books](), which produces online digital and print-on-demand editions with 25 titles so far. It is the [second-largest IR]() in the United States.

RP: To what do you attribute your success?

PR: "Success" might imply the game is over, so I will settle for "progress," and I attribute that to 1) a faculty who are actively publishing their research and who care ardently about the dissemination of their work, b) a founding Dean of Libraries and her successor who have given us a sharply focused assignment, the freedom to pursue it, and the relatively modest resources it takes, c) the bepress DigitalCommons vendors, who developed an easy-to-use and easy-to-learn cloud-based system that has allowed us to concentrate on recruiting content rather than programming, and d) a succession of "farm girl" work-study students who don't want to go home before the job is finished and who have pushed me to be creative in searching out sources of items for the repository.

We have been oriented toward the practical rather than the philosophical and have tried to be inclusive rather than exclusive. Early on we encountered some rich sources of popular content — the [Internet Center for Wildlife Damage Management]() and the [Lester A. Larson Tractor Test and Power Museum](); these have helped drive both our contents and usage numbers.

The bepress DigitalCommons system creates faculty excitement with its automated monthly download reports and makes the repository content especially transparent to Google searching and indexing, tapping into a worldwide audience that seems much larger than other IRs apparently experience.

We have listened to the advice of the scholarly communications "thought leaders," but have been guided by what we think will work best for our own local campus and situation, so in fact we have travelled a different route than what is recommended by SPARC and others regarding OA campus mandates or policies, use of author addenda, open source systems, funding for Gold OA, reliance on faculty self-deposit, and some other core issues.

We see the repository as a publishing program rather than a technology project; and in our view it belongs to the faculty, not to the library and not to the university. We try to help the faculty with whatever they need: materials or numbers for tenure and promotion consideration, PubMed Central deposit, copyright advice, and even monograph publication of esoteric works that no publisher is willing to risk money on.

As a result, we have made many friends for the library on campus and have come to be seen as a favourite and essential service; this has been especially gratifying.

RP: Would you describe yourself as an open access advocate? If so, what do you understand by the term "open access"?

PR: I no longer call or think of myself as an advocate for "open access," since the specific definition of that term excludes most of what we do in our repository. I used to think the term meant "free to access, download, and store without charge, registration, log-in, etc.," but I have been disabused of that notion.

Thrown under the bus

RP: In [a presentation]() you gave at Open Repositories earlier this year you said that the open access movement is alienating its allies. Earlier, in 2012, you published [a paper]() in the Journal of Librarianship and Scholarly Communication (JLSC) *called "Up from Under the 'Open Access' Bus" where you described leaving a SPARC meeting, "in a huff" feeling that "those of us who operate institutional repositories under the present ground rules had just been thrown under the bus". Can you say why you think the rules have changed, and what you see as being the problem with OA today?*

PR: At that 2012 SPARC meeting in Kansas City, it became clear that a more specific definition was being insisted upon, and finally SPARC director Heather Joseph declared from the podium in her closing remarks that "From now on, Open Access means CC BY or equivalent" — stipulating that Creative Commons re-use licensing had become the *sine qua non* of open access.

So our work in promulgating Green OA (which normally does not convey re-use rights) and our free-access publishing under non-exclusive permission-to-publish (i.e., non-CC) agreements was henceforth disqualified. I have spoken with Ms. Joseph concerning my disappointment and disagreement, but have not noticed any effect.

I don't think the rules had changed, but I think there was a concerted effort to be more specific about the revise, re-use, re-post, and re-publish requirements of an official OA definition based on the "founders' intentions" as interpreted from the Budapest (2001) and Berlin (2003) declarations.

I believe this reflects the influence of the Gold OA advocates and publishers. Green (self-archived) OA is potentially subversive of the existing publishing system, while Gold (paid) OA supports publishers with a business model that still transfers money from the universities or researchers.

Demoting most Green OA to a lesser status in the "movement" privileges the paid and paying open access, and it puts the non-"CC BY" work in the back of, if not under, the bus.

The problem I see with OA today is how dominated it is by the commercial publishers and how willing its participants are to cede influence and resources to many of the same entities that have been exploiting the university market for so many years. Of course, Springer, Wiley, Elsevier, and others have embraced OA when it means opening up an additional income stream. Organizations such as OASPA give full admittance to these profit-taking publishers while excluding more innovative and unconventional projects.

I am worried that the OA movement is being used to glamorize and whitewash the sins of the same old bad actors who have held our content hostage for the past 60 years. To me, it looks like a lot of starry-eyed idealists being used as shock troops in a calculated attempt to open up a second-front assault on the coffers of academe.

RP: In passing, we should perhaps note that Elsevier has not been admitted into [OASPA membership](). But tell me: what do you think repositorians like you should be doing to get up from under the OA bus?

PR: Thank you for that correction, though I think the point still stands; but nobody is served by misstating the facts.

My current attitude regarding OA is to step away and leave it alone; it does some good, despite what I see as its feet of clay. I am not "against" it, but I don't feel inspired to promote a cause that makes the repositories second-class members.

I think it is more important that universities redirect funds towards developing a publications infrastructure that actually meets the needs of faculty and researchers, so I have become a proponent of library publishing.

As long as we rely on the same providers, scholarly publishing will remain stodgy, expensive, and inertial, regardless of the payment model. The text of my sermon these days is "Come out of Babylon" — leave the commercial world behind and begin to create our own scholarly communications nexus housed on campuses and based on a different economy.

As for the repositories, I feel our best strategy is to pump as much free-access content onto the Internet as possible. Our faculty depositors want the widest possible dissemination, even if they do not have the funds to ransom their content back for public re-use.

If we can also redouble our efforts at original publishing, we may eventually move towards replacing a publishing system that has never made the interests of the academy its first priority.

Free-access publishing

RP: You say that you are now a proponent of library publishing. I wonder what that means in practice: presumably publishing alternative journals and books in the way you are doing, but what is the business model for what you call "free-access publishing" and how exactly does what you propose differ from what university presses have been doing for many years?

PR: "Business model" is often shorthand for "how to get money," and I think the first challenge is to stop thinking of scholarly communications as a commercial transaction in which knowledge, or science, or learning is traded about like some commodity.

As I see it, the aim of scholarly communications is twofold: 1) to get the work as wide an appropriate audience as possible, and 2) to allow the authors as much control over the distribution as they desire. Neither of those things is especially cost intensive. My business model involves keeping expenses to a minimum — low enough to fit on a budget line item.

Libraries are currently undergoing a seismic shift in staff activities and responsibilities; I am hopeful there will be room and opportunity for the reallocation of resources to publishing functions. Foot traffic and circulation are falling, and scholarly communication is an activity valued and appreciated by the campus community. I think it is an exciting prospect for libraries to become active producers instead of passive consumers of content. I think an incoming generation of librarians with digital expertise will be inspired by the available tools and the freedom to experiment.

I would not, however, recommend that they adopt the practices or the mind-set of the university presses. They have too many advantages that would be wasted by that imitation.

RP: Can you expand on that?

PR: Libraries have better understanding of technology and digital products. They also have the opportunity to start fresh in a digital environment, without the burden of continuing generations-old practices that have lost a great deal of their relevance.

The university presses are in a tough situation, and they have my sympathy; but I feel that emulating them would be a mistake. They are miniaturized versions of commercial presses, with various amounts of university subsidy, and they share staff, philosophy, and common interests with their for-profit cousins. The presses are, however, large enough to have their own momentum or inertia, and that makes change and redirection especially difficult.

I know many think the university presses do not receive enough credit for what they do, and that this is perhaps a "messaging" problem; but I feel the issues go deeper, and that there are problems of divided missions and divided loyalties. As a press director, I found the top priority in every decision was the survival of the press, not what was best for the book, the faculty author, or the scholarly community.

RP: Essentially, I guess, you are saying that it is time for the research community to "take back ownership" of scholarly publishing. Sceptics might point out however that, even though everyone now agrees that it is a deeply flawed approach, the research community has shown itself incapable of abandoning the use of the [Journal Impact Factor](#) when evaluating researchers. It also seems highly unlikely that researchers could be persuaded to stop publishing in prestigious journals and presses. Since these journals tend to be owned by for-profit publishers it is hard to see how library publishing can aspire to being anything more than a small scale, not to say fringe, activity. Would you agree?

PR: It is certainly true that the academy's processes for evaluating scholars and researchers are not altogether perfect, accurate, responsible, or even humane, and that is unfortunate. Free-access library publishing alone cannot change that, but the cumulative effect of growing repositories and the alternative impact metrics they provide may eventually produce a valuable counterweight to the tyranny of the journal title. As faculty become familiar with the analytics they get from repositories, they will be better able to evaluate those sorts of metrics about candidates for jobs and promotion.

Further, I believe that library publishing, if you include institutional repositories, is already much more than a fringe activity. In 2012, Elsevier [sent 700 million downloads](#); last year Nebraska alone sent 6 million, and we are only one of roughly 2500 institutional repositories worldwide (per [ROAR](#)). So I believe the potential exists to overwhelm the for-profit suppliers of content before too many years go by.

Even if you consider only the original publishing part of repository operations, it is still vitally important to have an alternative to the flawed and oppressive system currently in place.

We may exist on the fringe now, but I believe the centre will move in our direction.

RP: In your JLSC article you refer to the OA policies in which faculty have voted to grant their universities an automatic and irrevocable licence to make their articles freely available in the university repository, and you go on to say that this gives the institution "incredible powers". I am assuming that the model you refer to is the so-called [Harvard OA policy](#) (since Harvard was the first to adopt such a policy). However, do not university faculty already (perforce) cede to their institution incredible powers over some of their intellectual property (i.e. patentable inventions)? Some might therefore ask why researchers should not cede greater power to their institution over the IP in their papers. How would you respond to that?

PR: First of all such OA policies (as Harvard's for example) not only give the university power to make the articles available in their institutional repository, but also "to exercise all rights under copyright and to authorize others to do so," which is a much larger cession of rights than is necessary for depositing a work in an institutional repository.

To my reading "all rights under copyright" would include making contracts with 3rd-party publishers and licensing translations, dramatizations, book club editions, compilations, serializations, film rights, action figures, or any of a large number of subsidiary rights, all technically without the author having to consent. However unlikely or preposterous those things might be, it seems somewhat like overkill, since IR deposit could be accomplished with a simple "non-exclusive permission to post."

I also believe it is a very slippery slope to allow the employer-university to stake a claim on the faculty-employee's publication rights. The intellectual property policy at our university says the rights to published papers and books belong entirely to the faculty author, and I am proud of our institution for that. The beleaguered faculty exist on university paychecks, live in university towns, possibly in university housing, and rely on the university for health care, retirement benefits, life insurance, childcare, etc.; to encourage the university to claim an equal share of power over the original productions of their creativity and education just seems totalitarian.

Patents are different, first because there may be substantial money involved (unlike scholarly publishing), and second because the university actively invests its resources in registering, developing, and marketing the invention.

A university having a claim on the intellectual property in patents does not constitute an adequate precedent for giving it a share in the power over copyrights. That would seem to me like saying, since Russia has taken over Crimea, they should just get the rest of the Ukraine too.

Authority

RP: You also question whether such policies can any longer claim to provide open access (if we assume OA implies CC BY). Out of curiosity I browsed Harvard's DASH repository (not least because Harvard has become somewhat of a poster child for the OA movement). In doing so, I formed the impression that very little of the content in DASH is available on a CC BY basis. What is available CC BY appears to have been published by OA publishers like PLOS. Harvard is not able to say how much of the content is CC BY, but I suspect that very few repositories offer much in the way of CC BY — which would seem to go to your point (as I understand it) that if the **sine qua non** *of the open access movement is now CC BY then a great many OA advocates, and presumably most if not all the institutions that have introduced an OA policy and/or set up a repository, cannot legitimately claim to offer OA. If I have understood correctly, that is a rather odd situation isn't it?*

PR: I feel that Harvard has enough authority to claim whatever it wants about its own OA status and activities. Many of the cognoscenti are there; I would not disagree with whatever terminology they chose to apply. I wish them nothing but the best in pursuing their ends by their means. The fact that Nebraska might see things differently should not bother them at all.

Personally, I try to avoid the term "Open Access" unless it is accompanied by a qualifier, like green, gold, hybrid, libre, or gratis, or explained in a footnote. That is unfortunate, because it is a great phrase and has wonderful

associations and appeal to everyone (except publishers, of course). Our repository is *open* 24/7, and full texts are *accessible* to everyone with an online connection.

If I did not have such hopes and loyalty to the idea of open access to scholarship, I would not have felt so sad on finding our work outside the definition. But I feel now it would be misleading to march under that banner.

RP: Another possibility of course is that you could have misunderstood Ms Joseph's intent when she said that from now OA implies CC BY. You say you contacted her after the SPARC meeting. Presumably you clarified this point?

PR: I think it would be hard to be more clear than she was, and I don't think there was any confusion or hesitation on her part over what she meant. I summed up my objections in a response to a request for feedback on a proposed flyer ("How Open Is It?"); she phoned me, and we talked for about 10 minutes. I believe the editors of *JLSC* asked if she would care to publish a response to my little piece, but, to my knowledge, nothing was submitted.

RP: Earlier on you used the phrase "official OA definition". This invites another interesting question I think: who or what is the OA movement? The truth is that there is no official OA organisation or foundation. Rather there are a number of different organisations that advocate for OA, including Heather Joseph's SPARC (an organisation that represents the interests of librarians); OASPA (which, as you noted, represents the interests of traditional publishers as well as OA publishers), and a growing number of other groups and individuals, many of whom tend to have strong (and often divergent) views about OA.

It is also worth noting that many OA initiatives (including the Budapest Open Access Initiative) were funded (or part funded) by George Soros' [Open Society Foundations](). One might or might not agree with the world view of OSF, but it is a specific world view.[22] Do you think it would have helped or hindered if early on an official OA organisation had been created (and a democratic structure put in place) and charged with directing and overseeing developments and definitions? If nothing else, I assume that had this happened it would not be possible for an individual to stand up at the end of a meeting and announce that the definition of OA is henceforth such and such?

PR: I don't think Ms Joseph was speaking solely on her own authority. The major spokespersons for open access in the United States have been SPARC, Creative Commons, the Public Library of Science, and the Harvard Office of Scholarly Communications — the majority of whom subscribe to Heather's definition. It is unfortunate that effort and energy are expended on disagreements among people who all want wider access to research literature; I should not add further to that.

I think you have elsewhere [pointed out]() how effectively the profit-based publishers have steered OA developments towards measures that support their continued domination of scholarly communication; and it is rather disappointing that university-based proponents of openness have not managed more effective cooperative actions. Still, I would never expect the push for the reform and liberation of scholarly publishing to be a well-coordinated movement.

Out in the field, however, repositories are building their own networks of common interest and practice, and OA is less of a core issue or rallying point. One reason I was pleased to attend the Open Repositories conference (in Helsinki) was the opportunity to present the international audience with an alternative vision of repository development in the United States. I think there was a good deal of surprise, but the response was very positive and very gratifying.

RP: Whatever one's view on open access, OA advocates appear today to be winning the hearts and minds of funders and governments. Why do you think OA is proving as successful as it is despite having no official organisation, despite there being little consensus on many of the important issues, and despite publishers initial lobbying against it?

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[22] For purposes of transparency: I personally support the activities of OSF, and indeed in 2006 I received a grant from the then Open Societies Institute to enable me to conduct [a series of interviews]() with a number of advocates for the various "open" movements. However, I think my point still stands: OSF is an external organisation funding activities intended to force a change in the way in which research is communicated, even though many researchers have been, and remain, antagonistic to open access, and fear its implications for them.

PR: For technological and demographic reasons, the growth of free access to scholarly literature is inevitable. More important than the funders and governments are the innovation and ingenuity of 3 billion Internet users, who will not be bottled up by a bunch of old-fashioned paper contracts, even if they are held by powerful multinational publishers.

I saw a recorded conference from England last year where a speaker flatly declared "In the future, paywalls cannot hold. Anyone with a 16-year-old child can see that." Already, many major scientists flaunt the terms of their copyright transfer agreements by posting their own papers on their web pages (though, I hasten to add, not in our repository). Publishers must choose either to sue their content providers and alienate their stars, or to turn a blind eye.

The internet is too large and too divided to be policed effectively. Holding content behind impenetrable walls 1) won't work, and 2) will make that content invisible and irrelevant.

If "open access" can avoid selling out to Gold OA publishers, it will succeed on its own terms in the end. Rushing to pay for "open" access on the publishers' terms may amount to selling our birthright for a mess of porridge.

Mandates and shibboleths

RP: In your Open Repositories presentation you said that faculty work with you on the repository because they want to, not because it is mandated or required. Are you opposed to open access mandates/policies, or do you just think they are unnecessary?

PR: I am not opposed. I just do not think they would have worked as well on our campus as a voluntary system has. Getting faculty to agree on something is a huge undertaking. In our case, we were able to demonstrate the benefits and generate as much enthusiasm as we had resources to satisfy. Personally, I would prefer to work with scholars who participate by choice, not under duress.

Having said that, I want to emphasize that I am a great admirer of Dr. Harnad for his unflagging efforts on behalf of Green OA. No single person has done as much for the cause as he has. If my views diverge from his, it is only a difference of local tactics, not of values or philosophy.

RP: I assume from what you say that you are not very sympathetic to Creative Commons licensing. Is that right? If so, are you opposed to the use of any form of Creative Commons licence?

PR: I believe Creative Commons licensing is a wonderful thing to apply to open educational resources, and if you are going to buy Gold OA, it is the best license to purchase. If you want to give the world the right to edit and re-post your work, then go ahead. I simply have trouble with the idea that it should be the default for published scholarship or for things like theses and dissertations.

Also, its being used as the shibboleth for the OA in-group has not endeared it to me.

RP: As I understand it, when researchers publish original material in your repository you advise them to make use of traditional copyright arrangement. Do some researchers nevertheless insist on using a Creative Commons licence? If so, how common is this and what CC licences are generally preferred?

PR: So far, no one has requested a CC license, but if they did, we would be happy to accommodate that.

Normally, we publish original monographs under a "one-time non-exclusive permission to publish" — an agreement that leaves further rights exclusively in the author's hands. As a start-up publisher, we try to make our arrangement attractive to authors — reassuring them that they will control all further uses of their work seems to be a solid selling point. Traditionally, publishers have insisted on acquiring control of all rights, in all forms, for all times.

CC licenses, on the other hand, convey shared control of those rights to the public at large. In both cases, however, authors lose *exclusive* authority over what was originally their intellectual property. Sharing your rights with the

world is obviously better than giving them up altogether; but requiring the author to share them as a condition for publication makes me uncomfortable.

For my own work, I care about having two things: the right to post a copy in our IR, and the prerogative to veto its re-publication by those on my personal "enemies list" — such as the National Rifle Association, Microsoft, Henry Kissinger, or that bald-headed Dutch striker who is always diving.

I recognize that my works have little or no monetary value, but they have sentimental value to me. I like having some legal basis for opposing their misuse.

RP: You said that the OA movement has come to stress CC BY and reuse as a result of the influence of Gold OA publishers. I don't doubt that is an important factor. But another reason perhaps is that there is today a great deal of interest in text and data mining scholarly publications. What are your views on text and data mining, and is it possible in your view to do this if the content is not licensed under CC BY?

PR: In my view, text and data mining are allowable forms of fair use and do not require permission or license. I am unmoved by the argument that CC licenses are required for this. I think such a claim undermines rights that we have already but perhaps have neglected to assert.

I am not a lawyer, but it seems to me that the decision in the Google Books case establishes that such transformative uses are not infringements. Obviously, I am only speaking from a U.S. perspective.

Wild dogs running free

RP: You said earlier that OASPA excludes from its membership those who are engaged in more innovative and unconventional projects. And I note in your presentation you said that you see two different forces at work today — an explosion of creative energy and disruptive innovation sparked by digital technologies, and an effort to "catalogue, classify, regulate, label and rationalise that explosion." Can you expand on this?

PR: I am a long-time publisher who now works in a library environment. I have been behind the scenes and have seen how sausage is made. I believe that creation is a messy, unpredictable, and chaotic process. My colleagues tend to want things to be neatly classified, organized, and highly structured; thus they see value in control vocabularies, ORCIDs, DOIs, etc. I am more in sympathy with the Chinese philosopher described by Foucault who classified animals into three categories: 1) belonging to the emperor, 2) wild dogs running free, and 3) everything else.

I am energized by the open chaos of the internet; to me it represents unlimited freedom to explore, to invent, to self-define, to publish in innovative ways, "to seek out new life and new life forms." Yet, I see many groups that want to put restrictions and stipulations on creative activity: it must be vetted or prepared or presented or distributed or identified or paid for in some specific way. To me those restrictions are reminiscent of the wise men of Gotham who tried to capture a cuckoo by enclosing it in a hedge.

Let's just say I prefer originality, innovation, and chaos to order and system. Order and system are more easily co-opted and controlled by the existing powers. What I fear most of all is the erection of a massive global system of surveillance over scholarly communications that will serve to keep academic faculty and students at the mercy of corporate publishers.

I see the small start-up library publishers as an insurgency, and a certain amount of chaos, entropy, and disorganization is to our advantage. There can be a positive value to wild dogs running free.

RP: Finally, you said in your presentation that the struggle over scholarly communication is about "access to the means of production, the accumulation of capital, and the alienation of the products of labour. It is best described by Marx, not Darwin." Can you say something about this and the implications as you see them? Are you saying, for instance, that the way in which OA is being appropriated by traditional publishers is just part of a larger problem academia faces today — what critics describe as the dominance of neoliberalism and an obsession with "markets" in universities, along with the proletarianisation of academic labour? If so, it occurs to me that the crisis in scholarly communication will not be fixed until that larger problem has been addressed? Would you

agree?

PR: I think there are some political terms that do not necessarily translate properly on this side of the Atlantic, but I think I get the gist of what you mean. I'm not sure I can say if I agree or not, but I will say what I think.

First of all, I was criticizing the recent widespread use of the term "ecosystem" to describe scholarly communications. I feel it suggests a "peaceable kingdom" sort of situation, where all the cute and furry little creatures frolic together in harmony, while the inexorable laws of Nature determine and reward the winners. I think this picture is promoted by publishers and others who don't want us to be suspicious of their motives or worried about what's happening to our wallets.

I see scholarly communications as an asymmetric conflict between the producers of content on one side and the traditional publishers on the other. What has changed is that academic scholarship no longer needs to rely on those publishers for access to publication.

Years ago, A. J. Liebling wrote, "Freedom of the press is guaranteed only to those who own one." Now, every university and every academic can have its own free press with worldwide distribution, and it should no longer be necessary to purchase access to the means of production by paying fees and trading away our publication rights.

The tenure system has forced faculty to give up the intellectual products of their labour in order to retain their jobs. The more the authors published, the more assets the publishers had, and the richer they grew at the expense of the faculty and universities. It was classic Marxian alienation, with the product becoming the means of the worker's oppression and confronting him (her) as a "hostile" thing.

What you call the larger problem, the dominance of neoliberalism (not a term we understand in America, where any form of the L-word is suspect) or the push to redesign education along market-based lines — these are questions that are "above my brief," and I should not speculate on issues that lie so far outside my experience.

I do hope, however, that our efforts in building institutional repositories and developing modes of library publishing will help bring the academic labourers a better deal.

We want faculty authors to have options that allow them to control the publication and post-publication of their works. Given a choice, I believe most would choose to retain control of their rights *and* have maximum dissemination of their content, and that is what we are trying to make possible.