

OPEN ACCESS AND THE PUBLIC INTEREST IN COPYRIGHT

BY

E.S NWAUCHE

Director Center for African Legal Studies

P.O Box 7663, Plot 73 Eagle Island Port Harcourt Rivers State

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Associate Professor of Law, Rivers State University of Science and
Technology, Port Harcourt Rivers State

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INTRODUCTION

- * **Open Access can be said to be a reaction to the failure of the public interest in copyright**
- * **Open Access and the public interest both serve the public domain**
- * **Open Access is intimately linked to the public interest and one cannot achieve its purpose without the other.**

*An instrumental Understanding of Copyright

- * Copyright is about the private and public interest
 - + Critical issue is the nature of this balance
 - + Balance presently in favour of author/publishers

- Art 15 (1) of the International Covenant for Social Economic and Cultural Rights.-

(1). The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

-Art 27 of the Universal Declaration of Human Rights

THE PUBLIC INTEREST IN COPYRIGHT

* Exceptions and Limitations

- Legislative - Copyright Act

- * Fair Use/ fair Dealing and specific exceptions and limitation

- Judicial Interpretation-

- * Parody as an exception/limitation - *Laugh It Off Promotions v South African Breweries Ltd_2006* (1) SA 144 (CC).

- * Exceptions and Limitations in a Digital Environment

- * User Rights — The Canadian Supreme Court in *CCH v Law Society of Upper Canada* [2004] 1SCR 339.

- * The Three Step Test - The Berne Convention, the TRIPS

Agreement and the WCT provide that limitations or exceptions must be confined to certain special cases, must not conflict with a normal exploitation of the work and must not unreasonably prejudice the legitimate interests of the right holder

- * The Public Interest is Endangered

IS OPEN ACCESS A WORTHY PROXY OF THE PUBLIC INTEREST?

Yes it is if it satisfies not just access but the other responsible reuses and purposes to which journal articles can be put- To copy, use, distribute, translate transmit and the make derivative works for educational purposes and non commercial subject only to respect for the moral rights of an author.

MODELS OF OPEN ACCESS

- Open Access Journals
- Open Access Archives/Repositories
- Self Archiving

OPEN ACCESS PRACTICES

- Revolve Around The Transfer Of Copyright To Publishers and Transfers That Are Enforced Result in Access Restriction
- Copyright transfer is therefore important for Open Access

COPYRIGHT PRACTICES IN OPEN ACCESS

Possible Models

A. The author retains the copyright (*issues of copyright management*)

B. The author retains the copyright but grants permission for broad use and reuse of articles (*Good for educational purposes and ironically for free riders whose derivative works including databases are eligible for copyright and database protection*)

C. The author retains the copyright transfers the commercial exploitation rights to the publisher and restricts reuse to non-commercial purposes (*Difficulty in determining the difference between 'commercial and non commercial use'*)

D. The rights to reuse and transform articles are granted if the resulting works are also redistributed via Open Access. A number of Creative Commons Licence are relevant here.

KEY POINTS TO NOTE

- * An Open Access article could be liable for copyright and other intellectual infringement. Therefore a public interest could ensure that credible Open Access works are produced.
- * Open Access depends on the voluntary action primarily of Authors.
- * Open Access is focused on Journal Articles leaving other educational products such as books, databases so important for Africa to be addressed by the public interest in copyright
- * Collective Management Organisations and the Laws establishing them represent challenges to Open Access
- * Open Access is not a complete answer to the neglect of the Public Interest

Human Rights Open Access and the Public Interest

- Access to information/knowledge is a human right in many respects and challenges us all to be innovative in solutions- Open Access is one of such innovations.
- As Authors/Publishers choose the path of Open Access, they may be fulfilling the entitlements of other human beings
- As universities and other higher education institutions adopt open access, they also enable individuals to enjoy their human rights

CONCLUSION

*** Worthwhile to think about Copyright Practices
for Open Access**