Developing Institutional Repositories:
Considering Copyright Issues

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Abstract

Purpose: The development of Institutional Repositories (IRs) was the outcome of several Open Access Initiatives and Movements made to salvage the dwindling scholarly communication. The development is more than a decade now and has been embraced by many universities and academic institutions. This paper discusses the nexus of copyright laws and the institutional repositories and reveals the fact that open access institutional repository is built on the principle of no restriction of access. Therefore, the paper opines that copyright issues must be treated in form of licenses which creators must give to allow contents to be included in the repositories. The paper recommends the teaching of copyright laws to authors (faculty members and students) and library staff who deposit and manage the repositories respectively and also that protocols for managing creators/publishers copyright licenses are employed.

Design/methodology/approach: A literature review of the issues confronting the development of institutional repositories was employed.

Findings: Many challenges confront the development of institutional repositories. However, copyright issues are found to be most complex.

Originality /Value: This paper provides an insight into copyright issues as they affect the development of institutional repositories.

Keywords: Institutional Repositories, Nigeria, Open Access, Open Content licensing, Copyright Issues

Paper Type: Secondary research

Introduction

An institutional repository is a digital archive with a platform whereby universities and other research institutions can archive their intellectual output and make them accessible to both local and global audience through the Internet. It provides an alternative model of scholarly communication that is less cumbersome when compared with the traditional commercial publishing model. The traditional model takes a lot of time before research results are published. Apart from the lateness, the poor budget allocation for the purchase of serials in academic and research institutions are currently a global crises. Consequently, much intellectual output had remained invisible to many. This has created a serious vacuum in the continuity of research; and has also led to duplication of research projects within local and global community.

The concept of Open Access to knowledge is based on the global understanding that access to knowledge is a key driver of social, cultural and economic development and that publicly funded research should be accessed openly. Institutional repositories since inception have been embraced by the academic institutions because of its many advantages to the academic community. Among the many advantages is the visibility of the institutions and the authors-staff and students. Off course this justifies the existence and the public funds spent on salaries and upkeep of the institutions. Institutional repositories are rapidly developing in the developed countries, but the growth is very slow in Africa as well as other developing countries.

A lot of issues and challenges have also risen with the development of institutional repositories in the global world. Such issues as lack of

awareness of the benefits of IR to the information society, cost implications, lack of skills, and poor advocacy have been discussed variously by scholars of Open Access (OA) (Crow, 2002; Nwangwu and Ahmed, 2009). Many of the challenges are critical to the growth and development of IR. Intellectual property rights (IPRs) issues pose even a more complex challenge to IR. IPRs are rights recognised by international treaties and national legislations for the protection of intellectual properties such as books, essays, journal articles, newspaper articles, letters, electronic mails, databases and many others from undue use.

However, it is important to understand the basic principle of open access to knowledge as declared by Budapest, Bethesda and Berlin principles for "free, irrevocable, worldwide, right of access". This paper examines the concept of OA IR; its importance to the universities and academic institutions; how intellectual property rights issues affect its development; and proposes the development of clear protocols for copyright management in universities and research institutions.

An Institutional Repository: what does it stand for?

The concept of Open Access IRs is premised on the fact that free availability of content is the prerequisite for effective and efficient research. OA stands for the free availability of scholarly literature on the Internet. It is 'a digital archive of intellectual product created by lecturers, research staff and students of institution and accessible to end users both within and outside of the institution, with very few barriers to access' (Gbaje, n.d; Crow, 2002). Igwe (2010) conceptualizes it as a movement that is concerned with 'putting peer-reviewed scientific and scholarly literature on the Internet, thus making it available free of charge and free of most copyright and licencing restrictions thereby removing the barriers to serious research'.

OA was designed to solve the problem of the restriction by publishers. According to Professor Peter Suber's Timeline of the Open Access Movement, an international movement of open access started in 1966. The UN World Summit on Information Society (2003) endorses open access in its declarations of principles and plan of action. The International Federation of Library Associations and Institutions (IFLA) is also committed to ensuring the widest possible

access to information for all people in accordance with the principles expressed in the Glasgow Declaration on Libraries, Information Services and Intellectual Freedom (http://archive.ifla.org/V/cdoc/open-access04.html). The major initiatives that gave rise to Open Access Institutional Repositories are:

- Budapest Open Access Initiatives at: http://www.soros.org/openaccess/read.shtml

- Bethesda at: http://www.earlham.edu/peters/fos/bethesda.htm

- Berlin at: http://www.op.mpg.de/openaccess-berlin/berlindeclaeation.html

The above initiates gave birth to both Open Access Journals www.doaj.org and Digital Archives/Institutional repositories www.opendoar.org. In Nigeria, academic libraries have been mandated to provide access to both print and electronic resources to serve users and to increase the visibility of their institutions, and as a measure of prestige (National Universities Commission, 2007). To achieve this mandate, an International workshop on OA was organised in ABU, Zaria in 2008 by the Department of Library and Information Science in conjunction with Electronic Information for Libraries and Nigerian University Libraries Consortium. Eighty-nine participants from forty-five institutions were in attendance. Copyright issues and content licencing were among many topics discussed.

There are many benefits for an institution that builds an institutional repository. Among the many benefits of an IR are:

- Contents of IR are freely available on the web

- Creation of partnership and networking

- Promotion of institutional Research

- Preserving digital materials for the long term

- Increase impact factors of scholars (Gbaje, n.d)

Institutional repositories make for the visibility of the institutions, staff and libraries. As libraries move to support faculty digital publishing activities, the library's relevance to the faculty – and, consequently, the institution overall – will increase (Crow, 2002). Moreover, the current

system of scholarly communication limits, rather than expands, the readership and availability of most scholarly research. Journal price increases and subsequently subscription cancelations act to reduce the audience further. In this context, the role of alternative scholarly publishing models, such as institutional repository, in breaking the monopolies of publishers and increasing the awareness of university intellectual output grow increasingly clear (Crow, 2002; Crane, 2001). The old model publishing is exploitative. This is in a sense that publicly funded research are repurchased with public fund. Nwangwu and Ahmed (2009) shared the same view.

Copyright was well intended but the way commercial publishers conduct their business today is 'incestuous'. This is because the property right of an article for which a scientist could be promoted to the rank of professorship, for instance, developed probably from the rigours of formal science, possibly funded by an agency is received free of charge by the publisher to translate into journal article. This does not translate into reduced price of the journal for the audience for which the scientist had written his article; neither does it guarantee free subscription by libraries to enhance the wide reach of the article to those who need it.

Scholars and scientists need maximum dissemination of knowledge. To them the Internet has provided a platform that is supportive to their research activities by providing timely and enormous invaluable resources for research.

The University of Jos and the University of Nigeria, Nsukka are Nigerian universities currently represented in the institutional repository directory at http://www.opendoor.org/. Gbaje (2010) reveals that out of the 92 universities and many research institutes in Nigeria, only one registered institutional repository and 16 open access journals are represented in the directories of open access institutional repository and journal. At the Ahmadu Bello University Zaria, Digitisation Program started since 2004 with the scanning of theses and dissertations, conversion of non digital document to digital document; and postgraduate students have been requested to submit both hard and soft copy to facilitate digitisation (Gbaje, n.d). In 2006, a pilot project for institutional repository commenced with the use of Dspace. The University of Lagos, Ibadan, Ife, Nsukka and others have all embarked on

digitization projects. It is noteworthy to refer to the Digital Pilot Project of the National Library of Nigeria which was set up in 23rd May, 2005. Eleven of the national dailies from December, 2004 have been digitised and have been made available in CD-ROM for sale (Odogwu, 2006). The fact remains that this vital resource is still of-line and would never be accessible to the majority of Nigerians let alone the global community. The beauty of OA is that it is web based and interoperable. It uses Open Source Software which comes in two forms: Open Source and Proprietary Solutions.

At the moment Dspace is the most popular software in use globally. Open Source provides for metadata harvesting by using Open Archive Initiative Protocols for Metadata Harvesting (OAI PMH) that enable networking and resource sharing. This means that a researcher can have access to other repositories and websites other than his own university repository.

A recent survey by Gbaje (2010); Christian (2008) on the issues affecting the development of IR in Nigeria, highlight the need for authors to retain the copyright to their research works in order to have the capability to make the works available in OA repositories and journals. This will be made possible through the alternative model of publishing, which allows the author to cede limited right (licence) to the publisher while the researchers retain the copyright to their work. Shimmer (2008) also observed that legal and technical barriers make the publication of academic research results in the Internet age far from being as efficient and sustainable as possible.

Copyright

The Encyclopedia of Library and Information Science (2009) defines copyright as the exclusive legally secured right to publish and sell the substance and form of a literary, musical or artistic work. It is the exclusive legal rights granted by a government to an author, editor, compiler, composer, playwright, publisher, or distributor to publish, produce, sell or distribute copies of a literary, musical, dramatic, artistic, or other works within certain limitations- fair use and first sale. The Black Law Dictionary (2004) defines it as a property right in an original work of authorship (such as literary, musical, artistic, photographic or film work) fix in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt, distribute, perform, and display the work. Copyright

literally means the right to copy. Copyright owners- creators or authors of a copyrighted work have the legal right to reproduce the work in any material form, publish the work, perform the work in public, produce, or publish any translation of the work. In Nigeria, the legislation governing the definition, protection, transfer, infringement of and remedy and penalty of copyright in literary works, musical works, artistic work, cinematography, films, sound recordings, broadcast and other auxiliary matters is the Copyright Act, 1988 (now Cap. 68 of the Laws of the Federation of Nigeria 1990). The U.S Copyright Office (2000) defines copyright as a legislation backed right for creation of a work.

Copyright is a branch of intellectual property. Property in this sense does not mean physical, fixed or tangible property like houses, cars and other physical belongings but rather connotes intangible property. Intellectual property is divided into two branches namely industrial property and copyright. Industrial property rights are the rights in patents, trademarks, trade names and industrial designs. Copyright (which is the focus of this paper) protects 'intellectual creativity and endeavours in the fields of literature, music and the arts'. It is usually referred to as a 'negative right' meaning that it restricts the doing of certain acts by others in relation to the protected work (Ojo, 2007). Copyright protects the investment of both the authors and publishers. Copyright is an intangible and incorporeal kind of property which confers on the author a right to control the reproduction of his intellectual creation, conferring on him the authority to control his creation after disclosure thereby preventing others from reproducing his personal expression without consent (Ojo, 2007; Epkere, 2002). Mess (2004) articulates the concept of copyright thus:

It is:

- The protection of the "expression of an idea''

- An extension of the right of a creator to control the use of the creator's work

- A collection of rights which may be transferred.

It is not:

- The protection of processes, ideas, and inventions.

- Restricted to published materials.

What is noteworthy here is the idea that both published and unpublished materials are protected by the law. One important fact about copyright law generally is the provision to balance rights of both the creators and the users of the copyrighted works. Right from the inception of copyright law beginning with the Statute of Anne to the different national jurisdictions and international treaties, this balance has been maintained.

The 'idea of fairness' to authors has been suggested as one of the premises for the protection afforded copyright. This idea of fairness is seen in Art. 27 of the Universal Declaration of Human Rights, 1948 which provides that:

1. Everyone has the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. This provision strikes a balance between the conflicting interests of the public to benefit from the author's work and the author's right inherent in his creativity.

Copyright law recognises this balance by not giving authors a perpetual monopoly over their works and also by providing certain exceptions in which certain acts would be exempted from copyright control during the period whereby the author enjoys the monopoly. This is specified in the 2nd Schedule of the Copyright Act, 1988:

Section 6(1) provides for the exclusivity of right of the copyright owners over the control of reproducing, publishing, performing, etc, of their work with the exceptions to the provision of the 2nd Schedule. The exceptions being that 'the right conferred in respect of a work by section 6 of this Act does not include the right to control any:

(a) acts 'done by way of fair dealing for the purpose of research, private use, criticism or review or the reporting of current events …. so far that an acknowledgement of the work and its authorship is made.

(h) use made of a work in an approved educational institution for the educational purposes of that institution,….

(k) use made of a work by or under the direction or control of the Government, or by such public libraries, non commercial documentation centers and scientific or other institutions as may be prescribed,….

(r) reproduction for the purpose of research or private study of an unpublished literary or musical work kept in a library, museum or other institutions to which the public has access.

Institutional Repositories and Intellectual Property Rights Nexus

OA IRs stands for free access to digital intellectual contents of universities and institutions. Free access here means that legal, financial and technical barriers are removed completely. The only barriers being that associated with not having access to the internet. On the other hand IPRs (Copyright) protect works which are eligible for protection based on the provisions of a particular legal system which has also been guided by international treaties. The intellectual content of universities are found in already-published articles (post-prints), pre-published articles (pre-prints), research reports, data sets, examination papers, conference papers, newsletters and seminar papers, course notes, theses and dissertation, manuals, teaching material or any other material that the authors or their institutions wish to make freely available to the public (Christain, n.d) This means that the copyright owners of the contents are the staff and students. Ordinarily, uploading the contents to institutional repositories will not pose any copyright challenge but these creators often cede their copyrights to the publishers and as such do not have the right to authorise the uploading of their works to their institutional repositories. The basic issue is that authors are concerned that they may be violating copyright agreement they have signed with their publishers (Mark and Shearer, 2006). Copyright is the number one question which members of university ask about when introduced to an institutional repository.

It is important to note that open access is not impaired by copyright. Copyright grants authors publishing right. An Open Access publication means that the author's exploitation rights are no longer exclusive. However, it is the author's decision to also make their work available for commercial exploitation through contractual

agreement (Kuhlen, 2008). Open Access models for works still in copyright must therefore be implemented within the scope of licencing agreements (Peifer, 2oo8).

Copyright Issues

Intellectual Property Rights refer generally to the ownership and rights over work produced and distributed both online and in print format. Understanding copyright issues is a key to building a successful institutional repository. Usually, the copyright officers/counsel in the universities and institutions are in the best position to interpret copyright laws. Institutional repositories deal with copyright issues in two ways:

➢ Collecting Content
➢ Distributing Content

In order to populate the repositories, the institutions collect content usually from faculty members and students or researchers in case of research institutes. In doing so, they encounter some copyright issues. They must get consent from the copyright owners before the contents are added to the repository. Otherwise, they will be infringing on copyright. There has to be a well written institutional repositories' policy. Some universities mandate faculty members to deposit any research carried out while working with them. Most universities are requiring their students to submit electronic theses and dissertations to be included in the institutional repositories. Some universities make it compulsory for students to comply with. Other universities allow the students to decide whether they will like to include theirs to the repositories. In Nigeria, most universities have embarked on the digitisation of theses and dissertations and are requiring students to submit electronic copy. This is in compliance with the Database of African Theses and Dissertations project (DATAD). The institutions having secured the consent from the owners have to make sure that the contents do not infringe on third party rights. Third party rights issues occur when the copyright owners use other people's contents in their work without seeking permission from the right owners or not acknowledging them. Copyright issues are so complex that most institutions are afraid of building their own repositories.

In the area of use there has to be a clear understanding about what use to be made of the contents by the end users. Thus, there has to be a

balance between the tenets of open access and the copyright protection. Complexity of copyright would have to be approached through a variety of licences. Content licences are legal agreements by which contents can be distributed. Barton and Waters (2004) suggested two kinds of licences:

- Deposit licence
- Distribution licence

Deposit licence is an agreement between the creator or copyright holder and the institution giving the repository the right to distribute and preserve the work while distribution licence is an agreement between the author or creator or copyright holder and the end user governing the uses that can be made of the work. For example, the European Commission and German Commission for UNESCO (2008) provided information as to what use is permissible of the handbook:

The content of this document may be reproduced and disseminated for non commercial purposes, provided that reference is made to the name(s) of the author(s), and to the original publication.

Recommendations and Conclusion

Upload Own Knowledge Bank

Copyright is simple for pre-prints. So, in building or populating an institutional repository, the first step should be to deposit institutional publications which were published by the university or academic institution. By this, the repository will face little or no copyright issue. For instance, in the case of electronic theses and dissertations the university would have secured the right to publish in the university repository by mandating the students to cede their exclusive rights to the university. Some other documents like seminar papers, lectures or books published by the university press will be easy to publish.

Another way out is to upload works which have fallen under public domain because copyright in them have expired. The public domain functions as a pool of creative material from which any one may draw. It provides authors with the law materials from which the next generation of books, music, songs, and knowledge can be built. Nigerian Copyright Act provides in 1st Schedule that the protection lasts for during the lifetime of the author and 70 years after his death in case of literary, musical or artistic works. This means that after the expiration of copyright, the

work naturally fall under public domain. Orphan works can also be uploaded. Orphan works are works whose authors are unknown. However, efforts should be made to be sure that the authors cannot be found.

Develop Institutional Repository Policy

There is need for the formulation of national and institutional policies on Open Access and institutional repositories. Victoria Okojie, the president of Nigerian Library Association reaffirmed the commitment of the association to OA (EIFL, 2008). The policy will include copyright checking services. Many IRs are already offering this (Mark & Shearer, 2006). The Cornell IR has developed a protocol for addressing the entire copyright checking process. The SHERPA/Romeo (www.sherpa.acuk/romeo.php) list is an invaluable tool for IRs for copyright checking services. It identifies policies of publishers in regards to depositing pre-& post-print into IRs. Creative Commons is a nonprofit organization offering a flexible copyright for creative work. It ensures that attribution is made; no commercial use made; no derivative work produced and allows for sharing data. Adbulsalami and Kuchma; Pappalardo and Fitzgerald, (n.d) gave some considerations in building and populating IRs:

You will have to:

- develop a Repository Deposit Licence that:

  - ensures that depositors own copyright in the materials they are depositing or having permission from the copyright owner to deposit; and

  - grants to the repository the necessary rights to make the material available to end-users

- decide who may have access to your repository and the scope of their rights

- decide whether you want to provide a facility to enable authors to enter into Author Distribution Agreement with end users, for example by attaching a Creative Commons license to their work

- require end-users to agree (through a click-wrap agreement) to the terms of the Author Distribution Agreement or the Repository Distribution (end-user) Agreement.

There should also be a legal notice/caveat/disclaimer that exonerates the repository from any copyright infringement on the part of the authors of the works deposited.

Teach Copyright Law to Stakeholders

Publisher copyright agreements can be complex and authors need assistance in understanding their rights. Librarians are stake holders and should acquire IT skills and copyright education. They should be ready to educate users of the institutional repository. Libraries are usually the host of institutional repositories. Authors should be aware of copyright implications when signing agreement with publishers on their work. The Nigerian Copyright Commission was established as the institutional machinery for the administration of copyright in Nigeria. Its objectives include the enlightenment of the general public on the tenets of the copyright law; their rights and obligations under the law, among others (Ojo, 2007). Authors should be taught the implication of ceding their rights to publishers. Instead, they should give non exclusive right to the publishers while they retain the exclusive rights to their works. This will enable them publish their works in the university repository.

Open Access institutional repository is strategically innovative in the current educational landscape of the information society. Copyright has always been well intended to support both the creator and user of intellectual property. However, the commercial publishing industries have used it to maximize profit. With the development of open source software a lot of opportunities are available for scholarly communication. The academic institutions stand to gain a lot from this and should not be scared by the complexities involved in handling copyright issues. The most viable way out is through alternative publishing agreement where the faculty members who must publish in refereed journals obtain licences to publish their contents in the institutional repositories.

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