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
&
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 limitations
  - Judicial Interpretation-
  * Exceptions and Limitations in a Digital Environment


* 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 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