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Open Access to Legal Information and Copyright rules: a Law and Technology Perspective

By applying laws concerning copyright, contracts, customs and technological standards, it is possible to achieve different kinds of control over digital information.

In the first form, control is based on the closeness of the information and it is rigid and centralized: see, e.g., the Digital Rights Management (DRM) systems.

In the second form, control is based on the openness of the information and it is flexible and decentralized: see, e.g., the GNU General Public License (GPL) and the Creative Commons Licenses (CCLs).

Those two models of control correspond to two opposite trends in the scientific community.

On one side, there is the risk that the rigid and centralized control (such as that based on the DRM systems), shaped on market considerations, invades the sector proper of the scientific community (which is, on the contrary, moved by the logic of the flexible and decentralized control, based on customs and informal norms), determining a marked compression on the possibilities of access to the scientific knowledge expressed in a digital format. This risk is prominent in the field of legal scholarship, where a vast amount of legal information (also covering the information that is, in theory, in public domain) is governed by the rigid and centralized control.

On the other side, to counteract such a risk, part of the scientific community is promoting the logic of the open access (mostly based on free licenses such as the GNU GPL or the CCLs) to the scientific knowledge.

The open access movement is quickly growing in the legal scholarship. Nonetheless, the institutional arrangements and the technological features of the open access to legal information are variegated and pose an array of problems.