

Open Access to Outcomes of Publicly Funded Research

Sebastiano Faro

ITTIG-CNR

Istituto di Teoria e Tecniche dell'Informazione Giuridica del CNR

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Starting point

Montreal Declaration on Free Access to Law

... Publicly funded secondary (interpretative) legal materials should be accessible for free but permission to republish is not always appropriate or possible. In particular free access to legal scholarship may be provided by legal scholarship repositories, legal information institutes or other means ...

The issue of **free access to Publicly funded secondary (interpretative) legal materials** is part of the wider debate on **open access to outcomes of publicly funded research**

(- debate arising from:

- Developments of new technologies and Internet [explosion of dissemination and access possibilities]*
- Evolution of scientific publication markets*
- issue discussed in different contexts - e.g. online “Petition for guaranteed public access to publicly-funded research results” – The Alliance for Taxpayer Access, <http://www.taxpayeraccess.org/>)*

Outline

- What do the expressions “outcomes”, “publicly funded research” and “open access” refer to?
- Points at issue
- Some national, supranational and international initiatives
- Arguments for open access
- The emerging approach to the issue
- Applying the emerging approach to legal science?

“Outcomes”

- Data collections
- Patentable inventions
- Copyrightable results (Scientific literature)
 - Royalty producing literature (e.g. books)
 - Royalty free literature: scholarly publications in refereed journals and international conference proceedings, which do not involve payment (royalties) to the authors.
 - Pre-print: any version of an article prior to peer review and publication,
 - Post print: any version of an article which has been approved by peer review but not copy-edited
 - Publisher’s version: version that includes additional changes made by the journal's editorial staff after acceptance of the author's final manuscript
 - Grey literature: material that usually is available through specialized channels and may not enter normal channels or systems of publication and distribution

“Publicly funded research”

- **Ordinary funding** of research institutes and Universities [intramural research]
- **Selective funding** of specific projects [intramural and extramural research]

“Open access”

Making digital content available free of charge without restriction

A more formal definition is provided by the Berlin Declaration (two conditions)

OA is compatible with copyright, peer review, revenue (even profit), print, preservation, prestige, career-advancement, indexing, and other features and supportive services associated with conventional scholarly literature.

Two primary vehicles for delivering OA to research articles:

Open access publishing ("gold" open access)

OA journals and hybrid journals published exclusively on-line and using a funding model that does not charge readers or their institutions for access

Self-archiving ("green" open access)

Authors deposit the peer-reviewed manuscripts of their articles in repositories (also called open archives), to be available in open access mode, sometimes after an embargo period in order to allow publishers to recoup their investment.

Points at issue

Should (some) outcomes of publicly funded research be openly available to anyone?

- Which outcomes should be made accessible?
- How should they be made accessible?
- When should they be openly accessible (embargo period)?
- Which are the legal basis for disseminating and accessing this material for free?

Some initiatives

- Declarations
 - OECD Declaration (2004) and Guidelines (2007) on Access to research data from public funding
 - Budapest Initiative (2002), Bethesda Statement (2003) and Berlin Declaration (2003) on OA
- Funding agencies policies
 - National Institutes of Health (NIH) policy (USA)
 - Similar policies proposed in other countries (e.g. UK)
- Proposed legislation
 - Federal Research Public Access Act 2006 (USA)

NIH Public Access Policy

Beginning 2 May 2005, NIH-funded investigators are requested to submit PubMed Central (PMC) an electronic version of the author's final manuscript (final version accepted for journal publication, including all modifications from the publishing peer review process) upon acceptance for publication.

The policy:

- applies to all research grant as well as NIH intramural research studies
- requests that authors specify posting of their final manuscripts for public accessibility as soon as possible (and within 12 months of the publisher's official date of final publication).

In accordance with the Consolidated Appropriations Act, 2008, the NIH voluntary Public Access Policy is now mandatory.

The Director of the National Institutes of Health shall require that all investigators funded by the NIH submit or have submitted for them to the National Library of Medicine's PubMed Central an electronic version of their final, peer-reviewed manuscripts upon acceptance for publication, to be made publicly available no later than 12 months after the official date of publication: provided that the NIH shall implement the public access policy in a manner consistent with copyright law.

Federal Research Public Access Act

FRPAA 2006 requires federal agencies with extramural research budgets that are more than \$100 million to develop public access policies.

The policies:

- would cover researchers that are employed, as well as those funded, in whole or in part, by the agency
- would require those researchers to submit electronic copies of their manuscripts accepted for publication in peer-reviewed journals to the agencies that sponsored their research
- would require that those manuscripts be deposited in a “stable digital repository”

The public would gain free online access to manuscripts not more than six months after publication.

The act would not alter copyright law or require that research results be placed in the public domain.

The EU approach

European Commission as Research funding body and Policy-making body

- *Study on the economic and technical evolution of the scientific publication markets in Europe* [recommendation A1] (2006)
- ERC (European research council) Scientific Council Statement on open access (2006)
- European research advisory board – Report on “Scientific publication: policy on open access” (2006)
- Council conclusions on scientific information in the digital age: access, dissemination and preservation (2007)
- ERC Scientific Council Guidelines for Open Access (2007)
- Pilot project on open access (2008)

EU Pilot project connected to FP7

Special clause of Grant agreement

- Grant recipients will be required to deposit peer reviewed research articles or final manuscripts resulting from their FP7 projects in an online repository
- They will have to make their best effort to ensure open access to these articles
 - immediately if the scientific publication is published "open access",
 - within either six or twelve months after publication, depending on the research area.

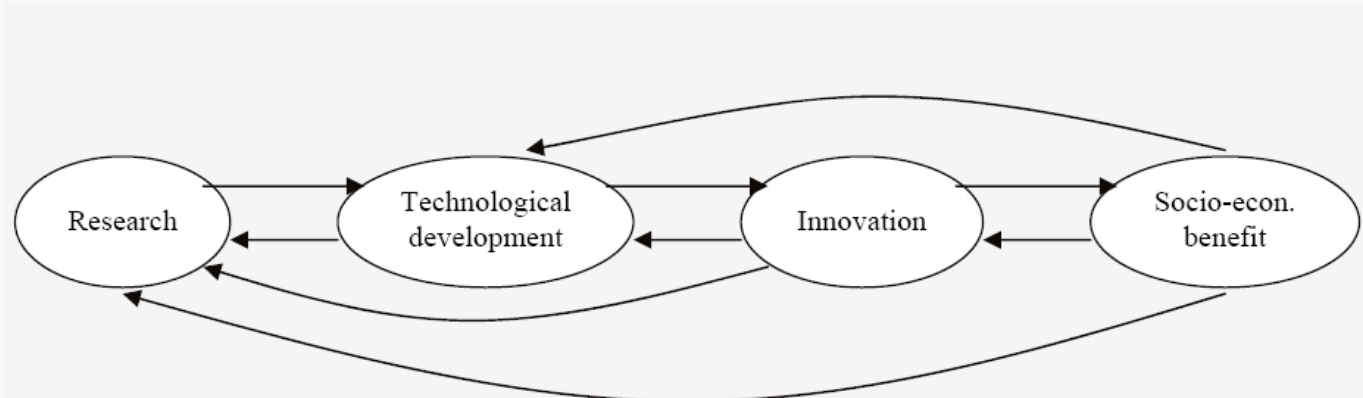
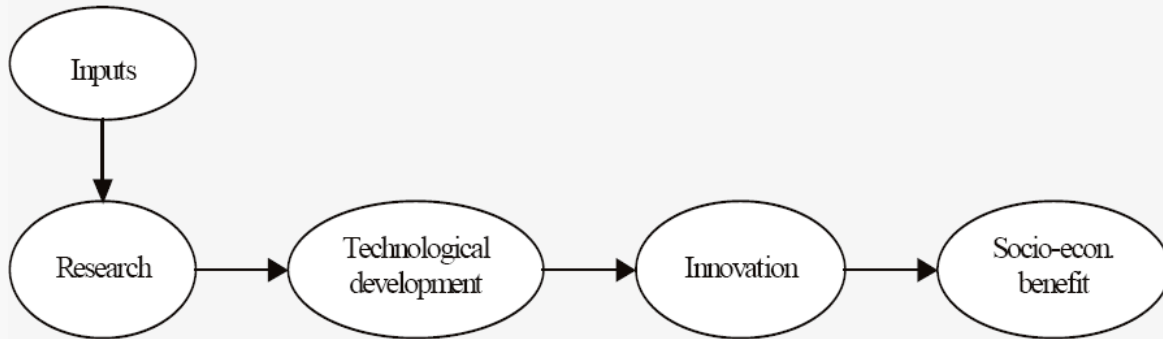
Why open access?: (a) The taxpayer argument

The output of research is typically not bought by journals but 'donated' by publicly-funded researchers; journals are bought by publicly-funded researchers or by publicly-funded libraries

“The primary version of the argument is that it would be wrong to make taxpayers pay a second fee for access. A secondary version of the argument is that tax money should be spent in the public interest, not to create intellectual property for the benefit of private publishers, who acquire it and profit from it without paying the authors or compensating the public treasury” (Suber, 2006)

Why open access?: (b) The return on investment argument

As all research and innovation builds on earlier achievements, an efficient system for broad dissemination of and access to research publications and raw data can accelerate scientific progress



Source: Martin and Tang (2006)

The emerging model

Policies focusing on:

- royalty-free literature
- online repository
- embargo period of 6-12 months
- specific contract terms (extramural research) or existing copyright legislation (intramural research) as legal basis for disseminating copies of the articles

Comments

It seems important now to affirm the principle that outcomes of publicly funded research must be accessible

A “pragmatic approach” is followed:

- some issues are not analyzed in details (e.g. the concept of “publicly funded”)
- the outcomes which are considered (royalty-free literature) are those that seem the less problematic
- the existing economic and legal framework is not altered

Final remarks: Applying the emerging model to outcomes of research in the legal field?

The debate focuses on Natural Sciences, Technology and Medicine

Legal science and research in this field presents specific features from different point of view

- Structure of research activities
- Content of research activities
 - Research activities are strictly connected to primary sources
 - The outcomes of research (or a part of them) should follow the same approaches and solutions as primary sources regarding their accessibility