

# **Brainstorming Meet On Open Access, FOSS and Copyright Law for Scholarly Communication and Literary Work A Report**

Connecting users with the information they need is one of the most essential functions of a good scholarly information system, and access to information is one of the most cherished values of this system. Therefore supporting policies/procedures that support and promote the unrestricted access to information should be high on the agenda of leading institutions that are concerned with putting intellectual worth of the country on the world map.

The Indian National Science Academy (INSA) is committed to promote scientific endeavors in the country. It is with this view that Academy organizes forums to obtain the opinion and deliberate on issues necessary for enhanced access to information for promotion of research and information landscape in the country.

To deliberate on an important issue of facilitating unrestricted access to information, a "*Brainstorming Meet On Open Access, FOSS and Copyright Law for Scholarly Communication and Literary Work*" was organized by INSA on 26<sup>th</sup> April, 2008 in its premises at New Delhi under the convenership of Prof. N. Balakrishnan, Vice-President INSA. The major aim of the meet was to draft recommendations on steps to be taken by the Academy and for changes in Policy and Law to Government of India to make them in tune with changing technologies in the new information era and the international developments.

The meeting had over 100 participants from all over the country representing all stakeholders and was inaugurated by the President INSA, Prof. M Vijayan. In his welcome address, Professor Vijayan opined that the Academy would support and encourage policies requiring open access to research. It should be endeavoured by all key stakeholders to raise awareness about open access, both the concept and the many open access resources, through means appropriate to each stakeholder, such as education campaigns and promoting open access resources. Also support to the development of open access in all of its varieties, including gold (OA publishing) and green (OA self-archiving) is central to these activities. In an intervention, he also mentioned that a precondition for the success of a substantial component of the OA efforts is for the granting agencies to include publication costs as an item in project budget. Prof. Balakrishnan, in his introductory remarks, gave the structure of the entire programme and said that no one is in doubt about the advantages of open access and the need for adopting it. What we need is a road map or an action plan. This time there would be action, he stressed.

The meeting had two sessions with the first concentrating on Open access and FOSS, with focus on discussion on recommendations on further action including

changes in Policy and Law for enabling an Indian initiative in OA and FOSS, while the focus for the second session was Copyright of Scholarly Communication and Literary work.

The first session highlighted the initiatives taken in this direction and thus acknowledged the contributions of the Academies in the recent past. Dr. S Arunachalam stated that INSA signed the Berlin Declaration on Open Access, made all its journals OA and convened a one-day session on OA at its annual meeting in Pune. IASc made its journals OA too. About thirty institutions set up institutional repositories (IR), but only one of them made OA mandatory. While focusing on OA mandating, it was suggested that mandating open access for all publicly funded research publications is easy to do by legislation and making it a condition for research funding and institutional employment, just the way NIH in the USA and six of the seven research councils in the UK have already mandated open access for all research supported by them. The first priority is for both *institutions* (universities, research labs) and *funders* to mandate the deposit of all peer-reviewed journal articles in IRs. That is happening worldwide. The easiest mandate to implement is immediate deposit (ID) of the authors' final refereed draft immediately upon acceptance for publication. That should also be immediately made OA, but closed access is allowed if necessary during a publisher embargo (preferably capped at no more than 6 months). In addition to the above, there can also be a mandate to retain copyright, but with an optional author opt out from the copyright retention (as in the case of Harvard), if desired.

The policies around the world are gathering pace, with the big funders now coming into the fold. The Austrian Research Fund has recently moved, like the NIH, from a request to a requirement. They are all seeing the light. The most notable one, though, is Harvard: interesting because the *Faculty* voted (*unanimously*) to mandate \*themselves\* to make their work OA by putting it into the repository. The Fellows of INSA, IASc and other Academies may also act Harvard way, Dr. Arunachalam stated. Fellows of INSA and IASc may persuade their own Institutions to set up an OAI-compatible OA repository. INSA and IASc may set up a repository of full texts of *all* papers by *all* Fellows, past and current. There can be no better mandate than a mandate coming from publishing scientists themselves. The Academies should set up a small group of experts who will constantly monitor developments worldwide in OA and e-science, identify best practices and help adopt them in India. INSA may recommend to the Government of India to enact legislation that would prevent scientists working in government research institutions from transferring copyright to work funded by the Indian taxpayer to publishers abroad. However these OA archiving should not end up at journal articles alone but other resources, like theses and dissertations, course material, conference papers and the like should also be brought under its ambit. All Indian journals should be helped to go OA, especially those which receive public funding.

There is a need to sensitize our scientists at all levels to the advantages of and need for adopting OA. We need to mount massive advocacy programmes. International collaboration and participation is essential for success of a global advocacy issue like OA. India should take part in worldwide movements of Open Access and may invite Berlin 7 to India, besides the OA champions.

Two other speakers of this session were Dr. D.K. Sahu and Dr. Sunil Abraham. While Dr Sahu demonstrated to the participants his successful initiatives of a number of OA journals as a private publisher, Dr. Abraham focused on OA and FLOSS, and opined that a national policy on OA and FLOSS is necessary. Support for legacy proprietary formats, adherence to open standards, cost of migration and disruption during migration need to be addressed, he stated.

The second session focused on Copyright for Scholarly Communication and Literary work with presentations by Prof. N. Balakrishnan and Shri Pravin Anand, where the draft recommendations were brainstormed and finalized.

Professor Balakrishnan in his presentation highlighted the need to have a relook at the copyright laws to promote scholarly communication and support and improve access to information and knowledge. Civil societies are built on the premise that the creator must have returns to encourage innovation, the user should have access to benefit the society and the publisher should facilitate both. However, over the years, the CopyRight Laws have become more and more skewed towards the benefit of the publisher who became the owner of the work and in effect the process has been hijacked to benefit the "Proprietor". In the digital era, the cost of production and dissemination has diminished substantially. In this era knowledge multiplies when circulated and also becomes obsolete too soon. It has become necessary to relook at the CopyRight Laws in a world where knowledge productivity rates are increasing exponentially and continuously. It is surmised that the "fair use doctrine must dominate when it comes to Scholarly Communication, Literary work and heritage documents" in order to truly achieve democratization of knowledge and its use for the good of the society.

While focusing on Scholarly Communication, Literary work and Heritage Documents, he stated that the two items that need immediate action are (i) copyright period and (ii) Government initiatives to improve access to Knowledge. Under these two action items, he outlined the following intervening initiatives to change the age old scenario and promote free, unlimited and unrestricted access to all.

(i)CopyRight Period: The copyright period in most countries is 40 to 60 years either from the date of the creation or from the death of the author. In India it is 60 years from the date of the death of the author. However in reality, it becomes very difficult to establish the date of the death of the author. There are many works which do not have the copyright disclosures printed in them. With the advances in digital scanning and web based dissemination, it is necessary to

ensure that the documents that are out of copyright in the country of origin should automatically come into public domain throughout the world. Nearly 75 to 90% of the books that are in copyright are also out of print, making no economic sense to any one. Often, the proprietor or the publisher does not pay royalty to the creator. It was thus recommended that :

- Copyright period be 60 years from the date of creation of the work
- Publications without CopyRight Logos must be deemed to be in the Public Domain
- Publications which are out of copyright in the country where they were originally produced should be treated as in Public Domain throughout the world.
- Publications that are out of print and those that do not earn royalties to the creator should be treated as in Public Domain with the proviso that the creator can at anytime claim the copyright back.

(ii) Government initiatives to improve access to Knowledge : Under this action oriented item it was recommended that:

- A National Repository of all publications must be maintained and this must be capable of handling the born digital documents and accessible through the Internet. Digital copy of all publications must be mandated to be provided to National Repository if copyright is to be valid, in addition to a paper copy.
- The country should set up a corpus, say of the order of 100 million rupees initially, for National Royalty Distribution scheme (analogous to public Lending Right of 4 M pounds in UK) to authors as part of providing access to copyrighted information to students and public.
- Author can voluntarily provide the content to the national institutions, say the National Repository, at anytime (say, 1 year after paperback publication) to be eligible to receive a part of National Royalty Distribution scheme.
- If a book is out of print or deemed out-of-print (say less than 10 K Rupees annual income), or 20 years after the publication of the book, the national repository is authorized to make the book available online and accumulate royalties for payment to the authors' estate. However the author can request removal from online access at anytime.
- The Government also would set up a project on resurrecting "orphan books" – books which are out of print and of no commercial value by digitizing them and making them available through the Internet.

It is expected that as the outcome of the meet, the recommendations would be seriously considered by the Academy and where necessary be routed to the Government for consideration and subsequent implementation. The recommendations when translated into action would affect directly or indirectly all stakeholders, and would promote democratization of knowledge .

## Recommendations:

1. Granting agencies and learned societies are urged to move in a nuanced manner towards mandating open access to the output of publicly funded research work. An important precondition for the success of this effort is the inclusion of publication costs in project budget. The Academies should provide all possible help to the government in this effort.
2. All scientists be encouraged to publish in open access journals irrespective of the source of research fund.
3. The Academies should take proactive measures to promote Institutional Repositories in universities and research institutions. They could set up an expert group to advice universities and institutions in this regard. The Academies themselves should establish their own repository, with publications of Fellows to start with, which could serve as a model for the repositories of other organizations.
4. The Academies must sensitise committees and bodies involved in recognizing scientists through Fellowships, awards, promotions etc., on the need to take increased cognizance of publication in OA journals
5. The Government be urged to set up a fund for creating and maintaining Institutional Repositories.
6. Copyright period be 60 years from the date of Creation of the work
7. Publications without CopyRight Logos must be deemed to be in the Public Domain
8. Publications which are out of copyright in the country where they were originally produced should be treated as in Public Domain throughout the world.
9. Publication that are out of print and those that do not earn royalties to the creator should be treated as in Public Domain with the proviso that the creator has at anytime the right to claim the copyright back.
10. A National Repository of all publications must be maintained and this must be capable of handling the born digital documents and accessible through the Internet. Digital copy of all publications must be mandated to be provided to National Repository if copyright is to be valid, in addition to a paper copy.
11. The country should set up a corpus, say of the order of 100 million rupees initially, for National Royalty Distribution scheme (analogous to public Lending Right of 4 M pounds in UK) to authors as part of providing access to copyrighted information to students and public.
12. The Government also should set up a project on resurrecting “orphan books”, books which are out of print and/or of no commercial value, by digitizing them and making them available through the Internet.