

# From the University Presses — What University Presses Think about Open Access

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I envy a commercial publisher like Elsevier. Its mission can be very simply defined: make enough money to pay your employees and keep your stockholders happy. Whether Elsevier were in the business of making widgets or publishing books and journals, that mission would remain the same. The means to achieve that end can be very complex, but the mission itself is simple and straightforward.

Not so the mission of a university press like the one that employs me. It straddles two worlds, academic and commercial, which each have imperatives unique to them that are often in tension if not outright conflict. On the one hand, and above all, a university press's mission is defined by the imperative that drives academe as a whole: create new knowledge and communicate it to the next generation of students and scholars. On the other hand, every university press must make enough money to stay viable as a commercial enterprise operating in the same business environment as any other publisher. A few can do so without the help of their parent universities; the vast majority cannot and need to be subsidized at some level (on average, 10% of their operating budget).

How these two imperatives are balanced differs from press to press, depending on pressures both from the university's administration and from the commercial marketplace. Some presses like my former employer Princeton have the advantage of being semi-autonomous: it is separately incorporated in the State of New Jersey, but the use of its name is controlled by a faculty editorial board and a board of trustees on which a number of university administrators sit. It receives no financial support from the university at all but fortunately has a handsome endowment, which derives from the astute management of the Bollingen Series taken over from Pantheon in the late 1960s accompanied by funds from Paul Mellon to see through publication of the remaining volumes, some of which (like the translation of the *I Ching* and books by Joseph Campbell) have been huge commercial successes. A few of the very largest presses, like Cambridge and Chicago, are obliged to turn over a portion of their earnings to their parent universities and thereby subsidize those universities in small part. At least one smaller press, Rockefeller, is also similarly obliged. Much more typical is the press at Penn State, which after more than a decade with no operating subsidy now has a subsidy at the level of the 10% average I mentioned above. Depending on how close to the margin any

press operates, you may find one press feeling it necessary to raise prices on its books to satisfy the commercial imperative, while another press may feel it can afford to prioritize its goal of maximizing dissemination of its books by keeping their prices low and making them available as soon as possible in cheaper paperback editions. (Some presses, like ours, cross-subsidize between journal and book operations, the former's surpluses used to offset the latter's losses.) Overall, because of this disparity in missions between commercial academic publishers and university presses, independent studies of pricing of books have routinely showed university press titles to be priced lower, sometimes much lower, than those from commercial publishers. In this way, too, some university presses are consciously subsidizing academe in general, if not just their own universities.

Those who, like David Shulenburger, have been critical of the positions that university presses have taken on copyright may better appreciate our seeming schizophrenia once they understand this fundamental duality in our mission better. As chief spokesperson on copyright issues for university presses for some forty years, I have been in the thick of this battle from the period leading up to the passage of the 1976 Copyright Act on, and I even testified at a hearing in July 1973 on fair use where we presented a different viewpoint from the one expressed by many other sectors of higher education, who succeeded in persuading Congress at the last minute to include language referring to "multiple copies" in the preamble of Section 107. Despite Congress's protestations to the contrary, that addition changed the law of fair use as it had theretofore been developed by the courts and has led to pervasive confusions in the law of copyright ever since, as admitted in a public forum recently by William Patry, a former Congressional staffer, author of the standard work on the law of fair use, and now a lawyer for Google. This confusion about the basic Constitutional rationale for copying is responsible, among other things, for the suit that several publishers, including two university presses, brought in 2008 against Georgia State University, and for major differences in understanding of what "transformative use" means between the Second and Ninth Circuit Courts of Appeal. Basically, without going into details, it can be said that university presses strongly support "transformative" fair use as interpreted by the Second Circuit, but not by the Ninth, while strongly opposing straightforward copying where no value is added of the kind that Georgia State has been accused of doing on a massive scale. (For a fuller account, see my

article in the June 2009 issue, "Is 'Functional' Use 'Transformative' and Hence 'Fair'?") This position is readily understood in terms of presses' dual mission: as an integral partner in the creation and

dissemination of new knowledge, presses believe that there is a very important role for fair use as "transformative use" to play in "promoting the progress of science and the useful arts," which it is the Constitutionally stated purpose of copyright law to serve. By contrast, copying that merely functions as a private printing machine, whether print or digital, to multiply the number of copies in the marketplace is perceived by presses as a direct threat to the commercial foundation of their business and hence is opposed wherever its threat economically becomes greatest. Unfortunately, too few people in academe seem to grasp that in taking that stance, university presses are merely striving to stay in business so that they can fulfill their primary mission of serving scholarship. Somehow we are perceived to be greedy for "profits," which don't really exist for us as non-profit enterprises anyway, rather than trying simply to stay afloat to carry out our mandate.

What I have just said about copyright can be equally said about university press attitudes toward open access. In principle, open access is a good thing: every press would love to be supported in such a way as to feel no need to grovel in the marketplace for every last penny, but instead be liberated to share the wealth of knowledge we produce in our books and journals with the entire world at no cost to the end-user. In practice, no university in the U.S. yet has shown any inclination to provide the level of support to make that laudable goal feasible economically. (I specifically refer to U.S. here because there are exceptions elsewhere, such as Athabasca University Press in Canada, which operates on an open-access model [<http://www.aupress.ca>], and the consortium of European presses called OAPEN [Open Access Publishing in European Networks: <http://www.oapen.org>].) Thus presses are left to fend for themselves, with about one-tenth of their costs covered, and must look to every source of revenue they can find, including from e-reserves and course-management systems where journal articles and book chapters are reproduced in great quantities, to remain in business.

This, in a very general way, defines the situation in which university presses find themselves when contemplating how much, and in what ways, they can afford to implement open access in their own publishing programs, or allow aggregators or other entities like institutional repositories or government agencies to do it on their behalf. Views and approaches will differ among presses, again, depending on their particular economic situations, as well as their administrative positioning within universities or outside. I mention the latter because it is no accident that those presses that have so far experimented the most with OA eBook publishing either are closely connected with the libraries at their universities — such as California, Michigan, and Penn State — or are related in unique ways to the bodies that control them, like the National Academies Press. It was NAP, of course, that

*continued on page 57*



started the ball rolling in the mid-1990s when it decided to begin posting all of its books online for free use by readers anywhere in the world with an Internet connection. It used an innovative technological approach to limit downloads and printing so as to provide incentives to users to buy copies printed on demand (or PDFs) after browsing, thus positioning this OA initiative as an experiment in online viral marketing, which has proved successful enough commercially while proving hugely successful in basic mission terms to keep NAP pursuing this model, albeit with some tweaks along the way. It took about a decade for **California**, **Michigan**, and **Penn State** to follow suit. **California** worked closely with the **California Digital Library** to make some of its backlist completely OA to the world and other titles OA just to the **University of California** system. It is also now experimenting with a number of OA monograph publishing programs in conjunction with various institutes on UC campuses. **Michigan** and **Penn State** both operate through offices of digital scholarly publishing, with **Michigan** initially trying out a series of books about digital culture and **Penn State** refashioning its formerly print series in Romance literatures into a broader OA series in Romance studies. At both universities these initiatives began before the presses formerly were joined administratively with the libraries and have expanded since, **Michigan** taking the far bolder step of announcing last year that it would publish all of its books in the future in OA mode, with a POD option, on which it must rely to generate sufficient income to keep the operation going. Some other experiments exist also, and one might mention **Rice University's** resurrection of its moribund press as an OA publisher beginning with art history, using the open-source Connexions platform that was developed to share courseware freely. On the journals side, **Oxford University Press** has led the way among university presses with its experiments in "hybrid" journal publishing, where authors have the option of having their articles made available OA on publication upon payment of a fee up front. (There is, however, considerable controversy about whether "hybrid" OA is really in keeping with the spirit of OA or merely a clever tactic by publishers to engage in additional price gouging.) **OUP** has also pioneered in eBook publishing with its large collection of titles called **Oxford Scholarship Online**, but this is sold via site license to libraries and is not OA in any way.

A test case of sorts presented itself to the member presses of the **AAUP** with the expansion of the **NIH's** policy regarding posting of **NIH-funded** research articles on its OA Website **PubMedCentral** from voluntary to mandatory submission. Worrying about its implications for university press journal publishing were such a policy to be copied by other federal agencies, the **AAUP** sided with the **AAP** in opposing the **NIH's** position and stating its preference for an alternative system, used at the **NSF**, where the submission and OA posting of reports resulting from funded research is mandated, but not the articles later peer-reviewed and published based on the research where publisher investments have been made to add value to the product. (The basic

argument is that publishers spend a lot of time and money operating the peer-review system to the benefit of the authors and end-users, and the **NIH** is taking advantage of this investment without paying back anything to support the publishers' direct costs — in other words, misappropriation, if not outright copyright infringement.) I was among ten press directors who "dissented" from this position after being lobbied by **Mike Rossner** of **Rockefeller University Press** and **Phil Pochoda** of the **University of Michigan Press**, who were co-drafters of the dissenting statement. I agreed to sign the statement, however, only after gaining some concessions from the drafters, most importantly the recognition that "one size does not fit all" and that the specifics of the policy as applied to STM journal articles for the **NIH** (such as the 12-month embargo period) might not work well for other fields (such as many areas of the humanities, where the "shelf life" of articles is typically much longer). I also joined a different group of press directors who opposed a policy proposed in **Congress** to mandate the early online OA posting of the papers of the Founding Fathers that would, essentially, expropriate the "value added" by the presses that publish formal editions of these papers at great expense, drawing only partially on government funding but also foundation support and internal university resources. In both of these examples, you will observe the delicate balance that presses must try to achieve between promoting the maximum distribution of their publications and recovering costs that are needed to publish more books and journal articles in the future. Some presses tip the balance more in one direction than the other, depending on their own individual economic circumstances and mission priorities.

I'll end by mentioning two more points about OA that mean a lot to me personally, but may be less important to some press directors. First is the issue of what I call the other "digital divide," not between developed and developing countries with regard to Internet access, where the term has been used widely, but between book and journal content in electronic form, which I think is intellectually indefensible. Journals made the transition to electronic from print with relative ease and rapidity, in less than a decade, but the process for books is inherently much more complicated, for many reasons having to do with production workflow, marketing (including the use of Web 2.0 social networks), multiplicity of competing and incompatible end-user platforms, the need for staff trained with different skills, the economics of price discounting associated with selling through a range of vendors, and legal issues of copyright regarding especially non-text components. The challenges are so daunting that many publishers already are struggling with how to make the investments necessary to succeed in electronic publishing, while relying on a declining stream of income from print sales not yet offset by increasing eBook sales. This, I believe, is the #1 problem facing publishers of all types today, not just university presses. (A recent article in *Book Business* quoted an executive of the Harlequin romance novel publishing house who is grappling with these issues and worrying about how the house will survive through the transition.)

The second concern I have repeatedly expressed in various places like the listserve liblicense, in conversation with **Stevan Harnad**, among others, and I have been asked to guest-edit a special issue on this problem for the magazine

*Against the Grain*, where I contribute a regular column expressing the perspective of university presses on a range of topics. My worry is that the proliferation of multiple versions of journal articles (and, potentially, books at some later point) can end up being harmful to scholarship. **Dr. Harnad** has been the chief advocate of what has come to be known as Green OA, i.e., the self-archiving, either on an author's personal Website or in an institutional repository, of the peer-reviewed but not final published version of each article an author writes. While views among publishers differ about Green OA, the majority of journal publishers, including **Elsevier** and our press at **Penn State**, now permit Green OA, preferably with links back to the final published versions available on the publisher's Website (in **Elsevier's** case) or at some other site (in our case, either **Project Muse's** or **JSTOR's**). There is a site called **SHERPA/ROME** (<http://www.sherpa.ac.uk/rome>) where the details of different publishers' OA policies may readily be found, though the information there may not be entirely up-to-date for every publisher. What happens between peer review and publication of the article in final form, in my view, is very significant. Perhaps I feel strongly about this because I began my career as a copyeditor and know from first hand what kinds of egregious substantive errors, not just stylistic infelicities, copyeditors routinely find and correct. I can give you plenty of examples, including a book published by **Princeton** that I am confident would not have won the **Pulitzer Prize** but for the heroic intervention of a talented copyeditor (now the production manager at **Temple University Press**). Studies have shown that once a recognized authority has made a mistake, as in quoting from an original source and misciting it, subsequent readers will repeat those mistakes rather than return to the original source to check their accuracy. Mistakes thus compounded can proliferate rapidly, to the detriment of future scholarship. They may not be so crucial as to render the Green OA versions of articles useless for certain purposes, such as classroom teaching (just as teachers now hand out drafts of their articles to students for such use that have not undergone any scrutiny by another expert or copyeditor). But I feel very uneasy about the massive postings of Green OA articles at sites like **Harvard's**, which given that university's great prestige may well lead to the widespread appropriation of those versions by scholars who find it easier to access them OA than to hunt down (and perhaps pay for) the final versions. I have a small corps of copyeditors who have volunteered to look over a random selection of articles at **Harvard's** site to test our theory that the versions available there will be less than maximally valuable for future scholars to rely upon, as part of the issue of *Against the Grain* that I'll be guest-editing (and to which **Dr. Harnad** has graciously agreed to contribute).

On that baleful note, I'll end by saying that I look forward eagerly to the day when OA fully takes over the dissemination of scholarship (and not as just Green or Gold OA), partly because it will solve the problem I have with Green OA now — but that I don't expect that day to arrive anytime soon, even for journals, much less for books. There is a long road to travel before we reach the OA Promised Land. 🌳