

Open Science Talk No. 54 (2024) Rights Retention Policies: a SPARC Europe report ¹

00:00:03 Per Pippin Aspaas

Open Science Talk, the podcast about open science. My name is Per Pippin Aspaas and today I am joined by three discussion partners, all of whom have been involved in writing a report – a very interesting report about retaining rights and open licencing in Europe, the so-called Opening Knowledge Report by Sparc Europe. So, the first question is to you, Vanessa Proudman, you're one of the authors. Welcome here – and our first question is: what is SPARC?

00:00:43 Vanessa Proudman

SPARC Europe is a Dutch foundation and we live and breathe open in higher education. We are really focused on. Policy making and advocacy for Open Access, open science and open education. And we serve very many stakeholders across Europe, in particular libraries, but we are working together with funders and research institutions all to make open the default.

00:01:14 PPA

And you've been working there for some time?

00:01:16 VP

Yes, I have actually. I think it must be over five years now and certainly when I started I thought ohh we're going to make open the default. It won't take us too long. I love action, but there's still plenty to be done. I'm here at the Munin conference and we still see there is still a lot of exciting work to be done in this area. And we know that there are some areas like copyright and rights retention, which really needs our attention. There are some obstacles along the way that we really need to sweep aside.

00:01:57 PPA

Next person on my list – author list – is you, Jon Treadway. Who are you?

00:02:04 Jon Treadway

Well, I'm Jon Treadway. I'm the director of Great North Wood Consulting. So I do quite a bit of work with SPARC Europe on a number of different projects – Project Retain, which we'll talk about in a minute is one of them, but also around open educational resources and working with the SCOSS Organisation that supports open infrastructure. And when I'm wearing other hats, I work for a range of organisations in scholarly communication and research like Dryad and ORCID, a number of publishers like the BMJ, some universities – a whole range of different organisations.

00:02:43 PPA

Lovely. And last but not least, Iva Melinščak Zlodi: who are you?

00:02:50 Iva Melinščak Zlodi

Thank you for pronouncing pronouncing my surname correctly. I am a librarian, a scholarly and E-Resources librarian from Zagreb University, Faculty of Humanities and Social Sciences. And I've been

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involved with issues related to Open Access for, I think more than 20 years now – in different ways, mainly working in the library and serving the needs of researchers in different ways, but also in building certain pieces of Open Access and Open Science Infrastructure – on an institutional level, on the national level, and in the late years, also on in the international level. And I've been very lucky that I've been a member of the SPARC Europe Board for the last two years, I think, now. So that gave me an additional opportunity to deal with issues that I'm interested in.

00:04:00 VP

May I also just come in? So we have three important – the three of us have been involved in this project – but there are two others who aren't with us today. One of them is Ignasi Labastida i Juan, who's also a board member. So I have two very active board members who are passionate about copyright. So how lucky am I? So he's also been involved in this project and we also have Clara Riera, who is involved in the community engagement and in developing the action as a follow up to this report, so we mustn't forget them today.

00:04:41 PPA

Yeah. And the report – let's go back to you, Jon. You mentioned something called Project Retain. What was that?

00:04:49 JT

So, Project Retain is the strand of KR21 which is focused on rights retention and open licencing – and and I could try and tell you what KR21 is, but I think it's probably better that you ask Vanessa, because she's so directly involved – Project Retain was the the strand of work of KR21 that led to this report.

00:05:10 VP

So, KR 21 – we're very thankful to Arcadia, the Arcadia fund. What we really want to do with the KR21 Programme is to innovate copyright. So copyright reform across Europe and one of those strands is particularly looking at rights retention. But there's also secondary publishing rights. So, they're two sisters, if you like – two different approaches towards Open Access. And so this enables us to actually progress some of the work that we started a couple of years ago, where we actually had another report where we were looking at publisher policies across Europe. We wanted to see whether there had been any change and we wanted to look at other stakeholders. So we're thankful to Arcadia and to this programme and we look forward to doing more with the programme in the coming months as well.

00:06:08 PPA

Yeah, we'll get to the future shortly, but just to get the the the picture and the background right: you mention now, rights retention, so that is part of this report – part and parcel of the report, even. But when you mentioned Secondary Publishing Rights, could you explain what that means to our listeners?

00:06:30 VP

So very, very briefly: Secondary Publishing Rights is often – you're looking at the national legislation where law is developed to insist on that the author has the right to deposit a version in a repository, often. So we don't want to talk about that today, but what we really want to stimulate with our work is that authors and institutions retain those rights – they are their rights, so that they can further disseminate their research where they want to be found in the future, and that they don't sign away those rights or transfer those rights or sign exclusive licences with publishers any longer. So it's trying to educate, raise awareness, and also to really stimulate that institutions have the backs of their

authors and that we have policies in place that support our authors so that they are really encouraged to disseminate their work and that they feel safe to do so. I think the time is really right to ensure that that happens on an institutional level, to really support the authors.

00:07:50 PPA

Maybe we could bring in you there, Iva, because you represent an institution, Zagreb University and and the country, Croatia. When we read this report, we see that there is a lot of movement in different countries in Europe. So, several institutions across Europe have their own Rights Retention Policies in place. In Croatia, how does it look there?

00:08:14 IMZ

Well, not so bright at the moment, although I wouldn't be too pessimistic about it, but maybe just to say that it's not so much – that it's not just about Croatia. What we've seen when doing this report is that, actually, there are maybe two main centres of adopting institutional policies, and those are the UK and then Norway, which is something that you would know more about. But outside of those countries – there is not such a broadly accepted approach among institutions, and definitely there are countries where this is even less prominent – and Croatia is one of those. And there are, I would say, different reasons. Some of those are, in a way, historical and some have something to do with the current situation – the general, I don't know, scholarly or scientific situation. So, historically, I guess that in countries of, let's say, Eastern Europe or ex-socialist countries, there was less emphasis on copyright in general, and less accumulated knowledge in the institutions on how to deal with intellectual property – so, although now this has changed a lot, we still don't have such a level of expertise as maybe is the case in Western Europe. And the other thing is that Croatia is part of what is sometimes called a scientific periphery or semi-periphery. So, let's say, those are countries where it's really very important to publish more in international venues and to become more visible. Our institutions sometimes fear of lessening their chances in publishing in such international journals or something like that. So they are maybe less likely to take action if they are not certain that it will not, well, jeopardise their chances of getting more visibility. But things are changing in some of the countries around Croatia – for instance, in Slovenia – and Croatia is also working on some national open science plan that could move things in a different direction.

00:10:58 VP

Maybe I could just add to that. I think Jon might tell us a little bit more about that big movement in the UK that is really stimulating, as well as the Norwegian case. But in the follow up of this study we are also going to utilise a very new network that the KR21 Programme has set up of national coordinators – so, national legal experts, which libraries and institutions really need to reform the legal framework that supports open science. And we have a number of countries who are keen to explore the legal context, because the context is king here. It's so key to know what is possible in the particular country: as you say in Croatia, it's a very different one – in the UK, Norway and other countries, different – but we have interest from Finland, from Italy, from France, Spain, a number of countries across Europe who are keen to really explore this seriously and we're really excited about that. That's also partly the point of the report: to share some findings, show that there is a lot more room for expansion in this area and we look forward to talking to more of those countries to see how this can be implemented and then to share those stories out with the rest of Europe.

00:12:29 PPA

Just to chip in there from Norway's side, to bring that perspective: we did a podcast in this open science talk series in January 2022 when we just adopted this policy at UiT, as the first university in Norway, but in the same calendar year, all the major universities in Norway joined. So by the end of

2022 this Rights Retention Policy was in place, which is facilitating, then, a 100% Open Access from research made by Norwegian researchers, if they want to. Because there's also an opt out possibility, so it's important to stress that it's the authors right to share their work in Open Access, if they want to. So they have the freedom of choosing whatever publication venue they like, but we have also experienced people choosing nature, which is of course a very expensive venue – if you want to make it Open Access with Springer Nature you need to pay a very large fee. But then we have said to our authors «you retain your rights», we upload it in our institutional repository, the accepted manuscript version, and then that gets the Green Open Access availability. So, as far as we can tell, this is working in practise, but what we don't know is if it actually is legally possible, what we're doing. We're doing it – we haven't had a single court case yet in our country, and as far as I know, there have been no publishers on our necks either. So this is an interesting landscape where we don't know, actually, whether the legislation would protect the academic freedom of our researchers or not, but we hope it will. And the institutions have agreed that they will stand up for their authors in the event that there would be a legal case. Iva, you have something to add?

00:14:30 IMZ

Well, maybe I can just say that in the report, I think that we've mentioned or explained exactly what you are speaking of, and two elements are critical here, I think. First, that institutional leaders have the appetite to do such a change, even if it can be legally risky, a bit – so even if you are not 100% sure – because it is really hard to know until you have a court case that something is legally bulletproof. So, an appetite for change and for a little bit of risk taking is important, and the other important thing is having an infrastructure that is already set and in place. So, you have CRISTin and you have repositories and a culture of self archiving and that is something that's also important, so not just a policy, but also having the support and the infrastructure to make it possible.

00:15:38 PPA

Jon, you were doing lots of interviews also, in the preparations for this report. Do you remember from your conversations back then – this report is actually quite new, it's from June 2023 – but the the interviews, I guess, date some time back. But can you, from the top of your head, remember this kind of discussions with your interviewees?

00:16:01 JT

Yeah, I mean, you know, we were very fortunate to interview a whole range of different people to supplement the survey that we did of institutions – a lot of analysis and, you know, it's impossible to talk to somebody in every jurisdiction, and it's important to cover every aspect, but the thing – I mean, we even related to it earlier – the thing that stands out is how much progress has been made in the area in the UK, because there's a clear understanding of a legal basis on which it can happen. And, allied with that, there was a network under the auspices of the UK Scholarly Communications Licence that did a lot of work seeding the possibility that, you know, essentially turned into the initiative that led to Edinburgh and Cambridge setting up their policies. And then the presence of that, sort of, eruption in the UK created a lot of interest in other countries, but they didn't have that legal context already established, they didn't have already a network of people who'd been investigating it, they didn't have – there are other aspects that it's worth pausing on, so – the publishing culture in the UK is around Gold Open Access, but the funding environment also encourages people to make their materials available via self-archiving because it can then contribute to the REF in the UK. So both of those lend themselves to institutions wanting something like a Rights Retention Policy in place. It's similar in Norway: you have the national CRIS system, so there's a very clear place where people can put materials. And so, again, it's a sound ground on which to build a policy of this kind because there's a framework in place that people are familiar with that you can

build it on top of. Those are the kind of things – so, the legal framework, an existing network of people looking into it, the type of funding environment, the type of Open Access environment – those are all things that, as Iva talks about Croatia or as we interviewed people in Italy, Denmark, the Netherlands and France, there's lots of interest in this, lots of potential ways forward for these organisations to look into it, but not the same momentum or history or networks in place already. And if I may, another point I'd make is: all of this, of course, builds on two other things. One is: this type of policy has been in existence for a very long time, coming out of the United States – Harvard introduced an Open Access policy with Rights Retention elements – I might get the year on, but I think it was 2008 that it was conceived and it was 2011/12 that all of the different faculties in Harvard approved it – and Peter Suber, who I'm sure most of the listeners will know, continues to monitor and actively promote this type of policy. The other being: the funder policies around Rights Retention that have been in place – they evolved from, you know, Wellcome Trust policies around the types of licence, the types of agreement that you should sign. And retaining rights was then adopted by Plan S and by many supporters of Plan S, to make funder policies. And that whole environment is what's led to interest and – explosion is the wrong word, but you know – a rapid adoption in the UK and outside and, you know, we tried to set out an analysis of all of those areas in the report. A lot of it's about institutional Rights Retention Policies. But we spoke to a number of funders, a number of institutions, and, actually, a number of publishers and publisher support bodies who were very keen and willing to talk to us about their experience and what they understand the legal position to be and how navigating inside publishers, for those responsible for Open Access policy, is complicated. So, yeah, we did do some interviews about this and found it to be – there's a danger with any report like this that you write down: this is context and it's really important, you must think about the context. That doesn't tell anyone anything, but actually there's some really concrete things that help you understand why the UK is the area in which these policies have come out, why Norway is also. You know, UK may have the most policies, but Norway is the country where all of the major institutions have a policy of this type, and it comes out of those types of things.

00:20:33 PPA

We'll soon talk about the future, but I see that you, Iva, have something to say.

00:20:52 IMZ

Maybe just to add to one thing: Jon was saying, that we saw in the report, I mean, in the investigation that it was really a complex interplay of policies – from funders, from institutions, and occasionally even from the legal system, because there are some countries where institutional policies rely on existing secondary publishing law, for instance in Germany – so, this is really important: to have these incentives from the funders, but then also institutions backing up their authors to enable complying with funders requirements. So it's not about which is more important, it's best when they work together, actually, and when they are aligned.

00:21:33 JT

I want to come back to the point Iva has made – coming back to me is to say, you know, talking to institutions, their motivation is slightly different for why do you see more policies in one place than another: motivation to develop these policies is often to make life really simple for the researcher. So our funder policy generally is: "please include a specific bit of language in any submission that you make, in a publication, stating that you retain your rights". That relies on an individual researcher to understand what they're doing, to put it in, to negotiate a process through submission, publication with a publisher. You know, that's complicated, and it puts a burden on researcher. The nature of – particularly the UK style policy – is that they assert that the university has the right to put the published articles into their repository. And so the researcher, in theory, doesn't have to do anything

else. It makes it easier, it reduces administration, it helps them reach the long tail of authors. So, for authors whose journals are, you know, in subjects where Open Access isn't as advanced or where funders aren't, you know, making funds available or where there's not necessarily Transformative Agreements, it helps them make sure all of their articles are available. And then there is a sort of frustration about the pace of Open Access as well, a desire to see it accelerate and, you know – the Gold Open Access approach has made a lot of progress, but actually we want to get there quicker and this is a way that allows institutions to take it into their own hands a bit, to help authors make sure everything is made Open Access more quickly. So just that's the motivation – and we make some other points in the report, but those are the ones that stick in my memory from the interviews.

00:23:17 VP

And I mean, it really is also about empowering those authors and it's really to support the authors above all. And I was actually – I was talking to the University of Bergen last night, just picking up on what you were saying about the opt-out clauses that some policies have, which is, which is also important – and I asked them, well, how many have actually opted out? One person! So, so far only one researcher had opted out, so it's quite interesting. We were also talking about open licencing and they're also saying that, I think authors are looking for some simple strong guidance and support from their institutions, and if you give them the guidance that this is a good way forward – don't over-complicate things and then, as long as they have trust in the institution and that they have their back, they will then proceed in a positive way.

00:24:22 PPA

Yeah, the way forward, could you expand on that? What are your next steps from SPARC Europe on this?

00:24:28 VP

Yes. We are really keen to continue with this work because as you hear, there is still a lot to do across Europe – and we're going to, obviously, leverage the good practises that we hear from the UK and from Norway and some other countries. So, I think I've already said that we're going to explore other countries and showcase some of those. Also, we'll have further webinars, bringing those policymakers together to discuss what are some of those success factors and what have been some of those struggles? But what we're also doing right now is we're also trying to raise awareness of the topic. Not everybody is ready to read hundred-page report. So we created a one-pager, an infographic. We had a two-week Twitter campaign raising awareness amongst different stakeholders – some simple information, some more sophisticated. We had some discussions also, online. And what we've also done is – from the learnings from our interviews, we've brought that together to create some guidance for national policymakers who would like to implement a Rights Retention Strategy, which Slovenia has done. We are so thrilled about that, seeing that policy, and hope that others will take that forward. But we also have checklists for institutional policymakers. And we also have some guidance for publishers. So we've digested a lot of those good practises and – we've got the Five Steps for the Publishers and the Six Steps for the Institutional Policymakers, and we will adjust those over time. So I think it's important that, from all of the knowledge that we've gathered – and we understand not everybody's ready to read that report – we've brought it together into some bite size, hopefully, knowledge that will help others. But I think our challenge is: how do we reach everybody who needs to know, and the policy makers? So, we're trying to circulate this. The more people who share our resources, their own resources, their own practises – we encourage more conversations like this to happen and to share those good practises out. So to create a movement – this movement in the UK, we love seeing that because, you know, many working together, we're much stronger that way, but we need that energy across Europe as well. So we will contribute to that

going forward in, in the next months. And we're also keen to hear from the communities: what else can we do to support you in supporting your authors, and in setting up an institutional policy across Europe?

00:27:25 PPA

With that, I thank you all for coming to this podcast and wish you a safe trip home from Tromsø. Open Science Talk is produced by the University Library of UiT The Arctic University of Norway. Thanks for listening.