

Open access from the point of view of the Polish author

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The purpose of this article is to analyse the phenomenon of Open Access from the point of view of the author subject to the Polish legal regime. This text describes not only the genesis and general assumptions of the Open Access movement, but also indicates solutions that can be used by the author based on the provisions of Polish law. The open science thesis that assumes the acceptance of the principle of openness at all stages of work and scientific communication is more and more proclaimed. This revolution consists not only of technological changes, but above all in the consciousness of people from the world of science, which thanks to digital tools appeal again to the fundamental principles of an effective scientific process – openness and readiness to cooperate with others. A society that is more and more aware of its rights has begun to demand disclosure of research results achieved by public funds. Thus, the views that scientific knowledge is in fact a public property and its use (subject to the principle of including authors' rights to published materials) should not be subject to restrictions that are increasingly and more clearly proclaimed. Open access can speed up research in any field and in any language. The most important, however, seems to be the realization of what it really is, why it turns out to be beneficial, how to implement it, and how it is best achieved.

Introduction

Open Access as a movement that disseminates universal, free and unfettered access to knowledge dates back to the 1960s². However, the full flowering of the idea of openness has been brought by gradual computerization and rapid development of the Internet. Increasing tensions and conflicts, mainly between scholars as well as readers and publishers, ultimately led to an attempt to find an alternative way of scientific communication. This alternative turned out to be the Internet. Through solutions that have brought new technologies of communication, the world has faced the opportunity to use a powerful development tool and spread the statements of universal accessibility, also in the area of science, and used this tool. In addition to the emergence of a new communication tool, scholars had increasingly realized that the traditional system limits access to the results of their work. Traditionally, the authors were forced to transfer copyrights to the publishers, which lost their control over the distribution of their work results. Consequently, the results of scientific research were available only to those institutions or libraries that subscribed to the journal in which they were published. In addition to the fact that no library in the world can afford to subscribe to all published magazines, the annual increase in magazine prices, associated with shrinking library budgets, caused the so-called serial crisis. Libraries began to make detailed research on the use of magazines and resigned from subscriptions to less important titles. Among other examples, these phenomena have stimulated the transition from the traditional system of publishing on paper to the electronic environment and the development of the Open Access movement in many places around the world.

Nevertheless, the theme of Open Access in Poland develops gradually and sometimes inefficiently. Not only the promotion of this movement takes place in relatively closed groups but is often mistrusted by the public. However, while in the environments of publishing houses or financing institutions reluctance can be understood, it is difficult to find a justification for it among the recipients of information and its creators. Considering the complexity of the Polish legal system, also within the copyright law, as well as the negotiating position of the creator towards the majority of publishers, it seems that the Open Access movement, although not without flaws, may be the answer to many emerging needs. Whilst the knowledge of the possibilities that comes with it is a tool which no author caring for his or her interests should reject³.

Concepts of the openness model

Shaped by numerous movements and organizations, promoted and developed over the years worldwide, responding to the diverse needs of different institutions and entities, Open Access does not have one universally applicable definition. Any attempt to enclose it in the framework of its application will be incomplete, as it will only express its partial assumptions and respond to the effects desired by the particular group. Therefore, when attempting to define Open Access, first and foremost, one should point out the variety of notions that appear in the context of openness but

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² J. Hofmokl, A. Tarkowski, B. Bednarek, Michalska, K. Siewicz, J. Szprot, *Przewodnik po otwartej nauce*, Warszawa 2009, p. 16.

³ R. Kozierski, R. Kabaciński, M. Lis, P. Kaczmarek, *Open Access. Analiza zjawiska z punktu widzenia polskiego naukowca*, Kraków 2013, p. 2–3.

bring slightly different meaning. Thereupon the *Open Access movement* is a global social movement, a bottom-up activity of many people, mainly scientists, librarians, IT specialists, publishers and others who are connected with science and for whom the idea of openness and transparency in science is the main reason for changing the model of scientific communication. Whilst the *open access model* is a system of assumptions, concepts and relationships between them related to the open scientific communication that allows to describe in an approximate way how scientists, librarians and other participants in this process exchange knowledge. The ways they create, collect, archive, share or publish. The opposite to the open science communication model is a closed model, e.g. a subscription one. According to the Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities open access to resources is defined as the possibility of using unlimited sources of knowledge and cultural heritage, which should be approved by the scientific community⁴. Whereas the *open communication channel* is an open connection between the sender and recipient of scientific information, an open method of sending, sharing or publishing knowledge resources using physical media. The communication channels are for instance: an electronic platform of a scientific journal, an open repository or an open raw data base⁵. However, the Open Access movement seems to be the strongest among the above. It is closely related to science and was the beginning for other movements that were built after it, nonetheless, it was modelled on the ideas and actions of the previous Free Software Movement initiative. The Budapest Open Access Initiative (BOAI)⁶ emphasizes that accessibility understood broadly – as reading, downloading, copying, distributing, printing, searching as well as linking or using the content in any other way should be provided to every user, without any financial, legal or technical barriers other than those inseparably connected with the access to the Internet itself. And the only possibility of limiting copying and distribution as well as protection resulting from copyright – in this aspect – may arise from the necessary authorial control of the integrity of his work and preservation of the right to be properly marked and cited. On the other hand, creators of the Open Access movement frequently point out that the only restriction imposed on the user is correct quoting and determining the authorship of the work⁷.

Open Access roads

In the course of the development of the Open Access movement, two basic methods of sharing publications in free access have been developed. The Budapest Declaration, already mentioned, defines them as the Gold and Green Road of Open Access. Naturally, over time, the so-called hybrid roads also developed. However, in Poland they still have not

gained much popularity⁸. The Green Road to Open Access is also often called self-archiving. That involves the authors publishing their refereed journal article as usual in the journal of their choice but ensures they retain the right to deposit the full-text of their publication in a digital institutional or thematic repository. The institutional repository is a publicly accessible archive that contains the work of researchers online. Stored works can be searched using interoperable software, compatible with the requirements of the Open Archives Initiative (OAI)⁹. Each time, however, the author should make sure that in the light of the provisions of the agreement with the publisher he can make a given version of the publication available in the repository. Sometimes publishers allow only pre-print (author's version), sometimes post print (published version), and some magazines do not approve of the inclusion of an article in the repository at all. Therefore, it may happen that the final version of the article is not deposited in the repository, but for example the pre-print version. The Gold Road to Open Access is achieved by publishing scholarly works in the Open Access Journal. In this case, open access is provided by the publisher. It is worth noting that a significant part of the world's editorial offices of open journals collect publication fees from the authors (the so-called Article Processing Charges – APC) to cover their editorial costs, as they do not charge readers¹⁰. These fees are usually covered by grants or by scientific institutions in which the authors of the publication work. Open Access journals do not work in the traditional subscription model, created to generate profits. In return, they use a new business model, which includes a fee for text editing, sponsoring and advertising. Reviewed journals available in the open access

⁴ Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities, https://openaccess.mpg.de/67605/berlin_declaration_engl.pdf (access 14.1.2019). It was adopted during a conference organized by the Max Planck Society.

⁵ The definitions come from an open e-learning course on new models of scientific communication of the Koalicja Otwartej Edukacji, <https://otwartanauka.cel.agh.edu.pl/mod/book/view6772.html?id=31&chapterid=84> (access 20.1.2019).

⁶ Budapest Open Access Initiative, February 14, 2002, <http://www.soros.org/openaccess> (access 23.1.2019). It was the first important international declaration containing a set of rules and supporting the Open Access movement. Created as a summary of the meeting organized by the Open Society Institute. It contains the first definition of Open Access, and also presents strategies and goals for access to scientific communication.

⁷ P. Suber, Praising progress, preserving precision, SPARC Open Access Newsletter, Nr 77, 2.9.2004, <http://www.earlham.edu/~peters/fos/newsletter/09-02-04.htm#progress> (access 2.2.2019).

⁸ E. Majdecka, K. Strycharz, *Otwarta Nauka: prawo autorskie i wolne licencje*, Warszawa 2018, p. 16–17.

⁹ P. Suber, *Open Access*, 2014, p. 54, The book is available under a free license, among others, in the service of the Open Science Platform (pon.edu.pl).

¹⁰ The fee is charged after passing the article through the review process and qualifying it for printing. These fees are usually quite high, for example in PLoS they are between 1350 and 2900 USD, while Elsevier proposes fees from 500 to 5000 USD. A quick list of publication costs in various publishing houses can be found on the PaidOA website.

model exist in many fields of science. Of course, it is also possible to implement both gold and green methods at the same time, but in practice the license policy of the publisher of a particular open journal must authorize it. There is a wide debate in Poland about which of these roads is better. Certainly both guarantee and provide open access, but in a different way. However, according to the Directions for the development of open access to publications and the results of scientific research in Poland, the Ministry of Science and Higher Education¹¹, based on recommendations of Polish experts, favour the green road more. This is mainly due to the cost accounting, i.e. publication in open journals (gold road) may cost, e.g. several thousand USD. As a result, the green road is usually a much cheaper method of providing access to the content of a given publication. In addition, it is worth noting that many Polish magazines operate in an open model and do not charge APC fees for publication at all (these journals manage, for example, from a statutory subsidy or other sources). Thus, each time the decision on choosing the gold or green road depends on the author, the terms of the grant agreement, budget and other conditions. However, it is worth emphasizing here that for scientific institutions it is important (e.g. for reasons of knowledge management, reporting purposes, etc.) that authors affiliated with a given institution deposit articles in the institutional repository, even if they publish a given text in the journal as part of the gold road.

Open Access models

Recently, in the context of scientific publications, among the various ways of using information and communication technologies, the so-called open access models are starting to have an increasingly important role. The criterion for their distinction is the degree of restrictions accompanying the placement of a scientific publication in an universally accessible Internet. The first model – open access gratis – concerns a situation in which a person who owns the copyright for a given publication only accepts access to it via the Internet. This means that users can profit from it, but to a limited extent. It is related to the concept of publishing on fair use. And the second model – open access libre – is wider, and includes the availability of the work on the Internet and additional content authorized by everyone to use it in a very wide range. Open access libre covers the kinds of open access defined in the Budapest Open Access Initiative, the Bethesda Statement on Open Access Publishing¹² and the Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities. In practice, it usually involves granting a free license to the work. The re-use rights of libre Open Access are often specified by various specific Creative Commons licenses; these almost all require attribution of authorship to the original authors¹³.

Open mandates

Open access to scientific publications and open science are gaining importance in the context of science policy in the world. The open mandate has been adopted by many leading universities, research institutions and entities financing research¹⁴. Open access is a mandatory requirement in the EU-funded Horizon 2020 program¹⁵. The Polish Ministry of Science and Higher Education adopted on October 23, 2015 an open access policy included in the aforementioned document entitled “Directions of development of open access to publications and results of scientific research in Poland”¹⁶. The document is in the form of recommendations regarding the introduction of open access by entities financing research (the National Science Centre, the National Centre of Research and Development, Ministry of Science and Higher Education), scientific units, universities and publishers, including publishers of scientific journals¹⁷. Open access policies still seem underestimated in Poland. Their content is often a set of certain indications and recommendations rather than obligations. However, given the role that such acts play nowadays in Europe and in the world, especially from the point of view of creating the position of authors and researchers, it should be expected that the number of such documents in Poland will grow and their provisions will interfere in their situation progressively.

Publishing in open access brings many benefits and can undoubtedly be an opportunity for many scholars. Nevertheless, after making a decision regarding the choice of the open access model, each author has to take into account a number of legal issues, so that this process can be carried out in accordance with applicable procedures, without violating any rights and interests and at the same time guaranteeing the expected result.

¹¹ „Kierunki rozwoju otwartego dostępu do publikacji i wyników badań naukowych w Polsce”, https://www.gov.pl/documents/1068557/1069061/20180413_Kierunki_rozwoju_OD_wersja_ostateczna.pdf (access 15.2.2019).

¹² Bethesda Statement on Open Access Publishing, June 20, 2003, <http://legacy.earlham.edu/~peters/fos/bethesda.htm> (access 20.2.2019). Its adoption is the result of a meeting on Open Access viewed from the perspective of research funding institutions, organized in 2003 by the Howard Huges Medical Institute (HHMI) and the Max Planck Society.

¹³ E. Majdecka, K. Strycharz, *Otwarta Nauka...*, p. 16.

¹⁴ A register of such policies can be found on ROAR websites: www.eprints.org/openaccess/policysignup/ (access 3.2.2019).

¹⁵ Under Horizon 2020, each beneficiary must ensure open access to all peer-reviewed scientific publications relating to its results, http://ec.europa.eu/research/participants/docs/h2020-funding-guide/cross-cutting-issues/open-access-dissemination_en.htm (access 19.2.2019).

¹⁶ Document available on the website of the Polish Ministry of Digitization, https://www.gov.pl/documents/1068557/1069061/20180413_Kierunki_rozwoju_OD_wersja_ostateczna.pdf (access 8.2.2019).

¹⁷ Information from the website of the Polish Ministry of Digitization, <https://www.gov.pl/web/nauka/otwarty-dostep-do-publicacji-naukowych> (access 8.2.2019).

General principles – determining the rightholder

From the point of view of the author, the most important issue is to determine whether he is the subject of the rights to his scientific publication. The continental-European *droit d'auteur* system is aimed at the individual, creative achievements of men and puts the personal interest of the author at the forefront¹⁸. Polish law establishes the basic principle according to which the scientific publication is a work for which the author is entitled to the fullness of personal and property rights¹⁹ (Art. 8 sec. 1 ustawa z 4.2.1994 r. o prawie autorskim i prawach pokrewnych, hereinafter referred to as the Act)²⁰. Sometimes it is also called the principle of creativity or the principle of truth, according to which the copyright law arises in the original way for the creator²¹. Disregarding this principle requires a special provision of the Act.

In practice, we often find exceptions to this rule. The first of these concerns the situation in which a publication is a scientific work created as part of the performance of employee duties by an employer who is not a scientific institution²². At that time, all employer's proprietary rights are vested in the employer. This provision is general. It proposes a compromise solution, trying to reconcile the opposite principles: labour law, according to which the employer appropriates the results of the work of the person employed, and copyright, according to which the author of the work is entitled to copyrights²³. Another example is a scientific publication being a work created as part of the performance of employee duties towards a scientific institution²⁴. At that time, the fullness of personal and property rights is limited by the right of priority of publishing, which in this case is vested in the scientific institution of the author's affiliation. Nevertheless, the aforementioned Act gives them this right in return for additional remuneration for the author. The aim of the provision is to provide the scientific institution with the financial benefits of the work of the people employed in it and to create opportunities to build scientific prestige in this way²⁵. Finally, the publication may also be a work to which the rights have been transferred to the buyer as a result of special provisions of the employment contract or other contract. It is worth emphasizing that the indicated exceptions to the model situation in which the author is entitled to full personal and property rights cause significant legal consequences in the form of the necessity of appropriate arrangements with the abovementioned entities.

However, determining the rightholder under the abovementioned provisions does not prejudice which entity will be entitled to decide on the publication of the work in the open model. Naturally, not always a scientific publication is the work of only one author. Very often the author shares his rights with other participants in the process of creation. The distribution in open access of a publication that is

a co-authored work or consists of connected works requires unanimity of all entitled²⁶. On the other hand, the inclusion of a collective work in open access requires the consent of the producer (publisher) and the consents of the authors of all composition works. The author may independently publish in open access only his component work, and only if he has not transferred the rights to this work to the publisher on the exploitation fields necessary for the given model of open access. Co-authors or authors of connected works who are unanimous about the inclusion of their scientific publication in open access may authorize one or a third party to perform appropriate actions. However, such a power of attorney does not have to be granted in a specific form. Depending on the selected open access model, the authorization may only apply to technical activities (placement in an online repository) or legal ones (granting a license). It is necessary to ensure sufficiently explicit content of the authorization and its confirmation by all entitled. The lack of unanimity among co-authors may mean the necessity to give up open access model. Namely, if the release is opposed by one of the co-authors, the author can either try to extract their contribution and make only a separated part of the work available, or request a decision by the court²⁷. But court proceedings are not a practical solution, because they do not guarantee consent – according to the Act, the court rules on the interests of all co-authors. However, when the release of a work is opposed by any of the creators of connected works, the author is in a much better situation, because due to the actual separateness of his work, it can easily be separated and made available to the artist alone. As it appears from the above, the lack of consent of the publisher of a collective work does not prevent the author from placing his composition work in open access, unless he has transferred the rights to the publisher. In practice, however, the situation may be more complicated. Some publishers take the position that the changes introduced to the author's manuscripts during the publishing process lead to the addition of a creative contribution to the publication.

¹⁸ W. Szpringer, *Koncepcja Open Access w świetle ekonomicznej analizy praw własności intelektualnej*, Warszawa 2011, p. 47.

¹⁹ D. Flisak, Citing, [in:] D. Flisak (ed.), *Prawo autorskie i prawa pokrewne. Komentarz*, Warszawa 2015, p. 160

²⁰ T.j. Dz.U. z 2019 r. poz. 1231.

²¹ J. Barta, R. Markiewicz, Citing, [in:] J. Barta, R. Markiewicz (ed.), *Prawo autorskie i prawa pokrewne. Komentarz*, V ed., Warszawa 2011, p. 121–122.

²² Art. 12 of the Act.

²³ J. Barta, R. Markiewicz..., p. 146.

²⁴ Art. 14 of the Act.

²⁵ A. Szewc, *Wynagrodzenia twórców i wykonawców w prawie autorskim i wynalazczym. Projekty wynalazcze, utwory, artystyczne wykonania, fonoi wideogramy*, Sopot 1999, p. 27, et seq.

²⁶ More about co-authorship and related and dependent works – R. Markiewicz, *Zabawy z prawem autorskim*, Warszawa 2015, p. 44.

²⁷ K. Siewicz, *Otwarty dostęp do publikacji naukowych. Kwestie prawne*, Warszawa 2012, p. 45–46.

Assuming that this is the case, in this way the development of a work or a co-authored work would be created. Indeed, in the editorial process the publisher can add his own creative elements for publication, and besides, his overall look can be protected if it is the result of a creative selection of elements, even non-creative ones. On the other hand, it is difficult to find a creative contribution in activities such as the implementation of linguistic correction, which is subject to external and reasonably strict limitations of language rules. Therefore, many doubts can be easily avoided by putting in the open access the final author's version, not the version after editing. However, it is best to ensure that the agreement with the publisher includes provisions that allow placing the work in the version processed by the publisher in the open access or immediately select the publisher already operating in the open access model.

Ways of proceeding at various stages of publication

The scope of rights an author must have to put a publication in open access depends on whether the author wants to implement open access gratis or libre. However, the procedure possible from the author's point of view will vary depending on the stage of publication of the author's decision to use the open access model. The most desirable solution is to establish contracts for scientific publications (including employment contracts) so that publishing these works in open access is possible without the need to terminate or annex these agreements. Ergo, the situation in which the author of the publication has decided to use open access in the future before concluding the contract. This applies to the situation of introducing into the contract provisions that will provide the author with a sufficient scope of rights after signing the contract. In addition to carefully mentioning the fields of exploitation in this agreement, i.e. the scope of the rights covered by it, it is clearly worth deciding that one of its goals is to preserve the author's rights necessary to place the publication in open access. It is also worth describing how the parties understand the concept of open access. For example, properly structured agreements may enable the author to collaborate with the publishing house and to place the publication in an open access in parallel. In practice, this usually requires asking the publisher to change the standard template of the publishing agreement that he uses. Often, such a model is a contract that transfers laws in a very wide range. It should also be noted that some publishers refuse to accept materials previously published. Therefore, authors who want to cooperate with such publishers must refrain from placing the publication in open access at least until the issue is clarified. If, however, for some reason, the publisher

does not agree to modify his standard contract template, open access can also be provided by means of an annex with appropriate content²⁸.

However, if the contract transferring the copyright has already been signed or the exclusive license has been granted and it is not possible to change it, it is still necessary to examine what rights it leaves to the author. This may allow publishing at least open access gratis (open access libre requires keeping unencumbered rights in all known fields of exploitation).

Polish legislation has established an interpretative rule, according to which all copyright agreements, transferring both the right and licenses, concern only the exploitation fields explicitly mentioned in those agreements (the principle of specification)²⁹. The statutory requirement of express mention, the parties will undoubtedly fulfil when they specify the fields of exploitation, using statutory terminology. It is also possible to use terminology that deviates from the statutory one, however, then the parties should use formulations that exclude interpretative doubts, for instance by introducing definitions of individual fields into the agreement³⁰. Wherein all doubts should in principle be resolved in favour of the author, which means that the lack of mention of a specific field of exploitation in the contract results in keeping it on the part of the author. During the interpretation, the circumstances accompanying the conclusion of the contract and the behaviour of the parties during its conclusion and execution are taken into account. In addition, apart from the transfer of rights to the fields of exploitation specified in the contract, the agreements may contain additional clauses, e.g. prohibiting the author from competing with the publisher or similar. Thus, any contract for a work that the author would then like to put in open access should be carefully analysed. The analysis of contracts is also indicated for the reason that the contract may sometimes open the creator of additional solutions, even if, as a rule, the copyright has been transferred to the publisher (e.g. contractual right of termination or withdrawal).

In the case of annexing agreements that do not leave the author sufficient entitlements, this of course requires mutual consent of the parties. Depending on the concluded agreement, it will be necessary to either sign a new agreement transferring the rights back to the author (respectively: solving the exclusive license), or annexing the signed contract by granting the author a return license to their work, authorizing

²⁸ List of author's annexes on the Open Access Directory pages, http://oad.simmons.edu/oadwiki/Author_addenda (access 25.3.2019) and sample addendum developed for Harvard FAS faculty, https://osc.hul.harvard.edu/sample_addendum/ (access 25.3.2019).

²⁹ Art. 41 par. 2 of the Act.

³⁰ P. Ślęzak, *Prawo autorskie. Wzory umów z komentarzem*, Warszawa 2018, p. 25.

them to grant free licenses (in this case as a sub-license). These solutions differ from the formal and legal side, but in practice they lead to the same effect – the possibility of placing the publication in open access by the author himself.

The situation appears slightly less preferable if the contract unfavourable to the author has already been signed and the purchaser of copyright does not show the will to cooperate in its termination or annexation (or it cannot be contacted, e.g. due to the passage of time). Then the author may actively use the copyright law protecting them. One such provision is the prohibition of contracting for unknown fields of exploitation³¹. In other words, the rights to use works in a certain way can be transferred only from the moment when the given field of exploitation appeared in the technical and economic sense. Therefore, some authors assume that contracts concluded at a time when the Internet or other such information and communication technologies did not exist at all could in no way cover the exploitation fields necessary to implement open access for free³². Simply put, authors may use this copyright law to place their archived publications free of charge, even if they have transferred their proprietary copyrights to them in a wide range. However, the law does not provide any hints allowing to precisely determine the date on which the “Internet” fields of exploitation came into existence. The later the contract was concluded, the greater the risk that it could effectively transfer the rights in these fields, provided that they were mentioned in it clearly³³. Nevertheless, not all representatives of the doctrine support this view. Some authors express the position according to which separating a new field of exploitation means that previously concluded contracts did not cover this method, even if the parties agreed to transfer all of their proprietary copyrights. Thus, if the author has transferred the rights to print reproduction years ago, it does not mean that the buyer can, without a new contract, make the so-called electronic publication³⁴. Some additional possibilities give the author the provisions of articles 56 and 57 of the Act. The first of them allows the author to withdraw from the contract or terminate it due to important creative interests. It is a law resulting from the Act and it cannot be excluded in the contract. However, this provision is difficult to apply and is subject to a number of guarantees for the current buyer. The author must above all be able to show that his important creative interests speak for the termination of the contract. In addition, if the creator intends to use the work (e.g. deposit it in an open repository) within two years of withdrawal or termination, he still has to offer the current purchaser the use of the work in this manner³⁵. In turn, paragraph 3 of the same article 56 determines the rules for the author to secure the costs that the buyer will incur as a result of withdrawal or termination. If the buyer requests collateral for these costs, this may be a condition for the effectiveness of withdrawal or termination. Article 57, paragraph 1 of the Act allows to

withdraw from the contract or terminate it if the buyer or the licensee who has undertaken to distribute the work does not proceed with the distribution within the set time limit, or, in its absence, within two years of accepting the work. From the point of view of authors, who would like to put their publications in open access, the usefulness of this provision is limited, as it only concerns situations in which the buyer (e.g. the publisher) did not start dissemination. Although there are several legal methods to make work available in open access at this stage of publication, none of them is a sufficient and absolutely applicable in any case.

Conclusions

Open Access has been gaining momentum over the past few decades. Researchers want their work to be maximized. The more often the results of their work are quoted and used, the better their career develops, and the institution in which they work gives the opportunity to raise funds. It also brings unquestionable benefits to science and society. Poland still remains a country where the Open Access movement is only gaining popularity. However, achieving open access publications is already possible based on the above-mentioned regulations and methods. And yet, the law should still change, so that it can be used in a more innovative way. What is more important is not only the normative but also the cognitive aspect of law. There is a need for procedural mechanisms that allow the use of knowledge of which progress is ahead of legislation³⁶. Open Access is not a completely revolutionizing movement of the issue of publication. Surely, neither is it a remedy for problems that scientists and authors have to face in the context of ever-growing communication technologies. Undoubtedly, however, it is one of the few tools that try to keep up with the progress of civilization and respond to the needs constantly emerging in society. However, it should be remembered that, as the creators and founders of the movement emphasize, although the idea of Open Access is simple, it is still being rediscovered. Its goal is not bypassing peer review and converting scholarly communication blogging and Wikipedia entries, nor disregarding copyright in the name of a greater good³⁷. Currently, Open Access is not just a dream of a group of activists or a perspective that is born in the minds

³¹ Art. 41 par. 4 of the Act.

³² K. Siewicz, *Otwarty dostęp...*, p. 48–49.

³³ Art. 41 par. 2 of the Act.

³⁴ E. Traple, *Citing*, [in:] J. Barta, R. Markiewicz (ed.), *Prawo autorskie i prawa pokrewne. Komentarz*, V ed., Warszawa 2011, p. 332.

³⁵ Art. 56 par. 2 of the Act.

³⁶ Cf with *Regulation beyond the Law? New Approaches to Social Regulation under Conditions of Complexity, Uncertainty and Risk*, conference materials, Münster, 16–19.2.2011, after W. Szpringer, *Koncepcja...*, p. 56.

³⁷ P. Suber, *Open Access...*, p. 164.

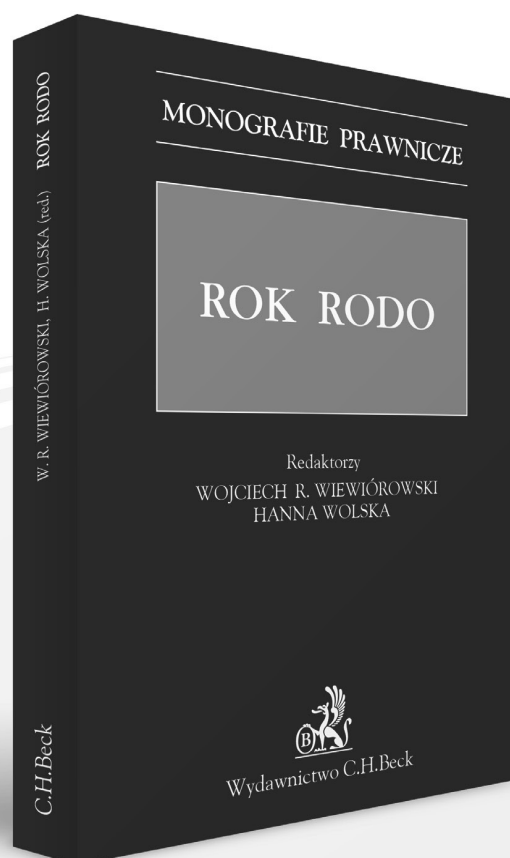
of visionaries. Open Access is a reality that will expand its impact every day. In the hands of the authors, as entities of the greatest importance in the process of creation and publication, it is the use of this tool in such a way that it becomes

a real chance and results in removal of a major distraction by allowing them, if they wish, to focus on what is likely to be true rather than what is likely to sell.

Keywords: Open Access, copyright, publication, work, determination of the rightholder, computerization.



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