

Open Licensing's Impact on Higher Education Resources Colombian and Catalan Approaches

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This text reflects the situation at beginning of 2008

Abstract. A new initiative has sprung on the path created by the Open Access (OA) movement: Open Education (OE). The initiative's aim is to open up all educational resources at all learning levels. In order to achieve this goal, several international institutions, like UNESCO and the OECD, have published reports, surveys and documents to help educational institutions in this endeavor. This global initiative needs a legal framework; as a result, efforts thus far have usually resorted to Open Licensing (OL), especially Creative Commons (CC) licensing. In fact, as a response to this new movement, Creative Commons launched a new program, *ccLearn*¹, which recognizes open licensing's impact on education and directly supports the idea of open educational resources (OER). However, there still remain a good amount of open questions: What is happening locally with OL in higher education? How are educational institutions receiving the initiative? How is it that the OL initiative relates to educational resources? Are there local examples of open educational resources (OER)? How do these local instances incorporate CC into their educational frameworks?

To this effect, this analysis aims to focus on the legal approach and specifically on the way the educational sector is using open licenses outside the English speaking world. It will do so by looking at the current situation in two specific scenarios, the Colombian and the Catalan experiences with open educational projects at the higher education level.

Keywords: Open Education, Open Licences, Creative Commons, ccLearn, Educational Resources, Colombia, Catalonia

1. Open Education (OE) now

“Open” (as opposed to “closed”) refers to the idea of allowing anyone (open) uses over intellectual productions that are, according to copyright law, the author's privilege to control (to close). The idea of “open” stems from (or is strong tied to) the idea that sharing and spreading knowledge for society, of which there are several related initiatives in different areas, though the free/libre open source software (FLOSS) initiative during the

¹ <http://learn.creativecommons.org>

90's is worthy of note. FLOSS advocates not only shared the idea of openness, but found a juridical solution to fit it within the copyright frame: software licenses to allow everyone to use, copy, share and modify software under the "copyleft" condition. Since then, the use of licenses has become a common tool to modify the scope of the law.

The idea of "open" has also reached the educational sector as a consequence of a remarkable development: the movement for an OA to knowledge in the Sciences and Humanities. Scholars first reacted to this structured alternative to academic publications and are now following the path started by the OA movement in order to develop this new initiative, Open Education (OE), to support joint efforts and standards on the learning process. The OE initiative's aim is to open up all educational resources at all learning levels. Growing interest around this idea in recent years has been focused on the Open Educational Resources (OER) concept. OER is a concept that has evolved since its inception in 1994 when Wayne Hodgins coined the term "learning object", popularizing the idea that digital educational materials could be reused in different situations. Four years later, David Wiley proposed the application of the FLOSS principles to content, introducing the term "open content". In 2001, when MIT announced OpenCourseWare and CC released its first set of licenses, ideas for technological and juridical strategies towards openness were assembled and many could start to use them in practice.

Though the term "OER" was first used at UNESCO's 2002 Forum on the Impact of Open Courseware for Higher Education in Developing Countries², there is no agreement on a single definition. UNESCO used the term to refer to "the open provision of educational resources, enabled by information and communication technologies, for consultation, use and adaptation by a community of users for non-commercial purposes". This restriction to non-commercial purposes is contested by some authors like David Wiley, who proposed his own open educational license³ advocating for a close dedication to public domain to allow any modification without any restrictions. Thus, we may define OER as any educational material or resource that is free (of charge) to be used, modified and combined without any restrictions. Among OER, we may include output from the creation of FLOSS and development tools, the creation and provision of open course content, and the development of standards and licensing tools.

The OE initiative has an important support base. Several institutions, like UNESCO or OECD⁴, have joined in the effort and are contributing to

² <http://unesdoc.unesco.org/images/0012/001285/128515e.pdf>

³ Wiley, David (2007) Open Education License Draft, Iterating Towards Openness, 8th August 2007, <http://opencontent.org/blog/archives/355>

⁴ <http://www.oecd.org/edu/oer>

building standard frameworks for community development, financing publications, reports, surveys and documents to help educational institutions analyze and adopt OER. As with the OA movement, OER adoption needs to address strategies that guarantee "openness", and these strategies should not only address technological concerns but also legal barriers. The fact that ideas like sharing and spreading (both basic to the "open" concept) need a legal framework that works with copyright restrictions is usually resolved by open content licensing, primarily through CC licensing (Fitzgerald, 2007). Surveys show that CC licensing is the preferred legal tool to reinforce "open" strategy (OECD, 2007). As a result, the CC community has shown special support for this educational approach. As an organization, CC started an education program, ccLearn, which recognizes the impact of open licensing on educational resources and explicitly addresses the important issues surrounding OER.

On the other hand, there have always been voices asking for a specific educational license. Inside CC the discussion about the necessity of such a license has surfaced and vanished periodically. The above mentioned proposal from David Wiley to use an open educational license different from the current licenses is the last proposal on this matter. Wiley suggests that any of the existing licenses do not match the needs of OE: reuse, rework, remix and redistribution. His license is almost a dedication to the public domain, something that might be difficult to extend to many jurisdictions.

The international movement to promote and develop open resources for education is strengthened by its growing number of users (Carson, 2006 or OECD, 2007). Regarding users, there is little surprise in finding that surveys on OER projects showed not only an incredible growth rate, but also that the majority of them and their products are located in English-speaking countries in the developed World (OECD, 2007). These numbers bring to the fore a new set of questions regarding OER projects in non-English speaking communities, where data and surveys on usage and impact are scarce.

It is necessary to look at alternative usage scenarios and users. In doing so, we are likely to find not only important initiatives that translate successful projects from the English speaking developed world into other language communities and developing countries (like the Universia-MIT project amply mentioned in the international bibliography), but also local production. This paper aims to discuss alternative local experiences that are outside the current international surveys, and to compare international findings regarding these issues to the specific experiences of Colombia and Catalonia. While doing so, we seek to open new study topics and introduce other considerations into the study field.

This analysis will focus on the legal approach and specifically on the way the educational sector is using the licenses. The adoption of a juridical strategy has been crucial to the design of open standards from its inception, since defining a legal framework becomes necessary to match the institution's philosophy with the "open" idea. Devoid of a legal strategy, the exclusive legal copyright privileges of the rights holder will be a barrier to the desired openness. Therefore, raising the users' and producers' level of awareness of the legal effects of their philosophy is recognized as one of the challenges of the movement. In a global world, this lack of awareness should also be mentioned as one of the causes of the minor impact of OE projects outside the stronger influence area (English speaking developed countries).

Until recently, many of the practices of the educational sector regarding the use of copyright protected material fell outside the scope of copyright law because of its limits (mainly fair use) and the fact that they happen outside of the commercial world. However, technology arrives before legal boundaries and here,here; it swept external legal concerns to the new educational sphere.

The open movement can be seen as a way to explore means to legally and formally keep educational practices in the new technologies environment in spite of legal and technical boundaries arriving with them. The open movement in education appeared and evolved in developed countries where the need to adjust the philosophy to formal technical and legal standards was at stake, with the aim to make it evident to many others. However, the way these concerns are being addressed outside the English-speaking developed world highlights different issues.

The article begins with the Colombian case where, as in many other developing countries, it was only recently that copyright in the educational sector became an issue. In countries like Colombia legal boundaries of copyright are meaningless because in daily practice sharing and spreading knowledge is norm and thus taken for granted⁵. Teachers seem to rely on the "academic" status of educational resources to reuse third party content, without considering that one of the differences between copyright and author's rights system is precisely the scope of the system's limits. In this later system, academic or educational uses are called limits or exceptions and they have a very narrow legal interpretation scheme. Exceptions grant permission to reuse works for academic purposes but rely on very specific case descriptions. Therefore those exceptions have a very narrow scope, hardly available for the digital world and far from the existing fair use doctrine in copyright systems spread in the web.

⁵ This is the case of social commons ideas as described by Ronaldo Lemos for the cultural industry in Brazil (Lemos, 2007).

2. Open licensing in the repositories of the Colombian universities

Colombians (teachers and students) are using Information and Communication Technologies (ICT) to teach and learn as they have always done: without a concrete concern for the legal framework but with the idea of sharing as a social practice. However, the trend to address legal concerns has reached the Colombian educational sector; alternative licenses (like CC) are being used and a call to share and spread is in the discourse, but in the practice, people are addressing recently discovered legal concerns mainly against social practices.

Colombia is a developing country in South America with Spanish as the official language. According to official information in 2007⁶ there were 279 higher education institutions (including technical institutions) with 77 universities and 101 university institutions among them. Public institutions' share in this universe was nearly 30%. There were more than one 1.300.000 students (more than a half in public institutions) and more than 80.000 faculty.

Today Colombia is experiencing a breaking point in which awareness of legal barriers and juridical alternatives are at the core of the national discussion and analysis regarding the Educational Resources legal frame. This process has brought forth the more traditional copyright and legal concerns than the possibilities of a legal framework as a tool for sharing. Thus the aim of this part of the document is to show how OL (mainly CC licenses) have been adopted in Colombia through a process motivated by the Repository supported by the Ministry of Education in Colombia where sharing is the central idea. In spite of this, the outcome is public (free access), not open access (free access and reuse) (Maccallum 2007). In this process the copyright issue was addressed as a tool to face legal concerns, without considering it as a way to share educational practices openly. These shifted the choice from sharing and social practices to economic control and legal models. This can be seen through a discussion of the decision-making process regarding copyright in the Ministry's repository initiative and in the National University.

The first initiative through which the Ministry of Education promoted the use of New Technologies to build and use educational resources was a public competition (2005) to design Learning Objects⁷ for a repository.

⁶ <http://snies.mineduacion.gov.co/men/>

⁷ <http://www.colombiaaprende.edu.co/html/directivos/1598/article-99368.html>

Among the requirements of the contest it was established that participants (universities and their academic staff) would transfer the economic rights⁸ to the Ministry. As a result of this contest, after all the paperwork (to clean and transfer copyrights) and formal procedures, one-hundred and ninety-nine Virtual Learning Objects (as they were called at the time) were transferred to the Ministry.

The competition's copyright terms entailed several difficulties; on the one hand, the actual transfer of copyright from the author to the Ministry was complicated and costly, both in time and money. There was hardly any awareness among the community on how to "validly" use copyright materials for this type of content while the idea that everything on the Internet is "reusable" prevailed. The feeling amongst the Ministry's staff was that once transferred, there was no incentive for authors to keep working and maintain the Educational Resource, especially to update information and resources. The Ministry confirmed that in Colombia, little attention was being paid to the legal frame that determines the author/rightsholder status on Educational Resources projects. Regarding the latter, even if the law provides certain rules to deal with work for hiring contracts, public servant works, rights holder transfer proceedings etc., there are hardly any institutional regulations at the universities to deal with the rightholder's status. When they exist, normally no practical measures are taken to actually implement them (considering the formalities imposed by the law). Moreover, the design of Educational Resources projects tend to start in the universities without a previous discussion regarding the legal possibilities when dealing with protected material-

The project inaugurated a second phase in 2006, in which its legal approach changed completely. In 2006 the initiative of the Ministry was to encourage universities to share educational content through institutional repositories of learning objects (Leal, 2007). The content was to be made available for Internet users through the metadata in the National Repository of Educational Resources (*Banco Nacional de Objetos de Aprendizaje*⁹) and the actual content would be placed in the institutional repository at each university.

The Ministry provided a small funding incentive for nine Colombian universities' projects that were to select, catalog and tag the content they already had. The Ministry required that contents should be accessed via Internet without establishing any specific condition on the way they should be accessible avoiding any interference with academic autonomy. However, because a central concern was to promote "valid sharing" in

⁸ Since in the *Derecho de Autor* regime moral rights are personal rights not transferable and perpetual, they remain with the original individual author Only economic rights are transferable

⁹ <http://64.76.190.172/drupalM/>

higher education institutions as well as to sustain the repository's content, copyright issues were at stake. The decision this time was that no transfer of copyrights was needed, but that instead each and every university should clearly state the legal conditions under which the content were to be made available to the public at the repository.

In June 2007 the National Repository of Educational Resources was launched and the content of the nine universities plus the Ministry's content (from the contest) was announced as being, "*open access and downloadable according to the user license defined by each university*". The preceding quote shows a philosophical intention but does not actually describe the result. Through the project, each university was forced to define the legal grounds in which their content would be made available, and to consider if any special copyright license was going to tag it¹⁰ but OA policy was not requested.

Thus, through this initiative, the participants faced their legal concerns and fears about copyright restrictions and possibilities in different ways. Educational institutions focused their analysis with the fear of losing control over the content when using a legal tool out of the traditional copyright framework instead of focusing on a new way to confront social educational practices with the legal boundaries. The decision was not a result of the confrontation of the social practices with the legal frame, nor a result of OA initiatives or standards. Regardless, the result was that the nine universities and the Ministry defined the legal approach of the repositories content and in doing so defined their approach towards the repository users. These approaches are presented in Table I.

¹⁰ It is important to note that none of the nine universities nor the Ministry had defined really a legal frame for their educational content before this project required it.

Table I. Legal strategies chosen by participants in the National Repository of Educational Resources.

Universities	Legal Option	Details	Institution Type
EAFIT	Copyright	With some authorizations	Private
Javeriana University (Cali)			Private
National University (Bogota)			Public
Andes University (Bogota)	CC Licenses	by-nc-nd	Private
		by-nc-nd	Public
		by-nc-nd	
		by-nc-nd	Private
		by-nc-sa	Private
		By-nc-nd	Private
Pontificia Bolivariana University (Medellín)			
Sabana University (Bogota)			
Minuto de Dios University (Bogota)	Their own license	Not available	Private

The majority of the participants (six) chose a CC license but, as Table 1 shows, all of them chose the non-commercial (NC) condition, and only one of the six institutions allowed modification of content. This university, the

Pontificia Bolivariana, would be the only one matching an open standard; the other four and the Ministry itself used the most restrictive CC license (by-nc-nd) and therefore achieved public, not open, standards. The remaining three universities chose to stick to the "all rights reserved" option while the last one, Minuto de Dios, designed its own license that is not available online.

Although the Ministry's intention was a broad approach that sought to favor "open standards", it is evident from Table 1 that it actually only reached "public policies": the material that is placed in the universities' repositories is publicly available, but cannot (as a whole) be copied, redistributed nor modified or reused, unless express authorization is requested, as should be if OA standards were met. As happens in the OA publications, confusion among *open* and *public* is evident. From the OA movement the confusion that this kind of legal statement shows involved mainly the users (Mac Callum, 2007), whereas in the decision making process that we are analyzing, the "confusion" might arise in the beginning by the educational institution itself. Because this decision is made without the open frame, only under copyright concerns, the result can be the opposite of what was originally sought: Projects that are "open" to social educational practices end up being "closed" because of the legal framework chosen.

In the National Repository of Educational Resources experience, the institutions' adoption of CC licenses was a legal strategy to publicly advertise the way the content should be dealt with online, but it was not a means of thinking about open standards since these were neither requested of participants, nor reached.

To understand the scope of their decision it is worthwhile to analyze more in depth the Ministry's and the National University's decisions in particular. They demonstrate how the process in 2006 resulted in more of a legal strategy to face juridical concerns and fears, and not necessarily as a tool to encourage the actual philosophical educational approach of each participant.

Clearly the Ministry's goal was to foster a community of sharing and a wide scope of diffusion as was specifically mentioned. But when the Ministry made the decision as a copyright holder, its choice was to adopt the most restrictive CC license preventing modifications, which are central for openness in this sector.

According to the functionaries in charge, the main reason to adopt this license was the fear that even if a rights holder authorized modifications, it could interfere with the moral right to integrity that would remain with the original author. They feared that this situation might eventually affect the Ministry and hold it liable (due to risk of litigation). This fear was reinforced by the office in charge of copyright policies in Colombia

(*Dirección Nacional de Derechos de Autor*), which suggested that the possibility of legal remedies regarding moral rights is still to be measured because of the scarce rate of litigation on copyright issues in Colombia. Furthermore, this office comments on their belief that if this trend changed, new tensions in the current copyright discussions would surface, because litigation by original authors on moral rights grounds would increase.

The moral rights issue has been dealt with extensively in the international community¹¹ and still no final word exists. Dealing with moral rights in unpredictable environments certainly implies risks and the Ministry is not willing to face them, despite the fact that the actual "social practices" are a legal risk on their own and, despite the importance of localization and sharing that the pedagogical practice claims. The fear of litigation seems to prevail when the institution has to declare the policy, while it is ignored when it exists as a social practice.

The other interesting decision-making process is the case of the open courseware project at the National University in Colombia "UNvirtual" that is developed by the *Dirección Nacional de Servicios Académicos Virtuales* (DNSAV). DNSAV has developed a philosophically open project, but when asked to choose the legal strategy to be part of the Ministry's repository, surprisingly, they chose "all rights reserved". UNvirtual is a courseware project that offers e-learning material to support the regular educational activities of the University. UNvirtual's server logs (downloads and visits) show that since its launch, very soon after, the project was recognized in the Latin American internet sphere and its content was being used by users throughout the continent.

The scope of the project was very broad and close to "open" policies, comparable in time and range, but not in its environment or funding, with MIT OpenCourseWare. It was born in 1998, and was designed to provide wide access to the courses it harbored, under the idea that anyone might use them, even allowing download and modification¹². They expected attribution, but never addressed a specific juridical policy different from "all rights reserved"; actually they were very reliant on social practices, leaving open the possibility of reuse. Technically, they allowed and encouraged open possibilities for free spreading and sharing of the material; furthermore, they felt flattered if it was reused so long as the

¹¹ In the porting of the CC licenses http://64.233.179.104/translate_c?hl=es&sl=en&u=http://wiki.creativecommons.org/Version_3&prev=/search%3Fq%3Dopen%2Bcontent%2Blicenses%2Bmoral%2Bright%26hl%3Des%26client%3Dfirefox-a%26rls%3Dorg.mozilla:es-AR:official%26hs%3Dcu7, in the community discussion lists arises from time to time <http://lists.ibiblio.org/pipermail/cc-licenses/>, and in papers that approach the issue: Fitzgerald, 2007 or McCracken, 2006.

¹² As they appear drafted in the policies of the institution not yet adopted

source was recognized, although some cases of plagiarism have been detected and are viewed as highly problematic. Because of the orientation of their previous efforts, DNSAV's decision confirming the traditional "all rights reserved" approach when joining the National Repository of Educational Resources was totally unexpected.

Why did DNSAV choose "all rights reserved" given their experience and philosophical relation to "openness"? The fact that technology facilitates the "reuse" of content was sensed at the national university as a huge pedagogical possibility and was used to develop a pioneering project like UNvirtual, but, when forced to frame it in a legal context, many concerns and preoccupations arose. The decision was probably influenced by many circumstances: changes in directives, concerns by the public policy copyright office (as mentioned by the Ministry), etc, but it is important to draw attention to the issue of "ownership" linked to the copyright idea.

Being a public university, the law assigns, in many cases, the copyright economic control of the content produced in its context to the state, leaving moral rights to the actual individual authors. As such, public authorities considered that when the university is the rights holder, the content is the state's "property". Therefore, even though the National University would have been glad to agree to an open approach, those responsible were concerned in their function as guardians of this "property"¹³. On the other hand, traditionally, the copyright idea related to "ownership" is that by controlling access to the work the rights holder will obtain economic revenue, and will keep an important competition tool especially in areas where resources are scarce. Therefore, functionaries at DNSAV were uncertain regarding the possibilities of losing legal control over the content and then having to face questions on the project's financial sustainability¹⁴ because they were leaving aside an important "competition tool". Here, the paradigm of control as a means to obtain economic resources ("to sell" it, to reinvest in the project) and market competition surfaces clearly and leaves aside social revenue of educational sharing practices.

Today the project is still publicly available through the university's web page and the National Repository of Educational Resources. UNvirtual is still one of the main national online courseware projects with more than 220 courses and more than 26,000 daily visitors from at least 125 different

¹³ Joint document for public servants from Dirección Nacional de Derecho de Autor and Procuraduría General de la Nación, http://derautor.gov.co/htm/legal/directivas_circulares/directivas_circulares.htm

¹⁴ Not that educational resources projects are good "business" but they believe by losing copyright control the question will remain open.

countries¹⁵. It is still part of the OpenCourseWare project, but with the decision of adding an "all rights reserved" tag to the courses all these steps fall short of open standards. UNvirtual is trying to establish a business strategy for sustainability and trying to define how copyright fits there. Even though UNvirtual switched from a primary OA approach regarding its social practices to a standard "public access" kind of policy, copyright for them is not yet a tool to share, but instead a means to face legal concerns. Therefore the issue is far from settled.

We continue with the Catalan experience where the awareness about copyright is spread but there are a lot of misconceptions. Author's rights are well known but there is a lot of misinformation about exceptions and fair use. There is still a myth about the reuse of any material available on the net: if it is there, it is free to use. However, new projects to disseminate educational resources have transformed the way scholars see those rights when they are applied to them. Although some projects advocate for openness and the use of free licenses, there is an overprotective perspective guiding them to use the most restrictive conditions/licenses.

3. Open licensing in educational projects in Catalan universities

Catalonia is a nation in the kingdom of Spain with an autonomous government that has competences in education, including higher education. The language of the country is Catalan although Spanish is also official. There are twelve universities, eight of them public, with 225,000 students and 16,000 faculties.

In recent years the interest in projects dealing with learning materials is increasing among all the Catalan universities. Following the path started by the MIT, some of them have joined the international OpenCourseWare consortium¹⁶ and others have started their own project to make their educational content available through the net. Although each university is developing its own project, there is also a common effort to build a collaborative educational repository that will harvest content from existing ones and will offer the chance to deposit new content if it is needed. This common repository is still a project but is similar to other consorted repositories developed by CESCO (Supercomputation Center of Catalonia) and coordinated by librarians through the CBUC (Catalan Consortium of

¹⁵ According to the 2005 and 2006 DNSAV annual reports that show that the published courses in the UNVirtual project increased steadily having about 50 courses in 2002, 182 in 2005 and, as the 2006 annual report informs, ended last year with 221.

¹⁶ <http://www.ocwconsortium.org/>

University Libraries) as Recercat¹⁷, the Catalan repository for grey literature from research, or TDX¹⁸, the thesis repository. In the first case, Recercat, it hosts collections of preprints, working papers, reports and unpublished documents all under the by-nc-nd license.

In this sense, Catalan universities are imitating their peers around the world, especially the English speaking institutions. Currently the main work in those developing projects is focused on building institutional repositories where any content from academics, including research and learning materials, will be available for all. Nevertheless there is still an unresolved issue: the lack of a general regulation of the intellectual property that arises from those documents.

Almost all the universities have developed a regulation of industrial property including a distribution of benefits from patents and other technological developments. However, no institution has paid much attention to author's rights. Probably the main reason is that the generation of learning materials and its distribution has never been seen by institutions as a possible source of income and therefore, the scholar has never asked for permission to publish educational content anywhere.

The problem arises now when a university wants to establish an open policy concerning the educational resources and it asks itself if an authorization is needed or not. Surprisingly, almost all the projects have begun without a real discussion among the members of the community about the rights of the content. It seems all the projects are following a trend while some important issues are left aside. The main worries are focused in technology.

The establishment of a repository within an institution could be seen as a good excuse to begin a debate about who holds the rights of a content developed to be used in class. Some universities have regulation on particular cases, but usually there is not a complete regulation about intellectual property. In Spain, the law contemplates the situation of the copyright within a working relation: if the work is created by an author as part of her work, the exploitation rights belong to the employee, though the moral rights will always be held by the author. Normally, this article from the law is not applied in the university in the case of learning materials although sometimes it is used in other cases. This lack of regulation is not an isolated problem in Catalonia; it seems to be a general problem across Europe, with some exceptions.

The exception in Europe can be the United Kingdom where we find clear regulations on copyright though there are different approaches. A report from the Zwolle Group (Friend, 2003) shows three different

¹⁷ <http://www.recercat.net>

¹⁸ <http://www.tdx.cbuc.es>

scenarios: individuals own copyright with a license to the institution, institution own copyrights but the university agrees not to benefit from the individuals' work, or the institution owns intellectual property rights but there are some exceptions¹⁹.

On the other hand, knowledge about intellectual property is very poor among academics. There is awareness about authors rights, but a lot of misunderstandings and disinformation. A scholar can use the fair use doctrine to access any content and reuse it without knowing that the Spanish law has a narrow educational exception not as broad as fair use.

In spite of the lack of an intellectual property regime, the universities have started the projects. From them, we can detect three different groups; the first one includes those institutions restricting access just to members within their own community. In the second group we find those that make their content publicly available, but do not go any further. They are using the well known "all rights reserved" sentence. Finally, we can find a third group that allows a reuse and remixing of their educational resources through the use of the CC licensing model.

Let's talk about this last group. As we have seen, there is not a clear position about the copyright issue and therefore the university allows their teachers to decide which license to use. The first Catalan university using CC licenses was the *Universitat de Barcelona*, its affiliated institution in Spain. Following the MIT model, the university offered its members the possibility of licensing their content under a by-nc-sa license adapted to the Spanish intellectual property law and to the university. However, suggested by their own lawyers at the university, it also offered a second choice, their own version of by-nc-nd. Regarding the choices made by scholars so far, one third of the works are published allowing derivative works requiring the ShareAlike condition, and the remaining two thirds are licenses excluding any kind of derivative works. The situation has changed with the new institutional repository and currently the choice is open to any of the six core licenses from CC.

The universities inside the OpenCourseWare consortium are following the MIT model, licensing their materials under a standard CC license. One of the goals of this consortium is making materials available to end users under "open" license terms that allow use, reuse, adaptation, and redistribution. However, it is possible to find materials under the local projects with limited access to members of their own community or materials not allowing derivative works. It is strange that an institution can adopt such a policy not allowing adaptations within a general framework that promote sharing and reuses.

¹⁹Massive http://cevug.ugr.es/massive/pdf/annex1/Annex_1_IPR.pdf

There is also something else to be taken into account when we analyze those open policies: how the universities have reacted to the OA movement. That movement is focused on research, but signing a declaration could imply some kind of openness in an institution. Until now, only four universities have signed the Berlin declarations, beside the former Department of Universities²⁰ as we can see in Table 2. Only one of the signatories has developed a public repository and its policy is not open at all.

Table 2. Situation of Catalan Universities

University	Berlin	Repository	Educational Resources	Accessibility	Licenses
UAB	no	yes	yes	restricted	No
UB	no	yes	yes	Public to all	Mainly by-nc-nd by-nc-sa
UPC	yes	yes	yes	Public to all – except some materials like the exams	Mainly by-nc-nd
UdG	no	yes	no	---	---
UdL	yes	no	---	---	---
UOC	yes	no	---	---	---
UPF	yes	no	---	---	---
URV	no	no	---	---	---

The current situation in Catalonia allows us to say that the universities are following OE projects as a trend or something that has to be done to be socially acceptable, but neglecting a lot of issues that should be taken into account. Some university authorities sign declarations in favor of openness but are not promoting a real debate about this topic within their communities nor establishing any kind of project aimed at opening knowledge.

At this point there are three issues to be discussed: the standard use of the NC clause, the broad use of a Nonderivative requirement in a project aimed to share, and the participation among scholars.

About participation we should say that teaching has never been seen as important as doing research and therefore the reward for innovation or creation of new materials has always been lower than the one obtained for publishing research results. Though tides are changing now, there is still a

²⁰ <http://oa.mpg.de/openaccess-berlin/signatories.html>

lack of motivation among scholars to publish their content. Aside from rewards or incentives, scholars are still afraid to share, not only with the public but with colleagues in their departments. In learning materials sometimes the awareness about author's rights is greater than when the same author transfers the copyright to an editor to publish a research paper.

This fear to share is also present when choosing the license. The NonDerivative clause is seen as a way to protect a reputation restricting any adaptation or translation. Maybe this is one of the reasons of the extended use of licenses with that condition, especially among social science scholars. The second requirement, the NC, is a result of the human condition: if someone becomes rich with my work I want my part. The institutions are also imposing this condition in materials that have never been seen as a possible income and if that income arrives no one will be able to distribute it due to the lack of regulation.

Another issue to be taken into account in the case of Catalan universities is the language. Catalan is the usual language used in teaching and therefore is the language used in learning materials. This can be seen as a problem when disseminating educational content because teachers are not motivated enough to spread their knowledge. However the point should not be who will use the materials but we want to share our materials to the world. The world is multicultural and this is a new chance to show it.

To end with the Catalan situation we should mention the adoption of the Bologna process, towards building a common European higher education framework that should be established in 2010. Within this process, some academics have decided to start teaching in English and therefore developing new materials. Those people could see the OE movement as a chance to show the world what they are doing.

4. Some conclusions

Universities have legal concerns regarding their educational resources and their possibilities online. Universities are using these educational resources as pedagogical tools, they are supporting teachers' involvement in similar projects, they are enabling technological support and institutional spaces for these developments and many of them are in practice doing this under open ideas. However, it is only lately that they have started to consider how to deal with the juridical aspects and implications of their decisions. This situation shows two different aspects of pedagogical practices: on the one hand the open practice of using third party materials (believing that internet content is open to public use without copyright restrictions) but deciding to close this possibility when facing their own legal policy towards third party uses. Since universities are looking at the legal framework, not at the

context of a philosophical tool for pedagogical and social practices, juridical fears are driving their choices on legal matters. How much of these decisions are influenced by the universities' poor practices regarding the definition of the author/rights holder situation is a question that remains unanswered.

The educational resources projects analyzed show that, as a general trend, people's choice is for restrictive NC licenses. The main preference for the NC clause is that it will restrict the exploitation of materials outside the educational sector, ignoring their different scopes.

Both in the Colombian experience and in the Catalan examples, CC licenses seem to be an interesting and practical way to face the legal copyright framework, but if they are not tied to wider preoccupations, i.e. to match philosophical concerns, as is the case right now, they are not part of open strategies. In the current framework, the fact that the most restrictive CC license is by far the preferred choice should still be seen as a worry for open activists; not only is it discordant with "open" philosophy, it also serves to reinforce the "public"/"open" confusion.

A thorough analysis of the legal standards for open content when applied to the universities' institutional repositories in Colombia and Catalonia shows interest in public access policies. This scenario ratifies the need to raise more awareness on the possibilities and standards of OA (OECD, 2007) because this might be an appropriate moment to find people willing to shift from public to open.

We also point out that this review draws attention to the need to look at social practices, especially since we may have more raw materials for "open practices" in this environment than for legal statements that are part of open standards. Philosophically, the educational sector shares many of the "open" movement claims, but it does not necessarily comply with the formalities that label projects as "open". However, as we have already shown, the risk is that once presented the legal framework, the juridical option will shift the social open practice to a legal public approach or even switch it to a closed option.

Even though in the Colombian case the public initiative, the National Repository of Educational Resources, is certainly the driving force behind the decision making process to address legal frameworks for educational content, it is also important to note that in Catalonia the role of the State should not be downplayed. Public initiatives can push the trend to openness (via public policies) or move the path towards closed (via doctrine), but all those will depend as well on the capacity of the educational sector to demand respect and legal frameworks for their social practices. With different frames, from those of commercial grounds, the educational sector's social practices need to demonstrate how they have also, for decades, searched for balance among users and authors.

We see that without real support from the public sector or private foundations, as in the USA and other English speaking countries, the universities and their staff are left alone with their scarce resources. Moreover, we see how universities have other priorities in addition to difficulties finding sustainability for OE projects' misleading cost and value.. Since successful projects come mainly from the Anglo-American world, that has a very different context from many other worldwide regions, universities outside of this scenario look at them with distrust. We believe that to increase the scope and impact of OE projects, we must build and showcase successful experiences of projects that are built outside of the Anglo-American world and/or that are going in the opposite direction from this current trend, i.e. projects where OE materials are being translated into English.

Consequently, it seems like the actual adoption of OA in certain countries might be reached after legal concerns are cleared; after the decision-making process forces universities to define policies regarding intellectual property. The analysis of the copyright regime vs. the alternatives (especially CC licenses as a possible option) is bringing much needed awareness to universities about the new possibilities and about OA trends that support social practices. It is possible that as a result of such reflections we will find that the number of institutions or academic projects formally adopting open standards will increase, when they realize that legal framework and copyright alternatives can be used as tools for matching existing pedagogical social practices and not only as a means to advertise legal control. This will happen if the institutions start to give value to the projects as part of the institution's needs, as important sources for materials that are otherwise paid for anyway, as important projects that give visibility or status to the institution, as training tools, etc., and not just as a means to obtain economic resources by "selling" them.

Therefore, in the awareness process it could also happen, as in fact it does, that the institutions will define their options with copyright fears and switch to "all rights reserved" (despite the social practices), or authorities in charge of copyright policies will strengthen the fear through concepts that will definitely move all of the sector backwards from the "open" paths. Those responsible will want to define an open practice when the paradigm says that the closed approach is the only path towards economical remuneration for intellectual products.

Finally, by reviewing these experiences, new questions arise. In sharp contrast to what happens in the cultural industry, the educational practices of sharing and spreading intellectual production are at the core of this sector's activity. Therefore, once the legal barriers of the copyright "rule of law" are evident to the people in the sector, will there be a fast and massive decision-making shift in legal strategies? Will many of the institutions and

projects formally adhere to open standards? Do we need to measure projects in developing countries including social practices and not only legal statements to really measure OE ideas? Or will the awareness of the legal framework in environments that traditionally are outside the juridical frame have the opposite outcome of making evident to normally open societies the “closed” option? Will this evidence increase the number of institutions adopting “all rights reserved”? How many of them will do so by considering that there is actually some economic revenue by controlling information that they were normally not in the practice of controlling? What will be the role of the state?

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