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Introduction: Intellectual Property Rights Issues of Digital Publishing - Presence and Perspectives. Papers of the Hamburg Colloquium

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This section of SCRIPT-ed contains the statements made at the FIGARO International Workshop: "Intellectual Property Rights Issues of Digital Publishing - Presence and Perspectives", which was held at Hamburg University in September 2003..

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FIGARO was set up in 2000 as a collaborative project between the universities and university libraries of Utrecht and Delft in the Netherlands, the German universities of Oldenburg and Hamburg, the University of Firenze in Italy and the private software house Daidalos in the Netherlands. Its aim was to address the crisis in academic publishing (Case 2001). At its core however was a merger of two older initiatives, the Dutch Roquade project (Grygierczyk & Savenije 2001) and the German GAP initiative(Gradmann 2001), from which FIGARO derived its acronym: Federated Initiative of GAP and Roquade. During its lifespan, FIGARO was funded with euro 1.4m from the European Union. From its inception, the aim of FIGARO was very much to throw the gauntlet in the face of the small oligopoly of commercial academic publishers. In the same way in which in Mozart's opera, the economic power of the small elite of the old regime, protected by outdated and inappropriate laws was successfully challenged by the co-ordinated action of the relative powerless, so FIGARO 's aim was to develop models of e-publishing that would allow academics and small academic publishers to stand their ground against the overwhelming power of the large academic publishers. In the same way in which the "right of the first night" in the opera failed to reflect the interests of those on whose labour it relied, so copyright law, with its emphasis on economic exploitation, fails to reflect the interests of academics on whose work scientific publishing is based.

The mission statement of FIGARO reads thus:

> *As a partner organisation within the European academic community, our mission is to enhance scientific communication by improving the speed, simplicity and cost, which we aim to do through innovations in scholarly publishing.*
>
> *We strive to provide effective and efficient e-publishing services to individual scientists and scientific organisations through the use of a shared organizational structure and the utilization of open source and standard base software tools wherever possible.*
>
> *We are committed to supporting our customers by facilitating scientific communication and the publishing process in a way that allows them to retain ownership of their work as well as present their own profile or identity.*

To do so, FIGARO aimed to realise technical innovation in the fields of collaborative document modelling and the development and implementation of a www-based shared workflow model. This would in turn result in innovative business models for e-publishing within a virtual community of academic institutions and SME's. Ultimately, this would lead to the building of a networked organisation and production platform. This networked organisation would also serve as a distribution channel for emerging technologies and new standards in the field of free-to-air and other forms of open source e-publishing. Examples of projects supported by the FIGRAO infrastructure included journals, publication sites with or without peer reviewing; institutional repositories and other forms of open archives; and finally co-publishing with traditional publishers and producing the electronic version of a journal which is already published in print (Savenije 2003). Guedon's excellent analysis of the historical roots of modern academic publishing shows just how this project was both ambitious and necessary: ambitious, because institutions developed over three centuries are not that easily swept away. Rather, they have embedded

themselves deeply in epistemological and economic practices to such an extend that today the very understanding of good science, the peer review process, seems intractably linked to a specific business model of publishing. Necessary, because he reminds us that he very reasons that brought academic journals about in the first place, timely and affordable communication between academics, is now hindered, not served by the very institution it created (Guoedon 2001). The internet gave rise to several initiatives that have the potential to address this dysfunctional development: Self-archiving by authors or institutions (Harnad 2001, SPARC 2002), open archives (Lagoze & Sompel 2001) and generally the open source and open access movement (Velterop 2002) all offer partial answers to these issues. Open access archives in particular have already made quite an impact in this field. The Public Library of Science (http://www.publiclibraryofscience.org/), the Budapest Open Access Initiative (http://www.soros.org/openaccess/), and SPARC (http://www.arl.org/sparc) are examples of initiatives that support this movement. They support new and innovative models of scientific communication, for the publishing process as well as for the economic aspects. In the UK, the Welcome trust has recently linked financial support for research to the condition of making findings available to the public for free in open archives, a move regrettably rejected by the tax funded research councils. Following and often incorporating these approaches, the aims of FIGARO was therefore to

- Execute an inspiring and instructive Europe-wide project on e-publishing within the constraints of time and budget.
- Deliver a publication platform at the end of 2004 that:
    - is firmly embedded in the European scholarly community
    - demonstrates a viable business model
    - shows a number of publication products that combine efficiency – measured in low costs and high speed – with reputation – reflected in impact-factor and branding
    - is perceived as a promising way out of the current crisis by scientists and their managers alike
    - opens up academic publications to any and all interested parties, be they from within the academic world or from outside.

The papers by Leo Waaijers (Waaiyers 2002) and Bas Savenije (Saveniye 2003) can give the reader a more detailed idea of the technological aspects of FIGARO, its underlying philosophy and business model. The workshop on *Intellectual Property Rights Issues of Digital Publishing*, organised towards the end of the FIGARO project, aimed at supplementing these economic and political drivers by a reflection on the dual role intellectual property law plays any attempt to give "science back to the scientists". In Figaro the opera, the ambiguous role of the law is exemplified by the shady Dottore Bartolo. Initially on the side of the establishment, he uses a promise Figaro made long ago under economic duress to tie him into a relation Figaro doesn't want. Finally though, he realises where his true interests are and helps Figaro escape his bond. Copyright law displays the same ambiguity: At present, it protects the establishment (commercial publishers) by binding academics through contracts made under duress (publish or perish) into relationships that don't serve their main interests – to reach the largest possible audience and engage in communication with

fellow researchers. In the future though, and with the right technological infrastructure, it may serve in freeing them from these constraints, by offering the right type of protection to authors who make their work available for free online. These and similar issues were discussed in Hamburg by a panel of representatives from academia, publishing and the legal profession. The aim was not just to analyse the present legal situation, but also to invite some stargazing: at the end of the FIGARO project, where will e-publishing go from here and how, if at all, can the law deal with the most innovative and unusual forms of academic publishing? Participants were given a list of possible topics for discussion:

- How might a legal framework be adjusted in order to preserve intellectual property rights of scientific authors?
- Charges for scientific online publications – hindrance to science or proper business ?
- Do scientific authors need intellectual property law in an Anglo-American or in a continental-European way to preserve their intellectual property rights?
- Is it useful to establish an open source system in the field of academic publishing ?
- What are the legal limits of Digital Rights Management ?
- Is the Internet a source of danger to the rights of scientific authors ?
- How is the situation of companies and especially online publishing houses that scientific authors work for ?

Some participants followed this blueprint closely; others took it as a starting point for their explorations. In all cases, their ideas and opinions contributed to a lively and vigorous discussion. Script-ed is proud to give the resulting ideas and insights a home. It is of course only right and proper that he results of a project that aims to foster open access publishing should itself be published in a free-to air online journal. Indeed, Script-ed does figure prominently in one of the papers, even though the author has to admit to some vested interests. There is however an even more fundamental reason why to choose Script-ed. Academic publishing should all be about communication. Communication is a two way process. Traditional publishing, by contrast, is more akin to lecturing: the reader takes what is offered to him, which little or no chance of reply. Long turnaround times in academic journals make it close to impossible to enter into an extended debate. The limitations of traditional publishing have by now affected the way in which academic business is conducted. Conference proceedings differ little from journal papers. More than that, often conferences which should invite discussion are reduced to the reading out polished pre-fabricated papers. The tail of publication wags the dog of academic research, and that what is distinctive about conferences gets lost. The conference organisers addressed this issue form their side: pre-formulated papers were discouraged. Instead, oral presentations and the ensuing debate was audiotaped. After the conference, participants received transcripts of their contribution, which they could edit and amend by the issues raised in the discussion. This ensured that despite the different background of the participants, lively and engaging encounters were made possible. Should online journals merely mirror their off line counterparts, this attempt to give academic debate its due would ultimately fail. This however is not the philosophy of Scipt-ed. Online publication is for us not just a cheaper way to do the same old things. It has the potential to be a superior way

of engaging the audience, by combining the traditional paper with other forms of delivery. For this conference, we tried to get as much leverage out of the unusual format as possible. While uploading the audio files had to be abandoned due to technical difficulties (but future conference organisers take note), we kept the transcripts of the oral presentations pretty much as they are, with some minor editing for readability. The result, we hope, preserves much of the flavour, local timbre and sense of location of the original conference. And yes, sometimes it helps to read the text out loud. The reader won't find heavily footnoted papers, with every claim hedged and every statement qualified. The result is often bolder, and more risky, then traditional forms of presentation. If it creates as a result the strong emotional agreement or disagreement that is often the starting point for one's own thinking, the conference organisers did their job well.

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