



# MedOANet: The Copyright and OA Landscape in Mediterranean Europe

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## Abstract

The aim of this paper is to present existing copyright policies of major stakeholders of scholarly communication in Mediterranean countries and to discuss whether these copyright policies need to be improved and by which measures. In order to do so, this paper firstly introduces MedOANet, which is an EU-funded project whose aim is to enhance existing national policies, strategies and structures for OA and to contribute towards the implementation of new ones in Mediterranean countries, namely France, Greece, Italy, Portugal, Spain and Turkey. Secondly, this paper gives an overview of the results of a survey which was conducted in 2012 amongst research publishers by MedOANet. Thirdly, an interpretation of the most striking results of the survey is given: research publishers based in Mediterranean countries have, on average, very OA-friendly copyright and self-archiving policies in place. Some improvements could be achieved by developing an OA-conducive campaign of awareness raising; additionally, the author of the article suggests that national policy-makers support OA as the default method of scholarly communication by introducing legal provisions into copyright law that enable researchers to go for a Green Road publication independently of prior assignment of exploitation rights to publishers.

**Keywords:** Open Access; copyright; Mediterranean Europe; MedOANet project

## **1. Introduction: The MedOANet project**

Large, national research funders in Europe support the Open Access (OA) publication of research results;<sup>1</sup> the EU Commission is calling for coordinated policies to implement OA (European Commission, 2012, July 17a). In the next funding framework “Horizon 2020”, the OA publication of all funded research results will be required (European Commission, 2012, July 17b).

As yet, coordinated action for establishing OA structures in Europe has been scarce. In 2011, however, six countries (namely Portugal, Spain, France, Italy, Greece and Turkey) from a unique and unifying cultural and geographical background — i.e. the Mediterranean region — joined forces in the FP7-funded project MedOANet (Mediterranean Open Access Network) in order to enhance existing national policies, strategies and structures for OA and to contribute towards the implementation of new ones in an internationally coordinated fashion. MedOANet<sup>2</sup> also promotes the national and regional coordination of policies, strategies and structures in these six countries and beyond. The MedOANet consortium comprises partners from six Mediterranean and three “Northern” countries, which play a key role in providing access to research results and in the distribution and preservation thereof:

- Centre National de la Recherche Scientifique (CNRS — France)
- National Documentation Centre/NHRF (Greece — project coordinator)
- Consorzio Interuniversitario per le Applicazioni di Supercalcolo Università e Ricerca (formerly CASPUR, now CINECA, Italy)
- University of Minho (Portugal)
- Fundación Española para la Ciencia y la Tecnología (FECYT — Spain)
- Hacettepe University (Turkey)
- European Network for Copyright in Support of Education and Science (ENCES — based in Berlin)
- The Stichting LIBER Foundation (LIBER — based in The Hague)
- University of Nottingham (UK)

The main aims of the project are to:

- strengthen and coordinate existing OA strategies, structures and policies in each of the six Mediterranean countries and across the Mediterranean region as such;
- identify and map existing structures and strategies with regard to OA in the six Mediterranean countries;
- include political decision-makers and stakeholders for OA who are able to bring about change;
- produce guidelines for political decision-makers that will help them implement the recommendations of the EU Commission efficiently with regard to the OA publication of scientific information.

MedOANet builds on a network, which was established during the seminar “Open Access to Science Information: Policies for the Development of OA in Southern Europe”.<sup>3</sup> This seminar took place in Granada in May 2010; it was prepared by SELL<sup>4</sup> and organised and held by FECYT.<sup>5</sup>

A systematic mapping of the current situation of OA in the participating countries was undertaken during the first phase of the project. The purpose of the mapping was to provide a more nuanced understanding of the structures currently in place regarding OA in Mediterranean Europe. The mapping was carried out via three surveys addressed to research funding organisations (RFOs), research performing organisations (RPOs) and research publishers in each of the MedOANet countries. The three surveys gathered quantitative and qualitative data from RFOs, RPOs, institutional repositories and publishers in order to elicit existing OA, self-archiving and copyright policies.<sup>6</sup>

The aim of this paper is to present the results of these surveys with regard to existing copyright policies of major stakeholders of scientific publishing in Mediterranean countries and to discuss whether these copyright policies need to be improved and by which measures.<sup>7</sup>

## **2. Analysis of the answers to the surveys, with regard to the current copyright situation**

Legal provisions, most of them still dating from the pre-digital age, regulate the flow of information in the information society, which is why copyright

legislation is decisive for the success of OA as a standard for scholarly communication. Where copyright owners do not allow for OA, it will not happen. When mapping the current situation of OA in Mediterranean countries, it is therefore important to know which copyright policies are actually in place.

Analysing the three surveys conducted by MedOANet, it can be noted that the main conclusions on copyright issues and OA in Mediterranean countries are to be drawn from the survey sent to publishers of research results, whereas the survey distributed to RPOs contains little information on this issue; the survey sent to RFOs does not allow for any conclusions on copyright questions. This is of course a result of the design of the surveys, but it also reflects the general fact that publishers, for the time being, very often own the exploitation rights of the works they publish and are the most influential with regard to the progress of OA in the field of research.

The publishers' survey asks thirteen questions on copyrights: eleven on Green Road copyright issues and two questions on issues concerning the Golden Road.<sup>8</sup> In the following we'll have a close look at what can be deduced with regard to copyright policy and OA in Mediterranean countries from the publishers' survey.

## **2.1. Composition of the sample of publishers**

The publishers' survey was sent to 1,549 publishers; the response rate was 12.1%, or in absolute numbers: 187 publishers answered the survey (Table 1). Due to the results of a former project conducted in Spain, 62.6% of the responding publishers were Spanish. On the other hand, Italian responses

*Table 1: Response rates to the publishers' survey.*

	<b>Response rate</b>	<b>Sent to</b>	<b>Responded by</b>	<b>Representation in overall sample</b>
France	28.1%	32	9	4.8%
Greece	12.3%	154	19	10.2%
Italy	16.7%	18	3	1.6%
Portugal	29.6%	108	32	17.1%
Spain	10.9%	1077	117	62.6%
Turkey	4%	160	7	3.7%
Spain	10.9%	1077	117	62.6%
Overall	12.1%	1549	187	100%

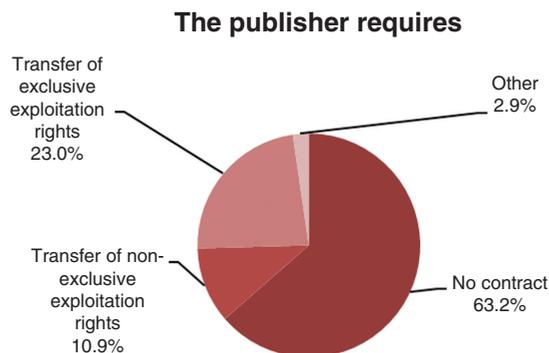
were particularly low in absolute numbers: only three publishers answered the survey, i.e. 1.6% of the whole sample. In Turkey, a response rate of 4% was achieved and Turkish publishers are represented in the overall results with 3.7% of the answers.

71.1% of the group of publishers that answered the survey were publicly funded presses such as academic institution presses, scientific association presses, learned society presses, national government bodies etc.; also, 71.1% can be considered small- and medium-sized presses.<sup>9</sup> Only 88 of the publishers answered the question about the domains in which they publish. Among them 55 (62.5%) respond that they publish in STM, 44 (50%) in Social Sciences and 36 (41%) in the Humanities. Out of 90 publishers 84 (93%) are active as journal publishers and 49 (54%) are engaged in book publishing. 84 out of 87 (96.5%) claim to exercise peer-review on the content they publish.

## 2.2. Contractual transfer of exploitation rights

Approximately three-quarters (74.1%) of publishers in MedOANet countries leave the decision on when and where to make a Green Road OA publication of their works to the authors (see Figure 1). This is because 110 out of 174 (63.2%) publishers do not require their authors to sign any contract at all and 19 out of 174 (10.9%) publishers require authors to transfer just a non-exclusive exploitation right, which leaves authors in a position to decide on a Green Road publication without having to ask for the publisher's consent. Only 40 out of 174 (23%) of publishers require their authors to transfer

Fig. 1: Contractual transfer of exploitation rights.

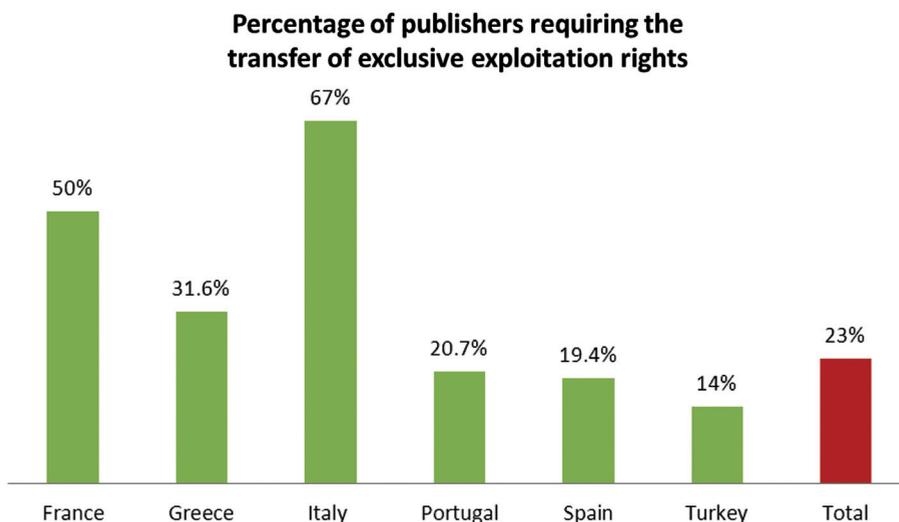


exclusive exploitation rights, which would make them subject to a publisher's permission to additionally make their works available as OA in repositories.

The overall result, however, reveals a considerable variation between different countries. Regarding the low rate of publishers that require a publishing contract (36.8%), France and Italy stick out as exceptions: in France 75% (in absolute numbers: 6) of the publishers reported requiring a publishing contract, and in Italy all three participating publishers (100%) reported the same practice. In both countries, two-thirds of publishers require the transfer of exclusive exploitation rights to their press, whereas one-third confine themselves to the transfer of a non-exclusive exploitation right. Portugal emerges at the other end of the scale: 22 out of 29 (76%) Portuguese publishers pointed out that they do not require authors to sign any publishing contract at all; but out of those who do (in absolute number: 7), 6 (86%) would require the transfer of exclusive exploitation rights.

All in all, the approximately one-quarter of Mediterranean publishers who require the transfer of exclusive exploitation rights to their press (Figure 2) turn out to be the resulting average out of 31.5% (6 out of 19) in Greece, 19.5% (21 out of 108) in Spain, 20% (6 out of 29) in Portugal, 50% (4 out of 8) in France, 67% (2 out of 3) in Italy and 14% (1 out of 7) in Turkey.

Fig. 2: Transfer of exclusive exploitation rights required by publishers.



Who are this average one-quarter of publishers requiring their authors to sign over exclusive exploitation rights? Does this group mainly consist of large publishing houses with high impact factors whose researchers in STM are so keen to publish their works with them? The answer is: no, it does not. Only 7 out of 33 independent and private academic presses ask their authors to sign over their exclusive exploitation rights to their press; but another 15 academic institution presses, 11 scientific associations or learned society presses and two governmental bodies expect their authors to do so.

On average, one-third of those publishers, who require their authors to sign over their exclusive exploitation rights, are likely to accept a Green Road OA publication (Figure 3).<sup>10</sup> It can be recommended, therefore, that authors negotiate with their publishers to gain permission for a Green Road OA publication.

### 2.3. Self-archiving policies

84.2% of the publishers surveyed claim that they permit their authors to archive their work in OA repositories.<sup>11</sup> 50.8% allow for an OA publication of the publisher's version (camera-ready version of the publication, ready for print) and 29.4% allow for the OA publication of any version the author chooses. Altogether this comprises a significant 80.2% of publishers who allow for self-archiving of the published version of the work. 51.6% of publishers say they allow for self-archiving as soon as the work is published, i.e. they do not ask the authors of the works to respect any embargo period.

With regard to country distribution (Figure 4), it is interesting to note that all Portuguese and Italian publishers reported allowing self-archiving. The two countries with the highest share of publishers not allowing self-archiving are

Fig. 3: Likelihood of OA publication after transfer of copyrights.

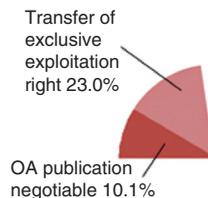
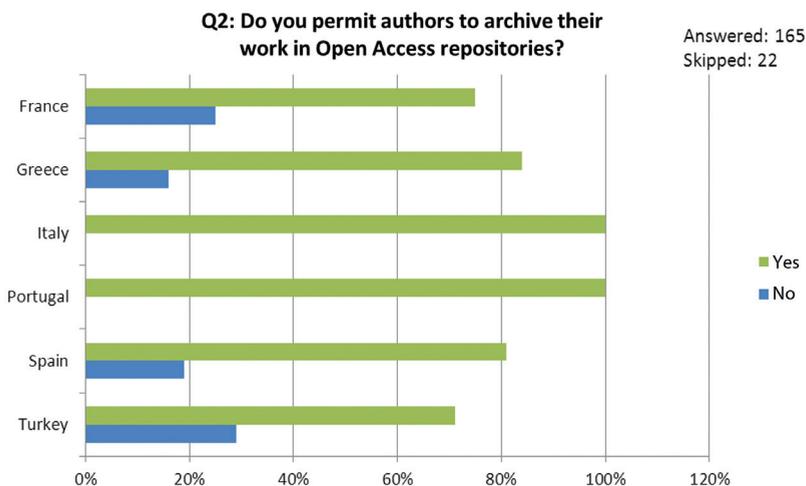


Fig. 4: Self-archiving policies of publishers.



	Yes	No	Total
Q2: France	75% (6)	25% (2)	8
Q2: Greece	84% (16)	16% (3)	19
Q2: Italy	100% (3)	0% (0)	3
Q2: Portugal	100% (28)	0% (0)	28
Q2: Spain	81% (81)	19% (19)	100
Q2: Turkey	71% (5)	29% (2)	7
<b>Total Respondents</b>	<b>84.2% (139)</b>	<b>15.8% (26)</b>	<b>165</b>

France and Turkey (25% and 29%, respectively), while in Greece and Spain, 15.8% and 19% of publishers do not allow self-archiving (MedOANet, 2013).

#### 2.4. Public Relations (PR) policies

Despite these figures being quite OA-friendly, they are not sufficiently made known to researchers and the general public. 42.3% of publishers do not publish their copyright policy on their websites, 80.3% of publishers do not publish their self-archiving policy on their websites, and 73% of publishers say they did not yet register their self-archiving policy in SHERPA/RoMEO.<sup>12</sup>

The highest rates of published copyright policies are reached by Spanish publishers (64.4%), self-archiving policies are mostly published in Turkey

and France (43% and 37.5%, respectively), whereas the highest scores of registration with SHERPA/RoMEO are reached by Portuguese and French publishers (60.9% and 50%, respectively).

## 2.5. Licensing of OA publications

It is recommended by the UNESCO Guidelines to OA (Swan, 2012) that any OA publication be accompanied by an OA license granting an irrevocable non-exclusive exploitation right to the public in order to make known what can be done with the work. When asked by the MedOANet survey whether they use standardized OA licenses for the publication of articles in OA journals via the Golden Road (i.e. as first publication), only 36.7% of publishers would answer 'yes'. In terms of country distribution, no Italian publisher (out of a total of three) uses standardized licenses, but 45.8% of Portuguese publishers do. However, nearly all (96.2%) of those Mediterranean publishers who do use standardized licenses would use CC licenses, with one exception from Turkey, where a GNU license is mentioned. Unfortunately, the survey did not ask for the sort of CC licenses used (CC-BY or other).

## 3. Conclusions drawn from the survey results

### 3.1. OA friendliness

The analysis of the answers reveals a surprising result: some of the most annoying legal obstacles, which frequently interfere with OA in Northern or Western countries of the EU, seem to play a minor role in the Mediterranean region. Not even one-quarter of publishers would require the transfer of exclusive exploitation rights from their authors; 63.2% would not require a written contract at all.<sup>13</sup> The choice of whether and when to publish their works in institutional repositories is left to all those authors who publish with approximately three-quarters of the publishers. Additionally, self-archiving policies of publishers appear rather generous with regard to the version that may be published in OA repositories and with respect to the embargo period. There seem to be few obstacles to OA set up by publishers based in the Mediterranean region.

It is, however, difficult to find a pattern in the variations of results between the six different countries; it is impossible to identify certain countries who

do “better” with regard to OA than others on all measures. The national distribution of “OA-friendliness” of the answers varies from question to question.

### **3.2. Further improving the results**

What is left to be done by promoters of OA in MedOANet countries is to make the relatively low number of publishers, who would by no means allow for a Green Road OA publication, change their mind. Improving the existing figures should be possible: there are good chances that by making publicity and educational advertising in favour of OA and by talking to each and every one of the publicly financed publishers, they will change their copyright, self-archiving and PR policies. A university press or scientific association press should easily understand that it is in their own interest to either allow for OA or to leave the exploitation rights — at least a non-exclusive right for a Green Road OA publication — to the authors. Any publisher familiar with the practice of OA will understand that to spread information about its OA-friendly copyright or self-archiving policy will be good publicity indeed. OA journal publishers who know about the advantages of standardized OA licenses such as CC-BY will not hesitate to use them. So a well-planned campaign of awareness raising for OA amongst research publishers — and other OA players — may well be able to improve the already quite OA-friendly attitudes towards OA in the Mediterranean countries. Such a campaign of awareness raising, designed with a special focus on the needs of each country, will help to make existing copyright policies in the Mediterranean countries even more OA-friendly. The campaign should be able to help improve:

- i) the knowledge of publishers about the advantages of OA,
- ii) the outreach policy of publishers on their copyright and self-archiving policies, and
- iii) the knowledge of publishers about standardized licenses to be used in OA publishing.

In case such a campaign is being successfully implemented by MedOANet or any follow-up project or infrastructure it may create, copyright questions in the Mediterranean region will not turn out to be insurmountable barriers to OA.

### 3.3. Reasons for OA-friendliness

How can the OA-friendly figures resulting from the survey be explained?

Firstly, the resulting figures may indicate that Mediterranean publishers do adopt an overall OA-friendly attitude indeed.

Secondly, the surprisingly OA-friendly results may partly be attributed to the fact that the answers to the survey are not totally representative, as the response rate to the survey by publishers was relatively low (12.1%, see above). We can suspect that mainly publishers belonging to the “hard core” of the OA community answered the survey, which makes it of course more difficult to estimate the real copyright situation for OA in MedOANet countries.

Thirdly, some of the answers — and especially the low response rate — seem to suggest an attitude of disinterest in or neglect of copyright or OA questions in general, as a high percentage of publishers do not seem to care much about making their copyright and self-archiving policies publicly available.

Be that as it may, the OA-friendliness of Mediterranean publishers should be maintained and improved by the development of an OA-conductive information policy and a campaign for awareness-raising by MedOANet or other OA stakeholders in Mediterranean countries.

## 4. Options for future action by political decision-makers

The EU Commission recommends with regard to OA copyright questions that Member States ensure “that [...] licensing systems contribute to open access to scientific publications resulting from publicly-funded research in a balanced way, in accordance with and without prejudice to the applicable copyright legislation, and encourage researchers to retain their copyright while granting licences to publishers.” (European Commission, 2012, July 17a).<sup>14</sup>

It was mentioned at the beginning of this paper that to help political decision-makers implement the recommendations of the EU Commission efficiently is one of the aims of MedOANet. The project therefore has developed guidelines which — in line with the Commission Recommendation of 17 July 2012 — provide explicit recommendations for RPOs and RFOs with regard

to copyrights. The MedOANet Guidelines suggest that in order to avoid publishers' embargoes, the author and/or the RPO and/or the RFO "retain sufficient rights over publications in order to render them immediately openly accessible through the repository." Additionally, RFOs' and RPOs' OA policies should, according to the MedOANet Guidelines, encourage the use of standardized licenses, such as Creative Commons licenses, which will facilitate the use and reuse of the works published via OA repositories (MedOANet project consortium, 2013, pp. 15 and 23).

Further to the recommendations for policy-makers of RPOs and RFOs requiring that authors retain their copyrights, Mediterranean Member States of the EU may legally strengthen the bargaining power of authors of scientific works. There have already been a few attempts to do so.

In 2011, Spain introduced an article on OA dissemination into its *Law on Science, Technology and Innovation* (Congreso de los Diputados, 2011). This article 37 requires all research staff whose work is mainly financed by public funds to publish an openly accessible digital version of the final version of any paper accepted by a periodical research journal. However, it is important to note that the last clause of article 37 makes all OA dissemination subject to not violating any copyrights that may have been transferred: "Lo anterior se entiende sin perjuicio de los acuerdos en virtud de los cuales se hayan podido atribuir o transferir a terceros los derechos sobre las publicaciones ..."

A German legislator recently introduced a legal clause on OA into German copyright law as well; it was passed on October 1, 2013 (Deutscher Bundestag, 2013). Although some improvements should be made before research organisations can totally agree to it (Kuhlen, 2013), the new clause will, in principle, enable publicly funded researchers to decide on whether — after respecting an embargo period of 12 months — they want to re-publish their articles (not in the publisher's version) in OA repositories or not. Such a decision shall be possible even if the researchers have already transferred the exclusive rights to their works to the publishers. The clause cannot be overridden by contracts.

Should such legal provisions be implemented in Mediterranean EU Member States and beyond in order to finally make OA publishing of research information the default method of scholarly communication? It seems it would probably at least help speed up the process. ENCES supports any attempt on the national or international level to amend existing legal copyright legislations to this effect.

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## Notes

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- <sup>1</sup> For the UK cf. Research Councils UK (2013). For the German Research Foundation (DFG) cf. Fournier, J. (2007).
- <sup>2</sup> The project's website is <http://www.medoanet.eu>. Retrieved December 28, 2013.
- <sup>3</sup> The seminar is documented at <http://oaseminar.fecyt.es/Publico/Home/index.aspx>. Retrieved December 28, 2013.
- <sup>4</sup> Southern European Libraries Link: <http://www.heal-link.gr/SELL/index.html>. Retrieved December 28, 2013.
- <sup>5</sup> Fundación Española para la Ciencia y la Tecnología: <http://www.fecyt.es/fecyt/home.do>. Retrieved December 28, 2013.
- <sup>6</sup> The surveys were distributed to addressees and their answers were expected from 10th April 2012 – 15th June 2012. (MedOANet, 2013).
- <sup>7</sup> Find more detailed information on further actions, findings and results of MedOANet at its website <http://www.medoanet.eu>; they cannot be reported in full in this paper, which concentrates on copyright questions of OA.
- <sup>8</sup> MedOANet (2013). Annex III: Survey Questionnaires: Publishers. Q10-20, Q24, 25.
- <sup>9</sup> Publishers are considered small- or medium-sized presses by the survey if they publish no more than 80 titles per year.
- <sup>10</sup> MedOANet (2013). Thematic Report I: IPR issues.
- <sup>11</sup> For comparison: As of May 2013, 71% of publishers on the SHERPA/RoMEO list formally allow some form of self-archiving. Retrieved December 28, 2013, from <http://www.sherpa.ac.uk/romeo/statistics.php?la=en&flDnum=1&mode=simple>.
- <sup>12</sup> <http://www.sherpa.ac.uk/romeo/>. Retrieved December 28, 2013.
- <sup>13</sup> Compare this to SHERPA/RoMEO statistics from 2008: "A 2008 survey indicated that there had been a drop in the number of publishers requiring copyright transfer from the author from 83% in 2003, to 61% in 2005 and to 53% in 2008. In 2005, 3% of publishers were found not to require any form of written agreement with the author and this had increased to almost 7% by 2008." (Swan, 2012).
- <sup>14</sup> See also <http://www.openaire.eu/en/support/copyright>. Retrieved December 28, 2013.