

# PUBLISH AND PERITH: THE MEANING OF PUBLICATION IN AN ONLINE WORLD

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## **Abstract**

The term “publish” is understood in many ways – in common use, in specialist fields, and in legislation. The advent of the Web has added another range of meanings, and has both extended and distorted traditional understandings of the word. However, the paper is not about semantics but about access to and use of information. What happens in the publishing space is changing very rapidly, and without much coherent thought. For example, a PhD thesis is undeniably an unpublished document, but when added to the CAUL (Council of Australian University Librarians) Australian Digital Thesis program, is accessible throughout the known universe; what does this mean? The paper will:

- 1 Explore the ways in which the term “publish” has been used in legal contexts (such as copyright, legal deposit, defamation) and in popular and specialist environments (such as the book and journal publishing industries).
- 2 Analyse the ways in which the term has changed with the advent of the World Wide Web in these same environments – legal, popular, and specialist (such as the areas of web editing/authoring and commercial publishing in particular). The paper will also take as examples some recent debates in which the protagonists have failed to come to grips with rapidly evolving realities.
- 3 Explore some ways in which these issues may be dealt with more proactively, so that access to and distribution of information is enhanced. There are conclusions for legislators, information managers, universities, researchers, web authors and editors, and of course publishers.

## **Introduction**

The term “publish” is now used in a bewildering variety of senses – as perhaps it always has been.

Popular speech has always been cavalier in the way it uses the word – we publish in many different senses, and the broad sense of just making something available, or known, or accessible, is perhaps the dominant meaning. Book publishers tend to neglect this fundamental element.

Dictionaries have acknowledged several meanings, including a general meaning and a more specialised meaning, the two main meanings for the purposes of this paper:

“1. *trans.* To make publicly or generally known; to declare openly or publicly ... 4. *spec.* To issue or cause to be issued for sale to the public ... To make generally accessible or available.”<sup>i</sup>

More specifically, legislation defines the term in a variety of ways, and in so doing impacts on what we may do and what we may not do – both in terms of the criminal law, and in terms of the rights of others. “Published” must be defined, or a definition assumed, for the purposes of copyright, defamation, legally prohibited or regulated content, passing off, and so on. In these definitions, both the general and the specialised appear again. In addition, non-legislative definitions of “published” may be very important: for example, in terms of academic recognition and promotion, a published work has much greater status than an unpublished work.

In another sphere, the term has taken on a new meaning over the past decade. For the Web, the term “publish” is most often used to describe the act of making something available on the web, by creating it online or uploading it to a web server.

So the concept of “published”, and the dichotomy with unpublished, are concepts and distinctions which everyone possesses in their personal information architecture. It underlies many practices in our traditional world of libraries and print.

The title of this paper is taken, with some liberties, from the winner of first prize (English-language category) in the Euroscience Open Forum Poetry Competition. This was a poem entitled Publish or Perish, by Stevan Harnad.<sup>ii</sup> Here is the last verse

“For showbiz being what it is today,  
work’s not enough, you’ve got to make it pay.  
What ratings, sweeps and polls count for our actors,  
no less than our elected benefactors,  
for Science the commensurate equation  
is not just publication but citation.  
The more your work is accessed, read and used,  
the higher then is reckoned its just dues.  
Sounds crass, but there may be some consolation,  
Where there’s still some residual motivation  
to make a difference, not just make a fee:  
the World Wide Web at last can make Science free.”

“Accessed read and used” Harnad says – can something be accessed read and used, and yet remain unpublished? Harnad believes so. I have to admit to being at least a neo-Harnadian, as I believe Harnad himself to be, and so I will argue that a distinction or continuum between published and unpublished is one which it is important to keep, particularly in an online world.

This paper is a work in progress. Recent years have seen a flowering of contradictory approaches to what it means to publish something. This is a tentative contribution to clarifying those contradictions. In the end it will not be possible just to transfer the language we used in the analog world into the digital world – it simply will not work. The concepts will need to be redefined.

## Publishing in Legal Contexts

“The taxonomy is context-dependent”, the authors of the OAK Law Report say of publication.<sup>iii</sup> This is obvious – what we mean by saying that something has been published depends on what kind of thing it is, and in what context it has been “published”. This becomes clear when we compare the way the concept of publication is understood in the contexts of copyright, defamation, legal deposit and online content regulation (or censorship). “Accessed read and used” can of course occur in those varied legal contexts.

### Copyright

In copyright terms, s 29(1) of the Copyright Act refers to a work being deemed to have been published if reproductions of the work have been supplied to the public. In particular

“(1) Subject to this section, for the purposes of this Act:

(a) a literary, dramatic, musical or [artistic work](#), or an edition of such a [work](#), shall be deemed to have been published if, but only if, reproductions of the [work](#) or edition have been supplied (whether by sale or otherwise) [to the public](#);

(b) a [cinematograph film](#) shall be deemed to have been published if, but only if, copies of the film have been sold, let on hire, or offered or exposed for sale or hire, [to the public](#); and

(c) a [sound recording](#) shall be deemed to have been published if, but only if, [records](#) embodying the [recording](#) or a part of the [recording](#) have been supplied (whether by sale or otherwise) [to the public](#).”<sup>iv</sup>

### Defamation

Defamation is an area where the concept of publication is changing. Australia’s many legal jurisdictions have recently got together and agreed on new uniform defamation legislation, which came into effect on January 1, 2006.

The Arts Law Centre of Australia Online describes the meaning of publication in defamation law.<sup>v</sup> For a defamation action to succeed, publication is one of three essential elements (the others are that it is about the plaintiff, and that it is defamatory).

“To be defamatory, the material has to be ‘published’ (communicated by any means – written, orally, pictorially) to at least one person other than the

plaintiff. The intention of the publisher does not matter – liability for defamation can arise from errors.”

“Everyone involved in the publication is potentially liable and each, all, or some can be sued. This means that writers, publishers, editors, artists and gallery owners must all be aware of the potential dangers. This also means that it is no defence to argue that you are only repeating rumours or a comment made by somebody else: you can be liable for a republication.”

The definition is extremely wide – only one person needs to be the subject of the communication. It relates to the broad meaning of publication as simply making something known, rather than the narrow sense used in the publishing industry.

With the Internet, the definition has entered new and more confusing territory, because both the vehicle for publication, and the location of the publication, have come into question. For example<sup>vi</sup>, a teacher recently sued the State of NSW over something offensive which had been put on the internet. This was on an external site, but the State of NSW was sued because his school principal had not removed access to the content. The NSW Supreme Court held that the school principal had “published” the defamatory material because he had allowed it to be displayed in the school – the internet was like a school noticeboard. A metaphor has got us into trouble, and that is a theme of this paper.

## **Legal deposit**

Legal deposit is an area where publication is defined in legislation. In Victoria, the Libraries Act<sup>vii</sup>

“publication” includes the whole or any part of-

(a) any printed book, periodical, newspaper, pamphlet, musical score, map, chart, plan, picture, photograph, print and any other printed matter; and

(b) any film (including a microfilm and a microfiche), negative, tape, disc, sound track and any other device in which one or more visual images, sounds or other data are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it;

The Act requires that every new publication must be deposited after it is published, but does not define the term published.

The definition bears a family relationship to other legal deposit legislation in the English-speaking world, because they are all descendants of a common (British) nineteenth century ancestor.

In its information page on legal deposit in Australia, the National Library<sup>viii</sup> says no more than that “A work is deemed to have been published if reproductions of the work or edition have been made available (whether by sale or otherwise) to the public.” In my years of experience as a legal deposit

librarian, much turned on the meaning of that term “the public” – how extensive it needed to be, and how external to the issuing person or other entity the distribution needed to be in order to make the work a published work,.

## Online content regulation

In Australia, Commonwealth and state laws regulate the publication of certain prohibited or restricted material. For example, an example of state legislation is the [Classification \(Publications, Films and Computer Games\) \(Enforcement\) Act 1995](#) (Victoria)<sup>x</sup>. This targets content creators or providers and users. The legislation makes it an offence for individuals or companies to publish certain prohibited material in Victoria, including publishing on the internet.

The Commonwealth legislation is the [Classification \(Publications, Films and Computer Games\) Act 1995](#)<sup>x</sup> This act includes (s5) the following definitions, and the state legislation largely follows this

**"publication"** means any written or pictorial matter, but does not include:

- (a) a [film](#); or
- (b) a computer game; or
- (c) an [advertisement](#) for a [publication](#), a [film](#) or a computer game.

**"publish"** includes sell, offer for sale, let on hire, exhibit, display, distribute and [demonstrate](#)

So a publication includes a wide range of content, but it is only published if it is distributed in some way, or demonstrated (which includes “exhibit, display, screen, play or make available for playing”)

## Web 1.0 and Web 2.0

How does this impact on the online world? The World Wide Web came into common use in 1994 when Mosaic software, and later Netscape, became widely used. It changed the way we present ourselves and information to the world. It is the conceit of this current decade that the web itself has changed again in a major way, and the term Web 2.0 is used for these changes.

When the Web itself entered common knowledge and behaviour, the term “publish” shifted meaning. Ordinary usage now is that to make something available on the Web is to publish it. For example, the Government of Tasmania, in the Tasmanian Government Web Publishing Standards defines web publishing: “Web publishing’ means putting information or transactional resources on a web server for access by users through a web browser.”<sup>xi</sup>

Interestingly, this term is used regardless of the size of the audience, notional or real. A journal article made available online to subscribers only is as “published” as an open access journal article. Of course, a print journal is also

regarded as published, whether or not there is a price. But that is different – the print journal, in a library, can be read by anyone – it is truly published to the world.

To make something available on the Web then, is to publish it, and has been since the mid-nineties. The term is used across a number of usage types – legal, specialist Web terminology, the publishing industry, scholarship, popular speech, and so on.

The characteristics of Web 2.0, a term supposedly invented in 2004 by Tim O'Reilly<sup>xii</sup> include the following

- The network is the platform: user software applications are delivered through a web browser, not through downloading software.
- Users own the data on a website and exercise control over it.
- There is an architecture of participation and democracy that encourages users to add value – social networking.
- Web content is enriched by user contributions such as descriptors, comments, evaluations, and ratings.
- There is a rich, interactive user-friendly interface.

Another definition: “a supposed second-general of internet-based services – such as social networking sites, wikis, communication tools, and folksonomies – that let people collaborate and share information online in previously unavailable ways.”<sup>xiii</sup> Examples include youtube.com, the Wikipedia itself, flickr.com. Myspace.com and even, for librarians, librarything.com.

One of the outcomes of Web 2.0 is that common individual activities have in many cases moved to a social platform, from an individual platform. What was located on my personal computer is now available on the World Wide Web. In many cases I can make it available to the world, or to my family and friends, or just to myself and my dog. I have become a publisher.

Equally relevant, material made available on the Web (published) is far less readily attributable to a single publisher, and forms a collaborative whole where the relationship between publisher and publication is no longer the most appropriate model for understanding what is going on.

Because usage is changing and has changed so rapidly, there are many examples of semantic confusion, and this paper considers a number of examples.

### **Example 1: Harnad & Oppenheim Debate**

My favourite example is this exchange between Professor Stevan Harnad and Professor Charles Oppenheim. The debate is now enshrined in the online archives of the American Scientist Open Access Forum – a publication, although the old concept of archives (by definition unpublished) and the new concept, online (or Web) are apparent opposites.<sup>xiv</sup>

Oppenheim says:

“Publishing” in law means making available to the public (whether for a fee or not) a copy of the item on demand. Putting an item in an OA [open access] archive is therefore publishing. It may not be publishing in terms of the publishing industry, but it is still publishing!

Harnad replies

(1) What is “the item”? The author’s unrefereed preprint? Various corrected updates? The final, refereed corrected draft? or the publisher’s PDF?

(2) So I am publishing my paper every time I give someone a typescript of it? When I read it aloud? If someone tapes me or takes notes when I read aloud?

Harnad goes on to use other analogies – emailing copies of eprints, and is that “retroactive for mailing reprints too, in paper days? Did even oral presentations of one’s (published) paper violate some copyright law ... Is there any end to this cornucopia of copyright koans?”<sup>xv</sup>

Authors who place their works on open access, Harnad is saying, are not publishing them, but doing something else, albeit in many cases with the permission of the copyright owner. What they are doing is analogous to circulating hand-written drafts to colleagues, in another age, or sharing thoughts. It is not publishing.

What Harnad may have in mind when he uses the term “published” could include these activities which when performed in relation to an unpublished work turn it into an undeniably published work:

- Editing and quality control.
- Ensuring that the work complies with copyright law.
- Review by either peers or others (publishers) experienced in preparing work for publication.
- Respectability and acceptance as a “publication” in a scholarly sense.
- Distribution through commercial channels.

What Oppenheim meant was something legal – making a work available to the public by publishing it, in the several legal senses of that word. It is simply inconceivable that to make something available to the entire known universe is not publishing it.

John Smith from the University of Kent came into the debate on a different list<sup>xvi</sup> a few days later.

No amount of pontificating or dogmatic definition tweaking is going to put this genie back in the bottle. Any document made publicly available is ‘published’ by any reasonable definition of the word. To insist that it is not really published until it has been through a refereeing stage and appeared in an acknowledged journal is rearranging the deckchairs after the Titanic has sunk ... IRs [institutional repositories] are part of a new publishing system whether their original proponents want them to be or not.

To which Stevan Harnad replied fourteen minutes later: such publications are best described as “Vanity Press (or Self-Publication), But they are really preprints, or unpublished papers.”

Clearly a dictionary would indicate that both are right, but they are using very different definitions.

## **Example 2: Electronic Theses and Dissertations**

The second example concerns research theses – PhDs and research masters. There has recently been an excellent study of theses as part of the OAK Law Project<sup>xvii</sup>

Theses have traditionally been distributed beyond the author and awarding faculty in hard copy form as a copy placed in the library of the awarding institution. To facilitate further distribution to interested scholars, in some cases microfilm copies were made; these were sent to people who wished to borrow the thesis or consult it remotely. In other cases copies were provided through a loans mechanism. Theses in Australia were also listed in the Australian National Bibliography, and currently in Libraries Australia (online). Theses were available, but not published.

From the 1990s, digitisation of theses developed from the earlier practice of microfilming them for preservation and distribution of copies. In Australia, the Australasian Digital Theses Program (ADT) developed from 1998 onwards, and now involves almost all universities. In this decade, some universities have begun to require students to submit a digital copy of their thesis, and for this copy to be made available online by the degree-awarding university. Copyright in the thesis remains with the author.

A thesis is unpublished, by definition. What is the status of an online digital thesis? In terms of the characteristics of a publication listed in Example 1, a thesis is not a publication, although it may be “accessed read and used” by anyone in the world. It is not a publication because

- It has not been edited like a commercial publication.
- It may have no commercial market and be unsuited to wider distribution in its current form – unreadable, even, for all but a small audience.
- There may be significant content where the copyright is not owned by the author, and for which publication rights have not been cleared (third party copyright material); use of an insubstantial part of copyright material does not lead to infringement, and each institution has criteria for determining whether what is used is insubstantial.
- In a scholarly sense, the work has been reviewed or examined as a thesis, but not for publication – a different kind of scholarly imprimatur.<sup>xviii</sup>
- There is no distribution channel characteristic of a traditional publication.

The OAK Law Report suggests that a thesis which has been made available online may be deemed to have been published on the basis of s 29(1)(a) of the Copyright Act. This requires that “reproductions of the work or edition have been supplied (whether by sale or otherwise) to the public”. But for the author, the academic world, and most commercial publishers, the thesis has not been published.

A significant issue for universities which wish to make their research theses available online is clearing rights for third party copyright material. The most common forms of third party copyright material include text from other works, and images from external sources. There are many options, each with its own problems.

- Seeking out rights owners and obtaining their permission may be so onerous a task as to render the enterprise of putting the thesis online impracticable.
- On the other hand, excluding third party copyright material is also undesirable, since the resulting work is incomplete.
- A third approach is referred to by the OAK Law Report as risk mitigation, and takes up the work of Hudson and Kenyon.<sup>xix</sup>
- A fourth strategy is to assert the convention of the unpublished nature of the thesis, despite its generous distribution.
- Although in the US, there may be a case for claiming fair use, in Australia the related principle of fair dealing is more narrowly defined; however, a fair dealing for the purposes of research or study will not infringe copyright, and the OAK Law Report suggests that dissemination may be reasonably held to be an essential element in research.
- The OAK Law Report also suggests that “in practice the delineation of what is a substantial part will be of critical importance as many of the potential copyright issues arising in relation to third party content can be solved at this point.”<sup>xx</sup>

Electronic theses face a particularly difficult transition from analog methods of distribution to their relatively small audiences (e.g. microfilm and other copies, lending, in house consultation) to digital methods of distribution – albeit to slightly larger audiences.

### **Example 3: Archives and Publications**

A long-standing distinction is that made between manuscripts, or archives, or records on one hand, and publications on the other. Libraries have used this distinction to distinguish themselves and their content from state and Commonwealth records offices.

Archives are by definition not publications. But the National Archives of Australia has programs to selectively digitise the content of Australia’s national archives. A huge volume of material has already been digitised and is available freely online. We have established that even if it was not available

“freely” online, it would still have moved from unpublished in any sense of the term, to published in some senses of the word. The NAA spells this out

In 2001 the National Archives initiated a program to make digital copies of items in the collection available for viewing on RecordSearch. This digitisation program is part of the Archives’ mission to make archival records more accessible to present and future generations.

If a digital copy of an item is available for viewing, the icon to the left appears at the top of the ‘Primary description of item’ screen.<sup>xxi</sup>

The Commonwealth of Australia has issued a Guide to Minimum Website Standards<sup>xxii</sup> They also refer to standards for electronic publishing on the Internet, which are the [Guidelines for Commonwealth Information Published in Electronic Formats](#)<sup>xxiii</sup> issued by Info Products, Department of Finance and Administration. The guidelines are available at: [www.agimo.gov.au/information/publishing/formats](http://www.agimo.gov.au/information/publishing/formats)

This document makes clear that “All digital data created or received in the conduct of Commonwealth business are Commonwealth records under the *Archives Act 1983* “ and “it is essential to ensure that web publishing and online service delivery systems have good record keeping capabilities and/or are linked to corporate record keeping systems.” Records or publishing? There is a fundamental semantic confusion – at a minimum the use of the word “publishing” to describe the act of making something available – to anyone at all – on the Web is to confuse the records/publications distinction.

#### **Example 4: Scholarly Communication**

At the same time as the debate about the publication status of the content of various kinds of repositories –institutional repositories, or thesis repositories – a parallel debate has been taking place using a different and more neutral term, scholarly communication.

This is not the place to summarise discussion of changes in the pattern of scholarly communication. However, a recent very thoughtful posting to another list by Colin Steele<sup>xxiv</sup> sets out the idea that scholarly communication might sit somewhere outside the sphere of “publication”, or if not entirely outside that sphere, then in a related parallel world.

Some of the characteristics of new patterns of scholarly communication are well known, and they have in common that they have taken on metaphors and actions which set them at odds with publication. The concepts of scholarly “discourse” or “debate” or suchlike dialogues are distinct from the fixed form of a traditional publication. A preprint issued to provoke discussion and input differs from the final form of an article which has been refereed, accepted for publication, edited, and published.

There is a voluminous literature on changing patterns in scholarly communication, and the whole debate on this topic rests on increasingly difficult distinctions about just what scholars are doing when they

communicate. A thoughtful article by Herbert van de Sompel and others<sup>xxv</sup> draws on the experience of the physics archive at Cornell, arXiv. It argues that the journal article, as the principal unit of scholarly communication, is no longer appropriate. In the future units of communication will take advantage of the intrinsic capabilities of the Web, and allows for “technology that allows units to follow a variety of pathways through the system, with distributed nodes fulfilling the different functions of the value chain.”

### **And many more examples**

Catherine Finn<sup>xxvi</sup> writes about mashups. The common point is blending, and the common platform is our Web 2.0. Mashups have spread from music into many other fields – maps is one area Finn cites, as Google Maps software spreads into all kinds of activities like <http://h2obeta.law.harvard.edu/92910> If mashups enable people to “comment on and reinterpret the works of others” then we are back to research, but with a Web 2.0 perspective. How much is research just a new take on mashups, when you can have a scholarly article with 32 authors (the current Swinburne record)? Is research moving to become just like a Mashup Camp <http://www.mashupcamp.com> ?

Is an e-portfolio a publication?<sup>xxvii</sup> EdNA defines an e-portfolio in this way  
In education and training contexts e-portfolios are learner-centred and outcomes-based. They are created when individuals selectively compile evidence of their own electronic activities and output as a means to indicate what they have learned or know. In this sense, e-portfolios function as a learning record or transcript. But given their developmental character e-portfolios function as both an archive and a developmental repository that is used for learning management and self-reflective purposes.

What does out of print mean? In the analog world, it meant that although a work had been published, copies could no longer be provided promptly and at a reasonable price by the publisher – distribution by the normal means had ceased. In an online world, immediate distribution of a perfect copy is always possible. Has the concept of out of print died?

### **Some lessons**

Paul Courant, Professor of Economics and Public Policy at the University of Michigan, suggests that ideas which are not published, do not qualify as ideas. “Ideas must be made public to qualify as ideas; art must take physical form in order to qualify as art.”<sup>xxviii</sup>

“Publish or perish” suggests Courant, means “publish or don’t waste our time.”  
“In essence, what we academics do is we think thoughts, read books, gloss texts, run experiments, make notes, interpret data and put what we know or think we know in the library where others can find it. The rest of it is superstructure, including the mechanics of publication.”

But Courant goes on – “I mean to use the word publication broadly” – to use the term to mix publication and distribution concepts to such an extent that he is really talking about collaboration.

In discussing publication, there is a constant semantic confusion between broad and specialised meanings of the word, and the analog and digital contexts in which it is used.

Here are several conclusions, although they are more like questions.

First, when everything is on the Web, does this mean that everything is published? Will people of the future ask “what did unpublished mean in the old days?” Or do we need to rethink what we mean by published, so that we can continue to maintain a distinction.

Second, as we share more and more, how will we untangle whose is whose? Jake Shapiro refers to “small pieces loosely joined” in a piece on public media – specifically National Public Radio<sup>xxix</sup> Shapiro suggests that characteristics such as “open access, civic engagement, diversity of voices, education values . . .” are taking us somewhere new. If what we are increasingly doing is publishing, it is becoming much harder to identify the publisher. Our lives are increasingly lived on the Web – life caching, Lorcan Dempsey calls it. Does that mean that our lives are published – in a legal sense?

Third, we must beware that the differences between the analog and digital world are in some cases differences of substance, not just form. We are not necessarily in a digitised version of the familiar analog world. It is different. One lesson is that the concepts of the paper days (Harnad’s nice expression) do not dovetail neatly with the concepts of our current online days, Web days perhaps. Email is not the same as correspondence – it has partly replaced telephone conversations, too. It is striking how often the word “conversation” is used to describe something which, in the crudest terms, looks like a publication . . . but not a publication . . . like a blog that people really engage with. Look at <http://www.globalvoicesonline.org>

Fourth, we need to recognise the law for what it is – slow to adapt, slow to catch up, endlessly subject to manipulation and capture by special interests. The danger is that, without clear decisions being made, copyright law defaults to cover the digital, online world, regardless of its unsuitability to do so. Legislative change is slow, and one of the consequences is that the law is sometimes simply ignored – the iPod was introduced to Australia well ahead of the development of major legal uses for it.

Fifth, watch out for metaphors. Book publishing is not a metaphor for web publishing – just think of the role of distribution in the value chains for book publishing and online publishing. For the first, distribution is everything, costing 40-50% of the total value, make or break. For online publication, its all marketing, and there is little or nothing to worry about with distribution. The

metaphor of the web as the school noticeboard was only meaningful to a court struggling in vain to understand.

Sixth, there is a distinction in both worlds between commercial and non-commercial. The tools we need in the commercial world – monetised communication – may well be inimical or even fatal to the commercial world. And at the same time there is a trend to monetize spheres of life where commercial value was not apparent. Ideas can be seen to be things which flow freely, which need to be in fixed form so that they can be monetised. The online world makes it possible, and drives towards, the freezing of forms of communication which once may have been fluid and free.

## Where To Next?

If we have now reached Web 2.0 – a new level of development of the web – have we also reached Copyright 2.0, the matching legal and regulatory framework? Of course not. Despite the recent avalanche of amendments to the Copyright Act, we have yet to reach Copyright 1.0, and we are a long way from creating a legal framework which matches the real world we inhabit in our day to day, Web-enabled lives.

There are conclusions for legislators, information managers, universities, researchers, web authors and editors, and of course publishers. But to get from the muddle we are in to a more real situation is not simple.

The answers include law reform. For example, the Oak Law Report<sup>xxx</sup> has some nice suggestions as to how the copyright law might be changed to enable us to deal with theses as if they were theses. They also involve the way we use words; perhaps we may have to go through a period of not using the word “publish” for a while, until we work out just what we are talking about. And it is also important that individuals, in managing their own activities, take the opportunity to use what flexibility they have – through open licensing of their own content and activity, for example.

The title of this paper, which twists the old saying, is intended. If we persist in applying the old analog publishing and legal paradigms to everyone on the Web then we will find our ordinary conversation, discourse, debate, scholarship and daily lives – all of them on the Web now – increasingly enclosed in straitjackets and hedged about with constraints that we did not intend.

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<sup>i</sup> The Shorter Oxford English dictionary. Oxford: Clarendon Press, 1978. p.1702

<sup>ii</sup> <http://www.esof2006.org/about.php4> and [http://www.esof2006.org/blog\\_send-content.php4?ID=11&what=News](http://www.esof2006.org/blog_send-content.php4?ID=11&what=News) and also posting by Stevan Harnad, American Scientist Open Access Forum, 22 July, 2006. See [www.amsci-forum.amsci.org/archives/American-Scientist-Open-Access-Forum.html](http://www.amsci-forum.amsci.org/archives/American-Scientist-Open-Access-Forum.html)

<sup>iii</sup> OAK Law Project Report No.1: creating a legal framework for copyright management of open access within the Australian academic and research sector / Professor Brian Fitzgerald and others. Brisbane: Queensland University of Technology, 2006. (The OAK Law Report)

<sup>iv</sup> Copyright Act 1968 Cth s28(1)

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- v <http://www.artslaw.com.au/LegalInformation/Defamation/DefamationLawsAfterJan06.asp>
- vi Clarke, Roger, Defamation Law Changes – Valuable Backgrounder, posting to LINK, 28 April, 2006.
- vii Libraries Act 1988 (Victoria) s49 Legal Deposit and s3 Definitions
- viii <http://www.nla.gov.au/services/ldeposit.html>
- ix [Classification \(Publications, Films and Computer Games\) \(Enforcement\) Act 1995](#) (Victoria)
- x [Classification \(Publications, Films and Computer Games\) Act 1995](#) (Cth)
- xi Government of Tasmania, Tasmanian Government Web Publishing Standards Version 1.2 January 2005.  
[http://www.go.tas.gov.au/web\\_publishing/tgwps/tgwps\\_complete\\_publication.shtml#introductionprinciples](http://www.go.tas.gov.au/web_publishing/tgwps/tgwps_complete_publication.shtml#introductionprinciples)
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