

Zwolle's contribution to good copyright relationships

A group of academic authors, publishers and copyright experts has been developing toolkits and documents which identify good practice in copyright management in the relationships between stakeholders in academic copyright. The group is known as the 'Zwolle Group' after the Netherlands town that hosted the three copyright conferences organized by the SURF Foundation and by the UK Joint Information Systems Committee (JISC). The Group developed seven 'Principles' aimed at 'balancing stakeholder interests in scholarship-friendly copyright practices' and is currently working on three documents intended to assist stakeholders in applying the Principles in practice. The aim is not to lobby stakeholders to adopt particular forms of copyright policies and agreements but to improve copyright management and copyright relationships by making available examples of good practice.



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Building bridges in Zwolle

The town of Zwolle in the Netherlands has been making a quiet contribution to harmonious relationships between publishers, librarians, authors and university administrators in the delicate area of copyright in academic works. Zwolle's contribution to harmonious relationships on this topic has not been made in its three-star Michelin restaurant, 'De Librije', although a meal in the former library did seem an appropriate way to seal the harmony achieved outside the restaurant. Neither does Zwolle's contribution to the realization of links between copyright stakeholders lie in the bridges which appear to connect every part of the town to every other. Rather, Zwolle has been the location for some bridge-building of a different kind, viz. between academics, publishers and librarians over the way copyright issues are managed in universities. Copyright has been a bone of contention for many years, librarians accusing publishers of stealing the academic birthright, publishers accusing librarians of not understanding the importance of copyright transfer, and academic authors – caught in the cross-fire between publishers and librarians – deeply suspicious of their employers' interest in entering the copyright debate. What the discussions in Zwolle have helped to do is to bring us together across some bridges into the centre of the copyright space, space that we have in common.

An international group of stakeholder representatives

The inspiration and much of the funding for the Zwolle Group has come from the SURF Foundation, the Netherlands organization for network services, information and communications technology. Although the structures of the two organizations are very different, some of the role of SURF overlaps with the role of the Joint Information Systems Committee (JISC) in the UK, and it is no surprise therefore that the JISC has been a partner in the Zwolle work, contributing staff time and funding. Publishers and publisher organizations have also been heavily involved, particularly ALPSP – the Association of Learned and Professional Society Publishers – and Emerald – the scholarly international journal publisher. And, last but not least, the Zwolle work has been taken forward by a number of individual academic authors and copyright experts, not representing their institutions but contributing their expertise and experience. The relevance of the Zwolle work to many countries has been ensured by the geographical spread of those involved, the steering group having representation from six countries, and the three conferences many more.

The Zwolle work began with an invitation from SURF to around seventy people to attend a conference on copyright management in universities at a hotel in Zwolle in June 2001. Several

presentations were given on the various aspects of the author-university-publisher relationship and at the end of the conference a small steering group was established to consider what might be done to assist the various stakeholders in academic copyright. This steering group, now called the Zwolle Group, began to explore the issues of concern to each group of stakeholders. Why is it important to publishers to ask for assignment of copyright? What effect does assignment of copyright to publishers have upon the use of academic content by library users? Are authors really concerned about copyright? It was important to get behind the rhetoric and established positions to understand why a publisher or a librarian or an academic might take a particular position on copyright issues. The UK people on the Zwolle Group had experience of this approach to conflict resolution in the PA/JISC discussions on topics like model licences, but we did not know how it would work in an international group largely corresponding by e-mail rather than meeting face-to-face on a regular basis. E-mail is a wonderful medium for communication but unless messages are phrased sensitively they can lead to mis-understanding in a contentious area like copyright.

Agreement on the 'Zwolle Principles'

Fortunately, although the members of the Zwolle Group have had occasional disagreements, we have found that there is more agreement between us than we would have expected. The area of agreement is expressed in the 'Zwolle Principles',¹ seven brief statements with the objective of assisting stakeholders in academic publishing 'to achieve maximum access to scholarship without compromising quality or academic freedom and without denying aspects of costs and rewards involved'. We are all concerned about access, about quality, about academic freedom, and about costs and rewards, but we may have differing expectations in each of these areas. How can we

manage copyright to enable authors, universities, publishers and library users to meet their expectations? The key to success, the Zwolle Group believes, lies in recognizing legitimate interests and in balancing those interests in scholarship-friendly copyright practices. The benefit in this approach is that it moves attention away from the contentious issue of *ownership* of copyright – an issue that divides stakeholders and polarizes opinion – to consideration of specific rights which may be allocated to various stakeholders in order to meet their legitimate interests. Every stakeholder in academic publishing needs some rights; no stakeholder needs all rights. It is when a particular stakeholder claims all rights that tensions arise between stakeholders.

Applying the Principles in practice

Adopting a balanced approach to copyright management is fine in theory but often difficult to achieve in practice. Some stakeholders may view the Zwolle Principles as idealistic and totally impractical in the ruthless world of academic publishing. The members of the Zwolle Group and the attendees at the Zwolle Conferences have seen agreement on the Zwolle Principles as only the first stage in the process of achieving good copyright practice. To be effective, the fine words in the Principles need to be applied in the wording of university copyright policies and of agreements between authors and publishers. Many existing policies and agreements do not balance stakeholder interests. Some contain wide-ranging, all-inclusive wording which does not recognize the legitimate interests of other stakeholders. At times such wording may appear to be the action of a powerful stakeholder – such as an employer or a prestigious publisher – using their powerful position against the interests of a less powerful stakeholder – such as an author or a library user. At other times such wording may appear to be the result of an over-cautious policy, claiming rights which may never be required but which should be claimed 'just in case'. Whatever the particular situation, applying the Zwolle Principles in practice requires a willingness to look at the wording of existing copyright policies and agreements to see how far they do meet the legitimate interests of all stakeholders.

¹ The Zwolle Principles and other documents on copyright management in universities produced by the Zwolle Group can be found on the web site: www.surf.nl/copyright/.

The Zwolle documents and 'toolkits'

At each of the subsequent Zwolle Conferences, in December 2002 and February 2004, members of the Zwolle Group have reported on their work to the wider community of stakeholders represented at the Conference and on each occasion Conference attendees have asked for practical documents to be used in applying the Zwolle Principles. The Zwolle Group's first response to these requests was to survey the university copyright policies and publisher agreements already in use and identify the various types of provision for rights. This initial survey of the copyright management landscape is available on the Zwolle web site at: www.surf.nl/copyright/keyissues/scholarlycommunication/implementing_policies.php and is valuable as a guide for stakeholders in looking at the options available to them. In some universities, for example, the copyright policy allocates ownership of copyright to the institution, except for rights in scholarly works which are retained by the individual member of academic staff. The survey also provides examples of publisher agreements based upon transfer of copyright to the publisher as well as examples of retention of copyright by the author.

It was recognized, however, that such a brief survey of the texts available would not meet the need for more detailed assistance to stakeholders in identifying suitable words to use in their policies and agreements. Accordingly, members of the Zwolle Group began work on three further documents. One document, a toolkit for authors and for publishers, takes the user through a series of questions on the various rights that might be retained or allocated. For example, an author may wish to retain the right to post a copy of her or his work to a web site managed by their university but is happy to allocate all other rights to a publisher. Alternatively, a publisher may need specific rights to enable their business to succeed but is willing to leave all rights other than those specific rights with the author. The toolkit – which is currently still in preparation – will assist the user in identifying the rights important to them and provide sample wording which might be used to implement the choices made.

A second document, entitled 'Ownership and rights of use of works created at the university' – of which an initial draft is available on the Zwolle

web site at: www.surf.nl/copyright/zwolle/2004feb/conferencepapers.php – identifies the text used by 18 North American universities in their copyright policies to manage the rights in publications written by their faculty members. This document illustrates the variety of ownership and rights allocation models already in use and it will be extended to include copyright policies from selected universities outside North America. A third document (also available at: www.surf.nl/copyright/zwolle/2004feb/conferencepapers.php) identifies the various features of national copyright legislation, such as fair use or fair dealing. Like the university policy document described above, the draft document entitled 'Comparative analysis of international copyright law applicable to university scholarship' has been prepared by Professor Kenneth Crews with the assistance of an Indiana University colleague. The importance of this document is that university policies and publisher agreements should be considered in the light of the legislation in force in particular countries. Although an author/publisher agreement may be covered by contract law, either party may wish to take into consideration the legal environment within which the contract is formed. Each of the Zwolle documents will be refined and updated as comments are received from copyright stakeholders.

Whither Zwolle?

The members of the Zwolle Group have viewed their work within a limited time-frame. The Group will cease to exist once its work is complete. At the third Zwolle Conference in February 2004, Conference attendees expressed a wish that the Group should continue its work for the time being, at least until the various toolkit documents are available on the Zwolle web site. It is no part of the work of the Zwolle Group to advise stakeholders on the use of the toolkits, although the Group recognizes that more attention must be paid to publicity for the work of the Group if its work is to be known and used. An important part of the Zwolle co-operative approach has been to avoid suggesting to any stakeholder that a particular form of wording should be used in their policies and agreements. The Zwolle philosophy is to identify principles underlying good copyright management

and to identify examples of good practice, but to make no attempt to lobby stakeholders. The hope is that by raising awareness of what is possible in respect of good copyright management, policies and agreements will change through natural evolution. Within the Zwolle Group there are still differing viewpoints on the rights required by the different stakeholders, but through consideration of the many options available to stakeholders the awareness of members of the Zwolle Group themselves has been raised. Copyright is often presented in 'black and white' terms – to own or not to own.

A closer examination reveals not many shades of grey but many shades of bright colours, a rainbow spectrum of possibilities.

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