

ANALYSIS OF THE LEGAL FRAMEWORK ON EDUCATION AND THE POSSIBILITIES OF INCLUDING OPEN EDUCATIONAL RESOURCES

**LET'S 'OPEN' THE TEXTBOOKS:
OPEN ACCESS TO TEXTBOOKS FOR PRIMARY AND SECONDARY EDUCATION**

Publisher:



Foundation for Internet and Society

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Open Educational Resources Initiative aims to raise the awareness and build the capacity of the academia for creating and using open educational resources in Macedonia.

CIP - Каталогизација во публикација

Национална и универзитетска библиотека "Св. Климент Охридски", Скопје

371.3:373.3]:004(075)(497.7)

371.3:373.5]:004(075)(497.7)

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Analysis of the legal framework on education and the possibilities of including open educational resources : let's 'open' the textbooks : open access to textbooks for primary and secondary education / [author Klime Babunski]. - Skopje : Metamorfozis, 2015. - 25 стр. ; 21 см

Фусноти кон текстот

ISBN 978-608-4564-65-2

а) Електронски учебници - Основно образование - Македонија б)

Електронски учебници - Средно образование - Македонија

COBISS.MK-ID 100231946



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1. INTRODUCTION – OPEN ACCESS AS FREEDOM TO LEARN AND EDUCATE

As anticipated, the development of the IT technology to the degree of making the Network omnipresent and the digitalization, as one of the key elements that defines each individual segment of the society, and the society in general, has redefined the processes which are of utmost significance to every society.

Such redefinition is the basis of a new ideology which is rigidly directed to the future and functionally related to ‘information-technologically literate society’ that grounds its well-being and prosperity on ‘knowledge-based economy’.

The learning and/or education is a key process that redefines every society. In such context, the multilayered nature of the task becomes clear: (1) a clear and firm awareness should be built that will create the concept of redefined education; (2) the new awareness should ‘conquer’, ‘enchant’ the institutions, and thus the new, redefined education could become social practice; (3) solely after the completion of the abovementioned, the complex process of redefinition can start, not only in the education, but in other societal areas, in the entire society actually.

In general, it can be confirmed that one of the greatest change in the educational process is the emergence of the open educational resources concept or the open educational means.¹ The idea of OER relates to the concept of David Wiley on ‘open content’², and it has occurred and is developing in parallel to the digitalization of the society and the growing usage of the Network. The globalization of these processes changes the practice in each society substantively, which generates global civilizational change.

The idea of OER has intensively matured in the last 20 years of the past century, and in the very beginning of the XXI century it grew from individual initiatives and practices into ‘citizens’ right’, its profile has been better defined and appropriately to its nature, it has been internationally standardized.³ Hence, it can be rightfully said that OER is a global concept and movement that has different national practices.

1. Further in this analysis, the phrases OPEN EDUCATIONAL RESOURCES (OER) OR OPEN EDUCATIONAL MEANS (OEM), shall be used as synonyms. In accordance with the title, resources or means shall imply only formal sources of education, i.e. textbooks.

2. consult: „Giving Knowledge for Free: The Emergence of Open Educational Resources”, CERI, OECD, 2007, and: Poposki, Dimitar. „Open Educational Resources and Open Access in Higher Education in Macedonia”, 2010, and: Guide to ICT no.7: „Open educational resources”, Metamorphosis, Skopje 2012

3. This is short and mostly indicative list of documents and events that have significant importance and influence the development and the standardization of the OER concept. 2001 – the establishment of Creative

It should be unequivocally emphasized that the effort for open access to textbooks is one of the pivotal axis within the OER concept, and thus within the open education or open learning concept. Namely, the textbooks are not the sole, but they are the basic tool in the learning and education process. In this context, what is more important is that in our case we are dealing with the beginners' levels of the educational process: open access to textbooks for primary and secondary education. The introduction of open textbooks, as well as the OEM concept, in the very beginning of the educational process, will exceptionally contribute to the creation of new societal practice, which from the very beginning will prepare future generations for the two fundamental roles in the educational process: student and teacher; user and creator of new educational contents.

However, before directing the thought towards 'opening' textbooks, it is necessary to emphasize the basic elements of the OER concept, and thus determine the lens of the analysis.

The 'opening' is usually described as free accessibility via Internet, and such availability means absence of any obstacles or accessibility with the least possible limitations in the content use, regardless whether the obstacles are technical or legal, or due to the price of the access.⁴ Clearly, we are discussing digital educational resources, and the open access to them is not by chance associated with free access. This feature of accessibility increases the opportunities to spread or transfer knowledge.

Also, some other authors⁵ identified this 'opening' through three dimensions. Although these dimensions, according to their nature, are different they are still interrelated, and the three together enable or endanger the 'opening':

(1) The dimension of technical features, or technical characteristics of the 'opening'. In this context, the 'opening' signifies technical interoperability and functionality. It refers to open standards that enable different programs to function together.

Commons, 2002 - Budapest Open Access Initiative, UNESCO Forum on the impact of open courseware for higher education in developing countries: final report, 2003 - Berlin declaration on Open Access to Knowledge in the Sciences and Humanities, IFLA Statement on Open Access to Scholarly Literature and Research Documentation, 2007 - Cape Town Open Education Declaration: Unlocking the promise of open educational resources, Open Educational Practices and Resources: OLCOS Roadmap, 2008 - EUA Working Group on Open Access recommendations, European Commission Directorate-General for Research Science, Economy and Society Open Access – Opportunities and Challenges, 2010 - Alhambra Declaration on Open Access.

4. „Giving Knowledge for Free: The Emergence of Open Educational Resources”, CERI, OECD, 2007, p. 32

5. Tuomi, I., ‘Open Educational Resources: What they are and why do they Matter’, Report, OECD, 2006,

(2) Open features of the means themselves or open systems, where the components, the parts of the system, are mutually independent and free, that is, they can be integrated with new components. This feature has its own dynamics and produces combined growth.

(3) The societal dimension of the ‘opening’ is a result of the relations, norms, the policies in certain societal sphere. It is a matter of principles, rules, criteria, that enable or limit the access, and that can be legal and/or economic (copyright, right to reproduce and distribute); linguistic (the access and the use can be free of charge, but the language can be a limiting factor); ethical (certain moral norms can limit the access in order to protect privacy).

The acceptance or the acknowledgement of the three aspects of the ‘opening’ expresses the awareness regarding the different nature of the standards within OER and the need of reconciliation of these dimensions in order to establish proper functionality of the open access.

On the other hand, in order to be aware of the accessibility, one must be aware of the existence of different levels of complexity of the accessibility that differ depending on the accessibility of each of the three dimensions individually. There are certain rules within the different levels that define the way the accessibility would be used. These rules actually establish the rules and the opportunities, not only regarding the use of OER, but how to modify the existing contents or add new contents to the existing ones. So, even in cases when the use, the access to open educational resources does not cause additional or other costs, this does not mean that access is not conditioned. The conditions and the rules within the accessibility and within OER actually redefine the status of the users and authors or producers, or the status of a ‘student’ and ‘teacher’, and consequently their interrelation is redefined as well. This quality, which is essential feature of the higher level of accessibility is exceptionally important incentive for creativity. And creativity is the healthy ‘environment’, which is primary requirement for creating new values, which on the other hand are the driving force of every economy, especially of the ‘knowledge based economy’.

The emphasis of the complexity and the qualities of higher levels of accessibility clearly indicate the increase of the accessibility or the freedom. In this context, an important

conceptual overview of the free use of creativity is given in: freedomdefined.org.⁶ According to the definition there ‘the free cultural creations’ imply the following types of freedoms:

- The freedom to use the creation and enjoy the benefits thereof
- The freedom to study the work and apply the knowledge acquired
- The freedom to reproduce the work and distribute copies, the entire work or segments only
- The freedom to change and improve the content and distribute the amended works

Obviously, such additional ‘liberation of textbooks’ turns them into a mean of ‘public service’ and the use of such mean is not questioned by the increase of the number of users: regardless whether they are ‘students’ or ‘teachers’. This is a natural feature of all digital means, and on such basis, especially in economical context, they are a typical example of ‘public wellbeing’ which is not only indispensable, but quite to the contrary, its good feature increases and reproduces its public availability and value, adequately to the needs and the creativity of the users!

6. Ibid: Giving Knowledge for Free: The Emergence of Open Educational Resources’, CERI, OECD, 2007, p. 35

2. (DIS)ADVANTAGES FOR OPEN ACCESS TO TEXTBOOKS IN THE REPUBLIC OF MACEDONIA

2.1. Legal (dis)advantages for open access to textbooks in the Republic of Macedonia

The right to education has been a fundamental human right for longer period, among the basic cultural rights. Hence, the part in the Constitution of the Republic of Macedonia, ‘Economic, social and cultural rights’, Article 44 saying:

‘Every person has the right to education.

Education is available to everyone under equal conditions.

Primary education is mandatory and free.’

The identification of the constitutional basis in terms of the education necessarily implies emphasis on Article 47, which includes the basic elements that create the ‘environment’ for establishing normal and functional educational process. On one hand, the freedom to create (science, art and other kind of creations) is guaranteed, and on the other hand, the Republic of Macedonia, which means the state, gets the obligation to ‘motivate, support and protect’ the science, the art and the culture; the scientific and the technological development and technical culture.

These two constitutional provisions regarding education clearly indicate the education is public good or an activity of undeniable public interest, hence, the constitutional norm calls for maximum engagement by the country.

Simultaneously, Article 45 of the Constitution gives economical dimension to the education, except the primary education, by stating that: in accordance with the provisions in the laws, the citizens have the right to open private educational institutions.

The indicated legal ‘framework’ of the education, refers to the fact that its feature of public good would be better identified in certain laws. In our case, these would be:

2.1.1. Law on Primary Education

The features of the primary education are defined within the Law on Primary Education.⁷ In the very beginning, Article 1 from the Law clearly emphasizes that this level of education is mandatory. In accordance with the above mentioned Article 45 from the

7. Law on Primary Education in the Official Gazette of the Republic of Macedonia no. 103/08, 33/10, 116/10, 156/10, 18/11, 42/11, 51/11, 6/12, 100/12, 24/13, 41/14, 116/14, 135/14 и 10/15

Constitution, only institutions of the state authority are obliged to provide all requirements that condition the realization of ‘mandatory and free of charge’ primary education. Consequently, the function of the primary education schools is defined as a ‘public interest’ function.⁸ The public interest or the educational process is ‘organized and implemented in accordance with curricula and syllabi’ prepared by the Bureau for Development of Education, and approved by the minister.⁹ Also, the Law on Primary Education (Article 25, paragraph 6) defines that when performing the activities in the educational process, IT technologies must be used, and this obligation is determined in the syllabi as well.

Furthermore, in the context of our topic: „open digital textbooks” Article 104 which refers to textbooks is encouraging digitalization, and in the last item of this article, the Law indicates the use of Internet in the learning process as a source of knowledge.

As a confirmation that the primary education is conceptualized as free public good, free public interest, in the long list of tasks and responsibilities on the side of the country one can find the obligation defined under the Law on Financing Primary Education. The means for financing primary education are primarily public funds, budget funds and means coming from local sources (Articles 162 and 163), and incomes from other sources are not forbidden, such as donations and/or legacy (Article 165). Such dominance of the public authority institutions is not only on conceptual level and planning of financial programs, but on the management level of the funds through their allocation and the control of the spending (Article 166).

2. 1. 2. Law on Secondary Education

As the primary education, secondary education is also defined as public interest, it is mandatory and free in public high schools (Articles 2 and 3).¹⁰

Private high schools, similarly to the public high schools, base their reasons for existence on the decisions of the line ministry, or the Government, and upon the proposal from the Bureau for Development of Education.

In secondary education the educational activity, the curricula and the syllabi are also confirmed and officially adopted by the Minister, upon the proposal of the Bureau for

8. Ibid, Article 11, paragraph 1

9. Ibid, Article 25, paragraph 2

10. Law on Secondary Education in the Official Gazette of the Republic of Macedonia, no. 44/95, 24/96, 34/96, 35/97, 82/99, 29/02, 40/03, 42/03, 67/04, 55/05, 113/05, 35/06, 30/07, 49/07, 81/08, 92/08, 33/10, 116/2010, 156/10, 18/11, 42/11, 51/11, 6/12, 100/12, 24/13, 41/14, 116/14, 135/14 and 10/15

Development of Education and the Center for Vocational Education and Training (Article 21).

The legal provisions related to the financing of the secondary education are confirmation on the status and the feature of the secondary education as ‘public good’. Namely, the public secondary education is financed by public, budget money (Article 101), and the financial plan and allocation of means fall under the competence of the Ministry of Education and Science (Article 102). Furthermore, the Law (Articles 103 and 104) provides for provision of funds from other sources, besides the standard gifts and legacy, such as: provision of educational services or sale of services resulting from the primary activity, which can actually be categorized as ‘right to manage the public interest in secondary education’. It is important that such management and the means collected on such basis are non-profit, i.e. they are earmarked, because under a separate regulation they are earmarked for ‘promotion, modernization and development of the educational activity’.

2. 1. 3. Law on Textbooks for Primary and Secondary Education

The textbooks publishing, as an activity, is clearly defined in the very beginning of the Law.

We consider the benchmark determined under Article 1 paragraph 2 within this Law as essential provision: „Textbooks publishing includes preparation, compilation and approval of the textbooks as basic teaching mean.”¹¹ This inclusion of all phases is in accordance with the elaborated comprehension of the primary and secondary education as public interest the realization of which is under the responsibility of the country, i.e. the state institutions have central and general role in the realization of primary and secondary education. A confirmation for such comprehension is Article 5 as well, stating: ‘Textbooks in public primary and secondary schools are free of charge’.

All mentioned phases in the textbooks publishing are processes defined beforehand. This is clear if one takes into consideration Article 4 stipulating that the curricula and the syllabi for certain grade or subject, which are the grounds for preparation of textbooks, are proposed by the Bureau for Development of Education and confirmed by the minister. This division of responsibilities – the Bureau suggests, the minister approves, is applied for the conceptualization of every textbook, which actually determines all essential elements of the

¹¹ Law on Textbooks for Primary and Secondary Education in the Official Gazette of the Republic of Macedonia, no. 98/2008; 99/2009; 83/2010; 36/2011; 135/2011; 46/2012; 24/2013; 120/2013 and 29/2014

textbooks, such as: scientific, expert and methodological grounds, educational functions, didactical and methodical standards, content systematization and other features.

The mentioned article defines the textbooks publishing in its essential meaning, and the following article, Article 5, defines the volumes i.e. the number of the textbooks: „Only one textbook can be used for one subject.’; and furthermore: „... when adapted foreign textbooks are used for a subject, an additional textbook can be used accompanied by didactical and working material...’; in other words: ‘...properly adapted textbooks can be used for subjects which are harmonized with... the curricula of the Cambridge International Curricula Center... translated in the teaching languages...’

In the mentioned division of duties in the context of ‘preparation, production and approval of textbooks’ the Law authorizes other entities as well: The National Commission for Textbooks, whose obligation is to establish commissions of reviewers and manage the reviewing process, and the Pedagogical Office, which is in charge of administering such activities. However, this does not mean that the abovementioned institutions are marginalized or have no authority, but to the contrary. The Bureau for Development of Education, in cooperation with the Center for Vocational Education and Training and Adult Education Center, drafts the program for the publishing of the textbooks which must be signed by the minister in order to become valid (Article 12).

2. 1. 4. Law on Copyright and Related Rights

This Law¹², although it is not directly related to education, is important as the previously mentioned laws when it comes to open access to textbooks. Hence, the norms defined within this Law cannot be considered solely as ‘external influence’. To the contrary, the Law is a kind of rotational axis due to the field it regulates. This Law defines the principles that regulate the rights of textbooks’ authors, regardless the form of the textbooks – printed or electronic. The Law on Textbooks actually implicitly mentions the Law on Copyrights in Article 18, paragraph 1, stating: ‘The minister and the author of the textbook shall sign a contract for transfer of the substantial copyright defining the mutual rights and obligations’.

According to the Law on Copyright (Article 26) the substantive right actually provide protection of the ownership and/or property interests of the author which arise from

12. Law on Copyrights and Related Right, in the Official Gazette of the Republic of Macedonia, no. 115/10, 140/10 and 51/11

his/her work. Also, the author has the exclusive right to forbid or allow (except in cases defined under this Law) the use of his/her work, regardless whether the original or copies of the original work is in question. The following Article (27) contains the types of substantive rights (1. Right to reproduction; 2. Right to circulation; 3. Right to public announcement; and 4. Right to revision) which belong to the author in the sense of usage of the work.

The reproduction, as substantive right is essential in terms of the free access to textbooks. The Law identifies this right as recording or preparation of a number of copies of the work, regardless of the material the copies will be made of, including electronic or digital recording. In this context, it is important that the Law embraces the benefits of the information technology and states that the reproduction can be performed ‘by storing the work electronically’ (Article 28).

The right to publicly announce the work, in accordance with Article 30, should be also mentioned, since it means that the work can be ‘made available to the public’ or it can be presented to the public ‘through wireless networks or landlines, including internet or other communication networks, in a manner that would enable access to the work from the place and at the time selected by the user’ (Article 37).

Article 52 from this Law is important as well since it regulates the use without paying any compensation. Namely, the Law provides for the use of the work, with no compensation, in cases such as ‘temporary reproduction’ or when ‘the reproduction is temporary’¹³ and when ‘the reproduction has no indirect economic significance and whose sole purpose is to... enable transfer of data in network...’ (Article 1); and also in cases when ‘reproduction is performed by... educational institutions for the purpose of realizing their activity, with no direct or indirect economic or commercial objective’.

In order to elaborate the possibility for open access to textbooks in details, especially in the context of the copyrights and its regulation, we should mention Article 75. In this article, the Law prescribes necessity of two publishing contracts, on the basis of which the author shall transfer to the publisher the right to reproduce the work. This necessity of two contracts is due to situations when the work is published or will be reproduced and/or circulated in different forms. Therefore, one contract should be made when the work is published in a form of a book, and another contract should be concluded when the same work is to be published or reproduced electronically.

13. In accordance with the Law on Textbooks, the validity period for a textbook is 5 years, after which a procedure for production of a new textbook is activated.

2.2. Financial / market (dis)advantages for open access to textbooks in the Republic of Macedonia

The analysis of the open access to textbooks, from financial (dis)advantages point will reconstruct the mentioned key elements in the listed laws, but under different lenses, through which I will treat the textbook publishing as specific economic activity.

Consequently, such approach is based on the thesis that the production of textbooks for primary and secondary education in the Republic of Macedonia is nonmarket economy.

By emphasizing nonmarket, I will begin my arguments with the elements that identify the market economy. The money, the capital, and the investment in certain type of production, is certainly the first element that identifies the market. In this context, I have already mentioned that it is a matter of public, budget money, whose investment or spending is aimed at satisfying certain public interest: educational process via ‘free textbooks’.¹⁴ So, it is clear that spending public money for producing textbooks is not aimed at making profits, but settling the production costs for certain public good.

All of this conditions the second element to lose the market nature, and that is the feature of the goods, in our case: the textbook. The textbook is not a good to be sold or bought on the market. It is used solely by student, who are not consumers, but only users: the student does not own the textbook, and he/she returns it at the end of the schoolyear.

In such circumstances some other elements or processes that define each market lose their market features. For example, the production of textbooks is strictly controlled process: only one textbook is approved for one subject, and thus the chances for competitions in production are brought to the minimum. The competition is present under specific circumstances i.e. it is determined beforehand. In such circumstances, the competition is possible between authors in the phase when they submit their works to the National commission and/or reviewing commissions, before the final selection of the textbook; and probably between the printing houses when they need to offer the most favorable bid for printing the approved textbook.

14. In order not to cause any misunderstanding, the phrase ‘free textbooks’ is used due to its frequency, but we are totally aware that textbooks are not free of charge in any case. They are fully paid, but not within the standard market purchase relations: the goods are paid by buyer and the buyer owns it. In this case, the country or the Ministry, pays the goods with citizens’ money and owns the textbooks.

The presented non-market logic in the textbooks publishing culminates with the fact that the Ministry of Education and Science is the only buyer of the copyrights, i.e. the Ministry is the solely publisher authorized to copy and distribute the textbooks.

From this perspective it can be concluded that the non-market logic in the textbooks publishing is in direction of creating public good and strengthening the opportunities for open access to textbooks.¹⁵ Is this assumption real in practice?

2.3. www.e-ucebnici.mon.gov.mk – random, fragmented and unregulated open access to textbooks in the Republic of Macedonia

The ‘e-textbooks’ web-page was set up by the Ministry of Information Society and Administration back in 2009. Three years later (2012) the web-page came under responsibility of the Ministry of Education and Science and it was reworked and reorganized.

Anyone knowing that this web-page was set up by the Ministry of Information Society, whose function is to design and direct the overall digitization of society, and maintained by the ‘most educated’ ministry, has every right to expect two things: first, the digitization should be consistent with the globally accepted trends and standards and second, this web-page, which is a digital means of education, should provide added value, crucially improve the creativity of the educational process instead of just digitally copying existing educational resources.

One could say that wonderful tasks and goals have been set for this portal, in line with these expectations. It is a ‘digital library for storing, searching and browsing e-textbooks mostly for students of primary and secondary schools’ and should grow into a ‘main centralized resource for access to a large number of e-textbooks’.¹⁶

Expectations and promises should be realized according to a clearly defined policy and precisely defined procedures. However, matching these expectations and promises with the reality on the ‘e-textbooks’ portal, primarily in the way that textbooks exist, points out

15. In order to avoid any misinterpretations, it should be emphasized that the open access does not exclude market logic, i.e. the realization of the public interest through the open access can exist even when the finances are from private sources, not only public sources

16 According to: <http://www.e-ucebnici.mon.gov.mk/pocetna> (27.07.2015)

to serious failings and absence of a comprehensive policy and procedures for its implementation. In fact, the absence of a specific document representing the defined policy and procedures for operation of ‘e-textbooks’ was part of my conversation with the Department of Textbook Publishing at the MoE. It was confirmed that this was not an unintentional failing, such as, documents regulating the contents of e-textbooks exist but have not been published on the portal by mistake. The problem is much more severe - such documents do not even exist. The absence of such documents is even graver, having in mind that although the existence of this web-page is undeniably useful and noble, it has not been legally foreseen. Hence, the virtuality of this portal is absolute, it is part of a public policy and the educational system, public money is spent for it, yet there is no official document defining its operation and responsibilities. This condition arises from the origins of ‘e-textbooks’: despite its six years of existence, it leaves an impression of RANDOMNESS.

In the further text I will outline other disadvantages pointing out the seriousness of failings which are the basis for the critical title of this part of the analysis.

FRAGMENTATION: Although ‘e-textbooks’ is the creation of two ministries, considered the smartest ministries in every country, which should have the capacity to open new worldviews or at least clarify existing ones, and despite the fact it has existed for 6 years, ‘e-textbooks’ is a static window, below the standard level of digital communication. Namely, the part entitled ‘SEARCH’ is still ‘UNDER CONSTRUCTION’.¹⁷ What is the use of a digital library, if after 6 years, a basic segment of its function such as ‘search’ is still below the standards of an average ‘paper’ library. The noble goal of the digital library is reduced only to a digital copy machine or digital warehouse of textbooks.

Another important indicator of the RANDOMNESS and FRAGMENTATION, as well as low quality and arbitrariness of ‘e-textbooks’, is the fact that it provides incomplete textbooks! Some digital files i.e. digital textbooks, (the number of incomplete textbooks is greater than two or three) to which there is access, are missing the cover or the second or third page, which by the standards of publishing, which certainly apply to textbooks, should comprise the catalogue number or catalogue information for publication – CIP.¹⁸

17. Accessed on 27.07.2015

18 The digital library was browsed with appropriate methodological principles. In the period from 01 July to 22 July, in the part for primary education, from first to ninth grade, 30 textbooks were reviewed, or every third textbook (34%) from a total of 88 published. In the part for vocational secondary education, 59 textbooks were under review, meaning every fifth one (20%) of the total 289 published textbooks.

Unfortunately, the MoE either does not take note of it or considers this condition completely natural, as it does not require any attention and/or information: no apologies or explanations to the users or authors.

Another equally serious indicator of RANDOMNESS and FRAGMENTATION of ‘e-textbooks’ is the absence of ‘creative commons’ logo, globally standardized as ‘CC’. The literal translation of this term is ‘common people create’, but a more correct translation, grasping the idea of copyright in conditions of free access, would be ‘creating together’. It covers several types of licenses or permits, which allow the author to set the rules for respecting copyright and the use of their work in a digital world, in the context of open access to the work, especially in the case of open access to means of education.

There is no good reason not to use ‘CC’ in ‘e-textbooks’. It should be underlined in this case that the lack of awareness by all stakeholders, first and foremost by the MoE, but also by the authors and commercial publishers, contributes to the failure to use ‘CC’. Further in the text I will present some facts explaining the assessment of the failure to use ‘CC’, referring to publishers, authors and, of course, the MoE.

All preconditions for such a step exist: there is public interest involved, textbook publishing financed with public funds and, as I stated before, considering that textbooks are free for end users, publishing textbooks is a non-commercial activity. Therefore the use of ‘CC’ is in the interest of both publishers and authors, and does not threaten their financial interests.

This environment requires commercial PUBLISHERS¹⁹ to perform their duties in the beginning, by printing the paperback version of the textbook. This fulfils the main condition for the financial transaction for publishing a textbook, and the MoE pays in installments. Publishers underlined that the number of reprinted damaged textbooks is minimal in the period while the textbooks are valid. Hence, this additional commercial activity does not generate crucial change for the financial structure of the textbook from the aspect of the publisher. Additionally, downloading a textbook from the web-site and printing it is much more expensive than buying the paperback, which makes it clear there is no real financial

¹⁹ In the research activities for this analysis I talked to representatives from ALBI, Prosvetno delo and Tabernakul. Unfortunately, because the owners of Ars Lamina were too busy during this period and their position that only they can discuss on behalf of the company, the interview with them was not realized.

reason for commercial loss of publishers, if they agree,²⁰ the books they published to be made available on ‘e-textbooks’.

In parallel, conversations with publishers showed other elements which contribute to their reserved and indifferent view to ‘e-textbooks’. First comes the current legal framework, which does not leave room for publishers in textbook printing in any creative sense. Textbook printing remains for a small number of older textbooks for which copyright have been purchased by publishers at that time. Newer textbooks and all future textbooks will be issued by the MoE, meaning that copyright will be purchased by the Ministry.²¹ Second comes the general level of the digitization of publishing i.e. the digitization of publishers and in this sense the lack of experience with open access, not only to textbooks, but in general, to any published work. Their web-sites are in fact digital windows or catalogues, which is far from digital way of working. Conversations showed that publishers are aware of this and that the slow pace of digitization is due to market limitations and the fact that digitization inevitably requires additional investments.

The creative power of textbook printing is determined by AUTHORS, and considering the importance of textbooks in education, it is exactly authors who have a key position in education. If the purpose of education is to spread knowledge and creativity, naturally, it is the interest of every author (of a book, means of education) their work to become accessible to the largest audience possible, to as many users as possible. The audience is not limited only to students – an important part of users are parents, and of course, the peers of the authors and teachers. In this principal level there is no serious reason pointing out that authors should have any opposite interest. Undeniably, open access is an ideal relationship between the author and users of the work, which can be completely realized through ‘e-textbooks’.

I would also like to remind that it rarely happens that public interests completely coincide with personal interest as it happens with the open access to educational resources.

20 This consent does not exclude authors who have sold their material rights to publishers. On the contrary, consent is based on an additional arrangement of the relations between the author and the publishers, this time in the context of e-publishing.

21 The assumption that public interests such as textbook printing should be in an inviolable monopoly of the state are completely outdated and uncreative. In conditions when globally, but also in Macedonia, a lot of subjects of similar significance to society, are resolved within public private partnerships insisting on such state monopoly is confusing, to say the least. However, this problem, considering its complexity, is subject of another analysis.

The realization of such an ideal relationship depends on the fulfillment of several conditions. Due to digitization and the creation of ‘e-textbooks’ based on it, the technical conditions for open access to textbooks are met. Another important element is copyright protection. In this regard, the condition is as follows: open access to textbooks can exist only if it does not question copyright protection, meaning it does not harm the author’s material rights. From this aspect, relationships are harmonized i.e. the condition is fulfilled. Considering that authors share the same environment as publishers, authors win the market by selling their material copyright for the paperback issue. Considering the current environment, the digital textbook does not assume an additional engagement by the author. The publishing of this textbook does not generate any new financial gain, neither for the publisher, nor for the author. The only ‘profit’ from the e-textbook is shared: on one hand, by the author(s), because their audience is multiplied, and on the other hand, by the separate groups of users, because they receive unlimited access to certain contents.

In addition to interviewing publishers, several authors of textbooks were also contacted.²² The replies of authors completely confirm the assumed theses:

- (1) Authors have heard but do not really know much about the open access (OA) to textbooks or do not know anything of it and encountered this concept for the first time in the questionnaire.
- (2) They are not aware if and to what extent their co-workers (authors that were interviewed are teachers, professors) are acquainted with the concept of OA which indicates that this concept is not subject to a regular or frequent professional communication.
- (3) At the same time most of them have personally experienced on the internet the open access to contents and materials which they have used in their professional activities.
- (4) Most authors are not aware how to protect copyright within OA to textbooks on the internet.

²² 15 textbook authors were contacted but considering that this was a holiday season, communication was established only with five of them, meaning that only they sent completed questionnaires. Being aware of the limits of the endeavor, the goals were modest: provide data on a preliminary level, which will give indications of the awareness and positions of authors on the open access to textbooks. In addition, all these authors have years of experience in this area, their textbooks have been published both by publishers and the MoE. Hence, despite the small number of completed questionnaires, the data are not irrelevant but they are completely appropriate to the goal: provide initial or indicative findings, which will serve as good direction for future more comprehensive research and public discussion.

(5) Most authors signed their contracts with publishers from 2010-2012 and the remaining the period 2013-2015.

(6) Part of the authors, which believe they are not sufficiently informed of the OA concept, do not know if they would sign a contract agreeing their textbook to be published on the internet, according to the OA concept. Those that would sign such contract, require clear definition of copyright or they agree with open access, but not to downloading the textbook.

(7) Most of the interviewed authors know the page 'e-textbooks' and have browsed it. Most of them are also authors and/or co-authors of some of the textbooks published on the web-page. However, none of them have signed a separate contract with the MoE for e-publishing of the textbook.

(8) Some of the interviewed authors responded that they 'still do not have a position to OA to textbooks' and those who have a positive opinion on the OA, require to have 'protected copyright and defined rules'.

(9) Those not having sufficient information for the concept of OA refrain from assessing the 'e-textbooks' portal and those with wider experience regard as positive the possibility for access to other textbooks offering different and more than the 'selected' textbook and point out that this pluralism in educational resources is relevant to the goal 'to realize curriculum, not a textbook'.

The reservation and (lack of) awareness by publishers and authors for the concept of OA to textbooks and the portal 'e-textbooks' is not and cannot be only their job. The MoE is also an institution whose purpose is to promote the conditions in the education. Therefore, if publishers and authors are outside of the matrix of processes defining the status and the role of the concept of OA to textbooks and for authors the portal 'e-textbooks' is not a common thing, this state of mind is directly related with the MoE.

In the end of the part I would like to add the facts for the third failure in the title: UNREGULATED open access in 'e-textbooks'.

The digital library of textbooks provides access to textbooks whose material copyright have been purchased by the MoE. Textbooks whose material copyright are owned by publishing houses are presented only with their cover. This condition is completely acceptable since the MoE does not have contract with these authors, neither for the paperback, nor for the e-publishing of their textbooks and for this purpose it would have to

provide consent by the authors and/or the publishers for ‘opening the textbooks’. On the other hand, according to my conversations at the MoE, and the communication with the authors who responded to the questionnaire and whose textbooks have been issued by the MoE, not only as paperback but also as e-books, authors have not signed separate contract with the MoE for e-publishing. The Copyright Law and the related legal regulations, Article 75, paragraph 2, undeniably states that: ‘The publishing right from paragraph 1 of this Article (the right from paragraph 1 refers to paperback – my note) does not cover the right to publish the work in an electronic form. Electronic publishing will require a separate contract.’

3. CONCLUSIONS AND RECOMMENDATIONS FOR PROMOTING OPEN ACCESS TO TEXTBOOKS IN THE REPUBLIC OF MACEDONIA

Conclusion 1:

The present normative concept of the educational system, as well as the practices according to which this system is realized, do not optimize the education in direction of preparing the students for future citizens of a IT literate society that would be creative force in the knowledge-based economy.

Conclusion 2:

The education is a public good and is an activity of undisputed public interest; therefore the constitutional norm calls for optimum state engagement.

A positive thing in the present educational system is the fact that this system creates in conceptual, normative-legal and financial aspect, certain grounds and does not close all possibilities for open access to educational resources.

Also, the open access to textbooks, on one hand, is not a defined part in the program planning of the educational process and textbooks; and on the other, through the portal e-textbooks, as a result of the determined negative aspects: absence of regulation, incompleteness and coincidentally show that this ‘opening’ of the textbooks is not ‘state of awareness’, hence it does not contribute to redefining of the educational system and process and if the portal continues functioning in the same manner it shall have a negative effect upon the open access to educational resources in general.

The authors themselves indicate that they are poorly informed on how to protect their copyrights within the open access to textbooks and on the open access concept in general.

Conclusion 3:

In accordance with the Law on textbooks for primary and secondary education, all phases in the textbooks publishing are processes defined in advance. The plan and the program for certain grade or subject, as basis for the preparation of every textbook, are proposed by the Bureau for development of education, and confirmed by the Minister. The same goes to the concepts for every textbook. Therefore, the Bureau for development of education should lead the process of “opening textbooks”.

Conclusion 4

Due to the matter it regulates, the Law on Copyrights and Related Rights is a pivotal axis where the principles arise from regarding the rights of the textbooks' authors, regardless of the form they are published in: hardcopy or electronic. The author has the exclusive right to prohibit or allow (except otherwise defined under this Law) the use of his/her work, the original or copies of the original.

The reproduction as substantive right is essential for the free access to textbooks. The Law accepts the benefits of the information technology and defines that the reproduction can be performed by "storing the work electronically".

The right to public announcement of the work should be mentioned as well, which implies that the work can be "put at the disposal of the public" and this can be realized by public announcement of the work "through landline or wireless, including the Internet or other communication networks, in a manner that would allow access to the work, from a place and at the time chosen by the user".

Conclusion 5

The Law on Copyrights and Related Rights allows for the use of the work without any compensation in cases as "temporary reproduction" or when "the reproduction is temporary" or when "the reproduction has no independent economic significance and whose main goal... is to enable transfer of data in a network..." and when "the reproduction is performed by... educational institutions for the purpose of fulfilling their activity and with no direct or indirect economic or commercial objective".

Conclusion 6

When it comes to public, budget money, its investment or spending has the objective of fulfilling specific public interest: educational process through "free textbooks". The spending of the public money for textbook production is not intended to create profit, but to settle the production expenses for certain public good. In this way, the good – the textbook is free from any aspect of market good. The textbooks is not intended to be sold or bought. In such circumstances, the other elements or processes that define every market, lose the aspect of market elements or processes.

MoE is the sole buyer of the copyrights, i.e. the sole publisher authorized to reproduce and distribute the textbooks. From this perspective, it can be concluded that the non-market logic in the textbook publishing is in direction of creating public good and strengthens the opportunities for open access to textbooks.

Conclusion 7:

There is no specific document that presents the policy and the procedures for the functioning of the portal “e-textbooks”. Hence, it is a part of the public policy, part of the educational system, public money is spent for this portal, but there is no specific document that defines the work of the portal and the responsibilities within the portal.

Conclusion 8:

There is no awareness regarding the licenses Creative Commons and the possibility for their use within “e-textbooks”. Furthermore, the lack of information among everyone, MoE, authors and the commercial publishers, contributes to the absence of CC.

Since the textbooks are free for the final users, the publishing of the textbooks is non-market economy. Therefore the introduction of CC would be beneficial for the publisher and the authors and presents no threat upon their financial interests.

Conclusion 9

The creative power of the textbook publishing is determined by the AUTHORS, and considering the importance of the textbooks in the education, the authors have the key position in education. It should be emphasized that the author’s interest is not limited solely to the users, i.e. the students, but the parents and the (author’s) colleagues and the teaching personnel are important users as well. With such principle, there is no serious reason that would indicate that the authors would have different interests. Surely, the open access is the ideal relation between the author and the users of his/her work, and this relation can be completely realized through the portal “e-textbooks”.

Conclusion 10

Despite the mentioned negative sides, which are the main source of ‘absence of awareness’, there are still some basic preconditions present for serious essential step

forward: the education has the status of public interest and the textbook publishing activity is non-market economy.

Therefore, the harmonization of all the actors in the open access to educational resources, initially the open access to textbooks, should start with legal and program definitions within the education.

State, economic, professional and civil organizations should be included in the defining process. Only in this manner, the open access shall become 'joint awareness condition'.

The realization of the indicated objectives should follow the following recommendations:

Recommendation 1:

On one hand, the Law on Copyrights and Related Rights should include a provision on authorship in the context of public interest and public finances as coordinative points in the open access, and on the other, the protection of copyrights and related rights should be strengthened, and the right to open access to such works should be promoted, especially when it comes to educational means.

Simultaneously, the Law on Textbooks should include a provision on open access to textbooks, as optimum fulfillment of the public interest in the education.

Recommendation 2:

The legally defined open access to textbooks should become segment in the plans, programs, and concepts created by the Bureau for Development of Education within the textbooks and other educational means, such as activity books.

Recommendation 3:

The introduction of the 'open access' as one of the basic principles in the textbook publishing should result in clearly coordinated policy that will include different, institutional and non-institutional entities, however, the authors and their rights shall always be in the center of such policy.

Recommendation 4:

In harmonization with the technical capacities and standards (for e.g. Web 2.0) the open access should promote communication and creativity, deformatizing the relation teacher – student and creating the basic preconditions for more essential and comprehensive digitalization of the education.

Recommendation 5:

The legal norms and by-laws on “open access” to textbooks should initiate conceptual redefinition of the portal “e-textbooks” up till the enabling of different types of availability, in cooperation with the authors by all means.

Also, the determined obstacles should be immediately overcome: signing separate agreements with the authors regarding electronic publications, and thus opening a dialogue with different public categories, for e.g. the authors, which would contribute to the promotion of the joint awareness.

The necessity of two contracts refers to situation when the work is published or will be reproduced and/or put in circulation in different forms. Thus the necessity to have one agreement when the work is published in hardcopy, and when the same work is published or reproduced electronically, another separate contract should be concluded.