

11-8-2011

Open Access: Good for Readers, Authors, and Journals

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Repository Citation

Watson, Carol and Donovan, James M., "Open Access: Good for Readers, Authors, and Journals" (2011). *Articles, Chapters and Online Publications*. 26.

https://digitalcommons.law.uga.edu/law_lib_artchop/26

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Student Edition

Law Review and Journals

Open Access: Good for Readers, Authors, and Journals



Contributed by

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Reader Acceptance

Students today receive information through a variety of digital media and methods. Whether seeking music, videos or news, they assume the process will be easy and generally free. This expectation does not always hold true for the core materials of legal scholarship, but we believe that this gap may soon improve due to growing interest within the legal community in open access principles.

Open access refers to the lack of barriers between users and the document they wish to retrieve. The most common obstacle is cost: Resources have long been held within expensive commercial databases, available only to those with an ability to pay hefty fees either to subscribe to the product or even to view a single item. The open access principle argues that financial barriers confound

the free flow of information to those who perhaps need it the most.ⁱ “Third world” scholars, for example, may not be able to rely upon their local libraries to offer the most current articles. If they cannot retrieve the materials electronically, they may have to do without, putting them at a consistent disadvantage that exacerbates an existing knowledge differential.

Law students can feel that they already enjoy the privileged circumstance envisioned by open access activists. They easily view documents without regard to cost. In fact they operate behind a secure financial wall underwritten by their schools. Unmetered access to materials through Bloomberg Law, Westlaw, Lexis, and HeinOnline is a privilege students will not enjoy after they graduate and enter private practice. At that point, if not sooner, they will quickly grow to appreciate the free availability of these legal materials on the Internet.

Author Acceptance

The greater challenge to encouraging wider adoption of open access legal scholarship practices comes not from reader acceptance, but from the other side of the production cycle, author resistance. In most academic disciplines, the majority of journals are produced by commercial publishers who can impose highly restrictive limitations on what authors may do with their own work, often requiring in return for the honor of appearing within their pages the surrender of all copyright in the work.

Law is unique in that its primary venues for scholarship are student-run journals under the aegis of the law school. In contrast to commercial outlets, law journals and reviews typically offer permissive copyright agreements that allow authors to post electronically pre-print versions of an article, and often even the final version as it appears in the paper issue—a practice endorsed by the Association of American Law Schools’ Model Author/Journal Agreement.ⁱⁱ

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Not all authors, however, take advantage of this liberty to post their writings onto the web, whether on open access platforms sponsored by their institutionsⁱⁱⁱ or in the Social Science Research Network (SSRN),^{iv} perhaps the most popular platform among law faculty for self-dissemination of written works. Given the many reasons that open access should be supported and encouraged, this reticence can be puzzling.

In an upcoming issue of the *Law Library Journal*, we present the case for open access legal scholarship, and provide empirical evidence that the practice is not only good for readers, but makes sense for authors as well.^v Drawing upon a sample of articles published in each of University of Georgia's three law journals from 1990-2008, we found that slightly less than half (44.1 percent) of current scholarship is finding its way into an open access venue. This result, while not inconsiderable, suggests that much room for improvement exists.

Some of the problem may be solved by increasing awareness among faculty and student writers that posting their work is even possible. Librarians can be especially helpful at this point by either describing the open access options, or volunteering to do the actual upload on their behalf. A different approach will be to show to authors that they derive measurable benefits from posting their scholarship.

The motivation for any author to write, we argue, is to find readers. By that standard, one measure of the success of an article is the rate at which it influences later thinkers on the subject, especially as indicated by citations. This statistic is the "scholarly impact" of the article, and several tools such as *Social Science Citation Index*, *KeyCite*, and *Shepard's* allow authors to track their latest standing.

Sorting the articles in our sample into those which were available via open access, and those that were available either only in print or through a fee-based outlet, we found that, on average, open access articles received 58 percent more citations than non-open access articles. While both types received citations soon after publication, the open access pieces enjoyed a much longer impact on later scholarship (see Figure 1). The message is clear: Anyone seeking to maximize their scholarly impact will make their works available through as many open access outlets as possible.

While all these points should appeal to any author, student writers may have cause to be especially excited by open access opportunities. Formal outlets for student work can be limited—each school's journal publishes only very few comments and notes, and outside reviews and journals are rarely receptive to submissions from students at other schools. By contrast, anyone can submit to SSRN, provided the paper fits into the selected paper series' topical description. The democratic possibilities of open access mean that contributing to the discussions of emerging legal issues need no longer be a privilege of the elite.

Publisher Acceptance

Even if the goals of both readers and writers are served through open access policies, one might reasonably question whether this approach would appeal to publishers. They certainly have legitimate economic interests that must be respected if we wish the journals to survive. Giving their content away might appear to undermine those goals.

The worry is that, if content is available for free on the Internet, perhaps fewer users would access the content through fee-based services such as Bloomberg Law, Lexis or Westlaw, reducing a critical stream of revenue for school journals. While that may happen in a few cases, we anticipate the more general trend to be that legal specialists accustomed to finding journal materials through fee-based services will continue to use that route. This will be especially true when relying upon subject searching rather than looking for a known article. Open access, in other words, should expand the pool of potential readers beyond the legal field without necessarily diverting from the established audience in revenue-producing sources.

There are additional noneconomic reasons why a journal might be skeptical about committing to open access. Having this content available electronically may call into question the future of the print versions. The *Durham Statement*, a policy declaration adopted by representatives of many of the leading academic law libraries, hopes that the elimination of print will indeed be the final outcome. It urges "every U.S. law school to commit to ending print publication of its journals and to making definitive versions of journals and other scholarship produced at the school immediately available upon publication in stable, open, digital formats, rather than in print."^{vi}

Even while the call to embrace open access is widely supported, journals will have several issues to consider when contemplating whether to eschew print entirely as the *Durham Statement* advises. One question concerns whether prestigious authors would wish to place an article with a journal that has no print version. A recent survey of authors found that while two-thirds would have accepted their first-tier placements even if they had lacked a print version of the journal, this openness to electronic-only publication seems to be true only with the most prestigious titles. Outside that elite realm, more than half responded that the lack of a print edition would negatively impact their decision to accept a publication bid.^{vii}

The author's hesitation to place an article in an electronic-only journal is not unreasonable in the current environment. Publication in such titles currently has an uncertain status within an academy that reserves its greatest rewards for publication in traditional print venues. This skepticism has roots in multiple sources, including one regarding the current instability of many online platforms. "Link rot" occurs when web addresses lead to a 404 error, meaning a once-valid URL has expired for one of many possible reasons. An early study of law review literature found that four years after publication only 30 percent of cited internet links still functioned.^{viii} Although tools exist to mitigate the problem of URL instability, at this time few law journals

have implemented these solutions.^{ix} The uncertainty of citation stability can justifiably lead many authors to refrain from citing to electronic documents, which reasonably enough can result in the reluctance to publish in that format if the author has a wish to be cited.

Whether or not law journals cease print editions—which many scholars do find useful, and not always easily replaced by electronic versions—the call for periodicals to facilitate open access to both its current and archived editions continues to grow. Many law journals have already begun to make their content easily retrievable from their own websites.

Conclusion

Readers, authors, and even law journal publishers will all achieve their different but related interests by adopting open access principles. Readers of every kind will have more efficient access to the materials they need to pursue their intellectual and informational goals; authors will see their works read and cited by a broader audience; and law reviews and journals can raise their own profiles without injuring their revenue streams from fee-based sources. Open access works for everyone, and is the future of information creation and distribution.

James M. Donovan is Director of the Library and Associate Professor at the University of Kentucky College of Law, and Carol A. Watson is the Director of the Alexander Campbell King Law Library at the University of Georgia School of Law. Donovan and Watson have co-authored several works on open access digital repositories, including “Behind a Law School’s Decision to Implement an Institutional Repository” (white paper) (http://digitalcommons.law.uga.edu/law_lib_artchop/15/), and presented on the topic at conferences of the American Association of Law Libraries and the CALI Conference for Law School Computing.

ⁱ John Willinsky, *The Access Principle: The Case for Open Access to Research and Scholarship* (MIT Press, 2006).

ⁱⁱ <http://www.aals.org/deansmemos/98-24.html>.

ⁱⁱⁱ The University of Georgia has a particularly well-established digital repository, which may be viewed at <http://digitalcommons.law.uga.edu>.

^{iv} <http://www.ssrn.com>.

^v See James M. Donovan & Carol A. Watson, *Citation Advantage of Open Access Legal Scholarship*, 103 *Law Library Journal* (forthcoming), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1777090.

^{vi} Durham Statement on Open Access to Legal Scholarship (Nov. 7, 2008), at <http://cyber.law.harvard.edu/publications/durhamstatement>.

^{vii} Richard A. Danner, Kiril Kolev, & Marguerite Most, *Print or Perish? Authors’ Attitudes toward Electronic-Only Publication of Law Journals*, available at http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3019&context=faculty_scholarship.

^{viii} Mary Rumsey, *Runaway Train: Problems of Permanence, Accessibility, and Stability in the Use of Web Sources in Law Review Citations*, 94 *Law Library Journal* 27 (2002).

^{ix} See Benjamin J. Keele, *What If Law Journal Citations Included Digital Object Identifiers? A Snapshot of Major Law Journals* (March 18, 2010), available at <http://ssrn.com/abstract=1577074>.