

Economic Gain

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Who Wins? Economic Gain and Open Access

Foto privat



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two copyright cultures sharing a single form of legal protection

Dieser Beitrag untersucht, unter welchen Bedingungen Autoren ökonomisch davon profitieren können, dass sie ihre Werke unter einer Creative-Commons-Lizenz frei verfügbar machen. Methodisch werden anthropologische Techniken angewandt, die die sozialen Rahmenbedingungen in bestimmten Kulturen und Mikro-kulturen der euro-amerikanischen akademischen Welt untersuchen. Ziel ist, die Bedingungen zu benennen, unter welchen Open Access insbesondere für akademische Autoren von Vorteil ist.

This article investigates the circumstances under which authors can benefit economically from using the Creative Commons license to make their works available for open access. The methodology applies anthropological techniques that examine the social circumstances within particular cultures and micro-cultures of the Euro-American academic world. The goal is to establish the circumstances under which particular academic authors do better with open access than without it.

COPYRIGHT CULTURES

Copyright in the Anglo-American legal tradition is strictly about protecting the economic benefits that come from the creation of intellectual property. European law by contrast offers a greater balance between authors' inalienable personal rights (generally called »moral rights« when translated into English) and the rights to economic exploitation. Nonetheless within both Europe and the Anglo-American legal world the usual contentions revolve not around moral rights issues like attribution or alteration, but about who profits financially from the publication of a work.

The theory of copyright law, particularly in the Anglo-American world, claims a social benefit for its exclusivity. For example, Article 1, Clause 8, of the US Constitution, states as its reason for copyright protection: *To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.*

Similarly the original English copyright law, the 1710 Statute of Anne, claims »learning« as a goal with in its title: »An Act for the Encouragement of Learning, by Vesting the Copies of Printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned.« This wholesome language coexists with the statute's raw intent to protect economic interests (Tallmo, [2007]):

Whereas Printers, Booksellers, and other Persons, have of late frequently taken the Liberty of Printing, Reprinting, and Publishing, or causing to be Printed, Reprinted, and Published Books, and other Writings, without the Consent of the Authors or Proprietors of such Books and Writings, to their very great Detriment, and too often to the Ruin of them and their Families...

The claim in this and later expressions of the copyright law that it protects the financial interests of authors is partly disingenuous. It is true that authors had no claim on income from the publication of their works before the copyright laws, but even with copyright protection only a tiny fraction of the world's authors earns an actual living from their works. The profits go mainly to the publishers. Companies like Elsevier make substantial incomes from academic writers who never get back a cent in royalties. This does not mean that those authors do not benefit economically, but they profit in ways that have little or nothing to do with copyright protection. Overprotection can even hurt them in the long run.

This situation stems from the existence of two copyright cultures sharing a single form of legal protection. Existing copyright laws do not distinguish between works that sell enough copies to make significant royalty payments for the authors and works whose economic value to the authors is independent of royalty payments. Best-selling authors are not candidates for open access.

The Berlin Declaration on Open Access (2003) defines the target group for open access with a definition that emphasizes scholarly and scientific materials: *Establishing open access as a worthwhile procedure ideally requires the active commitment of each and every individual producer of scientific knowledge and holder of cultural heritage. Open access contributions include original scientific research results, raw data and meta-data, source materials, digital representations of pictorial and graphical materials and scholarly multimedia material.*

This formulation of the cultural divide is problematic because of the many gray areas. Textbooks represent an obvious example. They can earn their academic authors significant royalties that can (depending on the field) outpace the authors' academic salaries. Textbooks also include research results, if perhaps not always ones that are absolutely original.

There are also scholarly works that, through some happy quirk of topic and literary skill, in fact sell enough copies to earn substantial revenues. My dissertation advisor admitted once that he made an instructor's salary on sales of his books, one of which won the National Book Award for history in 1964. While the number of these works is relatively small, the number of academics who aspire to best-seller fame, especially

in fields like history, is a factor in their attitude toward open access.

In practical terms, open access benefits those authors whose economic interests in publishing are independent of any expectations of royalties. These authors are likely to be scholars, but the set does not necessarily include all scholars and may include others. Laws belonging to a copyright culture that assumes an authorial interest in royalties do not benefit this group.

ECONOMIC VALUE FOR ACADEMIC AUTHORS

Two forms of economic value other than cash payments to authors play a significant role within the academic world. The first has to do with the tenure and promotion process in North American Universities, and with the process of acquiring a professorial chair in a European university. In both cases, when viewed over career-long stretches of time, the incremental accretion of peer-reviewed, much read, well-cited, influential articles and books has a measurable impact on the bottom line of a professor's income. The process is less direct than with best-sellers. Instead of selling a work to a publisher who markets it and pays direct royalties, the scholar-author provides the article for free (or even pays to submit it) to a journal whose impact factor status persuades the author's institution to offer promotion or increase the salary. What matters is that the result for the author is more money.

Of course, scholars benefit economically in ways that do not always appear on their income-tax statements. For example, authors whose works have a high impact according to the measures of their disciplines are likely also to have a better chance at winning grant money. Grant money is not personal income, but it provides economically valuable resources to do things that the author wants, including hiring staff, acquiring computing or laboratory equipment, and traveling to conferences or research sites. This means that the author does not have to spend personal funds on these goals, a saving that represents a non-taxable increase in personal resources.

The intangible rewards from scholarly publishing are another form of economic value. Collegial respect and reputation matter in human societies. It often matters more to academics whether their peers think well of them than whether they make slightly more (or less) money. The number and impact of researchers' publications make a difference to their place within the hierarchy. After ten years as an editor I have learned that I have more influence in this gatekeeper role for publishing success, than I did as the author of a book that increased my income by a third.

Under these circumstances, economically rational academic authors should want to maximize their publication in venues that tend to improve their chances for tenure and promotion, for getting grants, and for earning the respect of their peers. Not surprisingly most do. The problem they face lies in finding the right publishers, and from their viewpoint, copyright and Open Access seem like secondary issues.

PUBLISHING CULTURES

The problem for Open Access supporters is how to get academic authors to see how Open Access can provide conditions that help to maximize their economic status. Established and relatively inflexible publishing cultures are among the most common barriers to the use of Open Access. Some publishing cultures already accept most of the key principles of Open Access. Physics and mathematics are good examples, since they share working drafts of articles freely and openly. Book oriented fields with predominantly single-author works show much less interest.

These publishing cultures split largely along disciplinary lines and it is important to understand how influential this discipline-based behavior is. Andrew Abbott (2001) describes the discipline-based dependence of American academics in anthropological terms:

... being an academic means, willy-nilly, being a member of a discipline. ... Other disciplinary functions are cultural rather than social structural. The first of these is the Geertzian function of providing academics with a general conception of intellectual existence, a conception of the proper units of knowledge. (p. 130)

This conception of the proper units of knowledge determines choices such as whether one writes a monograph with an extended narrative covering hundreds of printed pages, or creates knowledge in quantum bursts the size of journal articles. This size choice tends to be one of the fault lines between disciplines strongly wedded to 1950s-style, paper-oriented publishing system with its strong tradition of requiring a copyright transfer, and those that are both more accepting of articles and more open to electronic publishing experimentation. Like its geologic cousins, this fault line also has disciplines build on top of it, a situation that leaves young scholars in considerable uncertainty.

This American discipline-based focus is by no means the only model. Abbott describes some of the alternatives, and explains why, in his view, the disciplinary model seems to dominate:

There are alternatives: the personalism of nineteenth century Germany, the French research cluster, the ancient British system with its emphasis on small com-

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munities of common culture. But because of their extraordinary ability to organize individual careers, faculty hiring, and undergraduate education, disciplinary departments are the essential and irreplaceable building blocks of American universities. (p. 128)

The fact is that the American disciplinary model has significant intellectual sway in Europe, especially in northern Europe. Many Dutch and Scandinavian universities have an intentionally American structure, and contemporary German universities have long had a discipline-based orientation, though the boundaries are a bit more flexible than the American mode.

AN EXAMPLE PUBLISHING CULTURE

The academic field of Accounting offers a good example of a field within this disciplinary model where the choices for those at or aspiring to the top-ranked institutions are strictly and explicitly limited, and yet the field shows recent changes that indicate potential for Open Access.

As an academic discipline Accounting is broadly international with both major US and major European journals, and authors that also come from significant Asian and Australian universities. A recent working paper with authors from the US and Taiwan describes the pressure to publish in a very small set of academic accounting journals:

The study investigates the appropriateness of using publication of an article in a top (specifically, top three) accounting journal as a proxy for its quality, as reflected by its impact on others' research. This investigation is motivated by an apparent increase in pressures to publish in top journals, with attendant effects on the allocation of faculty and institutional resources and more broadly, the health of accounting knowledge advancement. – Chow, 2007 p. 2

The study concludes:

Yet pressures to publish in top journals continue to rise, implying further downgrading of works published in journals below the top ranks. This development can significantly impact the welfare of most faculty members. Since individual faculty typically publish only a limited number of articles regardless of outlet, the mis-evaluation of even a small portion of their publications can significantly affect their performance evaluation, professional stature and rewards. – Chow, 2007, p. 17

For authors in this discipline, and others like it, issues about who owns the copyright and what permissions they might retain for open access publication are functionally irrelevant. The field is small. The academic departments generally have enough financial resources from corporate contributions that they can afford to buy publications if their university libraries cannot. As

a research field accounting is also relatively young and relies heavily on modern statistical tools. This means that access to older publications is not a priority, or often even of much interest, for active researchers at top-ranked institutions.

In recent years a private, for-cost pre-print service has grown up through the Social Science Research Network (SSRN)¹. SSRN makes no demands for an article's copyright and is in that sense Open Access friendly. To submit a working paper to SSRN the author need only state who the rights owner is. But this is not Open Access. SSRN merely accepts the fact that its draft articles may later appear in a venue requiring copyright transfer. Access to SSRN is not cheap. Most universities with active researchers in the field have subscribed. This creates a situation that feels like Open Access to people within the field. True Open Access appears to offer no way of improving exposure to colleagues, because SSRN completely dominates electronic access, both pre- and in some cases post-print.

Accounting represents only one example of a publishing culture where Open Access appears to have little chance of success. But it is also a field where, as Chow's article suggests, the existing limits on acceptable journals could be viewed as potentially unhealthy. Measurable success in terms of readership and citation can create interest in Open Access once the connection between readership and peer-recognition is realized.

READERSHIP REALITIES

In the past a handful of readers represented the economically significant audience for academic authors: an editor, one or two reviewers, departmental colleagues, and a few administrators such as a dean, provost, or president. These were the people who traditionally made the life-changing decisions for most academics. The sales of books or of particular issues of journals mattered only so far as they interested and influenced these people and in so far as these people had comparative information. Even editors, who are key insiders in the publishing world, rarely had statistics that would meaningfully let them distinguish the performance of individual authors in a world of association-based subscription for journals and blanket orders for monographs.

That situation changed in two ways in recent decades. The first change began in the early 1960s with citation-analysis studies that claimed to provide a factual and neutral evaluation of the impact of particular articles. This form of analysis benefited a society that already put a high value on ranking lists for sports results and electoral predictions. The absolute truth of

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the analysis mattered less than the fun of having winners and losers. The popularity of citation analysis has reached a level where many universities either have or contemplate rules that require publication in journals with a particular citation-analysis impact factor. The second change was the move to electronic publication, which allowed publishers and their editors to get article-by-article download counts that represented an approximate mapping to how much an individual article was read. Both these measures have flaws when taken too literally. Both also favor authors whose articles are highly accessible.

The impact of these changes affects disciplines quite variably. Some fields, particularly in the natural sciences, use citation analysis heavily and publish (or at least publish preprints) in electronic formats. Other fields, especially book oriented disciplines in the humanities, rarely use either citation analysis or download figures. For example the music historian J. Peter Burkholder has 20 records in the online catalog of Indiana University, where he is a professor, and 33 in Worldcat, but only one entry in SSCI. A third and larger set of fields make irregular use of both citation or download-count readership measures.

Spotty coverage tends to be a key problem within this set of fields. Some journals and some authors are only partly visible within the commercial parts of the system. *Contemporary Accounting Research*, which counts at many universities as a high-ranking publication, appears in SSCI only back to 2002. A search for the articles of an active author like Kathy R. Petroni, who publishes mainly in the three top-ranked accounting journals, turns up only 9 hits out of twenty listed on her resume.

The field of Library and Information Science offers another example of inconsistent coverage. The association journal *Information Technology and Libraries* has listings going back to the early 1980s, but two online journals with far greater international importance, *D-Lib Magazine* and *First Monday* are not listed at all. SSCI has recently restored *Library Hi Tech* to its list after 8 years of exclusion following a publisher change. This leaves an eight-year gap in their listings and excludes some of the most cited theme issues.

CITATION ANALYSIS

The effect of Open Access on citation analysis is a key factor in whether Open Access benefits authors or not.

A 2004 study by the Institute for Scientific Information, found »no discernable difference« between the citation frequencies of Open Access and non-Open Access journals (Pringle, 2004). This refuted ar-

guments that Open Access lowered quality and standards. Further analysis suggested an actual advantage for authors who take advantage of publisher policies to make their work available via Open Access.

What this kind of analysis is beginning to reveal in the OA [Open Access] era is that there is indeed a »discernible difference« in terms of the frequency with which the article is cited: there is a dramatic advantage in favor of the articles that their authors have made OA. – Harnad, 2004

This suggests that it could matter less if readership measures are flawed through incomplete coverage as long as authors can use Open Access to improve their visibility and relative ranking. Authors who choose Open Access options can have a measurable impact on their personal citation analysis results and this can make bottom-line income differences at universities or departments that rely on citation analysis as a measure of quality.

For disciplines that do not rely on citation analysis or other readership measures, Open Access offers a less explicit economic benefit. It does not guarantee that more people will read or will cite an author's work, but advertising helps and Open Access is one way to let people know a work exists. In an academic culture where a person's income and status depend on imperfect measures of their impact and influence, every means for potential improvement represents an economic benefit as real and substantial as royalty payments.

PROVIDING OPEN ACCESS

To take advantage of Open Access authors need to separate themselves and their works from the legal constraints of a copyright culture oriented solely toward people gaining benefits from royalties. This can be done in a variety of ways.

The simplest is to publish in a journal whose policies allow Open Access preprints or postprints. The list of these publishers can be found via Project RoMEO2, and the list is surprisingly long. If authors routinely took advantage of these publisher-provided Open Access benefits, they might improve their readership and thus their financial status without more than a trivial effort on their part to put a version of their work online in an acceptable location (generally their own or an institutional home page).

Another option is to use the Creative Commons or similar license when publishing with a standard journal or when putting a preprint on a website. The license sets conditions for use, including the creation of derivatives, whether a work may be used for commercial purposes, and an attribution requirement that

authors who choose open access options can have a measurable impact on their personal citation analysis results

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among those who benefit most from open access are students

protects an author's moral rights, even in the US where the Creative Commons license functions as a binding contract.³ The license does not prevent the author from later assigning copyright to a publisher that requires it. All options remain open for the author. It really offers no disadvantages.

Some journals have a policy against accepting articles that were made available in pre-print form. This practice varies from field to field and does represent a constraint that needs to be considered, depending on the discipline's publishing culture. The number of journals with strict policies against preprints has declined substantially. The success of, for example, the Social Science Research Network is only possible because most if not all business journals have accepted the existence of preprint versions of articles as a fact of modern academic life. Authors with qualms about whether publishers in their area allow Open Access should check before making assumptions. Preprint drafts are especially valuable economically because comments from colleagues can help to improve the final version and its impact potential.

CONCLUSION

Open Access belongs to a copyright culture that does not depend on royalties and exclusivity, and to a publishing culture that favors articles and an impact evaluation where broad readership matters. Where these conditions occur, authors can gain economically from making their works available via Open Access. This gain does not come in the traditional form of a royalty check from the publisher but indirectly via status, promotion, and grant money. For most academic authors, these indirect rewards are the ones that matter.

Why then, if Open Access is beneficial for this segment of the academic community, is it not more widespread? The reasons lie in the complex and often conservative micro-cultures within academic disciplines. Open Access is new. Electronic publishing is new. Those whose past successes came within a pre-Open Access paper-based publishing paradigm have to reassess what benefits they might get by changing old habits. Many judge that they have reached a point in their careers where the marginal improvements do not offset the effort required, even if that effort is small. From a purely personal viewpoint they may be right.

This article has only indirectly discussed the wider social value of Open Access, particularly for universities, which pay people to research and write, let the authors give away the intellectual property for free, and then have to buy it back from publishers in the form of subscriptions. Eventually the economic illogic of the

situation will probably inspire administrators to make serious efforts to change their institutional cultures. At present they tend to include those who prospered in the pre-Open Access world and are not personally ready to change.

Among those who benefit most from Open Access are students. They need free access to materials in their areas of study and do not always attend institutions with the financial resources to buy back all of the intellectual property that they need. In days of greater student activism they might have demanded changes in institutional policies. The trouble is that change would mainly benefit future generations once a critical mass of Open Access works became available. Students who become academic authors can, however, reap personal economic benefit from making their articles more freely available. They need merely to recognize the benefit and act in their own self-interest.

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¹ Social Science Research Network: www.ssrn.com

² RoMEO / Sherpa list: www.sherpa.ac.uk/romeo.php

³ Creative Commons, <http://creativecommons.org/licenses>

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