

Reviews in Medical Ethics

"Open Access," Legal Publishing, and Online Repositories

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The Open Access Movement maintains that all scientific and scholarly literature should be available to all for free via the Internet. This concept is not new. Some scholars trace its roots as far back as 1963 when "hypertext" was first introduced.¹ Although the Open Access Movement may have originated more than fifty years ago, it has been fueled by more recent events, including the unrelenting escalation of journal subscription prices over the last two decades, resulting in massive cancellations of journals by academic libraries; the ubiquitous nature of the Internet and the parallel explosion of electronic resources; and the desire of authors to find a new publishing model which continues to offer the benefits of peer review while providing for more rapid publication and wide-spread distribution than the current labor-intensive, time-consuming model.

The Open Access Movement has resulted in a number of online repositories devoted to legal analysis and policy. This column explores the genesis of the movement, its value to researchers and policymakers, and provides an overview of the two principal open access products in the legal arena.

The Genesis of Open Access

In 2002 and 2003, a number of events affirmed the open access concept, starting with the Budapest *Open Access Initiative*, which states:

An old tradition and a new technology have converged to

make possible an unprecedented public good. The old tradition is the willingness of scientists and scholars to publish the fruits of their research in scholarly journals without payment, for the sake of inquiry and knowledge. The new technology is the internet. The public good they make possible is the world-wide electronic distribution of the peer-reviewed journal literature and completely free and unrestricted access to it by all scientists, scholars, teachers, students, and other curious minds. Removing access barriers to this literature will accelerate research, enrich education, share the learning of the rich with the poor and the poor with the rich, make this literature as useful as it can be, and lay the foundation for uniting humanity in a common intellectual conversation and quest for knowledge.²

Building on this lofty goal, a group of scientists met in Chevy Chase, Maryland in April, 2003, and drafted the *Bethesda Statement on Open Access Publishing*. This statement outlined the steps necessary "to promote the rapid and efficient transition to open access publishing" and described the characteristics of an open access publication:

[T]he author, or authors, and the copyright holder, or holders, grant(s) to all users a free, irrevocable, worldwide, perpetual right of access to, and a license to copy, use, distribute, transmit

About this Column

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and display the work publicly and to make and distribute derivative works, in any digital medium for any responsible purpose, subject to proper attribution of authorship, as well as the right to make small numbers of printed copies for their personal use;

and,

a complete version of the work and all supplemental materials, including a copy of the permission as stated above, in a suitable standard electronic format is deposited immediately upon initial publication in at least one online repository that is supported by an academic institution, scholarly society, government agency, or other well-established organization that seeks to enable open access, unrestricted distribution, interoperability, and long-term archiving.³

Several months after the *Bethesda* statement was issued, the Conference on Open Access to Knowledge in the Sciences and Humanities drafted the *Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities*, where support for Open Access was reiterated. The following steps for the transition to an open access publishing model were recommended:

- that researchers be encouraged to publish their work in keeping with the principles of open access;
- that holders of cultural heritage be encouraged to support open access by making their resources available on the Internet;
- that mechanisms be developed to evaluate open access contributions and on line journals in order to maintain standards of quality and good scientific practice;
- that open access publication be recognized for promotion and tenure; and
- that the intrinsic merit of contributions to an open access

infrastructure be supported by the development of software tools, content provision, meta-data creation, or the publication of individual articles.⁴

What does this mean for legal and policy research and publishing?

Legal and Policy Analysis

Researchers in the sciences and in medicine were early supporters of the open access concept. Within the scientific, technical, and medical (STM) community the movement has a high profile and considerable international support, in contrast to the social sciences and humanities communities, where open access has been gaining acceptance at a slower pace. In the community of legal scholars and policymakers, open access policy is still in its infancy. The Directory of Open Access Journals⁵ lists 1,988 titles, of which only 43 concern law. Two reasons in particular may explain why legal scholars and publishers have been slower to embrace the concept of open access than scholars in other disciplines. First, the majority of legal scholarship appears in law reviews which are frequently non-commercial enterprises subsidized by their parent institutions. This allows the law reviews to maintain subscription prices at reasonable levels and insulates them from the effects of massive cancellations experienced by publications in other sectors, particularly in the sciences and medicine. Second, law reviews are usually edited by students, who also evaluate the submissions. Peer review, so crucial in other disciplines, is generally not a consideration in the field of law.

Although this is a very skeletal view of legal publishing, it sheds some light on why the Open Access Movement has received relatively little attention in legal publishing circles.

Although legal scholars have been slower to recognize the value of open access than scholars in the sciences and medicine, a small but growing number are now beginning to appreciate and even reap its benefits.

In order to retain rights to their research, legal scholars routinely use documents such as the *Open Access Model Publication Agreement* developed by the Creative Commons and Science Commons Open Access Law Program,⁶ and the model author/journal agreement drafted by the American Association of Law Schools.⁷ Many authors also maintain personal Web pages where they self-archive their work, and even more are discovering the benefits of posting their work to an online scholarly repository, such as the Social Science Research Network (SSRN) and the Berkeley Electronic Press (bepress).⁸

Online Repositories

SSRN was established in 1994 as a non-profit corporation "devoted to rapid worldwide dissemination of social science research."⁹ The SSRN repository includes more than 106,000 documents¹⁰ and is growing at the rate of approximately 1,400 new submissions a month.¹¹ Under its umbrella, SSRN maintains ten specialized networks,¹² including the Legal Scholarship Network (LSN), which is devoted to publishing research related to law, economics and business. LSN, like SSRN's other specialized networks, is directed by a prominent group of scholars and is dedicated to cost-effective, timely distribution of research and unrestricted communication with peers around the world.

LSN hosts research and working paper series on behalf of institutions and organizations and maintains specialized subject databases, called "journals." Many law schools avail themselves of LSN's hosting services to support one or more publication series in Law & Economics, Public Law & Legal Theory, Science, Technology & Innovation, and Legal Studies.

SSRN continues to adhere firmly to the principles of the Open Access Movement so authors are able to post and, for the most part, download papers free of charge. Receiving email notification about recently-posted material in the institutional series is also free, although notifica-

tion about the contents of the topical journals is available only by subscription. Institutions that maintain a research or working paper series pay a fee that covers the cost of hosting and editorial support. In addition to the research and working papers series and the subject matter journals, SSRN maintains relationships with a number of major publishers through its "Partners in Publishing" program, where publishers give permission for abstracts of articles to be posted to SSRN. These partners in-

and dissemination."¹⁴ The founders of bepress made a calculated decision to keep their publications available *only* electronically, and to have no print counterparts. Bepress' approach to publishing stems from the premise that traditional publishing models were no longer viable, and that a new publishing model was not only essential for the future well-being of scholarly intercourse, but could be achieved in a cost-effective manner without sacrificing quality. The elimination of overhead asso-

model, bepress has expanded since 2000 into other areas of electronic publishing. In addition to a growing number of peer-reviewed journals, it now supports an array of services including a legal repository of working papers, as well as institutional and subject matter repositories.¹⁶ It has also developed several software packages specifically designed to facilitate the article submission process and help editors manage the flow of manuscripts.¹⁷ There is no charge for submitting papers to the repository and they may be downloaded for free. Bepress also maintains a free email notification service to inform subscribers when new papers are posted.

Aside from the similarities in the hosting services offered by SSRN and bepress, the two organizations differ in a number of ways beyond their respective not-for-profit and for-profit statuses. At the core of both organizations are services to facilitate the spread of scholarship as broadly as possible. SSRN fulfills this role primarily as an expeditor and facilitator. Bepress practices a more "hands-on" form of management, particularly with regard to its responsibilities as a publisher providing peer review. This fundamental difference gives the two organizations their distinctive character and shapes the course each pursues in promoting research and scholarship.

An obvious difference between the two organizations emerges in their approach to journal publishing. SSRN supports a variety of "subject matter journals," the content of which consists largely of articles published either in the journals with whom they have established formal relationships, or linked to content posted to their various networks. Although SSRN refers to them as "journals," the term is somewhat misleading in the traditional sense of selection for inclusion. The SSRN model depends entirely on self-submission. Although there is some editorial oversight of the submitted material, SSRN relies on authors themselves to exercise sufficient judgment in submitting high quality material. The management of SSRN holds that "...no filters [are

Despite different philosophies, different management styles, and a different array of products and services, both SSRN and bepress are dedicated to providing scholars with the widest possible audience for their work and with giving their audiences access to that scholarship.

clude a number of major commercial publishers such as Academic Press, Blackwell, Kluwer Law International and Oxford University Press, as well as associations including the American Bar Association and most law schools in the U.S. Contributions received on the basis of these arrangements greatly enhance and enlarge the database.¹³

When a paper is posted online, it is assigned a number of descriptive "metadata" elements that identify it for purposes of classification and retrieval. Although papers may be contributed to SSRN on an individual basis, those that are affiliated with an institutional series and also contributed to one or more subject journals receive the widest possible exposure.

Bepress, a private, for-profit corporation, was launched in 1999 by several colleagues at the University of California at Berkeley who were frustrated by spiraling journal subscription prices and the huge pre-publication delays authors experienced under the traditional system of peer review. Like SSRN, bepress seeks to "improve scholarly communication by providing innovative and effective means of content production

ciated with traditional print publications revealed lower production costs and more efficient publishing. Bepress also introduced the concept of a "journal-family" – several publications focused on different aspects of a single subject. Instead of being considered for publication in a single journal, a paper submitted to bepress is considered for one of several related titles and, based on its quality, it is assigned to a publication. At the center of this change is a revolutionary concept that preserves the value of peer review but circumvents the process of submitting an article exclusively to one journal after another. It thus guarantees that "every paper with a minimum quality level can be published, but not every paper gets published in the more prestigious Gold series."¹⁵

In 2000, bepress launched its first two peer-reviewed online economics journal "bundles:" B.E. Journals in Macroeconomics and B.E. Journals in Economic Theory, demonstrating that the entire process from submission and peer review to acceptance and publication could be managed in eight to ten weeks.

Established initially as an alternative to the standard publishing

applied] other than the paper should be part of the worldwide scholarly discourse....[and they have] followed the principle, 'Let a thousand flowers bloom.'"¹⁸ Nevertheless, they provide a very effective mechanism for the widespread distribution of scholarly material through a variety of channels.¹⁹

Bepress began by rapidly publishing peer-reviewed, original work of a quality equal to that found in conventional print publications at subscription prices considerably lower than those of its competitors.²⁰ Since launching its first two online economics journals, bepress' experience has shown that its publication model is fiscally viable and is subject-matter neutral, and therefore eminently suitable for any subject or discipline.

The other major distinction between the two concerns the way each provides information about the number of times a paper is downloaded. SSRN prominently displays information on the number of times a paper has been downloaded and how many times an abstract has been viewed. Critics charge that by emphasizing the download statistics, SSRN gives the perception that the number of downloads a paper receives is indicative of its scholarly merit. Critics also worry that it may be possible to improve a paper's ranking by "gaming" the system.²¹ While it is possible to fraudulently increase the number of times a paper is downloaded, SSRN believes that the attendant risk is negligible and is outweighed by the value of making the information available publicly:

Although very rare, we have had a few instances where we have identified an individual trying to increase download counts for themselves or others. In those situations we discuss the matter with the person and make adjustments to the numbers. This is a time consuming process but critical if [the] data is going to be trustworthy.²²

Bepress approaches the matter of downloads differently. Rather than make the information available on-

line, bepress provides authors with download information on a monthly basis. Bepress spokesman Jean-Gabriel Bankier explains:

Authors with papers in the bepress Legal Repository are emailed download statistics every month. We have seen that papers posted to SSRN and the bepress Legal Repository have comparable downloads-per-posted-days rates. This isn't an issue of bepress hiding figures. Rather, we are concerned that popularity and scholarly value not be conflated. SSRN feels differently, and this is reflected in their approach. It's an honest difference of opinion. I think at the end of the day, authors want their research to be read by those who would learn and benefit from it. This means creating multiple paths of discovery to their work, via SSRN, bepress, law reviews, institutional repositories and other venues.²³

Conclusion

Despite different philosophies, different management styles, and a different array of products and services, both SSRN and bepress are dedicated to providing scholars with the widest possible audience for their work and with giving their audiences access to that scholarship. They are enterprising, visionary organizations, skillfully harnessing the power of the Internet and successfully persuading scholars that long-standing, entrenched practices, procedures and points of view must be transformed. They are solidly committed to the principles of the Open Access Movement and are actively engaged in promoting the concept of open access within the legal community. These repositories are an underutilized tool for legal research policy. Policymakers and researchers should mine these resources for the gems they offer, free of charge.

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