

CURRENT ISSUES

Open Access: the Journal is Not Dead!

Abstract: In this article John Bell follows his previous LIM article which was published in December 2012¹ by suggesting that, despite the development towards an open access world for publically funded research, the journal as a form of publication for peer reviewed research is far from dead; indeed, it has an active role to play in the future.

Keywords: open access; legal publishing; academic

OPEN ACCESS

Open access (OA) is accepted policy by most governments in the developed world. The EU Research Area is to have open access by the end of 2014, the US Office of Science and Technology Policy published its commitment in February 2013², and the UK Government reiterated its position in November 2013 in response to the report of the House of Commons Select Committee on Business, Innovation and Skills (BIS). If that basic commitment is established, the preference for Gold Open Access is less well justified. The real issues that face us lie elsewhere – in managing the consequences of open access, rather than in funding a process which has already gathered speed.

GOLD v GREEN OPEN ACCESS

The UK Government and the US expressed a preference for scientific research funded by the taxpayer to be immediately available. But both accept that there might need to be an embargo period of up to a year. They prefer the idea that Gold Access is in the Eldorado to which we are journeying, rather than something which is to be attained rapidly. Reviewing the position in September 2013, the House of Commons BIS Committee remarked: “Despite the Government’s claim that its open access policy and preference for Gold is ‘going with the grain’ of worldwide trends, we have received strong evidence that Green is dominant internationally, with the latest data showing that Green accounts for about 75% of all open access worldwide. The UK produces about 7% of the world’s published research articles. The vast majority of the total global output is accessible only through subscriptions”.³ In response, both the Government and RCUK expressed their commitment to continue with Gold Access: “RCUK has a preference for immediate, unrestricted, on-line access to peer-reviewed and published research papers, free of any access charge and with maximum opportunities for re-use. This is commonly referred to as the ‘gold’ route to Open Access. RCUK prefers ‘gold’ Open Access as we consider it provides the best way of providing immediate access, free of charge to the final peer-reviewed versions of papers to the widest group of users. Papers are

referenced by the journal in which they are published. Therefore, by going directly to the journal web site a reader can be confident that they are accessing the final peer-reviewed and formally published record of research”.⁴ But both Government and RCUK recognise that Green Access is what is currently achievable and the place to which we will be arriving in the near future.

OA – DOES ACCESS NEED TO BE IMMEDIATE?

The policy of Open Access is expressly based on the idea that the open availability of research findings will generate wealth (though this is based on assertion rather than evidence). But, even if this is true, need access be immediate? In law, it is not obvious that there is a significant group of people who are seriously impeded in their access to the fruits of research – members of the professions all subscribe to databases, universities have their subscriptions, typically now by consortium, and there are other kinds of library which other people might access. How significant is the harm done by making someone wait a year to know about a new breakthrough in the understanding of the history of seventeenth century Chancery? Is it worth creating a system of Author Processing Charges to enable the general public to have immediate access to this information? There is simply no need for Gold Access. The Government’s continued assertion of it as a preference, despite the evidence amassed by the Select Committee, and the lack of enthusiasm in the sector is simply a failure to admit that they made a policy mistake and have wasted public money in paying out funds for Author Processing Charges. Indeed, much of the money that has been distributed for this purpose remains to be spent. The publishers will keep the money for those charges and also the money paid in subscriptions, which have not fallen.

THE MASS OF INFORMATION

The US agenda set out in February 2013 is to maximise access and to take as a benchmark an embargo period of 12 months. The agenda takes Green Access as a baseline and then tries to work out how sustainable access can be

achieved. That is by far the more sensible approach than the line pursued by RCUK.

So where are the real issues? They are not about finding Author Processing Charges, at least in law. RCUK, the Government and the EU accept that Green Open Access is acceptable, and that is the way things will go forward. Institutional repositories are well established and publishers accept the inevitability of having to make profits through subscriptions for current issues, rather than through the sale of backlog issues. The real problem is not that Open Access is not happening. The real problem is how the mass of information being made available will be made accessible. I believe that journals will continue to play an important role as gatekeepers, but only if they ensure that they maintain a reputation for quality assurance.

There are going to be hundreds of articles available on a topic. So which of them do you bother to read? Search engines help you to identify through words in content, but are there going to be any ways of identifying quality? Experience of reading outputs for past RAEs (Research Assessment Exercise) suggests to me that good quality work can appear in the most unlikely places, and poor quality work can appear in reputable places. One potential shortcut is to use the source of the article as a proxy for quality. Two sources are significant: the publisher of the article and the institution to which the author is affiliated.

ASSESSING QUALITY

A researcher could simply rely on the reputation of a journal – you read some journals and ignore others. But the prestige of a journal is not a guarantee of quality. The attempts within the European Science Foundation to create a European Reference Index for the Humanities that ranked journals collapsed in 2009 and were not replaced. Attempts in Belgium and other countries to rank journals also failed to gain acceptance.

So the alternative is to look at the reputation of the institution from which the research comes. Could the reputation of the institution be a guide to whether what is stored in its repository is worth reading? If the requirement on staff is to place all their outputs into the institutional repository, then the reputation of the institution will be even less of a guide to quality than the quality of the journal.

Let me explain why. Many of us have spent time reading the works of our colleagues and advising them about their careers. There are many reasons for publishing work, but really top quality work takes a long time to come to fruition. Let us think about the life-cycle of good research. If a researcher gets interested in a particular topic, she may start by producing a conference paper or a review article on the work of others. The point of that paper or article is to suggest a few tentative ideas, to receive reaction and so confirm which ideas are worth pursuing and identifying those which are less valuable. The researcher may follow up this work over the coming few years with a number of other articles, which explore different facets of the topic, refine ideas and engage with criticism. Many of these

articles will be good, but not top quality research – they contribute to new understanding in the field, but do not set the agenda. At the end of this process of engagement with the scholarly community, path-breaking papers will be written which do set the agenda. But then the researcher gets invitations to conferences, to give keynote speeches etc. These also get published, predominantly to add lustre to the conference proceedings but the innovation in these follow-on articles is not great. There are incremental refinements in the way the path-breaking ideas are expressed. So the institutional repository is going to contain not only the path-breaking articles, but also the early works which gradually led to it and the follow-on pieces which repeat the high quality arguments. So, even with the really innovative and important scholar who has published outstanding work, there will be work contained in a repository which is less good. The outside researcher has to use some external reference in order to determine which of this undifferentiated mass in the institutional repository is worth reading. There may be portals and search tools to identify work that has been deposited in the institutional repository, but these will not differentiate material according to quality.

PEER REVIEW

The reader needing a shortcut to determine quality is going to have to rely on the processes of peer review that are operated by journals. It is in the interests of a journal to maintain rigorous standards in its selection of work. If the journal can achieve this, then it will gain a reputation for being the place where high quality work is to be found, and this in turn will encourage more high quality work to be submitted. The hard pressed researcher is going to give priority to reading the articles which are likely to be of good quality and the journal may be a crude proxy. But faced with the need to discriminate between very many articles on a topic, then the reputation of a journal may be a help to the researcher in deciding what to read first. The journal editors therefore perform the role of critics who are recommending work to be read, rather than simply selectors and processors of work.

JOURNALS WILL EVOLVE

The challenge for those involved in information management will increasingly be to help researchers navigate their way around the mass of open access materials which institutional repositories make available. But the assessment of quality is the role of a subject expert and the search for recommendations from peers is the best that can be hoped for. It is this role which the journal remains best placed to provide. So, in the end, the journals will evolve, but they are going to be needed to kitemark research.

POSTSCRIPT

HEFCE produced Circular 07/2014⁵ after this article was written. It set out the requirement of open access to

journal articles and conference proceedings (but not books) if their contents are to be included in any future REF (Research Excellence Framework). Basically, the requirement is that articles accepted for publication after April 2016 must be lodged in an institutional repository and become accessible after the publisher's embargo

period has ended. This requirement is essentially for Green Open Access. It does not require institutions to pay Article Processing Charges and does not make a significant change to what has been gradually happening over the past few years. It vindicates the pressure against Gold Open Access and for a more affordable open access policy.

Footnotes

¹ Bell, John (2012). "The Future of Legal Research" (2012) 12(4) *Legal Information Management* 314–317.

² US Office of Science and Technology Policy: http://www.whitehouse.gov/sites/default/files/microsites/ostp/ostp_public_access_memo_2013.pdf.

³ Open Access (Fifth Report of Session 2013–14 - Report, Together With Formal Minutes, Oral and Written Evidence) "Open Access", §33.

⁴ House of Commons, BIS Committee, Open Access: Responses to the Committee's Fifth Report of Session 2013–14 (HC 833), p.15.

⁵ <http://www.hefce.ac.uk/pubs/year/2014/cl072014/>

Biography

John Bell, FBA, has been Professor of Law (1973) at the University of Cambridge and Fellow of Pembroke College since 2001. Previously he was Professor of Law at the University of Leeds (1989–2001) and Fellow and Tutor in Law, Wadham College, Oxford (1979–1989). Between 2005 and 2009 he was the Chair of the Council of the School of Humanities and Social Sciences at Cambridge. He is the editor of *The Cambridge Law Journal*.

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Tablets in the Library: Trialling eBooks and iPads at Middle Temple Library

Abstract: This article by Renae Satterley discusses a trial conducted over a four month period at Middle Temple Library where members were allowed to borrow iPads for a week, free of charge. The iPads were lent to the library by LexisNexis and had ebooks and a subscription to LexisLibrary loaded on to them. In this article the author discusses the pros and cons of lending tablets to library users and whether law ebooks are as popular as some claim. It also examines the possibilities of integrating tablet computers into legal research training sessions.

Keywords: ebooks; ipads; e-learning

INTRODUCTION

Middle Temple is one of the four Inns of Court responsible for calling students to the Bar. It is a professional society which educates and trains advocates, as well as providing chambers for barristers and maintaining a large heritage estate in central London. The Inn provides financial support

to its students by way of scholarships of over £1 million per year. In conjunction with Inner Temple, the Inn is responsible for the maintenance and preservation of the 12th century Temple Church. Last but not least, it provides a modern law library to the members of all four Inns of Court – students, pupils, barristers and judges, as well as law clerks and academic researchers.