

**Executive Summaries of:
Report to the Trustees on Open Access Publishing and Its Implications for LSA,
By Robert Dingwall & Bert Kritzer (Majority Report);
And
Short, Alternative (Minority) Report to the Trustees on Open Access
Publishing and Its Implications for LSA, By Jeff Handmaker (Minority Report).**

I. Majority Report By Robert Dingwall & Bert Kritzer.

A. A History of the Scholarly Journal.

In their early history, journals were created for the benefit of a society or university's membership. Members receiving journals largely funded scholarly societies. Scholarly journals were used to disseminate information to the society's members and to maintain alumni networks. It was relatively easy for scholars to maintain journal subscriptions in their area of expertise because of the small number of learned societies. After World War II, university research and education expanded rapidly, which led to explosive growth in the number of scholarly societies and journals. This growth created a new economic framework. It became practically impossible for individual scholars to maintain a library of the journals relevant to their area of expertise. Consequently, scholars and researchers became heavily dependent on university libraries for journal subscriptions. Also, as a result, scholarly societies began to receive substantial funding from the sale of their journal publications to non-member purchasers, mainly university libraries. Continuous technological growth also increased the initial cost of journal publications.

As a result, journal publications, through subscriptions and intellectual property ownership rights, became a main source of funding for many, perhaps most, modern scholarly societies. Presently, journal-publishing societies generally rely on a subscription model with access restricted to those individuals or institutions that have paid the access fee. Practically, this means scholars at institutions with minimal resources, unemployed or self-employed scholars, and private & public sector employees have a difficult, if not impossible, time gaining access to up-to-date research and publications. Additionally, the subscription model presents serious barriers to the general public's access to scholarly journals.

B. Why Open Access?

The Report's authors agree that published scholarly work should have the widest possible readership. But the Open Access (OA) debate requires a few major considerations. First, dissemination of publications has a cost. Second, the intellectual property of a publication has a potential value to the author and publisher of a work. Third, there is little evidence today showing a vast amount of unmet demand for access to scholarly publications. Fourth, the major push for OA generally comes from the biomedical sciences where funding models and citation patterns differ fundamentally from social science and law journals. Finally, some claim the major publishers use their market dominance to extract higher fees at the expense of universities and researchers although analyses of this claim are conspicuously absent.

C. The Major OA Arguments.

There are several major justifications put forward by OA advocates to justify the adoption of OA regimes.

1. The Public Entitlement Argument.

Proponents of OA claim that because a major part of academic research is paid by public tax dollars, the taxpayer has a right to view the results without payment. The Report's authors agree that this argument holds weight where government heavily subsidizes publishing, but they are not sure it applies as strongly in the U.S. where tuition and endowments are major sources of private funding.

2. The Open Source Argument.

This argument focuses on the virtues of OA access as a basis for empowering individuals to promote the free exchange of ideas and information. Proponents of this argument view the current publication industry as a barrier to the mass dissemination of information and knowledge.

3. International Development Argument.

This argument expresses a concern for the costs of journal access and its effects on those who cannot afford access. This argument focuses particularly on scholars and universities in poor and middle-income countries. Advocates of this argument contend that OA to scholarship will reduce the global "North-South" knowledge gap. The Report's authors believe this argument tends to overlook the extent to which other schemes already benefit researchers in low and middle-income countries.

4. The Stimulating Innovation Argument.

Proponents of this argument believe that free access to scholarly ideas will enable entrepreneurs to produce more economic and social benefits for a country and its society as a whole. The Report's authors believe this argument is too speculative given the absence of a body of evidence that restricted journal access constrains economic or social growth.

D. What Do We Mean By OA?

There are two major components of OA: Availability and Intellectual Property. Availability focuses on the extent to which articles are freely accessible. Intellectual property looks to dictate the scholarly work's future use. Some OA proponents want OA for articles in both respects while others advocate only free accessibility.

1. Accessibility.

There are three significant OA models: Platinum; Gold; and Green.

a. Platinum OA.

This model stresses that articles should be freely available to all readers immediately upon publication. A less radical version restricts access for one year after publication and gives free access thereafter. The most radical version would

eliminate journal publication by making all articles available through institutional repositories.

b. Gold OA.

This model would require that the publisher make the definitive version of the paper freely available immediately upon publication. Under this model, authors must pay a set fee, a so-called “Article Processing Charge” (APC), after their paper is accepted for publication. The gold model puts the costs of publication on the authors rather than the reader. Most journals today have a gold-hybrid model, where the journal collects some combination of subscription fees and APCs.

c. Green OA.

Under this model, journals continue to be funded by subscriptions. But, prior to publication or after a defined embargo period, a final manuscript version of the article is deposited in a university or subject repository (like SSRN) or made available on a personal website. The general embargo period in the humanities and social sciences is twenty-four months.

2. Intellectual Property.

The OA movement has put forward various Creative Commons licenses to manage the intellectual property of scholarly journal publications. These favor unrestricted use of the work by any other user, whether non-profit or for-profit, in part or in whole or in edited and rearranged form, provided that the original author is credited. Modifications are possible to restrict derivative or commercial use but these are not encouraged.

IV. OA and the Contemporary Journal Publishing Ecosystem.

OA attempts to change the status quo of the current scholarly publishing regime. It will have an effect on the costs and benefits for each stakeholder in the publication process.

1. Learned Societies.

Learned societies primarily obtain revenue from three sources: member dues; meeting fees; and journal revenue. A study in the UK found that journal revenue constitutes roughly forty percent of a midsized-learned society’s total revenue. All societies must confront the tension between OA and the society’s business needs. Foregoing journal revenue altogether and relying on membership fees risks membership declines from the increased cost of dues. With new fully OA models, small fees (\$400-700) are charged to authors with editing kept to a minimum during the publication process. The fees charged by these models at most cover the cost of publishing. Hybrid models, combining Gold and Green, are not currently destabilizing society incomes but are vulnerable to subscription cancellations if scholars shift to using repository versions of articles at the end of the embargo period. Traditionally, learned societies exist to provide collective goods to a constituency of scholars. With membership no longer needed to have easy access to journals, LSA and other societies need to think about how they can offer benefits that will sustain membership, especially if journal revenue decreases.

2. Government & Other Non-profit funders.

The ultimate issue for these stakeholders is whether they have the right to insist that the journal articles they fund be OA. Where most university funds come from the government, the claim is the strongest. In the U.S., the federal government is moving to require OA for the articles it funds, but that applies to a relatively small proportion of social science or humanities research.

3. Universities.

Many U.S. universities have begun to mandate OA for the publications of their faculty members. Some only require OA where the university specifically provides funding for the article. Others base OA requirements on the scholar merely receiving a salary from the school. US universities have generally made little effort to enforce these policies. In the UK, there are serious institutional pressures that are requiring OA for scholarly article publications. Elsewhere, Europe varies widely in its OA policies. For example, it is vigorously promoted in the Netherlands but much less so in Italy.

U.S. universities have experimented with both gold and green OA programs. Gold OA programs shift significant costs to research-intensive universities where most authors work, compared to funding through more widely distributed library subscriptions. Government- or university- created block grants minimize the costs to professor-authors, but have not yet proven less expensive than library subscriptions. Green OA requires significantly fewer costs to authors, but the university must fund an OA repository and ensure author compliance with submission policies. Some journals (e.g., student-edited law reviews in the US) operate under a pure gold or near-platinum OA model, but generally require subsidies from the supporting institution or university.

4. Authors.

Authors generally focus on increasing the readership of their articles, but article production has a cost. The costs must be paid by subscribers/readers, authors or institutions, a third party funder, or perhaps one day, advertisers. Authors also need to attend to the license defining acceptable reuse of their work.

5. Readers.

There are three classes of readers who will be affected by OA. First, there are those who have access to a university with a high-quality research library. Second, there are those who have access to a university library without high-quality research resources. Finally, there are those independent scholars without university affiliation and the general public.

For the first group, increased OA accessibility will make little difference to the reader/researcher. These readers already have access to the materials made available under most OA schemes. For the second group, OA will be an aid, but most of the sources provided by OA will be available through their university library ILL system or through short-term pay-to-view online subscriptions. OA would effectively eliminate the need to rely on ILL in many or most instances. Overall, OA

will provide a benefit to this group, but in most cases will replace other accessible research mediums.

The third group will benefit the most from OA to journals and publications. OA would provide article access where it was simply not available before. The actual interest/demand for scholarly articles from this group is currently unknown.

6. Commercial and Quasi-Commercial Publishers.

The traditional publishing industry is proving remarkably resilient in the face of new challenges. Learned societies generally focus on the six main publishers and pick one to create and establish a publishing partnership. As the full report states, “Potentially, this represents a tiering of the market with highly selective prestige journals publishing articles selected for quality and originality . . .and [OA] journals publishing work that crosses a basic quality threshold but otherwise offering limited review or editorial support.” This tiering could become a proxy for tenure and promotion decisions in the future.

V. What Does This Mean for LSA?

A section in the report, not addressed by this summary, focuses on OA’s potential effect on the current state and future of LSA. The main report is available to LSA members. Please login to your LSA account and select Open Access Reports from the left hand menu.

II. Minority Report By Jeff Handmaker.

OA in publishing is growing in use and acceptability across the fields of scholarly publications and journals. LSA cannot ignore the implications of this growth or simply brush off the growth as a radical, fringe movement. For better or worse, OA will have an impact on the *Law & Society Review* going forward.

In the OA debate, the ultimate issue that must be decided is not whether scholarly publications should be free or not. Rather, LSA and others, must decide: (1) how substantial the actual cost of publications really is, also in relation to the profits being generated; (2) who should bear the costs of publication; and (3) in what proportion those costs should be borne by the readers and the publishing organization. In this regard, consideration should be given by LSA for alternative funding schemes, including grants for gold OA publishing.

The majority report failed to give adequate consideration to OA claims on their merits, including the significant variations between skeptics of OA in the Natural/Beta sciences and skeptics of OA in the Social Sciences; and regional differences in OA policies among American, UK, and European institutions based on the proportion of public monies in their funding. Moreover, the general criticism – that OA publishing automatically leads to a reduction in quality of scholarly publications – is not valid.

The two sides of the OA debate can be roughly divided into those who endorse a principled approach concerning OA, on the one hand, and skeptics of OA who argue a model that ensures profitability of academic publishing, on the other. To properly address and debate OA, there must be representation by both supporters and skeptics.

The LSA's trustees will need to open the OA debate to LSA members. To facilitate an open debate, LSA should consider: (1) creating an online forum to debate OA; (2) exploring alternative publishing options; (3) promoting the self-archiving of pre-publication versions of scholarly work to ensure OA to articles for those without subscriptions or university access; and (4) exploring new business options that would decrease reliance on revenue from the *Law & Society Review* and shift to alternate sources such as donor support, research funding and grants, and other sources.

The complete version of both reports is available to LSA members. Please login to your LSA account and select Open Access Reports in the left hand menu.