

# Introduction

## Snatching the Good from the Jaws of the Best

“The best is the enemy of the good” is an aphorism purloined by Voltaire from an Italian source. Aiming for perfection, we ignore the achievable. Open access is a visionary quest whose ultimate ambition is an absolute: All knowledge should be freely available to anyone anywhere. From the Ptolemies on, humans have dreamed of an Alexandrian library housing all we know, a single unified source of all information, enlightenment’s abode. In the era of parchment, paper, and binding, the closest we came were the great national and university libraries. These cathedrals of learning’s reading rooms envelop visitors with a secular sense of the sacred. Knowledge is shuttled back and forth, readers bow their heads over the tables, and visitors murmur in hushed tones.

Digital technologies, with their almost costless reproducibility, and the internet, with its seamless global embrace, catapulted this vision skyward. Every laptop connected to the internet could now be Alexandria. Rarely had a potential utopia appeared to materialize so unexpectedly or quickly. Little wonder, then, that the ambitions inspired were fervent, the passions behind the cause, strong.

Yet aspiration and disappointment go hand in hand. As Bismarck, father of *Realpolitik*, reminded us, politicians exercise the

## 2 Introduction

art of the possible. A digital Alexandrian library was now theoretically and technically feasible. But did that mean we could achieve it? Realizing open access in practical terms faces many hurdles. Not all authors want their work made available to consumers at no cost. Many live by selling their content and see no reason for change. Their claims are what copyright was invented in the eighteenth century to protect. As instituted in some nations, moral rights give authors even stronger protections—not just to sell their work, but to guard it against misuse, reuse, and unauthorized change. None of that bodes well for open access.

To persuade such authors to surrender at least some of their rights, open accessors have argued the virtues of networking. The more information is available to others, drawn into linkages of association and affiliation, and thus put to use, the more fruitful and valuable it becomes. As science and creativity have become more collaborative, pursued by groups rather than solitary authors, access and availability have enhanced knowledge's worth. Knowledge embedded is knowledge multiplied.

Add in, that realistically, not many freelance authors make a living from their work, and it stands to reason that being used by others may be more important than slight mercenary rewards. Such considerations must be weighed by each author. Do we hope—however vainly—for a breakthrough into stardom with its attendant audience? Or do we cast our lot with the globe's collective creativity, each contributing a modest brick to building the tower of human knowledge? This decision has no moral import. Authors can be persuaded, but not obliged, to consider the collective good over their personal ambitions.

However, this is not true for those who are paid to labor for humanity, not just themselves. Work for hire is an offshoot of copyright that assigns rights in works to their commissioner, not the immediate author. The doctrine was first developed to deal with portraits, paid for by someone else, often the person rendered. In

such cases of *Gebrauchskunst*, art that serves a practical purpose, the commissioner was thought to have a closer relationship to the work than the artist. The privacy right of controlling the portrait outweighed the moral rights of the artist who had accepted a fee for the commission. From here, work for hire expanded to include the collaborative arts, especially film. Since many toiled, not everyone could be the author or rights holder. The more collaborators, the less any one participant had the oversight to be an author in the Romantic sense.<sup>1</sup> Yet, someone had to assume ultimate responsibility, and that was usually the commissioner or employer of the others.

The bulk of scientific and academic work today is done by employees of universities, think tanks, museums, and research institutes. Corporate R&D—the biggest single bloc of all scientific work—is governed by work for hire. No one gives a second thought to the rights of Boeing engineers or Apple software programmers to their work. University professors and researchers, in contrast, are birds of a different feather—enjoying the security of civil servants and the intellectual freedom of bohemians, as Henry Rosovsky once put it to a cohort of newly hooded PhDs. They are considered to be much like Romantic artistes, individual creators whose work—emanations of their personalities—is their property. They are free to do with it as they please, even as salaries pay for their activities and research funds cover their labs, assistants, and travels.

Legally, work for hire does not apply to the American professoriate. But what about the ethical import of how its work is financed? Most research funding is paid from tax revenues or is at least subsidized by the deductibility of private donations. Academic researchers, in effect, work for the tax-paying public. Broad social benefits may arise from making academic work widely available. But the moral leverage exerted by open access rests on the implication that, having paid for the work, the public is entitled to use it. So long as access to publicly funded work involves no control or influence,

and academic freedom remains inviolate, the ethical logic here is persuasive.

But this holds only for scholarly work. Most scientific articles are written by academic researchers, and it is here that the first battles over accessibility have been fought. For books, the case is less clear-cut. Only a small fraction of all volumes are authored by salaried researchers, published by university presses, or otherwise subject to the moral logic of open access. For obviously commercial media—film, music, art—there is no case to be made for open access. In the heat of debate, it is easy to miss the obvious point that only for a small fraction of works is the moral argument for opening it to the public—as opposed to the argument from social utility—convincing.

Yet, even where open access is justifiable, further obstacles loom. In the old analog system, readers paid for the pleasure of their consumption. Whether retail buyers or libraries settled the bills mattered less than that the funds came from the demand side. With digitality and especially the promise of collections that go beyond merely national institutions to approximate a global library of Alexandria, that has to change. After Alexandria under the Ptolemies in the first century BCE, no single library has again aspired to collect everything. Even national collections are not exhaustive for their own remits, although in theory, deposit libraries, where publishers are obliged to send a copy of everything they issue, should come close. The Library of Congress, for example, receives two copies of every book printed in the US but is not mandated to preserve even one.<sup>2</sup>

But for anything beyond the nation, barring unprecedented international cooperation, no single analog library could hope to be universal. The acquisition costs alone would be insurmountable, not to mention storage, preservation, and access. To collect globally, a new funding system is required. Financing has to shift from demand to the supply side. Only if those who produce content also

pay to disseminate it can it all be made available. That was possible only once digitality had largely eliminated the expense of all copies after the first.

The idea that the author should pay to publish seems revolutionary when compared to the inherited system where eager readers or their library proxies bought works. In practical terms, however, the change is less far-reaching. Authors already bear the cost of producing content. For much scientific research, with its labs, field stations, telescopes, and colliders, the sums are huge. Of course, it is a big ask to demand that a poet or philosopher whose research infrastructure may amount to a notebook and pencil should underwrite dissemination. But for scientists with impressive research budgets, broadcasting the results costs a small fraction (2% perhaps) of the overall expense of their work. Authors already pay to produce content; why not also to disseminate it? Open access hinges on flipping the funding stream from consumer to producer. Whether the dissemination is paid for directly by authors, or indirectly by funders or some third party, including governments, is less important than shifting the cost away from consumers. This core tenet of open access is what allows us to envisage the global availability of all (scholarly) content.

The ease and perfection with which digitality allows work to be duplicated reduce, but do not eliminate, the cost of the first copy. The value added by legacy publishers has doubtless been exaggerated. Compared to analog precedents, digital efficiencies can be harvested, and of course, the final copy at the margin is practically free. Furthermore, tasks once gathered under the publisher's umbrella—copyediting, typesetting, proofreading, indexing—can be outsourced. Nonetheless, short of just posting typescripts to the web, dissemination costs money that must be found even for open-access works.

The good news is that enough money exists already in the world's current library systems to flip all academic content from

the traditional reader-pays model to a new author-pays system. Whether libraries are financing journal subscriptions and the retail price of books, as before, or the fees required for open access publication does not much matter, so long as the sums are comparable. If 200 libraries pay \$75 each for an academic monograph or band together to pay the \$15,000 an open-access publisher needs to make the work freely available is a wash for their budgets.

But for the world, the difference is huge. In the old system, patrons could read a work if they chanced to live nearby and if they happened to be permitted access to the library of a university or other closed institution. In the new system, everyone can read the work at any internet connection. In effect, digitality allows the most efficient bulk-purchasing conceivable. The discount granted these libraries, united as a buyers' consortium, takes the form of universal access.

The bad news is that, just because the money exists, does not mean it can be used for such purposes. First, only part of library budgets is earmarked for academic content. Even if all scholarly output became open access, much work would still need to be bought in the usual fashion. Second, much of the part of library budgets used for academic content is already spoken for and is unlikely to be easily repurposed. Long before digitality and the first hints of open access, scientific periodical publishers had stitched up the library market to their own ends. Starting in the 1970s, they brought forth many new journals, published more articles than ever, and charged steeper subscription prices.

Part of this shift reflected the postwar boom in scientific output. More researchers were at work as universities hired women and once-excluded minorities. Research institutions in the Global South began to contribute to the swelling stream of content. Since all this deserved to see the light, the science publishers spotted an opportunity not only to do what was right and necessary but also to profit from it. The cost of journals skyrocketed, and library budgets

were drained by paying subscriptions, while monographs and other scholarly output were neglected.

This serials crisis predated both digitality and open access. When these new possibilities appeared, the scientific publishers at first feared their lush markets would desiccate. They soon learned, however, that the new world was nothing to fear. Whether libraries paid subscriptions or article processing charges was a matter of indifference, so long as the monies remained comparable. The scientific publishers quickly adopted the new open-access mantra, chanting it all the way to the bank. As with subscriptions, they charge what the market will bear, not what it costs to issue online articles. The most prestigious publishers demand fees that are perhaps five times what their more modest competitors levy and what studies suggest are the actual costs. The serials crisis continues to afflict the post-paper era, as library budgets still cannot meet the scientific presses' prices and other media, such as monographs, are sidelined.

This is the landscape where battles over open access are fought. On the horizon, a Shangri-La of limitless available knowledge beckons, but to reach it, forbidding terrain must be traversed. Doubtless, humanity would profit if everyone could read everything, but important vested interests block such aspirations. Works with commercial ambitions constitute most output, and the bulk of content, susceptible to no moral argument for openness, remains closed.

Scientists work directly on the natural world. When they write up their research, there is only reality's facticity and their conclusions. Copyright in others' work is not an issue. Nor do they entertain any hopes of reward other than the purely intellectual. They are indifferent to sales. For them, the open-access problem is easily resolved. Once the monies have been found to pay for scientific publications, they can be offered to the world.

For humanities scholars and many social scientists, in contrast, their subjects are often the copyrighted work of others. The problem of continued intellectual lock-up must be faced. And for all

authors who aspire to audiences and royalties, open access has no appeal. Only two arguments could gain traction with them. First, those with no realistic chance of a large following or a lucrative career may be won over by the virtues of making their output more widely available—harvesting readers rather than rewards. Beyond this, most works lose their commercial appeal shortly after publication. Rare is the book that is bought even a few years out. Despite having no further monetary value, content still remains locked up by copyright for well over a century. Since little would be lost, both considerations favor the public good of making works freely available.

Though it falls short of true open access, one means of liberating works is known as controlled digital lending. Libraries have retooled for the digital age by making books available on-screen to any reader, one at a time, as with physical volumes. Digitality's conquering of distance and time is harnessed to library lending. Yet, copyright is preserved by not allowing more than the initial (digital) reproduction nor more than a one-to-one loan-to-own ratio. If controlled digital lending holds up against its current legal challenges, it might help free up content that would otherwise not be susceptible to open access. This would not meet the purist's standards of true accessibility, but it would at least allow on-screen reading anywhere by anyone.

The vested interests of rights-holders are open access's biggest hurdle. For scientists, this is not a pressing issue, and some non-academic authors may be persuaded to favor open access by the virtues of networking. Controlled digital lending may pry works from copyright's clammy grasp after a few years. Some rights-holders' objections can be overcome or sidestepped. But not all. Established scientific publishers are the most powerful interest impeding open access, and they are a tough nut. Their conquest of the journals in the postwar years and their subsequent discovery that publishing charges could be as lucrative as subscriptions persuaded them to dig



in. More recently, they have begun moving up the research chain. They now stake claims to organizing, managing, and disseminating scientific data, not just the published results. That will make them even harder to dislodge.

Open access's vaulting ambitions thus slam head-on into powerful, entrenched, and widely popular interests supporting the existing copyright system. To achieve broad access via legal reform, two approaches are available, but unlikely to succeed. Scaling back copyright's duration for all content in order to make the prize less worth fighting over would antagonize almost all non-scholarly authors and many academics, too. Trying to distinguish legally between academic and non-academic content, allowing open access for the scholarly, would involve endless definitional hairsplitting and objections from academic authors with ambitions for an audience. Going down these roads, we are unlikely to achieve much success soon.

Expecting scientific publishers voluntarily to relinquish their gains is equally implausible. Reformers have spent the last 30 years seeking to regulate pharmaceutical prices in the US without much luck. Since every consumer prefers cheaper medicines and therefore sides with the reformers, that does not bode well for hopes of prying loose the publishers' grasp of scientific output—a dispute where the status quo has the backing of most authors. The most immediate beneficiaries of broad open access would be developed-world citizens without research library cards and the Global South. Neither is a constituency with much heft in the industrialized world's disputes over intellectual property.

Realistically, broad reform is unlikely soon. The sciences have largely solved the problem for themselves. Scientific research is on its way to becoming freely available. As university and research budgets are rejiggered to pay for publication fees rather than subscriptions, we are within sighting distance of that goal. But it comes at a steep price—the gutting of library budgets for purposes other than the scientific, leaving academic monographs and humanities

journals adrift. Exploiting the efficiencies of digital dissemination on behalf of non-scientific publications and channeling funding in this direction remain the practical goals the open-access movement can set. This is less than what the most fervent open accessors aspire to, but it is likely to be what can be hoped for. And it remains a far cry better than what we have.

## Where We Are Going

Torrents have been written about open access, but little comes from those who supply or consume knowledge: the scholars who produce the works that are to be accessible and their potential readers, whether colleagues or the general public. Instead, the drum is beaten by librarians, information- and data-science scholars, media professors, and others who populate a kind of second-order stratum of academia, scholars of scholarship.

A vast quantity of work has billowed forth, professionalizing the field by making it a full-time job just to keep up. Countless conferences, workshops, networks, study groups, Twitter feeds, journals, and blogs keep up a tireless outpouring. The caravan moves on, but where is it going? Founding and running open-access journals and publishers, organizing boycotts of the worst-offending academic presses, lobbying politicians to reform copyright laws, probing the boundaries of what counts as legal under current rules: such activities move us toward a freer exchange of information. What the theorizing and discussion contribute is less obvious. As so often in the academic world, noble intent does not necessarily produce tangible results. Process is often confused with progress.

Why, then, add another brick to the edifice? Because many participants come from a nimbus formed around the scholarly enterprise without being part of it, they often pay little attention to workaday academics' concerns. Especially in the humanities, arts, and social

sciences, the professoriate is surprisingly ignorant of—and, if aware, often hostile to—open access. Because the well-funded sciences have been the first to warm to the cause, open access has been tailored to their specifications, with publishing fees paid out of generous research budgets. Including less well-endowed fields remains a hurdle.

This book seeks to flesh out debates that often remain focused on the sciences. It situates current discussions in a long history of information's progress toward greater openness. Despite the mantra that "information wants to be free," much does not. Corporate R&D makes up the majority of research and is not striving for release. Most writers of fiction and commercially viable nonfiction sell their wares in the marketplace, hope to live from the proceeds, and have no interest in opening up. That holds for most producers of visual and aural content, too. Nor are privacy and open access harmonious bunkmates. We naturally resist freeing up information about ourselves except as we choose.

The problem of too much information is a leitmotif. Even without copyright reform or open access, as the public domain inevitably expands, freely available content will eventually dwarf what any current cohort of creators issues. What effect will this have on future cultural producers' motivations to bring forth novel work? What does the common complaint that we disgorge too much information mean? Can more information ever be a bad thing, even if some is mediocre?

Enthused by the idea that openness must be an absolute, the debate often fails to situate the particular circumstances of academic knowledge in the broader domain of intellectual property. For most content, there is no moral case for accessibility. Yes, other arguments also speak for the virtues of opening up—the logic of knowledge as a commons and the turbocharging of its usefulness allowed by networks. These are claims of public utility. None packs an ethical punch. Most cultural producers do not (yet) want to make

work freely available. Only for content that society has paid for can it also claim access. Work for hire is the logic of open access's moral leverage. But when applied to scholarship, it is often dismissed as a neoliberal encroachment on academic freedom and the sanctity of the university. Perhaps it could just as well be seen as an element in democratizing access to the ivory tower's knowledge.

The humanities and social sciences have been the stepchildren of these debates. For the hard sciences, existing funding only needs to be repurposed. The expense of disseminating results is a small fraction of research's total cost. But more than money separates the humanities from the sciences. Humanists cannot be as indifferent to aesthetic and presentational issues as their scientific colleagues. They claim a continued stake in how others use their works. Their data are not just nature's coalface, but often the copyrighted work of others to which they can lay no claims. Lack of funding has not only hamstrung their ability to adopt open access on the scientific model. The sciences' ability to solve the problem for themselves has drained library budgets that once were more equitably shared, compounding the issue for other scholars.

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# Athena Unbound

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