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Copyright's broken promise: how to restore the law's ability to promote the progress of science

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For a long time, the copyright of scholarly publications has functioned in the same way as the copyright of popular novels or poetry, or the character of Disney's Mickey Mouse (whether it is the reason for extreme prolongation of the copyright protection or not), despite the fact that the function and significance of scholarly communication are very different. The conditions of creating research production are also very different in terms of rewarding scientists and scholars or benefits for the scientific progress, which is proved again and again to be losing because of copyright protection. It seems that the only actor on this scholarly communication playing field benefitting from the existing copyright is commercial publishing, though many others support it because of habit, convenience, indifference, or ignorance. Though the whole movement of open access was set into motion by academia and other interested parties, it was quickly stolen by the largest profit-makers and turned into an additional income stream through golden open access of publications paid by institutions. This development has answered to some extent the need for open usage of published research and effectively banned less fortunate researchers, universities and countries from possibility to publish in highly ranked commercial journals. Thus, the access was closed on the input side of the communication process.

This book, which sets aside the area of scholarship and science apart from the rest of creative industries and exploring the actual situation of copyright workings in it, is refreshing and the ideas presented in it are welcome. They may not be accepted by all, but provide a serious foundation for discussion on how to really balance the interests of different groups for the greater good for

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everyone. We can only hope that such discussions can help in achieving the universal open access to research publications that seems to be stagnating and sinking in the swamp of commercial gain protection.

The main aim of the author is to present his own solution, which he names a realistic proposal, that could help balancing *'the needs of researchers and readers for open access, on the one hand, and the needs of publishers, including scholarly societies, for the revenue that sustains the distinct qualities of scholarly publishing, on the other'* (p. 159).

Throughout the book, the author presents the arguments in favour of open access and, especially, lays the ground for his balanced proposal. He outlines the development of the Copyright legislation for different types of intellectual products in the United States and proves the exceptional situation of the scholarly production among them emphasizing the benefit of opening up of scientific advancements and its results during Covid19 pandemics in the first chapter.

The overview of the spread of the open access ideas and its acceptance by practically all actors in the field of scientific and scholarly communication, including commercial interest groups, shows the overall consensus that, alas, leads only to a dead end, is presented in the second chapter Open Access Consensus. The third chapter devoted to the Intellectual Property Clause of the US Constitution explores the intention of promoting general welfare that underlies it and how it actually played out in the court practice. This chapter provides strong grounds for the critique of the copyright legislation as a market failure (Chapter 4) in the scholarly publishing demonstrating how making money precludes the progress of science. The present open access solutions and other initiatives obviously are not successful enough and despite relieving some of the problems also have caused others, both in terms of global inequality among researchers and disruption of legal systems.

The fifth chapter exploring the relations between law and scholarship is particularly interesting as it investigates more general issues of conflicting interests among scholars and in research more generally and shows how such conflicts are treated and attended in the US courts. Special attention is given to statutory licensing as one of the possibilities to solve the earlier discussed market failure and to its critique. This leads to the exposure of the actual proposal of the author in the chapter 6. After proving that scholarly communication and publishing is a unique area that needs a different treatment by the copyright legislation as much as other unique areas, the author suggests how to design and organise a system of statutory licensing for open access of research publications. This is done by outlining the proposal with great care and in detail, examining the benefits and losses of different interest groups, the rights of researchers and publishers and especially the ways it may be realised in legal and administrative terms.

The book is finished by an Epilogue advocating copyright reform in scholarly publication and the steps that should be taken in order to achieve it for the sake of the global public good. The way is presented in somewhat depressing realistic detail of how it could be moved from one implementation stage to the other. It seems to be a long and costly process, though may be quicker and cheaper in the long run than leaving the situation as it is. Personally, I liked the idea of the proposed reform and statutory legislation, though it is neither easy nor faultless.

I would suggest that all the parties interested in opening up science and scholarly achievements should read this book. It may serve as a backup for discussions about realistic ways that could change not only the US copyright, but also open up the eyes of European academia, publishers, and copyright professionals to the problem of scholarly publishing as an exception from existing intellectual property system and looking for ways of increasing their primary intentions to promote scientific discovery and creative research. This can be done only by sacrificing exorbitant exploitation of the publicly financed research area by commercial interests.

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