

The use and perceptions of Open Access resources by Legal Academics at the University of Cape Town (UCT) in South Africa

Elizabeth Moll

Junior Librarian: Law, UCT Libraries, University of Cape Town

elizabeth.moll@uct.ac.za

Abstract: Although access to primary legal materials in South Africa is now easily accessible as a result of the Free Access to Law movement, access to legal scholarship is not as easy. Through using the University of Cape Town (UCT) as a case study, due to its research intensive nature, it is possible to see how academics are publishing their legal scholarship through the use of bibliometrics and data mining. After the success of a Research Visibility month, law librarians were able to attest to the perceptions of legal academics around the importance of the openness and visibility of their research. The author contrasts these two to see if the perception of legal academics around the visibility of their resources reflects their publishing practices. It is seen that although academics at UCT publish mostly in closed journals, the publishing in open and hybrid journals has slowly increased during the period 2011-2015. Further it is evidenced that legal academics are exploring other avenues, including that of self-archiving, to boost the visibility of their work. Law Librarians are able to assist in boosting at least the visibility, if not the openness of legal academics' work.

Keywords: open access; legal scholarship; academic perceptions; south africa.

INTRODUCTION

The Open Access movement has been embraced in legal circles through the international Free Access to Law movement and through the signing of the Durham declaration. The Free Access to Law movement outlines their reasoning in an official statement:

“Public legal information from all countries and international institutions is part of the common heritage of humanity. Maximising access to this information promotes justice and the rule of law;”¹

While the Free Access to Law movement has made every effort to ensure that primary legal materials such as cases and legislation, however access to legal scholarly works has been much slower in gaining momentum. In 2006, Carroll urged scholars to share their work openly through a number of technologies that were becoming available to address the lack of openly available legal scholarly works². Danner³ further expanded upon this need for legal scholarship to become available, as legal scholarship discusses and analyses the law and is able to point practitioners to pertinent legal information. Specifically the primary sources that may assist them. Legal scholarship is also an essential resource in developing legal discourse around topics in law both old and new.

A large advantage of the open agenda is that it boosts the academics’ visibility as well as their impact. For the purposes of this study, visibility refers to how accessible a legal academic’s work is via the internet without paying fees, excluding the ability to read the full text, while openness refers to the ability to access and read the full text without paying fees. These two concepts are often tied together, and while the author advocates for full openness, the author is of the opinion that the first step is to rectify the lack of visibility of legal scholarship before tackling the complete openness of legal scholarship.

¹ Legal Information Institutes, ‘Montreal Declaration on Free Access to Law’, 2002 <<https://www.canlii.org/en/info/mtldeclaration.html>> [accessed 28 July 2017].

² Michael W. Carroll, ‘The Movement for Open Access Law’, *Lewis & Clark Law Review*, 10.4 (2006), 756 <<http://dx.doi.org/10.1525/sp.2007.54.1.23>>.

³ Richard A Danner, ‘Applying The Access Principle In Law: The Responsibilities Of The Legal Scholar’, *International Journal of Legal Information*, 35 (2007), 355 <http://heinonline.org/HOL/Page?handle=hein.journals/ijli35&div=29&start_page=355&collection=journals&set_a_s_cursor=0&men_tab=srchresults> [accessed 27 July 2017]. This sentiment was repeated in his 2012 article, Richard A. Danner, ‘Open Access to Legal Scholarship: Dropping the Barriers to Discourse and Dialogue’, *Journal of International Commercial Law and Technology*, 7.1 (2012), 65–79 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1945228> [accessed 27 July 2017].

In the South African context, open access to legal materials is not just a luxury but a necessity in a country where legal materials are often tied up in expensive commercial products. Subsequently they are unaffordable to small firms, NGOs and even certain government organisations thereby serving to hamper their ability to function effectively. In 2016 Bopape⁴ analysed the amount of resources available and how legal academics were sharing their resources in South Africa. He found that there were 27 accredited law journals in South Africa but only 5 of these were Open Access, the rest being available through subscriptions to the LexisNexis, Juta, HeinOnline and Westlaw databases. Most concerning was the lack of indexing found amongst the South African publishers (Juta and LexisNexis) within international indexing databases. The Southern African Legal Information Institute (SAFLII) has made great strides in uploading all South African cases and legislation as open material, this access is counter balanced by the lack of legal scholarship which delves into the understanding and interpretation of the laws used in the cases. Without access to legal scholarly communication, the parties are not able to discover the discourse surrounding current legal challenges.

Legal academics are aware of the importance of their discourse, as is evidenced from their participation in research networks, news items and social media. A recent example of a challenge in South African law arose in a debate around the interpretation of one of the provisions in the Constitution of South Africa relating to the binding powers of the Public Protector on government entities. This debate ended up with the Constitutional Court of South Africa being approached for an opinion as to whether the powers were binding or not. In the wake of the Court's opinion finding that the powers were binding, legal academics specialising in Constitutional Law at UCT used the platform of The Conversation⁵ to analyse and debate the judgment. These pieces were often picked up by newspapers, and shared widely via social media,

⁴ Solomon Bopape, 'The State of Open Access Adoption in Legal Scholarly Communication : An Analysis of Selected Open Access Resources', *Mousaion*, 34.1 (2016), 83–100
<<https://journals.co.za/content/mousaion/34/1/EJC190691>> [accessed 27 July 2017].

⁵ The Conversation is a website that describes itself as "...an independent source of news and views from the academic and research community, delivered direct to the public."

indicating the interest in legal discourse around current issues. Therefore, it is in the perceptions of legal academics around the advantages of the openness of legal resources that the key lies in broadening the access to (and openness) and visibility of their scholarly communication.

METHODS

The University of Cape Town is the highest rated university in South Africa (according to the 2018 QS rankings). It is a research intensive university, that is, the focus of the university is on quality research being produced by its academics. Therefore, UCT would make a good case study in terms of investigating the practices and perceptions of legal academics when looking at scholarly legal research.

The author used a mixture of data mining and bibliometrics to determine the publishing practices of the law Faculty at UCT, specifically using the databases of InCites, SciVal and data obtained from the Research Office that consists of scholarly articles submitted to accredited journals. The period of 5 years from 2011-2015 was identified. The data from all three sources were cleaned and analysed, which included correcting the ISSN numbers, confirming the publisher and marking the journal statuses, as reflected in DOAJ, Sherpa/Romeo and on the journal websites themselves, as either being “open”, “hybrid” or “closed” (access through subscription only) model journal

Further to this data, interviews conducted with academics as part of an ongoing Masters study will highlight the perceptions of legal academics with regards to legal information sources. In addition to these interviews evidence collected by the Law Librarians at UCT, during engagements with legal academics in a Research Visibility month, around legal information source use and publishing will supplement these findings.

FINDINGS AND ARGUMENT

Over the period 2011-2015, the UCT Law Faculty published 329 articles, primarily in journals that are only visible through subscription, namely closed journals (see figure 1). A large reason for this is the monopoly on the law journals held by commercial publisher⁶. In South Africa, Juta is the primary publishing company of the top law journals. Out of the 329 articles, only 56 were published in Open Access journals.

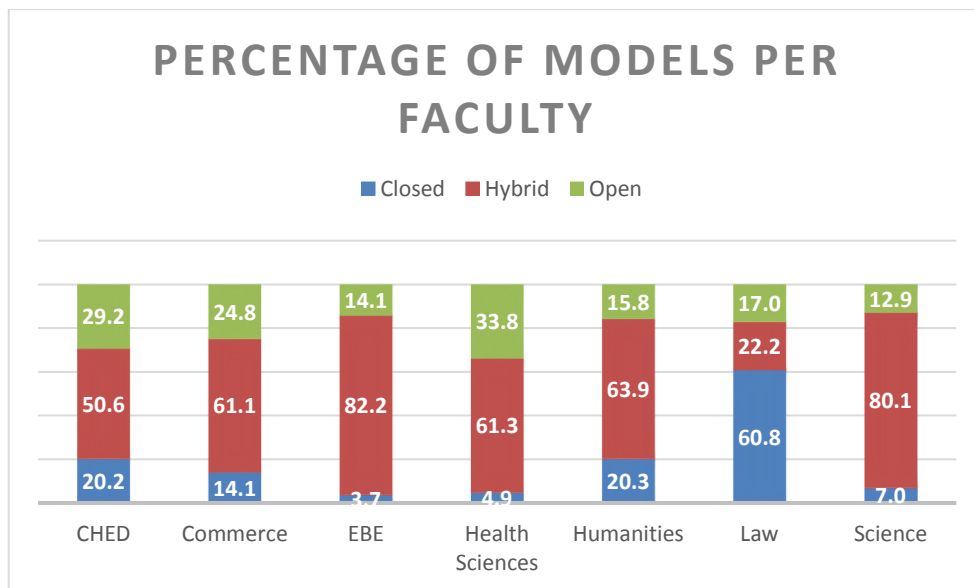


Figure 1: Percentage of journal publishing models of all faculties at UCT (from left): Centre for Higher Education and Development (CHED), Commerce, Engineering and Built Environment (EBE), Health Sciences, Humanities, Law and Science.

Over the five year period, the Open Access publishing remained relatively stable, but increased overall (figure 2). What indicated the most growth was hybrid journals, which allow the author to make their articles open for a fee.

⁶ Richard A Danner. See note 3 above.

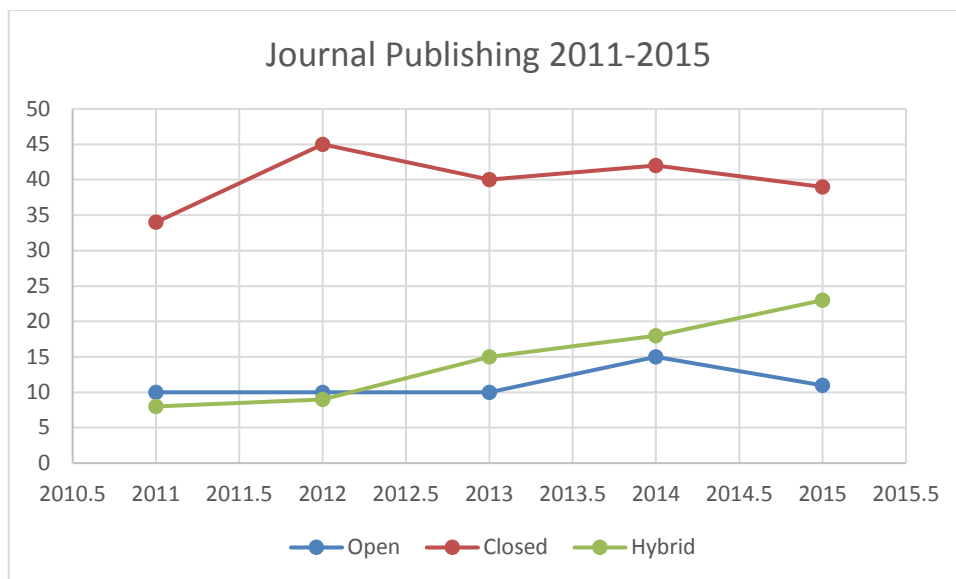


Figure 2: Journal publishing patterns of the UCT Law Faculty 2011-2015

Out of the top 10 journals published in by the Law Faculty during this period, three journals are gold Open Access (*Potchefstroom Electronic Law Journal*, *African Journal of Information and Communication* and *Law Democracy and Development*) and two are hybrid journals (*Agenda* and *the South African Journal of Environmental Law and Law Policy*). The remainder are closed journals.

During discussions with the UCT law academics at the Research Visibility month, it transpired that many academics were unaware of the invisibility of closed journals. This was further iterated by law academics that were journal editors stating that they would look at moving to more open and visible systems, specifically moving towards the hybrid system. Faculty members were also more interested in being able to conduct self-archiving, and were happy to be offered assistance. With discussion as to the tools used by Faculty for research, it was found that Faculty relied mostly on open resources, specifically using Google as their search engine, or Google Scholar. When confronted with the news that Juta, LexisNexis and Westlaw were not indexing their information in Google, the faculty members seemed shocked and started to question as to why the commercial vendors were not visible. It indicates that academics are heavily

reliable on the easiest resources to find, which are usually open resources available through Google, or resources that are indexed by Google and available via IP verification as a result of university subscriptions.

CONCLUSIONS AND RECOMMENDATIONS

Although academics are publishing mostly in closed journals, there is growth in publishing in open and hybrid journals. When analysing the top 10, it can be seen that open and hybrid journals are equal to the number of closed journals, thus indicating that the acceptance of publishing in journals that are openly available. Academics at UCT do not want their work hidden behind paywalls, and are starting to embrace one of the different routes of open access, namely self-archiving.

Law Libraries can assist academics in South Africa through advising them about ways to self-archive, or advising on publishing alternatives. Further to this, law librarians are positioned perfectly to assist academics in self-archiving and research profiles, including that of non-institutional repositories such as SSRN, Researchgate and Academia.edu.

It was found when liaising with Juta (one of the main commercial publishers) that publishers are willing to look at alternatives for allowing legal scholars to make their work more visible, if not allowing for openness through self-archiving. The publisher understood the importance of legal information, and the importance of its visibility, and after being contacted by the author of this paper, committed to making their products more visible.

It can be seen that legal academics in South Africa are wanting to make their work more accessible, and are understanding of the importance of scholarly communication, but are not aware of how to make their work more accessible. Law librarians play a vital role in encouraging legal academics and partnering with them in order to disseminate the legal academics' work more widely.

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