

# JLSC

ISSN 2162-3309 | JLSC is published by the Iowa State University Digital Press | <http://jpsc-pub.org>

Volume 11, 1 (2023)

## Brief Reviews of Books and Products

### Copyright's Broken Promise: How to Restore the Law's Ability to Promote the Progress of Science

Mark Swartz

Swartz, M. (2023). Copyright's Broken Promise: How to Restore the Law's Ability to Promote the Progress of Science [Brief Reviews of Books and Products]. *Journal of Librarianship and Scholarly Communication*, 11(1), eP16059. <https://doi.org/10.31274/jpsc.16059>



© 2023 The Author(s). This is an open access article distributed under the CC BY license (<https://creativecommons.org/licenses/by/4.0/>)

## BRIEF REVIEWS OF BOOKS AND PRODUCTS

Book review: Willinsky, J. 2022. *Copyright's Broken Promise: How to Restore the Law's Ability to Promote the Progress of Science*. Cambridge: The MIT Press. DOI: <https://doi.org/10.7551/mitpress/14201.001.0001> (open access eBook); / ISBN 9780262544412, \$28.00 (paperback)

In *Copyright's Broken Promise: How to Restore the Law's Ability to Promote the Progress of Science*, John Willinsky provides readers with a unique vision for one possible future for scholarly publishing: one in which open access (OA) is legislated for publicly funded research outputs and compensation is mandated through statutory licensing. This book is essential reading for anyone involved in scholarly publishing and will be the source of much discussion and controversy as Willinsky's vision proposes a seismic (and uncomfortable) shift for all stakeholders involved in the scholarly publishing process.

As one of the most important OA scholar/advocates over the last 20 years, Willinsky is uniquely qualified to write this book. Willinsky is the founder and director of the Public Knowledge Project (PKP), the developer of Open Journal Systems (OJS), which is the backbone for many scholar-led OA journals around the world.

Willinsky's scholarship is familiar to many in the scholarly communications ecosystem. In my case, I had just graduated from library school and started work as a librarian at Queen's University in 2009 when he delivered the keynote for our OA week celebration. This talk, and his book *The Access Principle* (2006), were instrumental in informing my own development as an academic librarian specializing in copyright and scholarly communications.

Willinsky begins his book, which is organized into six chapters, by establishing his rationale for a legislative approach for OA. His proposal hinges on the assertion that, although major strides have been made over the past four decades, the current rate of growth suggests that "universal open access to research is still decades away" (Willinsky, 2022, p. 6) and a new approach must be explored. Nevertheless, he argues that there is now a consensus on OA, in that "those who are most closely involved in scholarly publishing—be they researchers, librarians, funders, academic institutions generally, or large corporate publishers and small scholarly societies—have reached a rare point of agreement on the internet's significant contribution to the circulation of research. They concur that OA to research promotes the progress of science" (Willinsky, 2022, p. 29). Willinsky goes on to conduct a landscape analysis, outlining



how this consensus was developed over the years for libraries, scholars, funders, publishers, and learned societies (Willinsky, 2022, p. 57).

There is no question that some aspects of this consensus do exist. Yet it is hard to truly trust the commitment of publishers who are doing all that they can to extract profit from the scholarly publishing process through article processing charges, transformative agreements, and the data and metrics that are now central to the publication process. After all, publishers have demonstrated that, although they may signal support for OA, they will only support versions that help their bottom line and will oppose others like self-archiving and green OA.

Chapter 3 provides a historical account of the development of the intellectual property clause in the US Constitution. In this chapter, Willinsky asserts rightly that copyright law designed around restricting, rather than opening up, access to research, does not “promote the progress of science” (Willinsky, 2022, p. 59). He then describes, in Chapter 4, how the scholarly publishing market has failed and the OA growth rate has slowed, describing a landscape dominated by big deals, article processing charges, and transformative agreements. This is useful and familiar to many in the library and publishing worlds, but his case gets weaker when describing how this new legislative approach will solve both predatory publishing and piracy.

Regarding the issue of predatory publishing, Willinsky outlines how his proposal would include a system that approves “trusted sources” through “publisher registration overseen by librarians,” something that is bound to be massively divisive and problematic (Willinsky, 2022, p. 100). Regarding piracy, Willinsky ignores the significant benefits that sites like Sci-Hub represent for discoverability and access. He does not believe that Sci-Hub is an OA model (Willinsky, 2022, p. 102), a point that is likely to draw disagreement from many librarians and scholars. From my perspective, Sci-Hub is one of the most significant drivers toward universal OA in the scholarly publishing ecosystem, by simply ignoring the existence of copyright. It is likely that achieving the consensus that Willinsky describes in the earlier chapters of the book would have been impossible without the influence of Sci-Hub.

Chapter 5 was the most interesting for me, in that it describes how the incentives and the economics that drive scholarly publishing are different than those that drive other types of publishing models, and that scholarly publishing incentives are not reflected in the law. This leads into Chapter 6 and the first element central to his proposal: the creation of a distinct category of works in the Copyright Act of 1976 for research publications. This idea is a good one, and Willinsky makes a strong argument that research publications that rely more on the “citation economy” than the traditional economy to incentivize creation should get unique statutory treatment. Willinsky submitted a version of this proposal to the Standing Committee on Industry and Technology (INDU) as part of the 2018 review of the Canadian

Copyright Act (Willinsky, 2018), and it drew me in then, so I was happy to see it again in this book. However, the vision that I hoped would come out of this would have been more akin to secondary publishing rights (Knowledge Rights 21, 2022) rather than a mechanism to enable the statutory licensing regime for research publications that Willinsky goes on to describe in Chapter 6.

I am generally skeptical of the benefits of Willinsky's proposed statutory license regime. This regime, which would be managed by a newly formed research license collective, would essentially map out the scholarly publishing ecosystem and control the compensation rates and terms of production. This idea is novel, but it has incredible potential for abuse, no matter the checks and balances put in place. As someone who has spent a decade working in copyright in Canada where a copyright tariff regime resulted in years of issues in academia (Sheppard, 2021), the prospect of a body like a research license collective acting as a gatekeeper for scholarly publishing sets off alarm bells. What is more, a US-controlled collective may then become the de facto worldwide body for the approval and control of all elements of scholarly publishing and could reinforce western stereotypes and systems.

In conclusion, although I appreciate a new approach to thinking about how we could accomplish the goal of universal OA, I do have concerns with any system that might reinforce and perpetuate many of the structural problems that plague the scholarly publishing ecosystem. There may be a stronger argument for staying the current course with the hope that new forms and models of OA scholarship will continue to emerge and eventually lead us to a place where a fair and equitable version of universal OA will be a reality.

## REFERENCES

- Knowledge Rights 21. (2022). *A position statement from Knowledge Rights 21 on secondary publishing rights*. <https://www.knowledgerights21.org/wp-content/uploads/2022/10/Secondary-Publishing-Rights-Position-Paper.pdf>
- Sheppard, A. (2021, August 26). *Fairness and balance: The Supreme Court of Canada decision in access copyright v. York University*. The Quad (University of Alberta blog). <https://www.ualberta.ca/the-quad/2021/08/fairness-and-balance-the-supreme-court-of-canada-decision-in-access-copyright-york-university.html>
- Willinsky, J. (2018). *Amending the Copyright Act to encourage open access to research* [unpublished paper]. Stanford University and Simon Fraser University. <https://www.ourcommons.ca/Content/Committee/421/INDU/Brief/BR10007574/br-external/WillinskyJohn-e.pdf>
- Willinsky, J. (2022). *Copyright's broken promise: How to restore the law's ability to promote the progress of science*. MIT Press. <https://doi.org/10.7551/mitpress/14201.001.0001>

**AUTHOR BIOGRAPHY**

Mark Swartz is the Scholarly Publishing Librarian at Queen's University in Kingston, Ontario, Canada. Recently, Mark was a visiting program officer with the Canadian Association of Research Libraries, where he engaged in a wide variety of policy issues on behalf of libraries, including privacy, copyright, and online harms/misinformation. Mark is passionate about open access publishing, user rights in the Copyright Act, the public domain, open educational resources, and privacy.