

# THE STATE OF OPEN ACCESS ADOPTION IN LEGAL SCHOLARLY COMMUNICATION: AN ANALYSIS OF SELECTED OPEN ACCESS RESOURCES

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## ABSTRACT

The study of law focuses, among other aspects, on important issues relating to equality, fairness and justice in as far as free access to information and knowledge is concerned. The launching of the Open Access to Law Movement in 1992, the promulgation of the Durham Statement on Open Access to Legal Scholarship in 2009, and the formation of national and regional Legal Information Institutes (LIIs) should serve as an indication of how well the legal world is committed to freely publishing and distributing legal information and knowledge through the Internet to legal practitioners, legal scholars and the public at large around the world. In order to establish the amount of legal scholarly content which is accessible through open access publishing innovations and initiatives, this study analysed the contents of websites for selected open access resources on the Internet internationally and in South Africa. The results of the study showed that

UNISA |   
university  
of south africa

Mousaion  
Volume 34 | Number 1 | 2016  
pp. 83–100

Print ISSN 0027-2639

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there has been a steady developing trend towards the adoption of open access for legal scholarly literature internationally, while in South Africa legal scholarly literature is under the control of commercial publishers. This should be an issue for the legal scholarship which, among its focus, is to impart knowledge about the right of access to information and knowledge.

**Keywords:** open access publishing, legal scholarship; legal scholarly journals, scholarly legal content, open access resources, electronic repositories

## 1. INTRODUCTION

Access to information is a fundamental right of a democratic citizenry. For democracy to thrive, all citizens alike must have equal access to information (Khan and Ahmad 2014, 7). Accordingly, information is the lifeblood of law and the legal profession; hence, this has made law and the legal profession an information or literature dependent field (Arewa 2006, 800). Similarly, access to knowledge is a human right that is closely associated with the ability to defend, as well as advocate for other rights (Willinsky 2006, 143). Therefore, free, fair, equal and open access to legal information and knowledge should encompass subjects that the legal world should advocate and campaign for. As such, free and open access to information and knowledge becomes a necessary condition for an attorney to provide effective representation; a client to receive such representation; a scholar or student to study the law; and a member of the public to understand and critique the law (Carrol 2006, 741).

In order to improve equality, fairness, free and open access to information and knowledge in law, several initiatives, such as the Open Access to Law Movement (1992), the Durham Statement on Open Access to Legal Scholarship (hereafter the Durham Statement 2009) and the Open Access Law Program (OALP), have been launched; and national and regional Legal Information Institutes (LIIs) have been formed. These initiatives and formations should serve as an indication of how well the legal world is committed to freely publishing and distributing legal information and knowledge, through the Internet, to legal practitioners, legal scholars and researchers, as well as to the public at large around the world.

Danner (2012, 67) posits that articles published in legal journals, on which lawyers, judges, attorneys, professors and law makers rely for commentaries, court decisions, new legislation and court opinions, have been the predominance of legal scholarship since the late nineteenth century. The need to communicate legal information extends beyond the primary materials to include articles of secondary scholarly commentary on those laws (Donavan and Watson 2011, 588). This suggests the importance of having access to articles published in legal journals.

However, it is professed that, although there is a proliferation of free legal information on the Internet in the form of cases and legislation, which form part of primary information sources in law, it appears that there is insufficient legal scholarly literature on open access resources, which form part of secondary information sources in law on the Internet. The legal scholarly content is not free and open on the Internet as primary legal information sources such as legislation and cases. Kahn and Ahmad (2014, 7–8) express the feeling that open access publishing of journals in the field of law is at a fledging state. This is despite the fact that legal scholarly publishing is one of the easiest cases for open access publishing, and law reviews and journals are funded in a way that is consistent with open access publishing approaches (Plotin 2009, 41). Fisher and Steiner (in Kroski 2014, 53) stress that, in the United States (US), there has been a slow progress towards making legal scholarship freely available and accessible electronically through open access publishing, as electronic access to legal reviews and journals has been delivered through costly commercial legal databases such as Westlaw, LexisNexis and HeinOnline (Lomio 2009). Quinot (2010) notes that South African judgements and legislation, which were primarily accessed through subscription-based law reports and laws published by commercial publishers such as Juta and Butterworths Lexis-Nexis, are now also accessible through open access to legal materials resources such as the Southern African Legal Information Institute (SAFLII), but it is not the same situation with the South African research outputs in law journals that have been much slower in moving towards open access. Legal scholars have been slower to recognise the value of open access than scholars in other disciplines such as the humanities, science and medicine (Bluh 2006, 127). Armstrong (2010) also proclaims that open access to research and scholarship remains an emerging phenomenon in the legal academy, while Carrol (2006, 741) suggests that the time is ripe for legal scholars and scholarly legal periodicals to fully join the movement for open access to law.

Open access publishing, as a new innovation, has generated prolific discussions and deliberations concentrating on its purported benefits, without looking into how well this innovation is being adopted in various fields or disciplines in the world. Conversely, the adoption of open access publishing in legal scholarly communication in South Africa and internationally appears not to have received enough attention, even though more research and scholarly content are being published in open access mode. Due to the rapid growth in scholarly literature, coupled with growth in open access resources, it becomes crucial to identify and investigate the trends of open access resources worldwide in the legal space or domain.

From this perspective, the current study looked at the current status and growth rate of legal scholarship in selected open access resources, both internationally and in South Africa. The study represents an analysis of the contents of websites for selected open access resources internationally and in South Africa to determine the present status of open access adoption in the legal scholarship. The study sought to:

- establish the progress made with respect to the availability and accessibility of electronic legal journals on selected open access resources;
- establish the extent to which legal scholars or researchers have adopted and embraced open access publishing; and
- compare the growth of legal scholarship accessible through open access resources to other disciplines within the same open access resources and repositories.

## 2. LITERATURE REVIEW

### 2.1. Theoretical framework

The adoption of open access publishing in legal scholarship can best be explained if studied from the perspectives of Diffusion of Innovations (DOI) theory. Rogers (1995) explained DOI as a theory that analyses and helps to explain the adoption of a new innovations into a social system. An innovation is an idea, practice, or object that is perceived as new by an individual or a group of people; and diffusion is the process by which an innovation is communicated through certain channels over time among the members of a social system. Thus, the four main elements identified in this theory are innovation, communication channel, time, and the social system.

DOI theory postulates that certain characteristics (relative advantage, compatibility, complexity, trialability, and observability) perceived by members of the social system determine the rate at which an innovation is adopted. Communication channel is the means by which messages get from one individual to one another about the new innovation in the social system. Mass media and interpersonal channels create knowledge of innovation and change attitudes towards a new innovation and thus influencing the decision to adopt or reject a new innovation. The time dimension in DOI theory is involved in diffusion in three ways, namely, the innovation-decision process, innovativeness, and the rate of adoption. The fourth main element in DOI theory is the social system, which is defined as the set of interrelated units that are engaged in joint problem-solving to accomplish a common goal (Rodgers 1995). A detailed account of these elements and how open access publishing in the legal scholarship can be applied from the perspective of DOI theory will require an article of its own.

### 2.2. What is open access publishing?

There are varied definitions of open access. Mammo and Ngulube (2013, 2–3) note that various authors, declarations and statements about open access have provided different definitions of open access publishing. While differences in the definition of open access publishing exist because of specific focusses and interests, in the study, open access refers to the idea that scholarly literature should be freely accessible

online. Open access publishing means disseminating materials over the Internet free of charge and free of conventional models for publishing materials which use the copyright system as a lever to induce commercial publishers and printers to disseminate scholarly research results (Khan and Ahmed 2014, 7; Litman 2006, 101; Plotin 2009). Donovan and Watson (2011, 557) define open access publishing as providing free access, for all Internet users, to materials that have traditionally been published in scholarly journals. This entails that scholarly communication or content was only available through expensive print subscription-based databases; but, with the development and advances in web technology, it is now possible to make this scholarly content available free of charge through the Internet.

Open access publishing can take two distinct forms. Firstly, by creating online scholarly journals that can be made available to the public without subscription fees (Parker 2007, 438). In this kind of open access, authors publish their works or articles in journals that readers can access and use for multiple purposes free of charge, as long as the author is properly acknowledged (Plotin 2009, 40). Secondly, open access can be done by archiving the scholarly works in electronic or institutional repositories. In this kind of open access, authors maintain their personal web pages where they self-archive their works or post them to an online scholarly or electronic repository, such as the Social Science Research Network (SSRN) and Berkeley Electronic Press (Bepress) (Armstrong 2010; Bluh 2006, 12; Parker 2007, 439).

Plotin (2009, 40) further states that the self-archiving strategy has been dubbed the 'green road' to open access publishing, while the open access route has been termed the 'gold road'. The difference between the two is the vehicle used to deliver content, where 'gold open access' refers to publishing scholarly articles on open access journals and the 'green open access' entails archiving scholarly articles on electronic resources or repositories (Fischer and Steiner in Kroski 2014, 54; Raju, Adam and Powell 2015, 141). The electronic repositories form part of the resources whose contents are analysed in the study.

### 2.3. Legal scholarship and open access publishing

The key milestones regarding the adoption of open access in legal scholarship internationally have been well documented by Fischer and Steiner (in Kroski 2014, 53). They maintain that the first call for the adoption of open access principles for legal scholarship started in 1998 when Professor Richard A. Danner led the Duke Law School to become the first law school in the US to make full runs of its law journals freely available online. This was followed by the call, by Dan Hunter, who offered a 'Manifesto in favour of Open Access to Legal Scholarship' in 2005, for the legal scholarly community to embrace open access principles. In the same year (i.e. 2005), the OALP, a project intended to support open access to legal scholarship, was launched. The OALP resources include an author pledge, open access principles

and a list of law journals adopting open access principles and a model publication agreement.

Donavan and Watson (2011, 554) posit that open access for legal scholarly communication surfaced with two major initiatives. They argue that the Harvard Law School was one of the early adopters of open access when it unanimously voted to make its scholarship 'freely available on an online repository'. The other major milestone regarding open access to legal scholarly content, according to Donovan and Watson (2011, 554), was when the directors of several major law libraries in the US held talks that resulted in the promulgation of the Durham Statement in 2009. The Durham Statement calls for all law schools to stop publishing their journals in print format and to rely, instead, on electronic publications with a commitment to keeping the electronic versions available in stable, open and digital formats (Fischer and Steiner in Kroski 2014, 55).

In South Africa, much has been said and more is still said than done about the adoption of open access in scholarly communication, and the legal scholarship in particular. According to the Max Planck Society website (<http://openaccess.mpg.de/319790/Signatories>), there are only 12 institutions in South Africa which are signatories to the Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities, whilst there is no single institution in South Africa which is a signatory to the Durham Statement (Berkman Centre for Internet and Society 2012). It has also been revealed that most of the law schools in South African universities have adopted open access by depositing their research outputs on their institutional repositories, dominated more by theses and dissertations, than legal journals. Some law schools make some of their journals freely accessible on their websites. For example, the *African Human Rights Law Journal* is freely accessible on the University of Pretoria Centre for Human Rights website (<http://www.chr.up.ac.za/>). The *Potchefstroom Electronic Law Journal* hosted by the Faculty of Law, Potchefstroom Campus of the North-West University can also be accessed free of charge (<http://www.nwu.ac.za/p-per/home-1>). The journal of the University of South Africa, College of Law, *Fundamina: A Journal of Legal History*, is also accessible through its institutional repository.

The major project that provides free access to legal journals not only in South Africa, but also in other countries in Southern Africa, is SAFLII. Its contents regarding open access to legal journals is also analysed in the study, together with other resources such as the African Journal Archive (AJA) and open access journals by Sabinet Online.

## 2.4. Benefits of open access publishing

Legal scholarship is written to discuss, explain and analyse the law, and to point legal researchers towards pertinent authorities in the sources of public legal information

(Danner 2012, 65). Making such information available and free of charge on the Internet is beneficial. Fischer and Steiner (in Kroski 2014, 56) maintain that the traditional print publication model causes many law journals to lose money each year due to increasing costs of both production and distribution, and inefficiencies in the traditional print publication model. Open access publications can defray many of the costs of print production and distribution without diminishing existing royalties received from vendor agreements with legal database publishers. Reliance on commercial legal vendors creates substantial costs and physical barriers to accessing legal scholarship (Fischer and Steiner in Kroski 2014, 56). In his call for open access to law journals, Lomio (2009) makes the point that each country's law schools produce at least one or two law journals containing scholarship and important policy pieces from law professors, distinguished practitioners and students. The bulk of legal scholarship should be published in such law journals; unfortunately, the only way to access this significant content electronically is through expensive databases such as HeinOnline, LexisNexis and Westlaw. It would be better for the legal information world if researchers could reliably turn to the host law school for any law journal from that school and to find all its articles available for free in open and stable electronic formats (Lomio 2010). In South Africa, legal content is accessed through subscription to Juta, Butterworths and Sabinet Online (Bopape 2013).

Carrol (2006) provides four reasons for making the legal scholarship accessible through open access:

- **Impact:** Research has shown that articles available on open access are cited more often. Donovan and Watson (2011, 553) claim that open access legal scholarship, which today appears to account for almost half of the output of law faculties, can expect to receive 58 per cent more citations than non-open access writings of similar age from the same institution.
- **Serving the underserved:** Many legal practitioners and researchers cannot afford to subscribe to legal periodicals or commercial databases that aggregate them. Gilmore (2009, 2) is against legal journals being available only to those who are wealthy enough to afford them. Open access, therefore, helps in winding information gaps between the information rich and the information poor researchers (Rai 2014, 472).
- **Improving disciplinary dialogue:** Legal scholarship is becoming more interdisciplinary, and thus of greater interest to scholars in other fields who may not have access to legal databases. Legal scholars and other scholars in other fields must mutually borrow and use ideas to and from one another in order to increase understanding of the law and legal thought in other disciplines (Carrol 2006, 756).
- **Improving international impact and dialogue:** In times of globalisation, lawyers and legal scholars in other countries or jurisdictions seek access to



both primary and secondary legal materials in other jurisdictions because they have matters or interest subjects pertinent to those laws, and they also seek comparative perspective (Carrol 2006, 757).

These explanations can be based on one of the Budapest Open Access Initiative (2009) principles which states that removing access barriers to research literature will accelerate research, enrich education, share the learning of the rich with the poor, and that of the poor with the rich, make this literature as useful as it can be, and lay the foundations for uniting humanity in a common intellectual conversation and a quest for knowledge. Accordingly, Gilmore (2009, 2) confirms that open access will enable many people to read articles, apply authors' ideas to their own work and cite the articles; and further that, if all academic journals could be published free online by the institutions to which they are attached instead of by the publishers, there would be a situation wherein every journal is read by everyone in the world.

### 3. METHOD AND MATERIALS USED

The method and materials used in the study are based on the data collected from the websites of open access resources that have been purposively and conveniently selected for the study. The researcher selected, visited and analysed the contents of some open access resources websites to establish the number of legal journals available and accessible through those resources. The targeted open access resources were purposively and conveniently selected because their websites display their contents and provide statistical information, especially information on how many journals are available in a specific subject. And some provide statistical information on how many downloads have been made on papers that have been deposited onto the websites. This made it easy for the researcher to compare the number of legal scholarly scholarship with the number of scholarly articles in other disciplines. Aguillo et al. (2010, 478) support reliance on information that is available on publicly available websites as this helps with the quantitative analysis of the website content. The researcher, therefore, accessed the selected open access resources websites and checked their statistics to establish how many legal electronic journals or articles, in comparison to other different subjects, are included in those resources, and how many downloads have been made on those resources. For some of the resources, the lists of journals for each discipline were retrieved and counted.

The scope of the study was confined to the six selected open access resources or repositories listed below:

- Directory of Open Access Journals (DOAJ);
- Social Science Research Network (SSRN);
- Berkeley Electronic Press (Bepress) Digital Commons Institutional Repository;

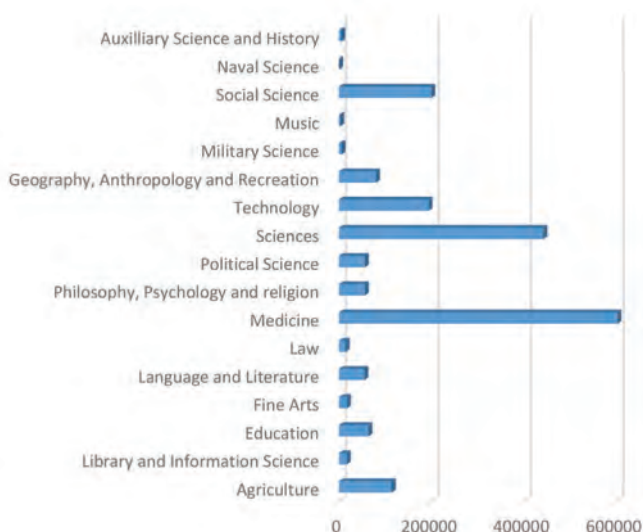


- Open Access Law Program (OALP);
- Southern African Legal Information Institute (SAFLII); and
- African Journal Archive (AJA).

## 4. RESULTS AND DISCUSSION

### 4.1. The Directory of Open Access Journals

According to Morrison (2008), the Directory of Open Access Journals (DOAJ) is an online directory that indexes and provides access to quality open access peer-reviewed journals. It is a database of open access journals covering all scientific and scholarly subjects. The aim of the DOAJ is to increase the visibility and ease of use of open access scientific and scholarly journals, thereby promoting their increased usage and impact. Journals can be browsed either by title or by broad subject areas. Articles are searchable by article, author title, ISSN, journal title, abstract, or key words. To be included in the DOAJ, journals must use a funding model that does not charge readers or their institutions for access, and must exercise peer-review or editorial quality control.



**Figure 1:** Number of articles uploaded on the DOAJ

**Source:** Generated from <https://doaj.org/subjects> (10 June 2016)

Figure 1 shows that the number of law articles on the DOAJ as at 10 June 2016 was only 14 480, constituting 0.71 per cent of all articles uploaded on the DOAJ.

With respect to journals in which these articles appear, Bluh (2006, 127) notes that, when it was last visited in January 2006, the DOAJ listed only 1 988 journal titles, of which 43 were law journals. In 2007, out of 3 203 journals listed, only 53 were law journals (Danner 2007, 377). Kahn and Ahmed (2014, 8) note that, from 1991 to 2008, which is a life span of about 17 years, the number of open access journals on the DOAJ in the field of law had only reached 64. In 2009, the DOAJ listed 3 728 journals, but only 65 journals under law (Plotin 2009, 46). According to Danner (2012, 69), there were 7 150 journals listed on the DOAJ website in 2012, out of which 123 were listed under law.

According to the results of a search that was conducted on the DOAJ website, there were approximately 8 955 journal titles accessible as at 10 June 2016. Out of this number, there were 298 electronic law journals included on this website. This constitutes 3 per cent of all journals that are accessible through this resource. Out of 8 955 journals, only 60 journals were South African journal titles. From 60 South African journal titles, only two (2%) were law journals, namely, *Law, Democracy and Development* and the *Potchefstroom Electronic Law Journal*. This shows that there has been slow progress towards South African journals being listed on international open access resources. Therefore, there has been a slow progress towards making legal scholarship freely available through open access publishing on the DOAJ, as attested by the figures above.

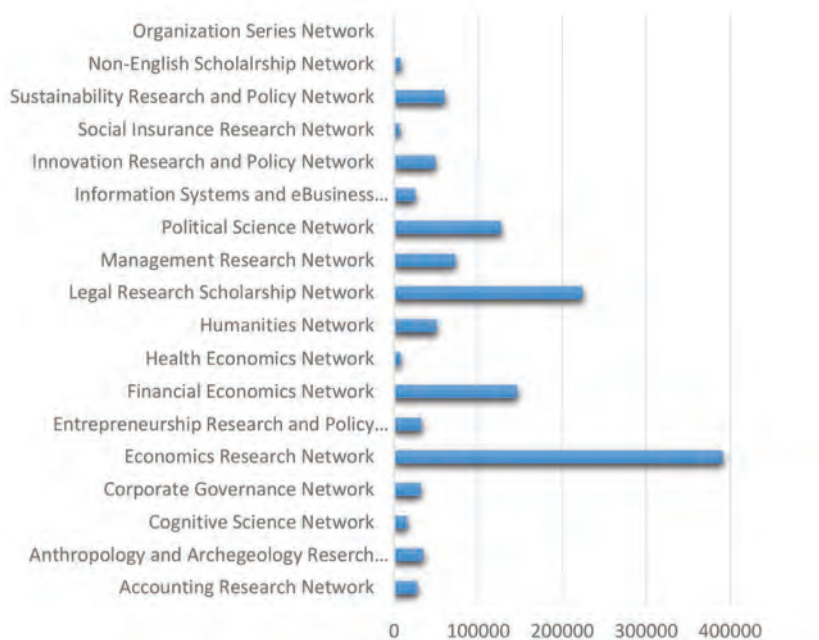
When compared to other disciplines, such as medicine, technology, agriculture and other sciences, education, language and literature, the number of law articles on the DOAJ is relatively low, but above other subjects, such as military science, naval science and music. Armstrong (2010) states that although open access to research and scholarship is well established in other sciences, it remains an emerging phenomenon in the legal academy. Carrol (2006) says it is important to recognise that law was formalised as an academic discipline much later than the arts, humanities and other sciences. Carrol (2006, 751) continues to remark that:

While peer reviewed scholarly journals was already developed and served as the model for scholarly communication in arts and other sciences, those in law were differently situated because they were still edited by students. It can therefore be deduced that legal journals emerged as a form of focused journalism, reporting cases of note and other matters of interest to the bar.

## 4.2. The Social Science Research Network

According to Jensen (2012), the Social Science Research Network (SSRN), a website founded in 1994 by Michael Jensen and Wayne Marr, is devoted to the rapid dissemination of scholarly research in the social sciences and humanities. Academic papers in Portable Document Format (PDF) can be uploaded directly onto the site by authors and can then be made available for worldwide free downloading. Publishers

and institutions can upload papers and charge a fee for readers to download them (Rai 2014, 475). Users can also subscribe to abstracting email journals covering a broad range of subject matters.



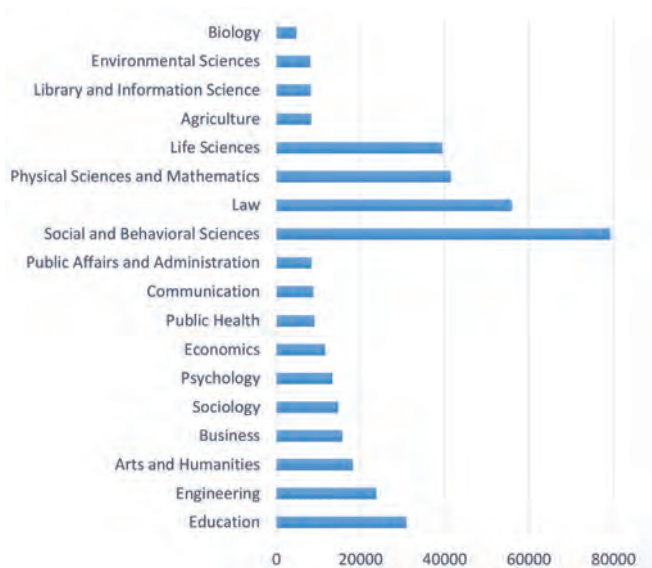
**Figure 2:** SSRN downloads

**Source:** Generated from <http://papers.ssrn.com/> (10 June 2016)

These e-journals can then periodically distribute emails containing abstracts (with links to the full text where applicable) of papers recently submitted to the SSRN in the respective field. On the SSRN, authors and papers are ranked by the number of downloads, and this has since become an informal indicator of popularity on Bepress and other open access sites (Litman 2006, 106). Figure 2 shows the number of downloads that were made from the site from different subject repositories as at 10 June 2016. The results show that the Legal Scholarship Network is the second most used subject on the SSRN, after the Economics Research Network. This shows that an increasing number of legal academics are posting at least their current issues in freely accessible formats on their journal websites and that, at least, there is a general consensus in the legal academy that the content of legal scholarship is a public good. Further, it is possible that in the age of the Internet, a commitment to research and scholarship carries with it the responsibility for scholars to circulate their work as widely as possible (Danner, Leong and Miller 2011, 40–41).

### 4.3. The Berkeley Electronic Press Digital Commons Institutional Repository

The Berkeley Electronic Press (Bepress) is an academic software firm that was founded by academics at the University of California in 1999. The firm is dedicated to producing products and services to support scholarly communication, including institutional repository and publishing software. To address the broader crisis in scholarly communications, Bepress sets out to provide authors and universities with a solution for them to share their research openly and widely. Thus, Bepress pioneered Digital Commons, a service that is now the leading hosted institutional repository. Digital Commons serves institutional needs by showcasing the breadth of scholarship produced at an institution, that is, everything from faculty papers to student projects, annual reports, and community partnerships. The Digital Commons Network brings together free, full-text scholarly articles from hundreds of universities and colleges worldwide. Curated by university librarians and their supporting institutions, the network includes a growing collection of peer-reviewed journal articles, book chapters, dissertations, working papers, conference proceedings, and other original scholarly works. Figure 3 shows the number of papers, articles, book chapters, dissertations, working papers and other scholarly works posted on Digital Commons according to disciplines, the number of downloads as at 10 June 2016. The results show that law receives the second highest number of downloads after social and behavioural sciences.



**Figure 3:** Bepress downloads

**Source:** Generated from <http://network.Bepress.com/> (10 June 2016)

The results from both the SSRN and Bepress show that the availability of legal scholarship in these resources is high. The SSRN and Bepress Digital Commons registered the highest number of contributions and downloads of law papers or articles, respectively. Arewa (2006, 810) states that these two repositories are emerging as new business models to facilitate the electronic dissemination of scholarly works. Scholarly articles can be downloaded at no costs from the SSRN and Bepress websites. When compared to other disciplines, the availability and accessibility of legal scholarship, as well as the degree to which their content has been downloaded on both the SSRN and Bepress, is higher than that of other disciplines such as the arts and humanities, medicine and health, as well as physical sciences and mathematics. Perhaps this is because these repositories also host electronic repositories that only deal with legal scholarship. The SSRN is organised into 16 subject matters or specialised networks, including the Legal Research Network, which is designed to publishing research devoted to law (Arewa 2006, 810; Bluh 2006, 127; Rai 2014, 475). This is regarded as one of the largest collection of open access legal scholarship in the US (Armstrong 2010).

Bepress also maintains two electronic repositories that are devoted to publishing law papers, namely, NELLCO Legal Scholarship Repository and Bepress Legal Repository. The former provides a free and persistent point of access for working papers, reports, lecture series, workshop presentations, and other forms of scholarship created by faculty at NELLCO member schools. Powered by Bepress technology, the aim of the NELLCO Legal Scholarship Repository is to improve the dissemination and visibility of a variety of scholarly materials throughout academic and legal research communities (Rai 2014, 474). The Bepress Legal Repository is where authors may submit an electronic version of an article free of charge. The number of legal scholars who submit their works to this repository is growing. Arewa (2006, 811) and Armstrong (2010) attribute this to one of the services offered by Bepress called ExpressO, which helps legal academics and scholars to manage their law-review submission process. Unlike in some other disciplines, legal academics typically make multiple simultaneous submissions to law reviews. This service, therefore, provides a valuable service in the law-review submission process by providing a single place where legal academics can submit articles (Arewa 2006, 812).

#### 4.4. The Open Access Law Program

The Open Access Law Program (OALP) is a project intended to support open access to legal scholarship. OALP resources include an author pledge, open access principles, and a list of law journals adopting open access principles and model publication agreements. The OALP website reveals that about only 37 legal journals in the US have adopted open access principles, while other few countries have contributed

only one or two legal journals to open access principle adoption. Danner (2012, 69) confirms that only few journals have signed onto the principles of the Science Commons OALP, and further that since these principles were promulgated, only less than 50 law journals, of which nearly all are from the US, have either adopted the principles or indicated that they are operating under policies consistent with them.

#### 4.5. The Southern African Legal Information Institute

The Southern African Legal Information Institute (SAFLII) publishes legal information for free public access which comprises mainly case law and legislation from both South Africa and Southern African countries. According to Greenleaf (2010, 48–49), SAFLII publishes over 50 databases of superior court judgments from 16 English-speaking and Portuguese-speaking countries in Southern and Eastern Africa, and four regional tribunals. SAFLII was established in 2003 by the University of Witwatersrand's (Wits) Faculty of Law. SAFLII also hosts legal materials from other countries in the region, which are obtained through partnerships, collaborative efforts and more recently, through links with other LIIs established in these regions. SAFLII has also started hosting few open access journals. The content analysis of SAFLII website shows that there are only four accredited South African legal journals freely available through the SAFLII database up to date. This constitutes only 3 per cent of all legal journals published in South Africa. Therefore, in South Africa most of legal scholarly content can only be obtained by subscribing to commercial database vendors such as Juta, Butterworths LexisNexis and Sabinet Online. On the SAFLII website, there are also three Southern African Development Community (SADC) journals that have been recently added to the list, but such are not listed in the Department of Education (DoE) accredited journal and International Bibliography of Social Sciences (IBSS) lists (Sabinet Online ©2015).

#### 4.6. The African Journal Archive

According to Sabinet Online (©2015), the African Journal Archive (AJA) is a Sabinet Gateway project in conjunction with the Carnegie Corporation that makes African research accessible to the whole world. AJA is regarded as one of the open access resources for African journals. On the Sabinet website, there is a link directing users to its open access journals. When users click on that link, they find all the journals that are on open access. Unfortunately, some of the legal journals that can be found are not accredited with either the DoE or the IBSS. Some of the open access journals on this website have been discontinued. This implies that all other accredited and active journals can only be accessed if one subscribes to Sabinet SA E-publications or Juta Law.



The results for both SAFLII and AJA show that the picture of open access to legal scholarship in South Africa is also still at its blossoming stage. Out of approximately 27 accredited law journals in South Africa, only eight are available on open access through the SAFLII website, but three of them from this list are not accredited. Perhaps this is because scholars or university law schools who are the originators of these materials are afraid of the risks of reducing revenue from print subscription and royalty income from legal database vendors. Quinot (2010) states that the picture of the South African research outputs in law has been much slower in moving towards open access, and further that the South African legal academics have barely started to engage with the open access-publication of journals. Gilmore (2009, 2) argues that open access to all journals is surely the ideal situation that must be achieved for the South African legal profession, both for the authors and the readers.

## 5. CONCLUSION

In conclusion, the study has shown that internationally, legal scholars and academics are beginning to appreciate the benefits of embracing open access publishing as a new knowledge production and dissemination platform, even though it is not yet embraced by many legal academics in South Africa. The availability of open access to legal scholarship on the DOAJ is not as convincing as other open access resources, such as the SSRN and Bepress. Perhaps this is because the DOAJ only deals with accredited journals; whereas the SSRN and Bepress allow scholars to submit working papers, reports, lecture series, workshop presentations, and other forms of scholarship. The study has also shown that there are not many open access law journals that are registered with the DOAJ. The only open access resources where it is possible to find more legal scholarly content than any other disciplines are the SSRN and Bepress. Therefore, the SSRN and Bepress are emerging internationally as new models for producing and disseminating scholarly literature, not only in the legal arena, but in other disciplines as well. Despite the initiation of movements that propagate free and open access to legal scholarship, the study results also point out that most of the legal scholarly journals in South Africa are still under the control of commercial publishers and database vendors. Legal journals that are available and accessible on open access platforms are either inconsistent or unlisted on the IBSS and DoE lists. This should be an issue of concern to the legal world which, among its focus, is the need to impart knowledge about the right of access to information.

It is, therefore, recommended that developers of open access resources should partner with legal commercial publishers, such as Heinonline, Westlaw and LexisNexis internationally, like they have done with publishers in other disciplines. In South Africa, SAFLII should establish partnerships with Juta, Butterworth, LexisNexis and Sabinet Online in order to find ways of making the legal scholarship



content available and accessible to all. Legal academics who have already started appreciating the value of open access to legal scholarship in South Africa should also begin to advocate for open access diffusion and adoption, together with law librarians, because they are the ones whose journal or periodical budgets suffer the ever-escalating prices from commercial publishers or vendors.

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