

STELLENBOSCH UNIVERSITY OPEN ACCESS SEMINAR

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Open Access and Legal Scholarship in South Africa

The picture of open access in legal scholarship in South Africa is a varied one.

On the one hand judgments – South African legal academics' stock in trade given our largely doctrinal research methodology – are now freely available on the internet. This has greatly changed the way in which we approach the field, both in practice and research.

There has been a clear break over the last few years from the closed past where judgments were primarily accessed through subscription-based Law Reports published by commercial publishers to comprehensive open access to legal materials.

The new approach to legal materials was pioneered in South Africa by various local law schools, including the Stellenbosch Law Faculty that has been publishing in open access form judgments from the Cape High Court for a number of years. This approach has now been consolidated by initiatives such as the Southern African Legal Information Institute (SAFLII) that provides open access to a range of legal materials, including judgments. And we accordingly find ourselves in a very different research environment where the materials are immediately available in open access form. This is quite a shift from the old approach where judgments filtered down into academia with at least a six month lag and on highly selective basis necessitated by paper-based commercial publishing. The near immediate availability of comprehensive materials on a searchable electronic platform challenges, but also enables the legal researcher to respond much quicker to developments and to engage in a much more comprehensive manner with almost real time developments in law.

But on the other side of the picture South African research outputs in law have been much slower in moving towards open access. Internationally there has been a growing trend towards open access publishing of legal research, particularly by law journals. Respected journals such as the *Yale Law Journal* have been experimenting with various open access models for some time and has most recently launched an online supplement to its already open access journal in which amongst others further engagements with articles published in the (main) journal are published, thereby converting the mostly one-directional nature of article publication into a much more dialogical process. Younger journals, such as the *German Law Journal*, have been able to establish themselves as leading publications in remarkably short periods of time by going open access from the start. However, in South Africa, we have barely started to engage with open access publication of journals. The paradigm in SA, with one or two exceptions, is still very much the old closed type publication of journals. We thus find ourselves in a somewhat paradoxical position where the materials we engage with are freely available, but the research exploring them are not. The major challenge for South African scholarly legal publication is thus

to pursue pathways to open access. Given that the *South African Law Journal* – our premier local law journal – is the oldest law journal of its kind in the world having been published since 1884, it is high time that the South African legal research community seriously engage with this most recent development in research publication.

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