

Sci-Hub case: What's really at stake is future of research in India

BY INVITATION

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On August 19, researchers across India woke up to unsettling news: access to Sci-Hub — the shadow library that has long been their lifeline — had been blocked by order of the Delhi High Court. If appropriate long-term measures are not taken, this could have enormous implications for the future of research in the country.

THE LEGAL BACKSTORY

The ban did not come out of nowhere. It was the outcome of a long-running copyright battle playing out in Indian courts since 2020. On one side was Sci-Hub, founded by Kazakhstani computer programmer Alexandra Elbakyan, which has long provided free access to millions of published research articles. On the other were three major international publishers (Elsevier, Wiley and American Chemical Society) who filed a copyright infringement suit against it. During the proceedings, Ms Elbakyan gave an undertaking that no new articles covered by the plaintiffs' copyright would be uploaded till the proceedings conclude. But while this undertaking remained in force, she released new articles through another website named Sci-Net. Arguing that this violated her undertaking, the publishers went back to court, leading to the blocking order on Sci-Hub, Sci-Net and all mirror websites.

WHAT THE COURT IGNORED

While this appears like a simple blocking order, one should not overlook some of the public interest dimensions.

First, it is an undeniable fact that even the most resource-rich institutions in India like IITs

and IIMs fail to provide access to all the publications necessary for facilitating good quality research. One can only imagine the plight of researchers in other institutes.

Second, the blocking order relies heavily on jurisprudence laid down in the context of issues like online movie piracy. But are these comparable infringements? The business models in academic publishing are very different — not just from movies but even fiction and newspaper publishing. Journal authors are almost never paid royalties or remuneration for their contributions. Even open access journals that allow the authors to retain copyright often charge them 'processing' fees, clearly illustrating the continued exploitation by journals. In such a context, the traditional incentive-based justifications for grant of copyright protection hardly exist. Most researchers contribute to journals for reasons such as advancing knowledge, signalling expertise, and meeting requirements for appointments/ promotion in academic and research institutions. This fundamental difference is why scholars like Steven Shavell argue for abolition of copyright in academic works and placing them in the public domain for broader social benefits.

Third, it is debatable whether the publishers own valid copyright in all the articles available through Sci-Hub, as this also requires valid copyright assignments from the authors to journals. A substantial number of articles could already be available in the public domain for multiple

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Illustration by Chad Crowe (USA)

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URL WAR: Such cases are not mere private disputes. It is important to look at the public interest dimensions before issuing sweeping orders

reasons such as expiry of copyright term, relinquishment of copyright by authors or application of open-access mandates by those who funded the research. These are complex issues that can only be determined through a full trial, and in such circumstances, the courts should avoid sweeping blocking orders applicable to the entire website. It is also worth adding here that cases like this should not be seen as mere private disputes between two parties. It is important to look at the broader public interest dimensions before issuing any injunction.

THE PATH FORWARD

The case and the resulting blocking order should act as a wake-up call for our policymakers. If India has to achieve economic and scientific progress, access to scientific information is a must for researchers and students. While the country

has initiated the One Nation One Subscription (ONOS) policy to provide access to journals for institutions across the country, the economic prudence of the scheme is questionable. It is also important to notice that not all publishers are part of ONOS, thereby limiting coverage.

The only sustainable long-term solution to the crisis is open access to research publications. A starting point would be to mandate that all work funded by public money — and all research produced in publicly funded institutions — be made openly accessible. The draft National Science, Technology and Innovation Policy 2020 had recommended steps in this direction; it is time to implement it.

Another important step is enacting restrictions on assignment of copyright to journals. For instance, France has adopted a specific secondary publication right for authors, which empowers authors to share their final accepted author version of publications, irrespective of any exclusive contract they may have signed with publishers. While allowing authors to publish in any journal they prefer, such measures can help authors and institutions address the current imbalance in bargaining power. It is also important to note that author-protective measures are not alien for Indian copyright law. For example, the Copyright (Amendment) Act 2012 introduced restrictions with regard to assignment of copyright and mandatory royalty sharing, with the primary objective of protecting lyricists and composers against economically powerful producers.

The long-term solution is, therefore, to take inspiration from our own history and achieve a fair balance between copyright protection and broader social interests. Only then can we create a research ecosystem that truly democratises knowledge. ■

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