

Do We Need Another Copyright or Another Science? (Re)interpreting the REBSPA for Scholarly Publishing

Klaus D. Beiter*

For scientists in the global South, the Covid pandemic meant the inability to travel and carry out research in the well-resourced libraries of universities in countries of the global North. Simultaneously, the pandemic made many realise that, to save the planet, reduced travel will remain a part of the scheme of things. Yet, paywalls prevent access to scientific knowledge in especially, though not only, developing countries. In the endeavour of developing Covid vaccines, it became apparent – in developed and developing countries alike – how paywalls and insufficient research exceptions in copyright law, e.g. for text and data mining, obstructed that endeavour. The pandemic served as a magnifying glass for copyright impediments in the sphere of science. This paper seeks to identify these impediments and it makes suggestions how these may be overcome. It focuses on scientific publishing only, and here on digital content. It assesses the deficits of copyright law in the light of the right of everyone “to enjoy the benefits of scientific progress and its applications” (REBSPA) in Article 15(1)(b) of the International Covenant on Economic, Social and Cultural Rights of 1966. To the extent possible, it seeks to achieve a harmonious reading of international copyright law with the normative demands of the REBSPA. The paper considers current interpretations of the REBSPA to reveal flaws and gaps. The REBSPA is accordingly *reinterpreted* in accordance with what is called a “more” human rights approach here. Its two essential elements are the concepts of “adequacy for science” and “global science inclusiveness.” It is concluded that, while existing copyright law needs certain reforms in the interim to accommodate the needs of science, in the longer term, entire institutionalised science will have to be reconceived. Genuinely open science requires far-reaching changes in the way copyright applies to science. It may even be necessary to “move beyond” the category of copyright in the field of science altogether.

* Klaus D. Beiter, B.Iur. LL.B. (UNISA, Pretoria), Dr. iur. (LMU Munich); Associate Professor, Faculty of Law, North-West University, Potchefstroom, South Africa; Affiliated Research Fellow, Max Planck Institute for Innovation and Competition, Munich, Germany. E-Mail: Klaus.Beiter@nwu.ac.za.