

McGill Law Journal accessible summary:

# **Implementing secondary publication right in copyright law for green open access to research**

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## **Topic and importance**

Every year, governments fund many important research institutions and projects to drive innovation and benefit society at large. However, in the digital age, journal publishers have chosen to maximize their profits from research works by locking them behind high paywalls. As a result, most of the public, as well as researchers with fewer resources, cannot access the findings from these research publications. For example, if health practitioners, policymakers, or health-conscious members of the public cannot access the biomedical research journals that would generate better health outcomes, then what's the point of health research?

As such, it makes sense that governments want to remove barriers to the research they fund. In recent years, governments, including Canada, have increasingly implemented open access policies that require immediate public access to research. However, to make these open access policies viable, this article argues that Canada must adopt a

copyright law strategy to help researchers comply with immediate access to open access policies: a secondary publication right.

## **Main arguments**

Currently, there are 2 methods to publish an open access (OA) article: the gold road to OA and the green road to OA. The gold road to OA allows researchers to publish in OA journals or closed-access journals on an OA basis, but often at the cost of article processing charges that can average thousands of dollars per article. On the other hand, the green road to OA involves the author self-archiving the accepted manuscript on an open access digital platform at no cost once their paper is published in a closed-access journal. While the green road sounds promising, standard publishing contracts often take away an author's right to republish their work or impose long embargo periods (sometimes 18 months or more) during which they are forbidden from exercising their right to republish. As a result, this article argues that taking the green road to OA, in practice, does not easily allow an author to comply with government policies that require immediate public access. By contrast, the gold road to OA fulfils the immediate public access standard, but it can be very costly.

To address this dilemma, the Canadian government, as both the key funder of research and the grantor of copyright protection, must strengthen the viability of the green road to OA so that researchers can comply with immediate access OA policies without paying article processing charges, whether out of pocket or from public funds. The legislative strategy recommended in this article is the secondary publication right (SPR), which legally allows researchers to republish their work on a publicly accessible platform without the permission of the initial publisher. The SPR would lead to expanded compliance with

OA policies, as it removes the hurdle of researchers having to negotiate contract terms with their publishers when they already have weak and sometimes nonexistent bargaining power.

If adopted by governments, the SPR is likely to facilitate researchers' commitment to OA as it takes away the hurdle of negotiating contract terms that permit immediate green OA with publishers for every research publication. For governments, SPR has the potential to lead to higher levels of compliance with OA policies, making research works open without additional government spending for article processing charges and when other non-fee routes to OA are not available to the researchers. For the public, the introduction of SPR can increase the share of research publications published as OA.

## **Conclusion and additional considerations**

To make the green road to open access a viable option for researchers to provide immediate public access to their research, Canada must implement a secondary publication right. Doing so would allow the government to use copyright law to empower researchers to publish their works on an open access basis without any delay and at no further cost.