



SECONDARY PUBLISHING RIGHTS

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Today's Discussion

- The Case: Why is Academic Publishing Different?
- The Need: The State of Open Access & Policy in Canada Today
- The Right: What are Secondary Publishing Rights
- Secondary Publishing Rights & OA Successes in Europe
- Secondary Publishing Rights in Canada
- Implementation Lessons





WHY IS ACADEMIC PUBLISHING DIFFERENT



From an instrument of freedom and responsibility, [scholarly publishing] has been transformed into an instrument for commodifying scientific knowledge that is held by a few. Economic rights do not serve to disseminate the work, but, on the contrary, to restrict its circulation.




Caso & Dore, *Academic Copyright, Open Access and the "Moral" Second Publication Right*

Author Motivation


- To claim a discovery (and to claim it is important)
- To be shared as widely as possible
- To open it to public comment, criticism, and review

Public Interest

- Availability of scientific knowledge for informed public & informed decision makers
- Acceleration of knowledge
- Democratization of global knowledge/ closure of knowledge gaps
- Multiple public stakeholders



While copyright is primarily an author's right, the reality is that it has become a publisher's right, especially in the context of research works published in journals and edited books.



Faith O. Majekolagbe, *A Right to Republish:
Redesigning Copyright Law for Research Works*

Who Does Benefit? Oligopolistic Markets

Springer Nature

2022 Profits – 1.8 billion euro

Profit margin – 28%

RELX (Elsevier)

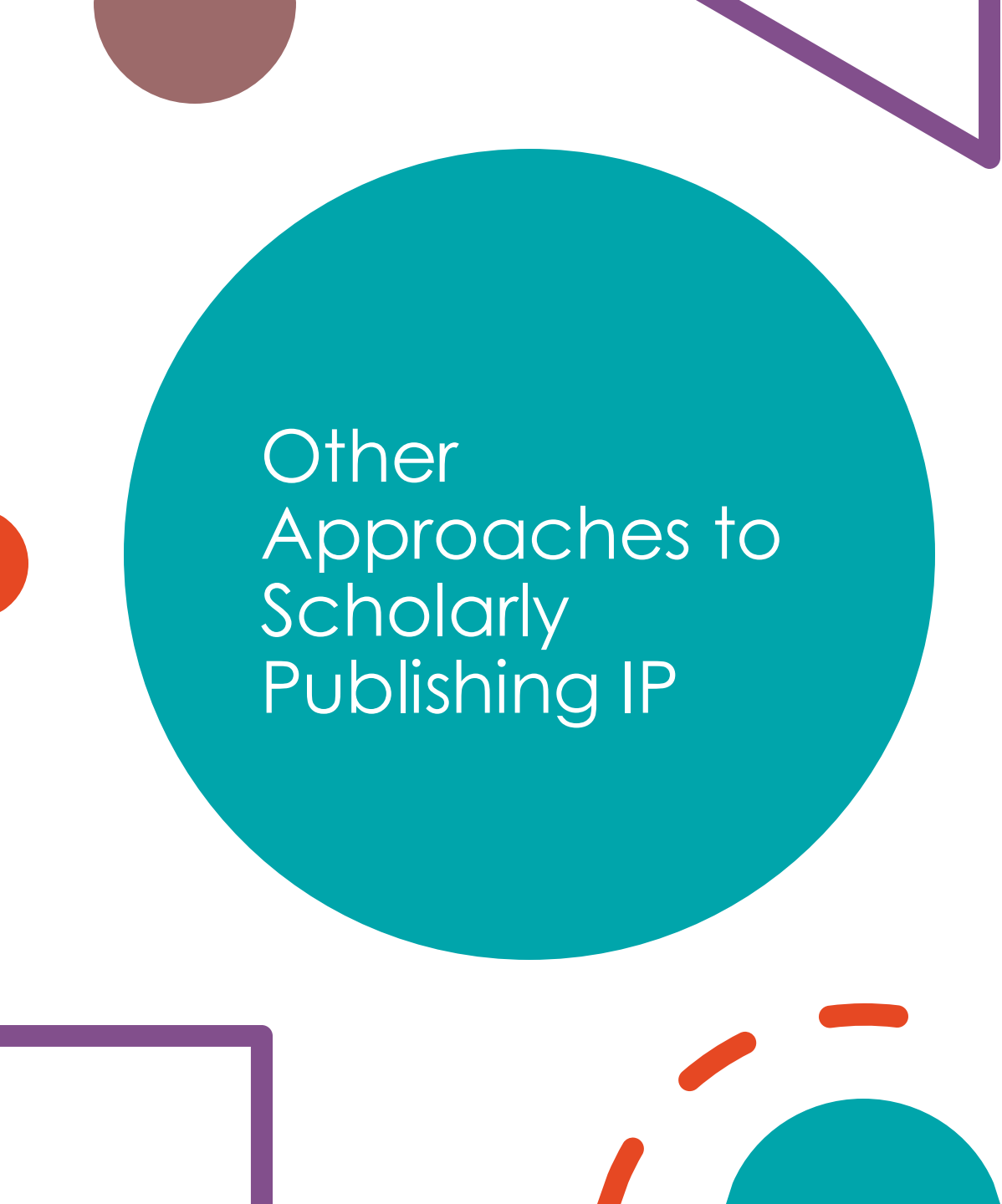
2023 Profits – 2.9 billion euro

Profit margin – 38%

Taylor & Francis

2023 Profits – 6 million pounds

Profit margin – 35%



Other Approaches to Scholarly Publishing IP

- No copyrights for academic scholars
- Rights Retention
- Collective societies



No copyright

- Maybe authors only need moral right?
- Requires University/ funder infrastructure

How close are we **already to a fully pay-to-publish system?**



SPR vs Rights Retention

Doesn't require IP transfer to Employer or Funder

There have been concerns at institutions that the transfer in RRS may be abused

Applies to all researchers with funding

Does not depend on an institutional willingness/ direction from legal

May help avoid publisher backlash

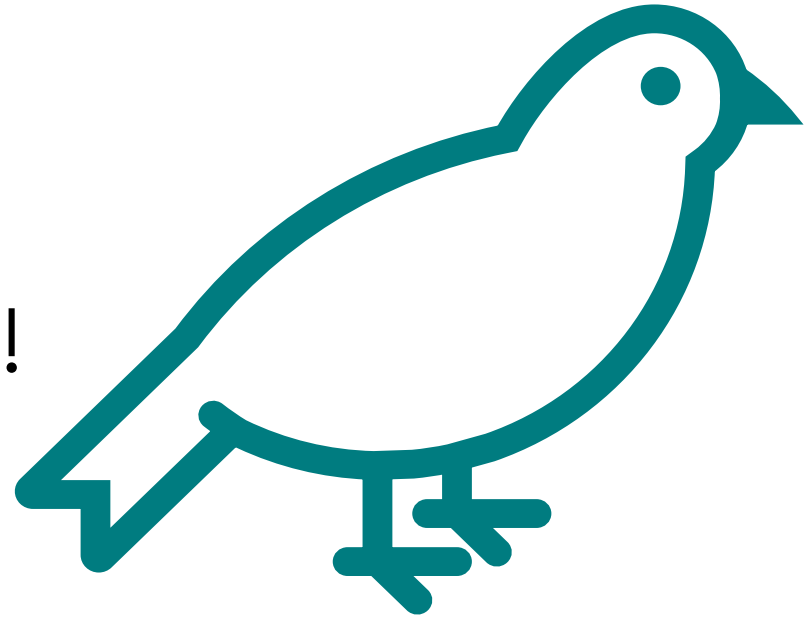
Springer has introduced mandatory fees for papers with RRS

Not Mutually Exclusive

Contractual and legislative strategies can both be pursued

Collective Societies

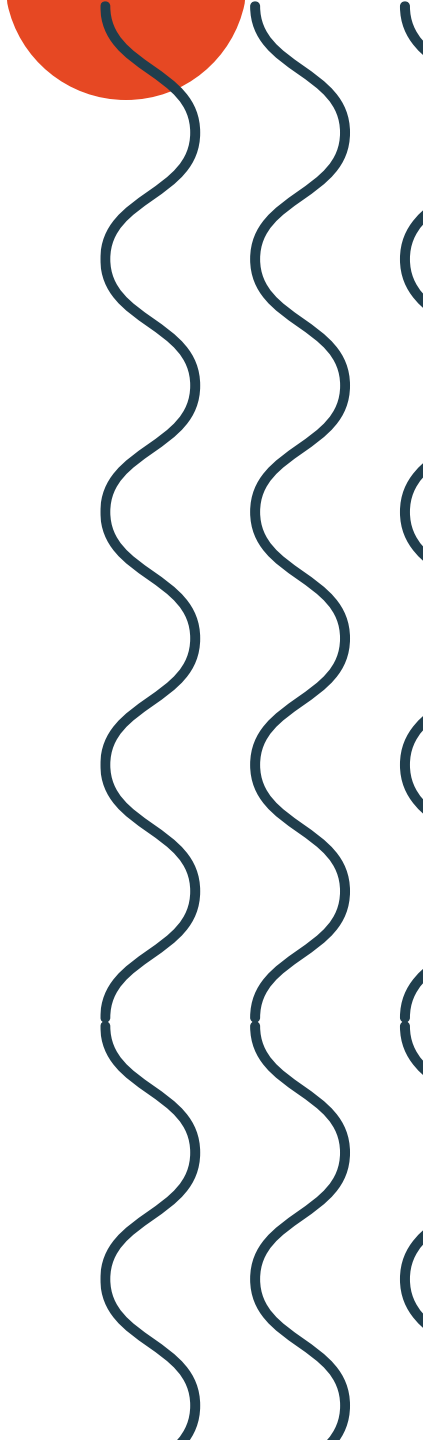
Market failure? Put a CMO on it!





THE STATE OF OPEN ACCESS IN CANADA

Tri-Agency Policy & Compliance, rate of OA, APCs &
Transformative Agreements





Implementation of Existing OA Policy

What is the problem we are trying to solve and why is it relevant to legislators?



Tri Agency Policy

- Applies only to journal articles
- silent on license required (eg, CC-BY, etc)
- allows a 12-month embargo period
- no rights retention required
- no black or white lists (eg, Norway)
- appears to be little in the way of compliance checking

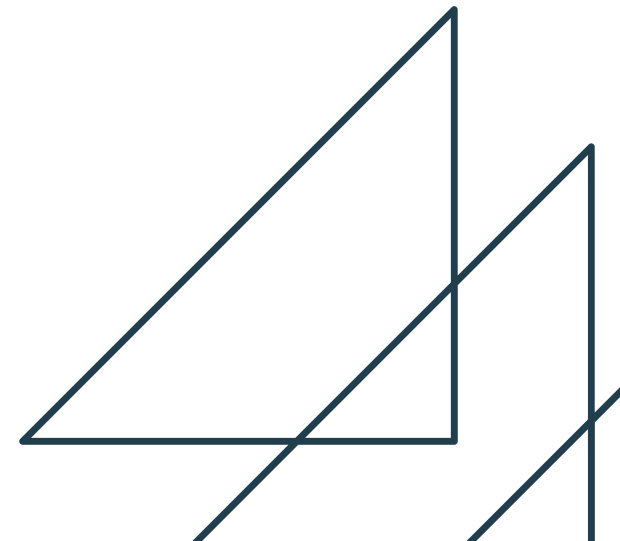
COMPLIANCE

42%

NSERC Papers OA (2015-2019)

30%

SSHRC Papers OA (2015-2019)



Current Routes to Compliance

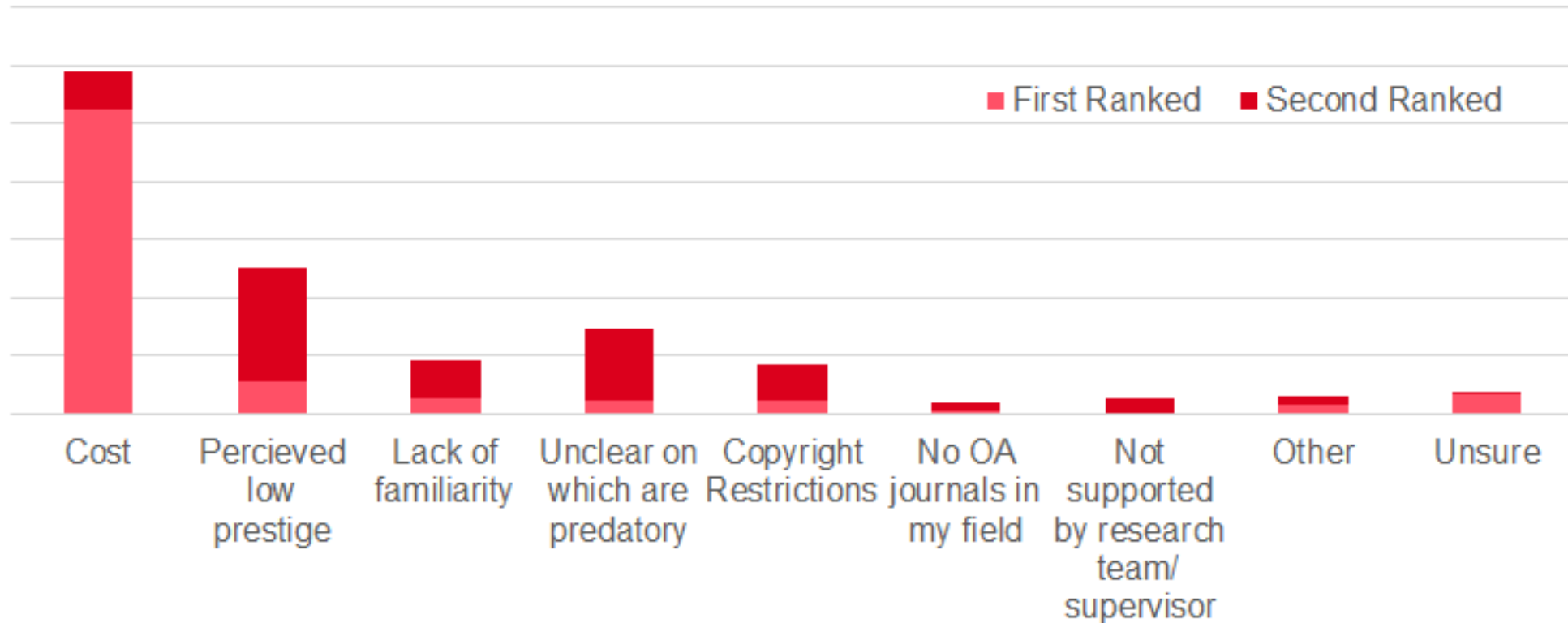
Archiving: Online repositories

- Publish in 'closed' journal
- Deposit final, peer-reviewed manuscript in institutional or disciplinary repository

• **Publishing:** Journals

- Immediate open access, or within 12 months
- Can be in diamond (no fee) or gold (charges Article Processing Charges) journal
- Cost of publishing (APC) is an eligible expense
- Authors are encouraged to *also* deposit in institutional repository

Implementation barriers to OA - Tri Agency Survey



COKI OA Dashboard



CANADA

Open Access statistics for Canada, covering academic research published from 2000 to 2023.



OPEN ACCESS
PERCENTAGE

44%

TOTAL
PUBLICATIONS

2.4M

TOTAL OPEN
PUBLICATIONS

1.1M

TOTAL
CITATIONS

67M



WIKIPEDIA



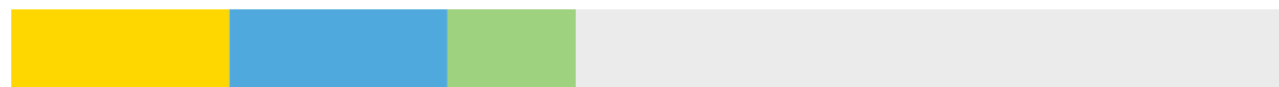
DOWNLOAD

Share

Northern America

Americas

BREAKDOWN



PUBLISHER OPEN

17%

BOTH

17%

OTHER PLATFORM OPEN

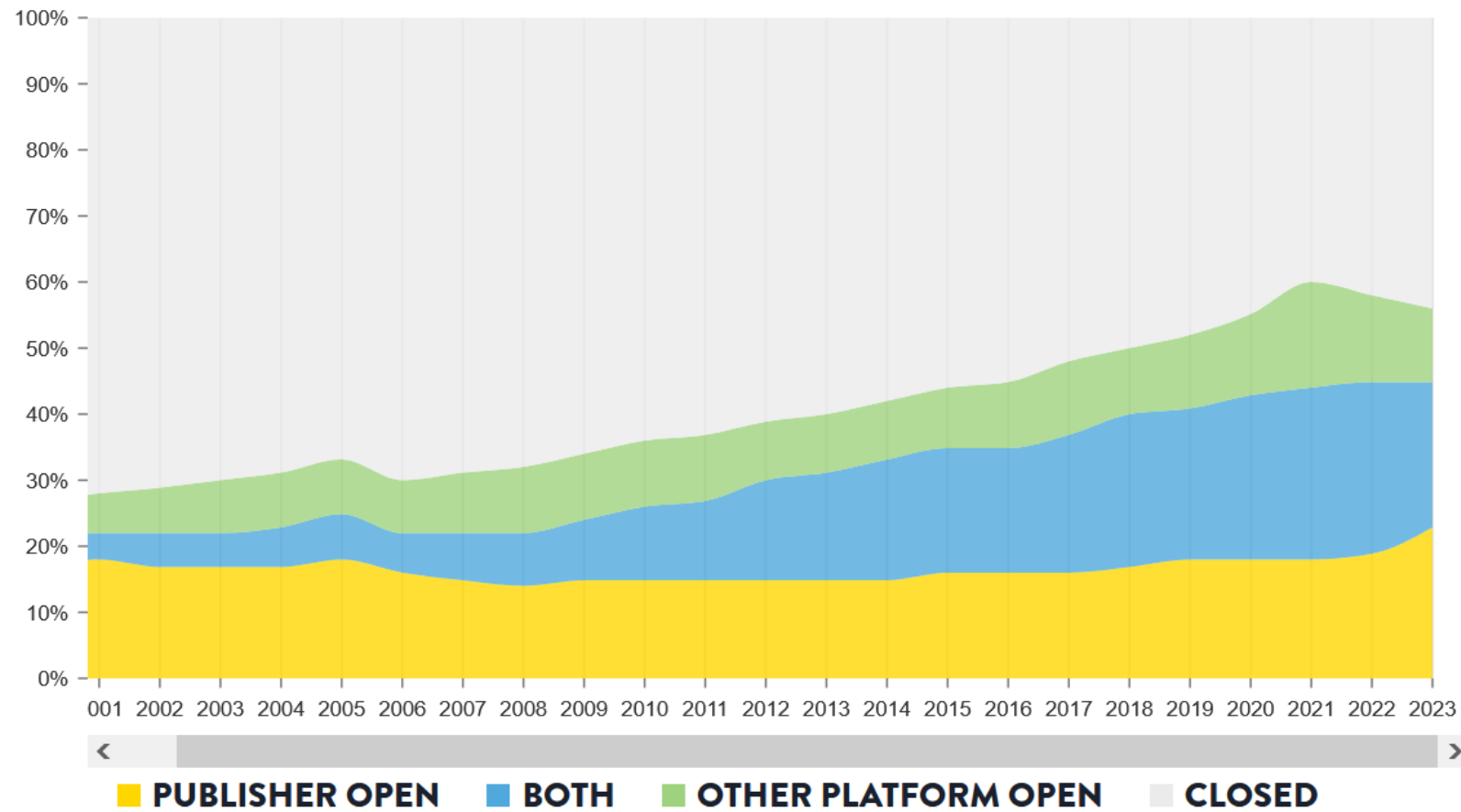
10%

CLOSED

56%

COKI

PERCENTAGE OF OPEN ACCESS OVER TIME



OA Policy Trends in Other Countries

- Move to immediate (no 12 month embargo) Open Access
- Desire to shift to diamond/ no APC journal model, to make more efficient use of research funds (EU Commission now funds a free publishing platform)
- tied to assessment in some places (eg, in UK to count for REF a work has to be deposited in institutional repository)
- future grants rely on compliance

A decorative graphic consisting of a series of orange dashed lines forming a curved path on the left side of the slide, and a solid orange circle in the top right corner.

On June 4th, 2023, Canada's federal research granting agencies announced a review of the Tri-Agency Open Access Policy on Publications, with the goal of requiring **immediate open and free access to all academic publications** generated through Tri-Agency supported research by the end of 2025.

The Open Connection

Commercial publishers have adapted to the new Open Access publishing environment.

- Authors now must pay-to-publish OA in commercial academic journals
- University and their libraries are now purchasing read-and-publish (transformative) agreements
- APCs are big money for publishers

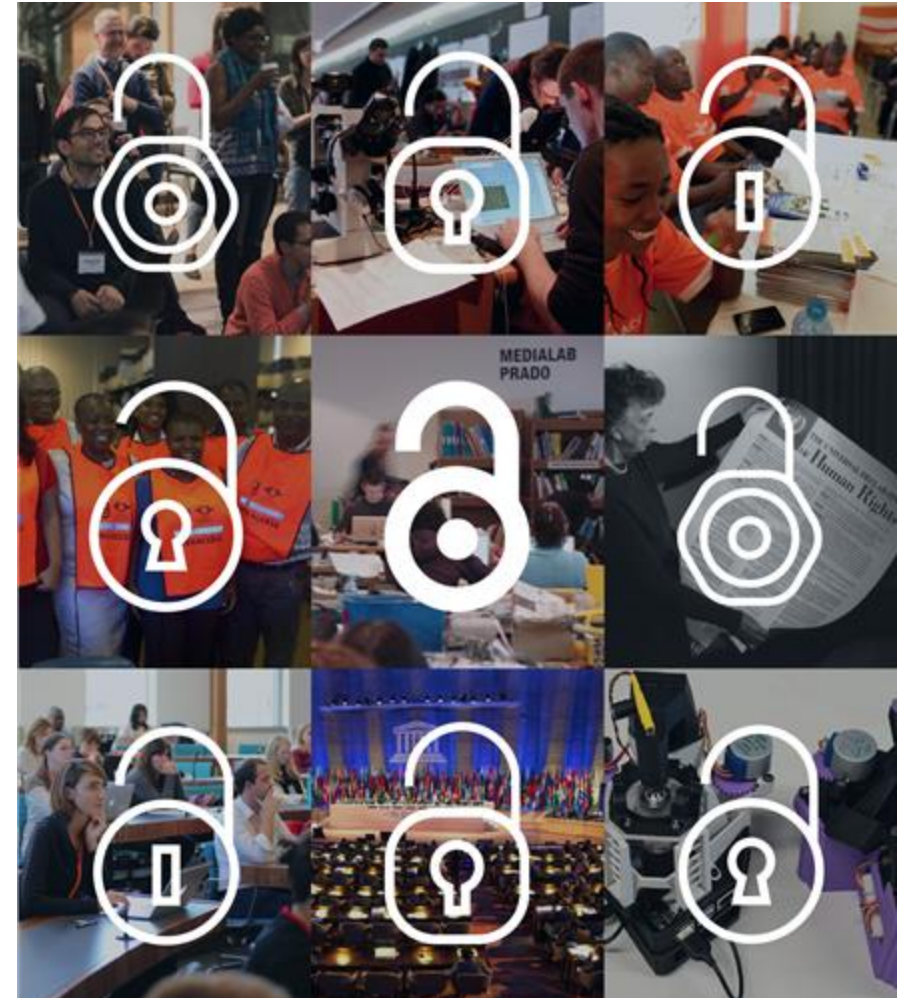


Image: 2024 International Open Access Week Graphic: Community Over Commercialization. [Attributions — International Open Access Week](#).

APC revenue

Worldwide APC payments to the oligopoly publishers from 2015-2018, as estimated by Butler et. al. in the 2023 study “ The Oligopoly’s Shift to Open Access. How the Big Five Academic Publishers Profit from Article Processing Charges”

APC Spend

1.06

**Billion worldwide from
2015-2019**

Gold OA

612.15

Million Spent Worldwide

Hybrid OA

448.2

Million Spent Worldwide



WHAT ARE SECONDARY PUBLISHING RIGHTS

Secondary Publishing Rights

- Author is first owner of copyright
- To get published, authors assign or license their rights to a publisher
- Typically, publishers demand a worldwide, non-revocable assignment of all rights on the work for the duration of the copyright protection
- Publishing contracts may not allow scholars to deposit their article in an institutional repository or to share their work (or make it very complicated for authors to do so)

Nature of SPR

- SPR is a right to be added to the Copyright Act that would allow authors of publicly funded research published in journals to make the work available to the public
- Statutory SPR are designed to empower individual authors in their relationship with publishers as an exception to the full transfer of rights
- Statutory SPR is a legislative compromise between scholars and publishers

Compromise embodied in SPR

- SPR generally applies to literary works (including any third party content such as images, tables, etc.) published in periodical publications, e.g. journals or reviews;
- SPR applies to articles (partly) funded by public money;
- SPR applies (often) after an embargo period;
- SPR allows the deposit of articles in institutional repositories;
- SPR is conditional on giving proper acknowledgement of initial publication;

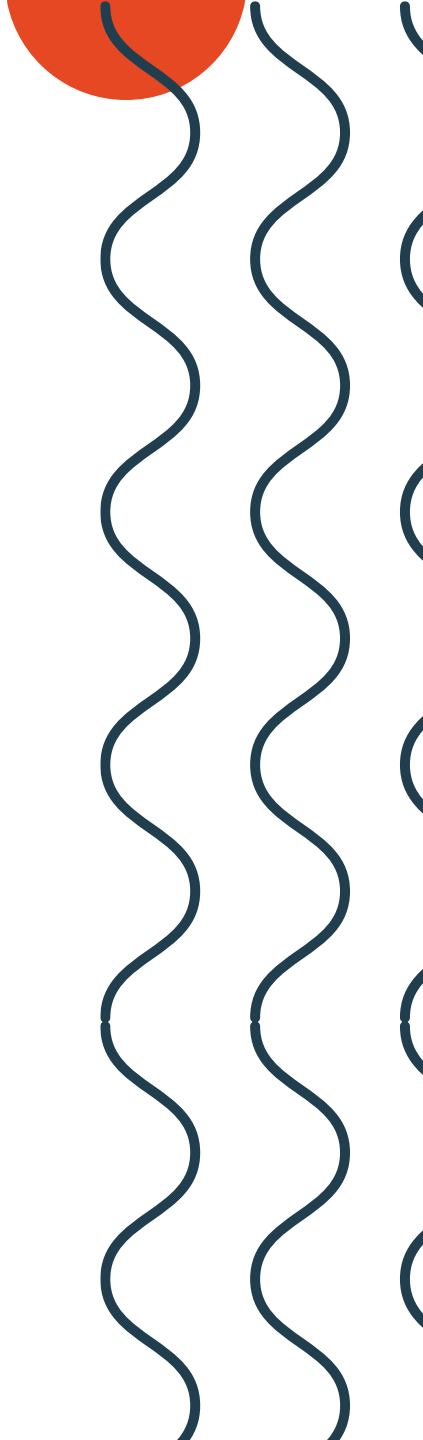
For the sake of clarity

- SPR is not an 'exception' in the traditional sense
 - The legislative solution addresses the contractual relation between authors and publishers;
 - SPR is in no way related to the rights owner – user relation;
- The three-step test is applicable only to exceptions and limitations on rights to the benefit of USERS
- The three-step test is therefore NOT applicable to SPR provisions



SECONDARY PUBLISHING RIGHTS IN EUROPE

Legislation, Policies, Successes, Challenges



SPR - Knowledge Rights 21 Classification

	PROTECT/ ENABLE THE CREATOR			FOSTER OA			
Country	Austria	Germany	Netherlands	Spain	Belgium	France	Italy
Scope of Use	NC	NC			Non Waivable Right	NC	
Citation of First Source	Y	Y	Y		Y		
Manifestation	AAM	AAM	Not defined, interpreted as VoR	AAM		AAM	
Extent of Funding	50%	50%	"in part"	"mainly"	50%	50%	50%
Embargo Period	>12	>12	"reasonable"	0	>12/6	<12/6	<12/6
Definition of Periodicals	2/yr	2/yr			"journal"	1/yr	
Additional restrictions	Employment				Point of contact in Belgium, retroactive	Consent of co-authors	

Spain

- An obligation, not a right
- Tied to Research Assessment language
 - (art. 37(2), [Law 14/2011 on Science, Technology and Innovation](#))

SPR - Knowledge Rights 21

Classification for Bulgaria

	PROTECT/ ENABLE THE CREATOR
Country	Bulgaria
Scope of Use	NC
Citation of First Source	Y
Manifestation	Any
Extent of Funding	Any
Embargo Period	Zero
Definition of Periodicals	-
Additional restrictions	-

Restriction on freedom of contract

(2) The author of a work of scientific literature created on the occasion of a research, funded in whole or in part by public funding, shall retain the right to make that work or parts thereof available to the public in educational or scientific repositories for non-commercial purposes after its acceptance for publication by a publisher, and shall be obliged to mention the publisher when doing so.

(3) Any arrangement which prevents or restricts what is provided for in para 2 shall be null and void.

(4) A publisher may not impose restrictions on the publication of a work of scientific literature solely on the grounds that it has already been published in an educational or scientific repository for a non-commercial purpose.



SECONDARY PUBLISHING RIGHTS FOR CANADA

Contractual restriction?

Canadian Specific Considerations

- Simple, smooth implementation route for Tri Agency OA Policy
- Will Bulgaria be challenged?
- No embargo, right not obligation
- Can we extend this to non-grant funded research?



Implementation of SPR

Analysis of SPR in Europe – Survey Results

- Time still remains the largest researcher barrier to OA uptake
- Many folks surveyed appeared to not know about, or how to implement, SPR
- Concern about clarity with international publishers and collaborating authors
- Feeling that the embargo period is too long
- Needs to apply to Version of Record, not just AAM
- Even in RPOs that noted a moderate impact on their activities, there was no reduction in budgets for publishing costs, subscriptions, etc
- Publishers generally report little to no effect on their operations due to SPR, though those that rely on journal subscriptions report declining revenues



Dutch Copyright Act 'Taverne' Amendment Implementation

- Ability of Libraries to implement – opt-out vs opt in
- Automated processes at the Universities
- 90% compliance

Sondervan, Jeroen, et al, *Sharing Published Short Academic Works in Institutional Repositories After Six Months: The Implementation of the Article 25fa (Taverne Amendment) in the Dutch Copyright Act*



References

Caso & Dore, 2022. *Academic Copyright, Open Access and the "Moral" Second Publication Right*. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3981756

Faith O. Majekolagbe, 2024. *A Right to Republish: Redesigning Copyright Law for Research Works*. <https://scholarship.law.umn.edu/mjlst/vol25/iss2/2/>

Tri-Agency Open Access Policy on Publications: Policy Review Survey Results
<https://science.gc.ca/site/science/en/interagency-research-funding/policies-and-guidelines/open-access/tri-agency-open-access-policy-publications-policy-review-survey-results#10>

Improving access to and reuse of research results, publications and data for scientific purposes <https://op.europa.eu/en/publication-detail/-/publication/77395a15-133b-11ef-a251-01aa75ed71a1/language-en>

Sondervan, Jeroen, et al, *Sharing Published Short Academic Works in Institutional Repositories After Six Months: The Implementation of the Article 25fa (Taverne Amendment) in the Dutch Copyright Act*, <https://liberquarterly.eu/article/view/10915/12075>