

Transformative agreements and beyond

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2021 analysis and report

- „Transformative Agreements: Overview, Case Studies, and Legal Analysis”
- Plan S context, status in selected countries, legal analysis (ESAC registry), case studies
 - case studies:
 - Ralf Schimmer, Colleen Campbell (Germany)
 - Anna Lundén, Britt-Marie Wideberg (Sweden)
 - Nina Karlstrøm, Nils Andenæs (Norway)
 - recommendations regarding legal issues and negotiation procedure
 - <http://pon.edu.pl/nasze-publicacje> (English version)
 - Natalia Gruenpeter, Nikodem Rycko, Jakub Szprot, Krzysztof Siewicz

Plan S

- Open Access outperforms subscription-based models
- publishers continue to play important role
- transformative agreements as a tool for switching to Open Access
 - specified, short period
 - transparency
 - details on conversion to full OA after transition period
- flexible approach, details clarified in guidelines and FAQs

- ESAC database
- analysed agreements are „a result of amending the traditional subscription contracts ... with terms that allow eligible authors to have their papers placed in open access without having to pay for this individually...”
- 3 types of contractual provisions in analysed agreements
 - (1) terms related to open access;
 - (2) terms related to access to closed journals; and
 - (3) terms related to more generic issues such as choice of law, forum, etc.

Open Access in TAs

- identification of eligible authors
 - affiliation, possible discounts for non-eligible coauthors
 - indirect impact of the list of covered journals
- terms for authors
 - sometimes CC licenses are specified
 - authors rarely given choice
- workflow
 - identification procedure organised by the publisher
 - opt-in
 - publishers obliged to provide information to authors
- calculation of publishing fees
 - unused funds transferred to incoming years, or forfeited

Legal recommendations

- safeguard against overpayment or under-availability
- prevent discrimination of non-eligible (co)authors
- composition of list of covered journals
- minimal standard for publishing contracts for authors
- workflow and information for authors
- fee calculation
- statutory user freedoms
- long term availability

Transformative agreements in the context of open access

- an important mechanism, but only one among many others
- fully open access journals and publishers
- journal platforms
- publication repositories
- new publishing models: what is the value provided by legacy publishers? to what extent is it a consequence of technical limitations of the past? why don't we make more use of new technical opportunities to reclaim ownership of scientific output by the community and find new ways of ensuring its quality?

Thank you