

Dutch law and routes to open access

A national copyright law pilot
as an inspiring example?



Workshop program

- **The Dutch legal framework & pilot setup** Arjan de Rooy , University Library Vrije Universiteit, Amsterdam
- **Results of the pilot** Just de Leeuwe
Delft University of Technology
- **Country presentations:**
 - Germany Christopher Bruch Helmholtz Association Berlin
 - France André Dazy, Couperin
 - Switzerland André Hoffman, University of Zurich
- **Collective stocktaking & Discussion**

The Dutch legal framework & pilot setup

Program

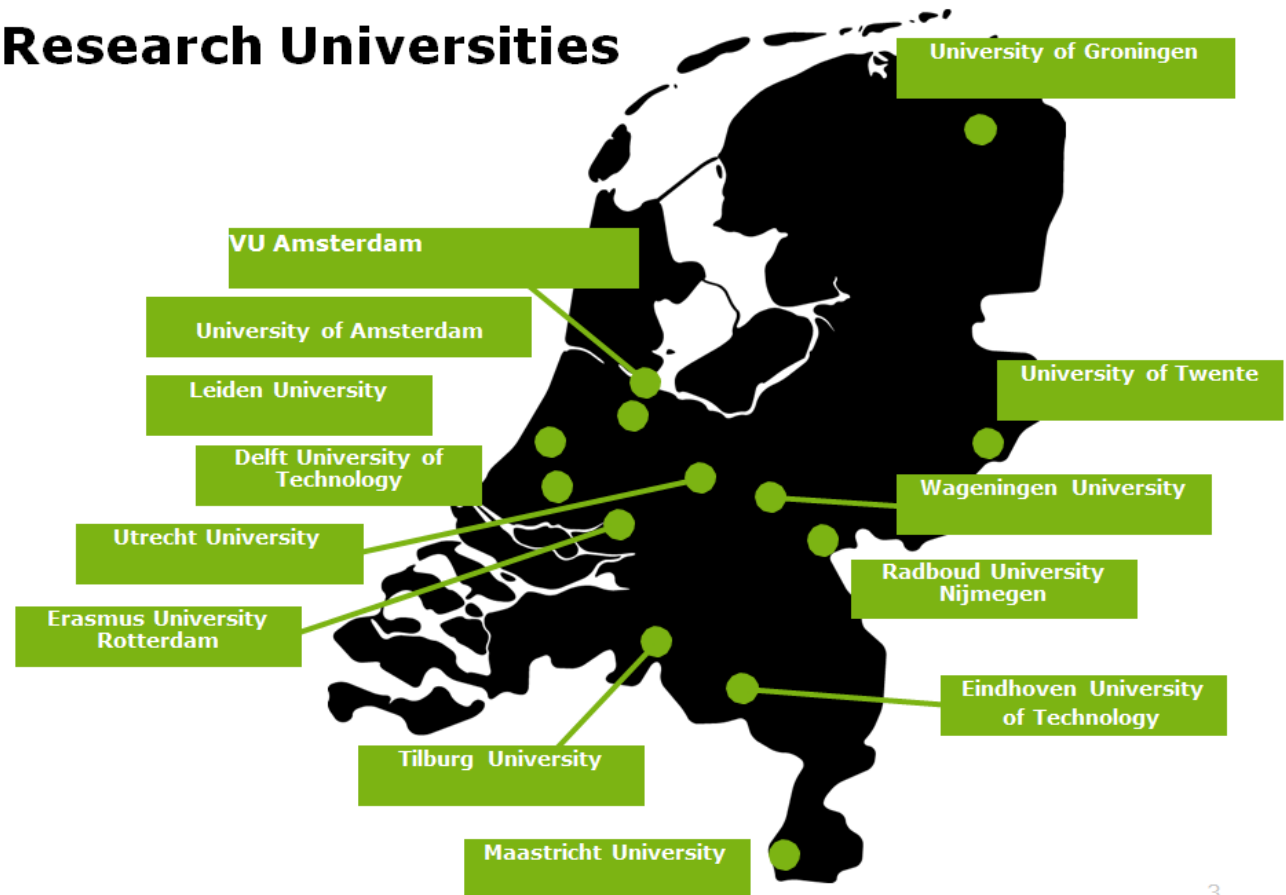
- Dutch Open Access Landscape
- Legal Framework
- The 'Taverne' pilot
- Arjan de Rooy publishing consultant at the University Library of the Vrije Universiteit in Amsterdam.

Joost Taverne former Dutch parliamentarian



Dutch Open Access Landscape

The 13 Dutch Research Universities

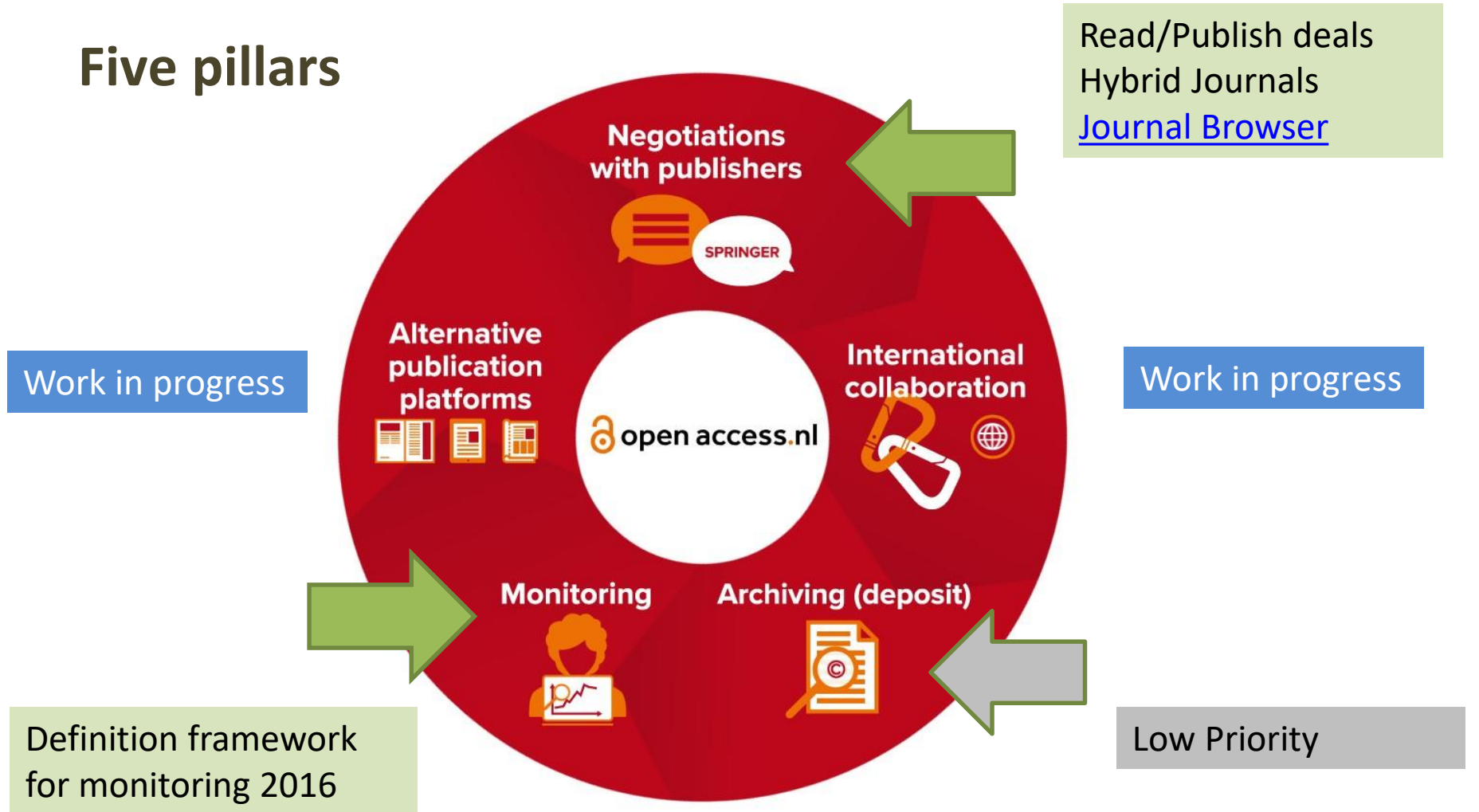


Dutch Open Access landscape

- Dutch Government Coalition Agreement 2018 – 2022
- Association of Universities in the Netherlands (VSNU)
- National Platform Open Science (NPOS)
- Dutch consortium of university libraries (UKB)
- VSNU/NPOS Target : 100 % OA in 2020 !

VSNU Roadmap 2018-2022

Five pillars



Green Open Access uptake

Compliance poor, even with:

- Mandate in place
- Administrative support

Administrative burden for researcher:

- Embargo periods
- (No access to) Author versions (and all the garden varieties)

Competition:

- Hybrid deals
- Gold
- Research Gate, SSRN, author website

Article 25fa Dutch Copyright Act : ‘Taverne Amendment’

The author of a short scientific work funded either wholly or partially by Dutch public funds is entitled to make that work publicly available for no consideration following a reasonable period of time after the work was first published, provided that clear reference is made to the source of the first publication of the work.

[Article 25fa Auteurswet, Staatsblad 2015, 257](#)

And...nothing happened..

Reasonable period of time ?

Funded wholly or partially by Dutch public funds ?

Short scientific work ?

Publicly available for no consideration ?

What about foreign law ?

Let's get some **legal advice!**

- **Personal right**, irrespective of exploitation rights/contract
- Dutch law takes precedence over foreign law
- Reasonable period of time can be established unilaterally by the academic community
- Published version (VOR) is allowed
- Risk is slight
- Worst case scenario: retraction of publications
- **Personal right** (collective) license required to deposit

National Pilot : Guidelines

Aim of the pilot

- Establish concrete **guidelines** for researchers
- **Practically implement** the amendment's potential (full service concept)
- Test **support among** researchers/administrators
- Test **legal soundness**
- Potential **impact** on overall OA score

Essence of the guidelines

The ***publisher's version*** of an article will be made freely available in the university repository **xxx months after the initial online publication**



*VSNU=Association of Dutch Universities

Translation into **specific guidelines** for researchers

- A. The work will be shared in its **definitive, published** version (VOR).
- B. A **reasonable period of time** will be uniformly interpreted as **six months**, regardless of discipline.
- C. **'First publication'** is the date on which the published version first becomes available online.
- D. **Short academic work** includes **journal articles**, as well as **conference papers** and individual **chapters in 'edited collections'**. It does **not** include **monographs** or **chapters of monographs**.
- E. **Applies regardless** if a publisher **appeals to foreign law** and/or **only a (small) fraction of the co-authors has been funded by Dutch public funds**. The inclusion of a researcher as co-author is prima facie evidence that his or her contribution is of substantial value to the final product.

Basic principles developing **the legal basis** guidelines

- **Take a position**
- Establish the **scope** of the law
- Substantiate the position

- Consider:
 - Facts
 - Purpose of the law
 - Intention of the legislator
 - Best interest of researcher / (Open) Science
 - Risk (for researcher/institutes)
 - Pragmatics
 - Political feasibility

Spotlight on **main** legal issues

- Reasonable period of time
- Version of record
- Foreign law

- *Position - Substantiation*

Reasonable period of time : 6 months for all disciplines

Position

- Short uniform embargo period serves OA goals
- Trend in policy : shorter embargo periods
- Multidisciplinary research

Substantiation

- Not described in law : ultimately decided by court
- Effect on exploitation: *no evidence of impact OA, big deal business model, damage very hard to substantiate*
- Country comparison, [EC commission advice](#), Dutch & international funders
- Amount of public funding very hard to determine

Version of record (VOR)

Position

- One definitive version identical to primary publication
- Preferred by scholars
- Support on a large scale should be feasible (full service model)

Substantiation

- Text art. 25 fa: *'The author....is entitled....to make that work publicly available....*
- Dutch Copyright law : version of work is not mentioned
- Copyright on layout is banal & trivial

Position

- Dutch law takes precedence over foreign (contract) law
- Personal right, irrespective of exploitation rights/contract

Substantiation

- Overriding mandatory provision (IPR)
- ...applies to all publishing contracts on which according to the applicable rules of private international law Dutch law applies, regardless of any legal choice in the contract. (*Art. 25h Aw, subsection a*)
- Habitual residence author, place performance (Rome I Regulation, Art. 4, section 2)

Legal & financial risk

- “Worst case scenario” retraction of all publications or adjust embargo period
- Infringement claim : individual researcher/institution
 - Claim for damages : slight risk in civil case, proof of damages
 - Foreign law: Court of Justice of the European Union
- Model-license
 - University guarantees legal & financial warranty
 - Collective sharing of legal cost
- Other risk
 - Pressure on researchers – Flagging or Black List ?
 - Effect on pricing of Big Deals?

Publishers

- Transparency
- Publishers informed through ministry of Education, Culture & Science
- Dialogue sessions with Dutch Association of Publishers
- Draft evaluation will be shared
- Publisher will write an official reaction to the evaluation

Factors contributing to **success** national project

- Momentum for Green OA
- Pro active government
- Full service concept appealed to researchers

- Legal advice : Good starting point to convince institutional administrators & legal staff
- Sound research : position papers, debate, expert opinions
- Pragmatic approach: focus on feasibility & practicability
- National project leader with excellent political skills

National pilot start : You share, we take care !

- You share, we take care!
- Start 31st januari 2019
- 13 Dutch Universities
- Rectores Magnifici participated

- And.. What happened ?

- Any questions ?



You share, we take care!

'Use your right to share publications after six months.
The university library will help you out.'

Can the article be
published in an open
access journal?

Yes

Publish it with a cc-by license.
The article will be available
to all for free!

No

**Share the publication via the
institution's repository.**

Complicated and slow? Not any more!

An amendment to the Dutch Copyright Act has made it much easier to share publications quickly. Please participate! Then the library will share the published version after six months, even if the embargo period is longer, or you are a co-author, or your publication was published by an international publisher.

Would you like to know more?

For more information and
the conditions, please visit

www.openaccess.nl/youshare

 openaccess.nl





Just de Leeuwe
TU Delft Publishing advisor

NOAD OPENAIRE

OS FAIR Porto, 17-11-2019



RESULTS OF THE PILOT OVERVIEW

- # 1 Context open access
- # 2 Definitions and selection content CRIS
- # 3 Acquisition | Communication towards researchers
- # 4 Response researchers | publishers
- # 5 Archiving | metrics |
- # 6 Results pilot
- # 7 Next steps

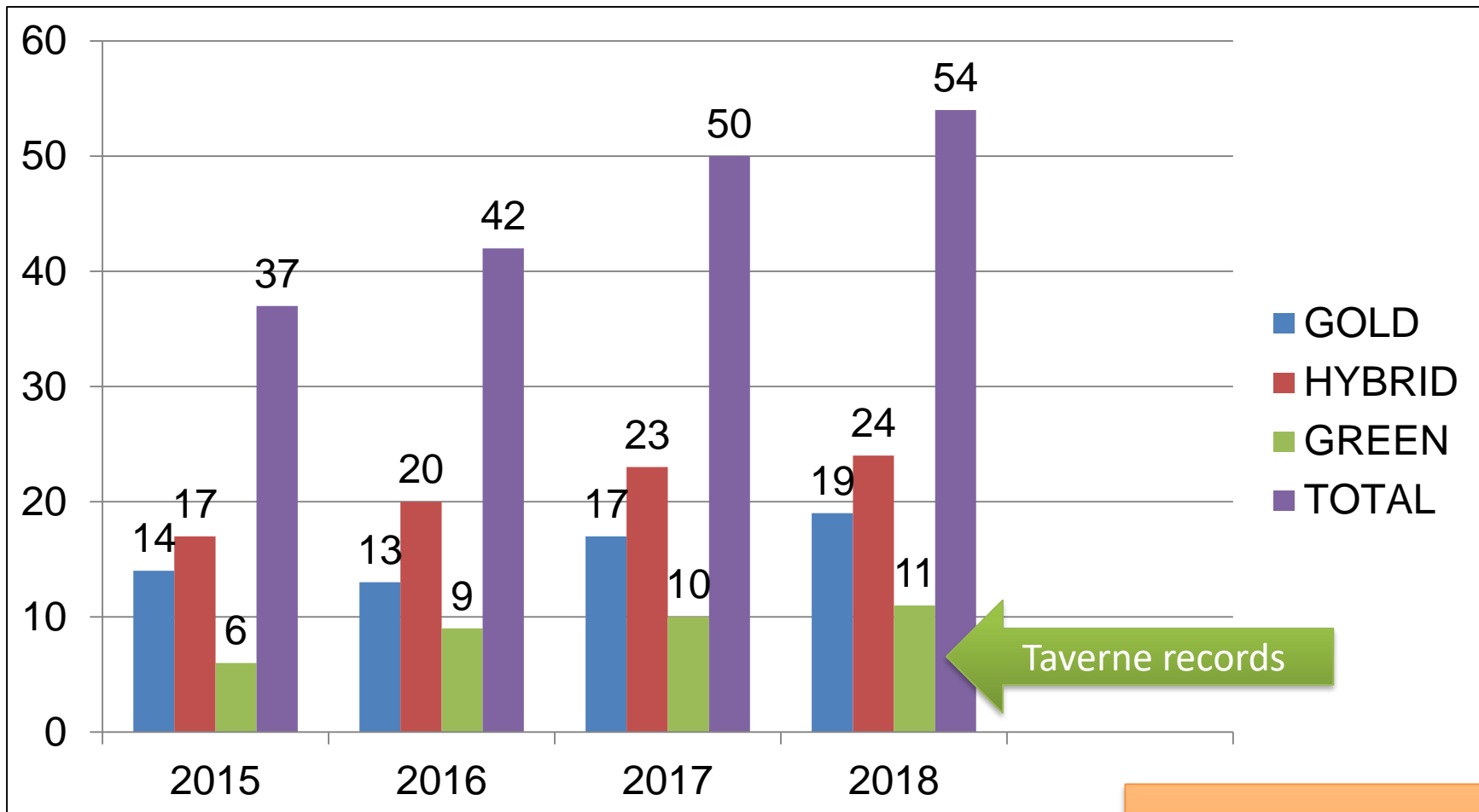
#1 CONTEXT OPEN ACCESS LANDSCAPE

Pilot Taverne alternative instrument in Open Access strategy

- Open Access Institutional Funds (2010-)
- National transformative deals Wiley | Springer | T&F (2014-)
- Bilateral deals OA Publishers Copernicus | MDPI (2014-)
- University mandates green OA (2012-)
- **Pilot Taverne (2019) Green OA**
- Funders Mandates/implementation Plan S (2021)

#1 OPEN ACCESS NETHERLANDS

MONITORING FRAMEWORK 2015-2018



RESULTS 2018 are provisional

#1 CONTEXT OPEN ACCESS

ACTORS

Actors in the pilot

- **Project leader-coordination/Library**
- Executive Board-Policy
- Legal Services-consultancy
- **CRIS en Repository teams-operational teams/Library**
- Authors-representatives faculties-participants
- Communication

#2 SELECTION CONTENT AND WORKFLOW

- Selection in CRIS document types of short work articles, book chapters, conference papers
- Publication stamp after 01-01-2018
(Retrospective content possible on demand author)
- Select availability publishers paywall version of record
- Selection based on benchmark of research fields (national)
- Selection authors within a Faculty or Department after consultation seniors
- Decision about metadata labels for 'Taverne' records

#2 SELECTION

AUTHORS

- **Selection of authors participate**
- **Library exchange the selected list with author. If publications are missing Library adds them in CRIS>Repository**
- **Library harvest/scans full-text versions**
- **Some authors like to publish set of retrospective content**

#2 CRIS AND REPOSITORY

Publishers version in PDF in CRIS

Labelled 'open' CRIS

Metadata reference to pilot

Embargo content based on first release date

Synchronise metadata and full text to

Institutional Repository

Publications are harvested national aggregator

NARCIS and worldwide

#2 CRIS AND REPOSITORY

HARVEST PUBLISHERS VERSION

Edit uploaded electronic version

Upload an electronic (full-text) version of this work (e.g. the author's accepted manuscript)

File *

 **1_s2.0_S0166218X18301975_main.pdf**
422 KB, application/pdf

Remove

File title

1-s2.0-S0166218X18301975-main

Document version

Final published version

Publisher's PDF, also known as Version of record

Access to electronic version

Public access to file * ⓘ

Embargoed

For many journals, the final published version is not allowed to be uploaded publicly unless an open access fee has been paid to the publisher (e.g. by the author or the funding body). Uploading the submitted manuscript and accepted author manuscript is generally allowed, although an embargo period may apply.

Embargo start date

Example: 21/10/2002

Embargo end date

16/02/2019

Example: 21/10/2002

Embargo ended: 16/02/2019

Available on portal date

09/05/2019

Electronic version(s), and related files and links ⓘ



Content input in this section indicates that this work is openly accessible:
Final published version – Open (Embargo ended 16/02/2019)

According to the archiving policy described in RoMEO an electronic version of the work can be uploaded

▶ RoMEO colour: Green

Can archive preprint and postprint or publisher's version/PDF

[Read more »](#)

Electronic version(s) of this work

ACCEPTED AUTHOR MANUSCRIPT

 [a_priori_tsp_postprint](#)

Show Edit -

Accepted author manuscript

Closed

350 KB | mstaak | 18 Mar 2019 13:47

FINAL PUBLISHED VERSION

 [10.1016/j.dam.2018.04.002](#)

Show Edit + -

Final published version

Unknown

 [1-s2.0-S0166218X18301975-main](#)

Show Edit ↑ -

Final published version

Open

Embargo ended: 16/02/19

422 KB | mstaak | 9 May 2019 12:41

[Add electronic version \(file, DOI, or link\)...](#)

Other links

 <http://www.scopus.com/inward/record.url?scp=85046159723&partnerID=8YFLogxK>

Show Edit -

Scopus publication

Link to publication in Scopus

[Add other link...](#)

#2 CRIS AND REPOSITORY

search

[About](#) · [How to search](#) · [How to upload](#)

Include full text



A priori TSP in the scenario model



Title

A priori TSP in the scenario model

Author

[van Ee, Martijn](#) (Vrije Universiteit Amsterdam)

[van Iersel, L.J.J.](#) (TU Delft Optimization)

[Janssen, T.M.L.](#) (TU Delft Optimization)

[Sitters, René](#) (Vrije Universiteit Amsterdam; Center for Mathematics and Computer Science)

Date

2018-12-11

Abstract

In this paper, we consider the a priori traveling salesman problem in the scenario model. In this problem, we are given a list of subsets of the vertices, called scenarios, along with a probability for each scenario. Given a tour on all vertices, the resulting tour for a given scenario is obtained by restricting the solution to the vertices of the scenario. The goal is to find a tour on all vertices that minimizes the expected length of the resulting restricted tour. We show that this problem is already NP-hard and APX-hard when all scenarios have size four. On the positive side, we show that there exists a constant-factor approximation



unpaywall

#2 CRIS AND REPOSITORY

COPYRIGHT NOTICE

To reference this document use:

<http://resolver.tudelft.nl/uuid:fe4d93cd-7370-4433-b96c-585c2688627a>

DOI

<https://doi.org/10.1016/j.dam.2018.04.002>

Embargo date

2019-02-16

Source

Discrete Applied Mathematics, volume 250

ISSN

0166-218X

Bibliographical note

Green Open Access added to TU Delft Institutional Repository 'You share, we take care!' – Taverne project

<https://www.openaccess.nl/en/you-share-we-take-care> Otherwise as indicated in the copyright section: the publisher is the copyright holder of this work and the author uses the Dutch legislation to make this work public.

Part of collection

Institutional Repository

Document type

journal article

Rights

© 2018 Martijn van Ee, L.J.J. van Iersel, T.M.L. Janssen, René Sitters



**LABEL
GREEN OA**



#4 COMMUNICATION AND ACQUISITION



Presentations

Websites

Infographics

Lunch-meetings

On demand meetings

Meetings policy-makers

Faculty seniors

personal mails

Word of mouth

Calls.....

4 Communication

some help from our Champions...



Universiteit Leiden

Search for subject or person All categories

Home > News > Dutch Rectores Magnifici publish own work as Open Access

Dutch Rectores Magnifici publish own work as Open Access

11 March 2019

The latest scientific articles by the Rectores Magnifici of Dutch universities will soon be freely available online. They aim to set a good example to researchers in the Netherlands. Carel Stolker from Leiden University is one such Rector.



PROF. DR. IR. TIM VAN DER HAGEN
PRESIDENT OF THE EXECUTIVE BOARD

'Global impact
with Open Access'

Open up to open access

Unsure about Open Access?
We can address your concerns
<http://openscienceguide.tudelft.nl>

TU Delft VSNU
openaccess.nl

You share, we take care!

'Use your right to share publications after six months.
The university library will help you out.'

Can the article be
published in an open
access journal?

Yes

Publish it with a cc-by license.
The article will be available
to all for free!

No

**Share the publication via the
institution's repository.**

Complicated and slow? Not any more!

An amendment to the Dutch Copyright Act has made it much easier to share publications quickly. Please participate! Then the library will share the published version after six months, *even if the embargo period is longer, or you are a co-author, or your publication was published by an international publisher.*

Would you like to know more?

For more information and
the conditions, please visit
[www.openaccess.nl/en/
you-share-we-take-care](http://www.openaccess.nl/en/you-share-we-take-care)

 openaccess.nl



Visuals

4 Communication

Institutional en National OA webpage

The screenshot shows the TU Delft Library website. The header includes the TU Delft logo and navigation links for Home, Library, Contact, and Nederlands. The breadcrumb trail reads 'Library for researchers > Publishing & Outreach > You share, we take care'. A left sidebar contains a menu with items like 'Setting up research', 'Investigating & Experimenting', 'Publishing & Outreach', 'Journal Browser', 'Creating your publishing strategy', 'Copyright', 'Open Access Funding', and 'TU Delft open access deals with publishers'. The main content area features the title 'You share, we take care' and text explaining the Netherlands' goal of 100% open access by 2020, mentioning agreements with publishers and Dutch copyright law. It also includes a section on the 'Taverne Amendment' and a flowchart titled 'Use the infographic: You share, we take care!' which asks 'Can the article be published in an open access journal?' and provides a 'No' path. The 'open access.nl' logo is visible in the bottom right corner.

TU Delft

Home Library Contact Nederlands

Library for researchers > Publishing & Outreach > You share, we take care

You share, we take care

The ambition of the Netherlands is to achieve 100% open access by 2020. [Agreements have been made with many publishers](#) about open access publishing. Unfortunately, this is not possible for all types of publications or journals. However, Dutch copyright law offers an alternative.

Article 25fa of the Copyright Act allows researchers to share short scientific works (e.g. articles & book chapters), regardless of any restrictive publishers' guidelines.

Taverne Amendment

The law states: *The maker of a short scientific work, the research for which has been paid for in whole or in part by Dutch public funds, shall be that work available to the public for no consideration following a certain period of time after the work was first published, provided that clear reference is made to the source of the first publication of the work.*

Use the infographic:

You share, we take care!

'Use your right to share publications after six months. The university library will help you out.'

Can the article be published in an open access journal? → Yes → Publish it with a cc-by license. The article will be available to all for free!
↓ No

open access.nl

#5 RESPONSES SO FAR

AUTHORS

How did authors respond?

The pilot was received very favorably


Spontaneous participation

Full service well appreciated

Legal approach and back up appreciated

We have received very few signals that were opposed to the idea

IMAGE ATTRIBUTION

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#5 RESPONSES SO FAR

AUTHORS

some concerns

Content scattered between different platforms

Relation with the publishers, societies


'fear for flagging' because of a possible blacklist

Relation with co-author(s)

Fear of breach of current contract

...prefer a policy instead of a project

IMAGE ATTRIBUTION

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5 RESPONSES SO FAR

DANGER OF BIAS

Authors who did not want to participate did not respond to the call for voluntary participation

Participants pro Open Access

So we know the concerns of the researchers, but much less the objections to the principles of the pilot

Image Attribution

["Hohe Luft Magazine"](#) by Sam Chivers is licensed under [CC BY-NC 4.0](#)



#5 RESPONSES SO FAR

PUBLISHERS

How did Publishers react?

Meetings **Mediafederatie**, Association of Dutch Publishers
representatives Brill, Elsevier, Springer-Nature, Kluwer

Up to now, attitude has mainly been to signal what happens
Focus on the current and upcoming transformative deals
How does it influence the current negotiations?

#6 DOCUMENTATION

Once License legal and financial indemnity signed by university and researcher

The license and all underlying communication is archived

This includes any with relevant stakeholders as publisher, co-authors, Legal Affairs.

The results are shared in a standardized format in a cloud environment.
A limited number of administrators have access to the files



IMAGE ATTRIBUTION

"SCRTD - Metro Rail Contract Signing RTD_1774_11" by Metro Transportation Library and Archive is licensed under CC BY-NC-SA 2.0 

5 DOCUMENTATION NATIONAL OVERVIEW

PROTOCOL METADATA

DOI	paper titel	tijdschrift /congres titel	Uitgever	datum opname in Pure	datum taverne openstelling	soort publicatie, (tijdschrift, book , chapter)
10.1002/admi.201800536	Self-Healing Asphalt Review	Advanced Materials Interfaces, /	Wiley	30/11/18	5/03/19	Contribution to journal - Review article
10.1002/jmri.25905	Estimating the arterial input function	Journal of Magnetic Resonance	Wiley	14/05/18	25/03/19	Contribution to journal - Article
10.1002/we.2293	Trailing edge serrations effects on	Wind Energy	Wiley	22/02/19	12/03/19	Contribution to journal - Article
10.1007/1345_2016_232	Multi-GNSS PPP-RTK		Springer Verlag	12/02/18	4/03/19	Chapter in Book/Report/Conference proceeding - Conference contribution
10.1007/978-3-319-93000-8_72	Improved Accuracy and Robustness		Springer Verlag	16/07/18	25/03/19	Chapter in Book/Report/Conference proceeding - Conference contribution
10.1007/978-3-319-99519-9_25	Feasibility of Using Low CO2 Conc		Springer	29/10/18	5/03/19	Chapter in Book/Report/Conference proceeding - Conference contribution
10.1007/978-981-10-1947-0_15	Flight path planning in a turbulent w		Springer Verlag	18/04/18	1/03/19	Chapter in Book/Report/Conference proceeding - Chapter
10.1007/978-981-10-1947-0_16	Design and Economics of a Pumpi		Springer Verlag	20/04/18	1/03/19	Chapter in Book/Report/Conference proceeding - Chapter
10.1007/978-981-10-1947-0_22	Airborne wind energy conversion u		Springer Verlag	20/04/18	1/03/19	Chapter in Book/Report/Conference proceeding - Chapter
10.1007/978-981-10-1947-0_29	Current and expected airspace reg		Springer Verlag	20/04/18	1/03/19	Chapter in Book/Report/Conference proceeding - Chapter
10.1007/978-981-13-2306-5_48	PISA:		Springer	26/02/19	25/03/19	Chapter in Book/Report/Conference proceeding - Chapter
10.1007/s00190-018-1135-1	A modified carrier-to-code leveling	Journal of Geodesy	springer	9/04/18	4/03/19	Contribution to journal - Article
10.1007/s10291-018-0800-4	Precise regional L5 positioning with	GPS Solutions (online), GPS So	springer	22/11/18	4/03/19	Contribution to journal - Article
10.1007/s10596-017-9700-x	Editorial	Computational Geosciences: mo	springer	9/01/18	13/03/19	Contribution to journal - Editorial
10.1007/s41999-018-0080-0	Persistent exclusion of older people	European Geriatric Medicine	springer	12/07/18	25/03/19	Contribution to journal - Editorial
10.1007/s41999-018-0124-5	Association of polypharmacy and t	European Geriatric Medicine	springer	12/11/18	25/03/19	Contribution to journal - Article
10.1007/s41999-019-00171-7	Where ergonomics meets geriatric	European Geriatric Medicine	springer	12/02/19	26/03/19	Contribution to journal - Editorial
10.1016/j.aap.2018.08.024	Cyclists' eye movements and cross	Accident Analysis & Prevention,	Elsevier	17/09/18	21/03/19	Contribution to journal - Article
10.1016/j.acra.2017.12.024	Semiautomatic Assessment of the	Academic Radiology	Elsevier	5/06/18	25/03/19	Contribution to journal - Article
10.1016/j.actbio.2018.09.059	Bactericidal effects of nanopatterns	Acta Biomaterialia	Elsevier	3/10/18	26/02/19	Contribution to journal - Review article
10.1016/j.aei.2018.04.003	Automatic classification of fine-gra	Advanced Engineering Informati	Elsevier	24/04/18	18/03/19	Contribution to journal - Article
10.1016/j.agrformet.2018.04.004	Measuring changes in forest floor €	Agricultural and Forest Meteorol	Elsevier	30/04/18	11/03/19	Contribution to journal - Article
10.1016/j.anucene.2014.09.012	Conceptual design of a passively s	Annals of Nuclear Energy	Elsevier	22/04/16	11/03/19	Contribution to journal - Article
10.1016/j.anucene.2015.02.043	Analysis of the running-in phase of	Annals of Nuclear Energy	Elsevier	22/04/16	11/03/19	Contribution to journal - Article

DOI

Publisher

First release
CRIS

Release
open

Doc. Type

6 RESULTS

MAIN OUTCOMES

Publications: 2.546 (28 August 2019)

DOI: 2141 (84%)

Peer reviewed articles: 1991 (78.2%)

Share publications > 01-01-2018: 55%

Share (associate) professors: >75%

Participants >500+

#6 RESULTS PUBLICATION TYPES

BOOK CHAPTER

Research > Research database

- Research database
- Research database
- Research units
- Publications
- Activities
- Prizes
- Press / media
- Datasets
- Experts
- Search by discipline

The Macroeconomic Toll of Genocide and the Sources of Economic Development

Soudis, D., Maseland, R. & Inklaar, R., 2016, *Economic Aspects of Genocides, Other Mass Atrocities, and their Prevention*. Anderton, C. H. & Brauer, J. (eds.). Oxford University Press, p. 125-139 15 p.

Chapter in Book/Report/Conference proceeding > Chapter > Academic > peer-review

Overview Citation formats

Dimitrios Soudis
Robbert Maseland
Robert Inklaar
Global Economics & Management

Original language English
Title of host publication Economic Aspects of Genocides, Other Mass Atrocities, and their Prevention
Editors Charles H. Anderton, Jurgen Brauer
Publisher Oxford University Press
Pages 125-139
Number of pages 15

Handle.net
<http://hdl.handle.net/11370/b643fb85-fdc1-4af5-90e5-992d99ed2d54>

Document
The Macroeconomic Toll of Genocide and the Sources of Economic Development
final published version
PDF-document



DANS NARCIS

← BACK TO SEARCH RESULTS

PUBLICATION

THE MACROECONOMIC TOLL OF GENOCIDE AND THE SOURCES OF ECONOMIC DEVELOPMENT (2016) [OPEN ACCESS](#)

Main [Save publication](#)

Title	The Macroeconomic Toll of Genocide and the Sources of Economic Development
Published in	Economic Aspects of Genocides, Other Mass Atrocities, and their Prevention, p.125-139.
Author	Soudis, Dimitrios, Maseland, Robbert, Inklaar, Robert
Editor	Anderton, Charles H., Brauer, Jurgen
Publisher	SOM GEM
Date issued	2016
Access	Open Access
References(s)	Taverne
Language	English
Type	Book part
Publisher	Oxford University Press
Publication	https://www.rug.nl/research/portal/en/publications/the-macro...
ISBN	9780199378296
Persistent Identifiers	
DOI	10.1017/b643fb85-fdc1-4af5-90e5-992d99ed2d54
Handle	http://hdl.handle.net/11370/b643fb85-fdc1-4af5-90e5-992d99ed2d54
Metadata	XML
Source	University of Groningen



EXPLORE PROVIDE CONNECT

SEARCH SHARE LINK CONTENT PRO

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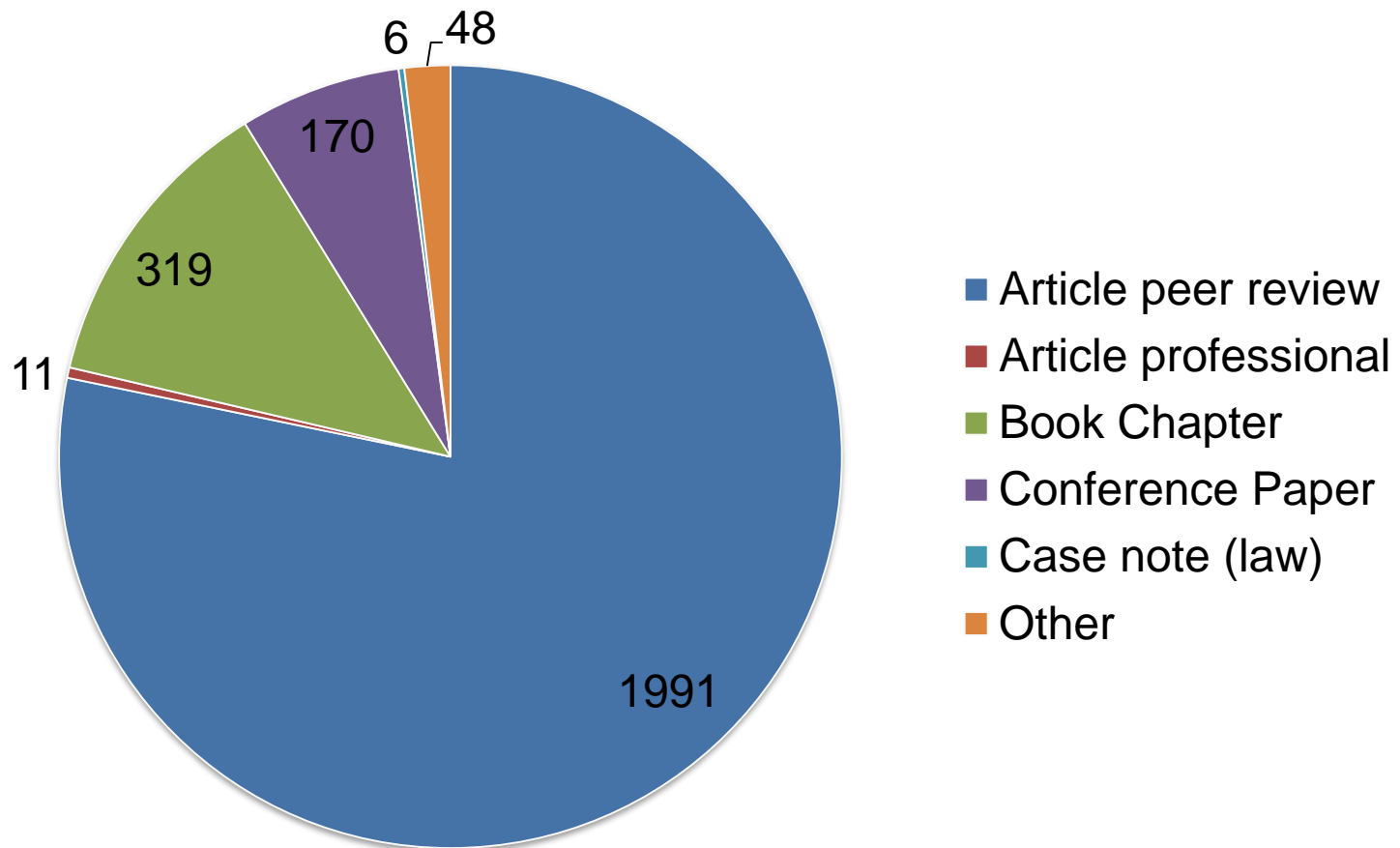
Share - Bookmark

Download from

University of Groningen Digital Archive via NARCIS (Part of book or chapter of book, 2016)

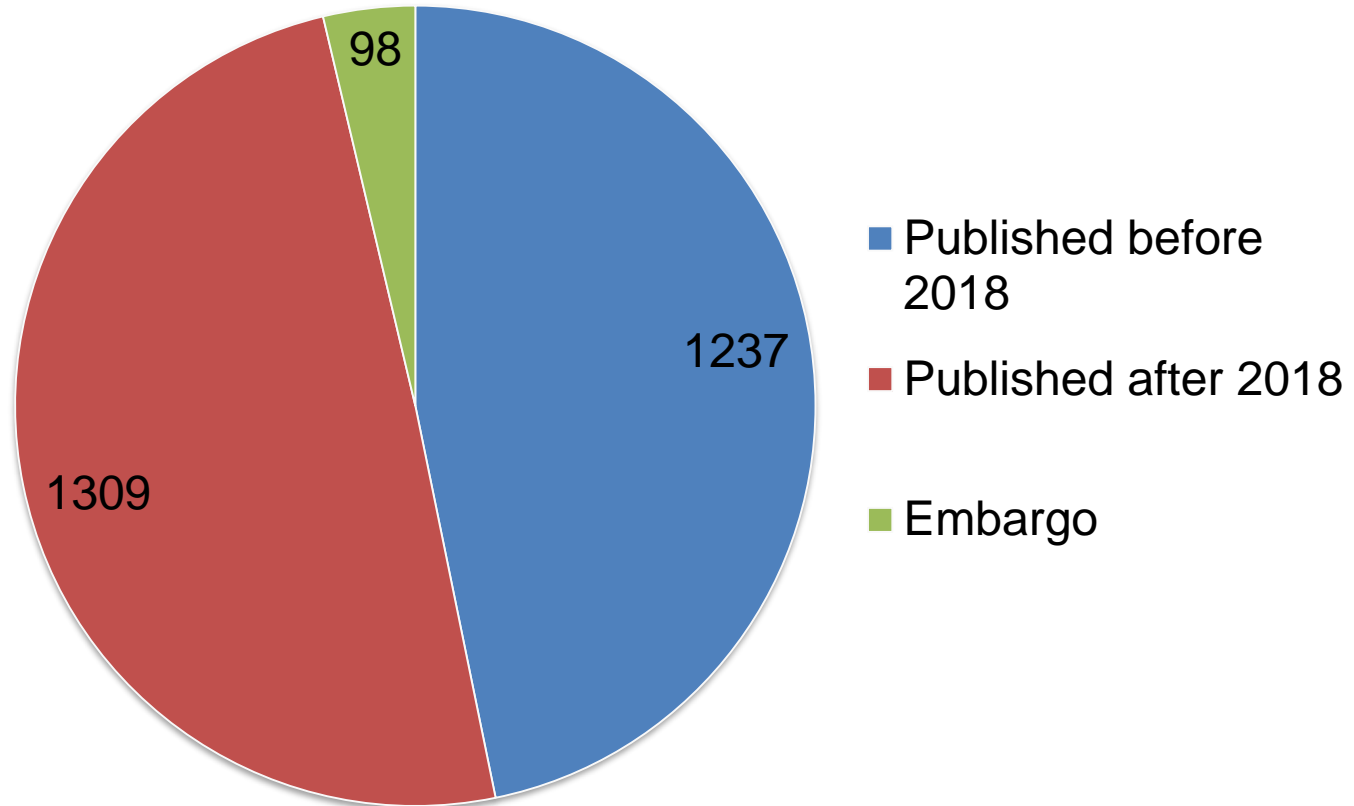
Cite this publication

#6 RESULTS PUBLICATION TYPES TOTALS



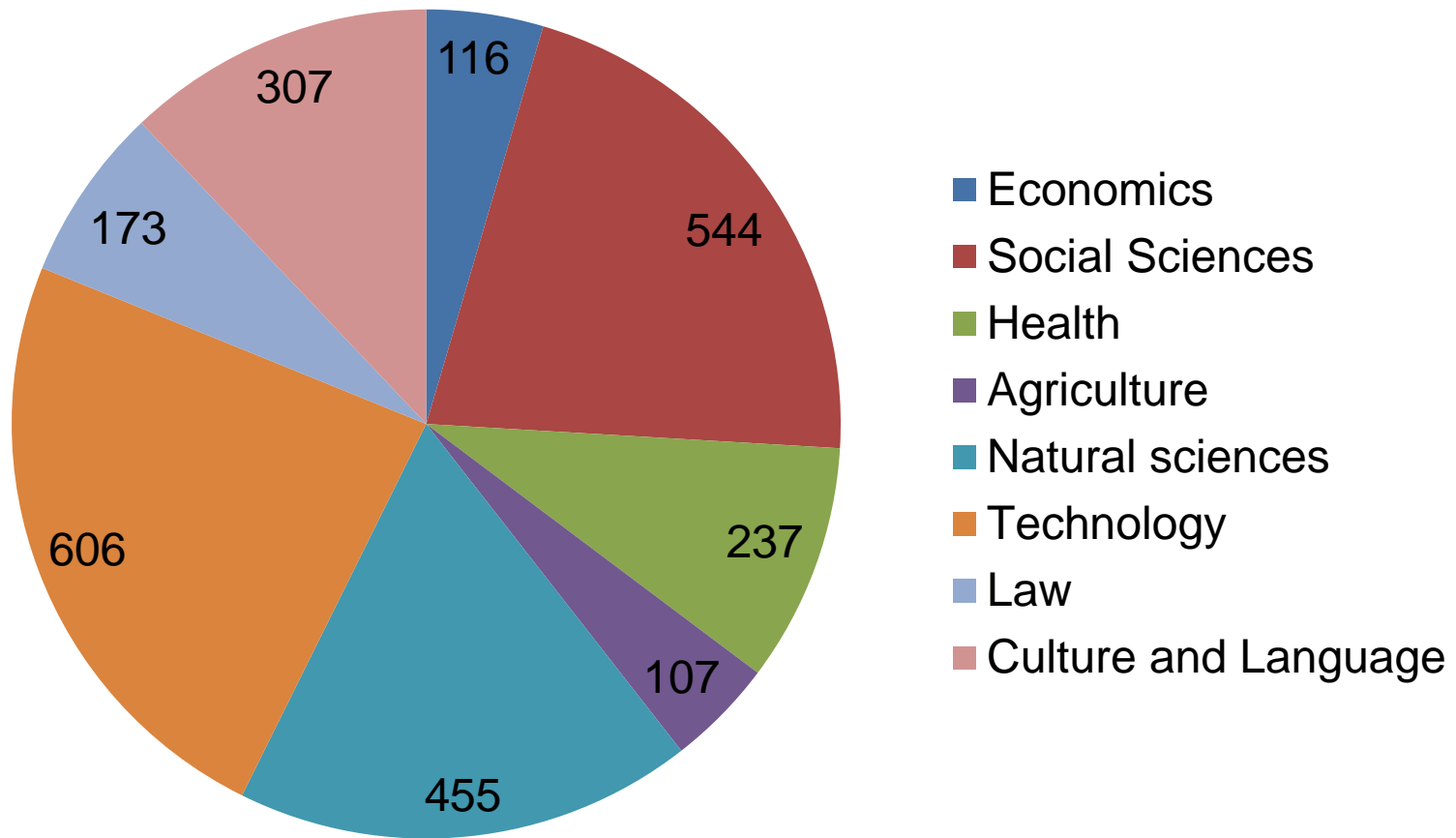
N=2546

#6 RESULTS PUBLICATION DATES



N=2546

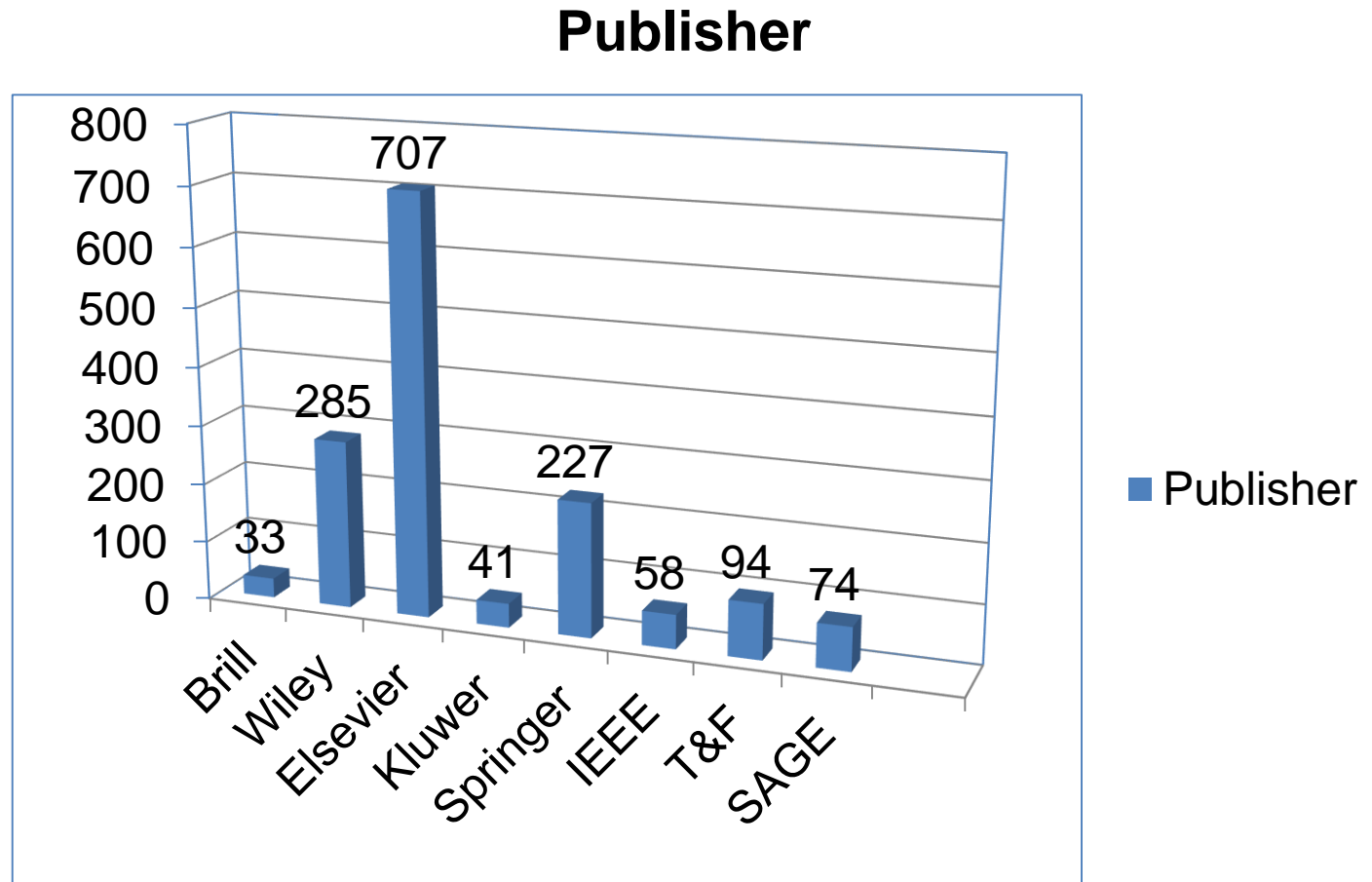
#6 RESULTS PUBLICATION TYPES **FIELDS**



#6 RESULTS PUBLISHERS

TOP 8

N=2546



The **next** steps

- Evaluation of pilot
- Publishers official reaction
- Decision on follow up (End of 2019)
- Guidelines status (NPOS/VSNU)
- Input for evaluation of Dutch Copyright Law

Possible routes

- Collective license on institutional level
- License in Collective Labor Agreement for Dutch Universities
- Automation of workflow : national project
- **Harvard model** in funding contracts : **Zero embargo**
- European countries follow example

Country presentations:

- Switzerland André Hoffman, University of Zurich
- France André Dazy, Couperin
- Germany Christopher Bruch Helmholtz Association
Berlin



Dutch law and routes to Open Access: a national copyright law pilot project as an inspiring example

?

The Swiss case
André Hoffmann

Main Library of the University of Zurich
Open Access, OpenAIRE NOAD Switzerland



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National Open Access Strategy

swissuniversities

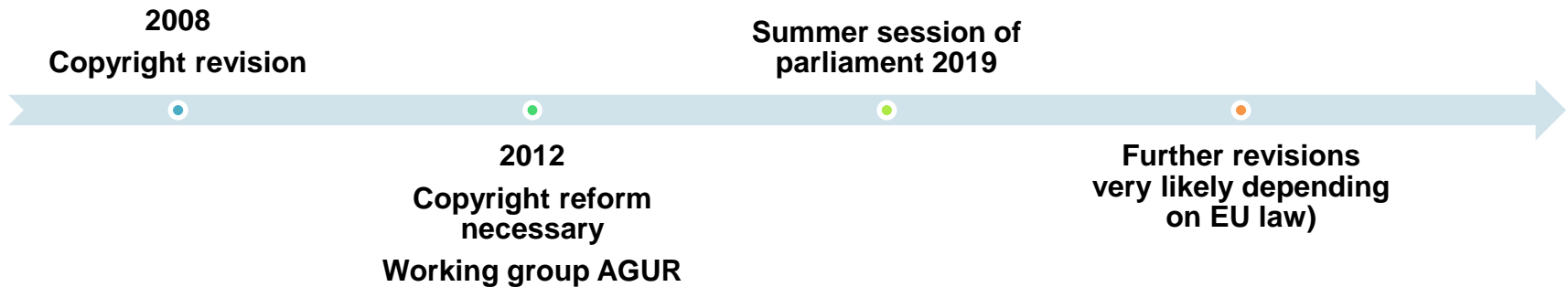
“By 2024, all scholarly publication activity in Switzerland should be OA, all scholarly publications funded by public money must be freely accessible on the internet. The OA landscape will consist of a mix of OA models.”

adopted by the swissuniversities rector’s conference on 31 January 2017

To achieve this vision, Swiss universities and higher education institutions, research institutions, research funders and science policy-makers agreed on the following action items (agreed in an action plan, adopted February 2018).

1. **Adopting and aligning OA policies**
2. **Negotiations with publishers**
3. **Coordinating and pooling resources**
4. **Alternative forms of publishing**
5. **Communicating and raising awareness**
6. **Supportive regulatory framework**
7. **National monitoring**

Secondary publication right via copyright reform



Secondary publication right → Swiss Code of Obligations ([German](#): *Obligationenrecht*; [French](#): *Code des obligations*; [Italian](#): *Diritto delle obbligazioni*; [Romansh](#): *Dretg d'obligaziuns*)

as proposed by swissuniversities & SNSF:

- It applies only to publicly funded scientific research publications
- The first publication is left to the publishers
- After a certain embargo period (6 months for articles, 12 months for monographs), authors have the possibility to make the publication freely accessible online
- This is not an obligation, but a right for researchers



Reasoning

- a) **Legal certainty for Green OA**, i.e. the creation of a regulation on which authors and publishers can rely as a basis for action (in contrast to the costly case-by-case treatment)
- b) **Lack of evidence** that immediate green OA causes material damage to publishers ([OAPEN-CH study](#))
- c) **The focus is on the resources of the universities** (Unlike commercial publications, scientific publications do not seek to generate income to support their authors. Researchers are paid through their institutions, which are themselves financed by public funds).
- d) With a changing international context, Switzerland must maintain its **attractive and competitive scientific position**.

Counterarguments



- a) **Switzerland occupies a leading position in Open Access** by international standards. Self-regulation works without the need for additional regulation. Mandatory legal regulation would go too far in that it would affect publishers.
- b) **Swiss law is not internationally applicable.** Even if an attempt is made to confer international enforceability on this law by making it mandatory, it can neither be assumed that publishing agreements of foreign publishing houses would be declared applicable nor that foreign courts would assume that Swiss law is mandatory. Secondary publication law is therefore directed against Swiss publishers, who already have difficulty asserting themselves against foreign competition in today's environment.

→ **The motion was rejected by 29 votes to 11 with one abstention.**

<https://www.parlament.ch/en/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=46139>

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French Law and others means to make scientific articles open





French Law

- On October 7th 2016, French Law for a Digital Republic Act (LOI n° 2016-1321 du 7 octobre 2016 pour une République numérique)

The digital Republic Act

provides that the researchers have the right to publish

their article without the modifications that the editor has added (AAM),

- after 6 months in STEM (science, technology, engineering and mathematics)
- after 12 months in SHS (human and social sciences).



Dissemin

Dissemin detects papers behind pay-walls and invites their authors to upload them in one click to an open repository

Sources:

Sources primaires

[CrossRef.org](https://www.crossref.org/) for traditional academic papers

[BASE \(Bielefeld Academic Search Engine\)](https://www.base-search.net/) for other papers, including preprints

[SHERPA/RoMEO](https://www.sherpa.ac.uk/romeo/) for publisher policies

[Zotero](https://www.zotero.org/) for metadata associated to DOIs

<https://dissem.in/>



Elsevier contract

French articles will be made available in the National archive HAL after 24 months

The agreement (2019-2022) provides for setting up automatic access after 12 months “Author’s Accepted Manuscript”(AAM) or postprint through streaming on Sciencedirect, the platform from Elsevier and a manual HAL (the CNRS open archive) which points to this streaming.

Then, in a second time and after 24 months, the pdf file of this manuscript would be found directly on the HAL platform.



Questions ?

Thanks for your attention!

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References

The full Act (in French)

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000033202746&categorieLien=id>

Dissemin (in English)

<https://dissem.in/>

Link to the article on French Elsevier contract (in English)

<https://www.soundofscience.fr/1754>



SECONDARY PUBLICATION RIGHT IN GERMAN COPYRIGHT LAW

Dr. Christoph Bruch
Helmholtz Association

Open Science Fair 2019,
Congress Centre Alfândega, Porto, 17.09.2019

SECTION 38 (1)

CONTRIBUTIONS TO COLLECTIONS

- **Old**
 - (1) Where the author permits the inclusion of the work in a collection which is published periodically, the publisher or editor shall, in cases of doubt, acquire an exclusive right of reproduction and distribution.
 - However, the author may otherwise reproduce and distribute the work upon expiry of one year
- **New**
 - (1) Where the author permits the inclusion of the work in a collection which is published periodically, the publisher or editor shall, in cases of doubt, acquire an exclusive right of reproduction ~~and~~, distribution and making available to the public.
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 - However, the author may otherwise reproduce ~~and~~, distribute and make available to the public the work upon expiry of one year,
unless otherwise agreed.

The translation includes the amendment(s) to the Act by Article 1 of the Act of 1 September 2017 (Federal Law Gazette I p. 3346)
https://www.gesetze-im-internet.de/englisch_urhg/englisch_urhg.html

SECONDARY PUBLICATION RIGHT

SECTION 38 (4) COPYRIGHT LAW

- Right not Obligation The author of a scientific contribution which results from research activities

- 50% public funding at least half of which were financed by public funds

- Journal articles only and which was reprinted in a collection which is published periodically at least twice per year
■ also has the right, if he has granted the publisher or editor an exclusive right of use,
■ to make the contribution available to the public

- 12 months embargo upon expiry of 12 months after first publication

- Manuscript only in the accepted manuscript version,
■ unless this serves a commercial purpose.
■ The source of the first publication must be cited.

- Trumps contracts Any deviating agreement to the detriment of the author shall be ineffective.

REMAINING QUESTIONS

- How deal with right archipelago -> Risk
- Academic Freedom vs. Open Access
- What are we actually aiming for?
 - A better deal for academic authors?
 - Who's giving the a bad deal?
 - Free availability of research all publications?
 - Why? To what end?
 - What does that imply for academic freedom?
 - What does that imply for guarantee of private property?
 - What is the relation to freedom of Information.
 - Copyright does not protect facts and ideas (as in patent law) – What does this mean for academic publishing?

Thanks for Your Attention!

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<https://creativecommons.org/licenses/by/4.0/legalcode>

Discussion



Question

Do you know if there is OA legislation in your country?

Question

Do you know if it is effectively used
and contributes to OA goals in
your country?

Question !

Why doesn't work in your country?

Law too complicated/Law is not practicable/Law is unknown?

Question !

Are we too afraid of copyright issues?

Question !

Can the academic community establish copyright & self-archiving policies on a European level?

Question !

Is increase in green publishing a threat for the publishers business model?