



**The Future of Transformative Agreements: Subscriptions, Rights & Open Access
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KENNEALLY: My name is Chris Kenneally, guten tag, good afternoon, welcome.

Judging by their growing number, transformative agreements will play a prominent role in the open access dimension of scholarly publishing over the years ahead. As the product of negotiations between two parties, publishers and institutions, each transformative agreement is as different as every marriage. Many types of transformative agreements exist, but again, like marriages, these agreements all strive to achieve harmony, and that's no small challenge in an environment that in the last decade has seen much discord.

Transformative agreements typically move publishing business models away from subscription fees to contract-based packages that combine institutional access to publishing and reading or reading and publishing. And – I should say and reading and publishing. The transformation underway is not limited to financial considerations, however. We are also seeing transformation in critical relationships that are likely to lead to innovations and the creation and dissemination of research.

Such a degree of systemic change in scholarly publishing raises important questions for all stakeholders involved. My panel today of licensing, publishing, and technology experts are here to offer their insights. I want to welcome them.

From the very far right as I look, I want to welcome Sybille Geisenheyner. Sybille, welcome. Sybille Geisenheyner is Sales Manager for Europe, Middle East, Africa, and India for the Royal Society of Chemistry, and she is a member of the RSC's Open Access Strategy Group. She was part of RSC's negotiation with the Massachusetts Institute of Technology in Boston for the first read and publish deal outside of Europe.

Immediately to my right is Susie Winter, Susie welcome. Susie Winter is Director of Communications and Engagement Research at Springer Nature. She joined Springer Nature from the Publishers Association, the trade association for the publishing industry in the UK.



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To my left is Dr. James Milne, Jim welcome. Jim is Acting President of the American Chemical Society's Publication Division. Through its Publications Division, ACS publishes 60 peer reviewed journals, numerous e-books, and the renowned Chemical and Engineering News weekly magazine. He is currently, as of today, I guess vice-chair of STM. Has it happened?

MILNE: Chair.

KENNEALLY: You are now chair, OK. And just maybe yesterday became chair of the board at STM.

And then to the far left as I look is Mark Seeley. Mark, welcome. Mark consults in science publishing and legal issues through SciPubLaw. He retired in January 2018 from a position as Senior Vice President and General Counsel for Elsevier. Mark serves on the board for the Copyright Clearance Center, and he is adjunct faculty at Suffolk University Law School in Boston, teaching international copyright law.

And Susie Winter, I want to begin with you because in the summer, in August, Springer Nature announced a deal of its own with Projekt DEAL, the consortium in Germany representing some 700 various institutions. Tell us briefly about why that agreement is so important and such a sea change, but also how it fits in Springer Nature's approach strategically to open access. It's just one piece, it's not the end of the story.

WINTER: That's absolutely right. Can everyone hear me with the microphone working OK?

Yes, that's a big opening question. But yes, we were delighted in August to sign that agreement. We're a little bit frustrated that Wiley got there first, but it was fantastic to see that back in January, as well. From Springer Nature's perspective, that did take the number of our read and publish deals that we have up to 11, so over 10 now, so that was very exciting as well. One of the reasons a) it was Projekt DEAL, so Germany is a great research country that we want to work much closely with. But one of the reasons why we were so excited is that we have seen, from the evidence that we have gathered and research that we've done, it's that actually these deals can really be very transformational to encourage people to publish open access, and that should really drive that transition that we're all trying to see to open access. For example the four most mature markets where we've got these deals at the moment we're seeing between –

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WINTER: Which are – oh, you’re testing me now. UK, Netherlands, Sweden, and Austria, we’re seeing between 73 and 90% of our authors in those countries publishing open access. So we can really see that they’ve got a fantastic ability to really drive that transition. But as you rightly say, that’s not the only thing that we think as publishers actually can and should be doing as an industry to do that.

Part of that is connected to those numbers that we’re talking about. For example, in the UK, about 77% of authors publishing open access with us, that still leaves 23% who aren’t for a variety of reasons, so we need to work out why is that the case and what can we actually do to get that 77% up higher, as well. I think part of it that we have identified, and again, it’s in another piece of research that we have done, it really shows the benefits to authors of publishing OA in terms of increased citations, increased downloads, increased broader impact by our metric scores. So there’s a real benefit to authors for doing that, and I think we need to look at ourselves as publishers about are we doing enough to actually communicate those benefits? Are we being active enough? Are we still being quite passive as to our authors publishing choice? Or should we see a shift in our approach to be far more active, saying no, actually you have a deal in this country, and therefore why aren’t you publishing OA?

KENNEALLY: I want to stay on that point because it’s important. These transformative agreements, they’re often cast as transforming the financial relationship, the business relationship with the institutions. But you’re touching on an important point, which is it’s transforming the relationship with the researchers and the authors and the readers, as well.

WINTER: Absolutely, and it’s obviously been in the spotlight in Europe at the moment with Plan S, and that has come from a frustration that the industry, which is nominally meant to be publishers, are not moving fast enough to open access. So yes, so we see this as a way of actually really harnessing that transition and moving it faster.

KENNEALLY: And James Milne, I want to turn to you at American Chemical Society and talk about your own transformative agreements. The ACS came to want a read and publish deal with Max Planck back in March, and it’s kind of a friendly competition, I suppose, among publishers as to who gets to these deals first. But to build on what Susie was just saying, talk about how these kinds of agreements – we’ll get the financial piece – but why they’re important to your relationship with authors. ACS has a global network of authors.

MILNE: Sure. The way I’d respond to that is that whatever we do at the ACS, we put the researcher at the core of any of our solutions. And we know that within the



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chemistry community, open access has really been at the back of their agenda, so anything we can do to try and encourage and support uptake in open access is part of our strategic direction forward. For instance we had multiple initiatives such as author rewards where we handed out over \$60 million of credit to encourage open access uptake. Even with that, we had to really actively market and promote it, offset deals as part of that solution, as well. Max Planck is one of the most progressive institutes in terms of securing arrangements across all publishers, similar to other publishers. We've got many transformative agreements now, as well. These are ways that we can simplify the process for researchers so that they are at the heart of everything we do. The simpler we can make it for them to submit, undertake peer review, and then get published and help their research access, that's good from our perspective because it's supporting the community.

One of the main things that we've been working on, as well, in the past is the simplicity of using open access credits within these transformative agreements, so the author has the simplest process going. So they are encouraged to use the open access credits and then basically get back to the lab bench to do more research because we shouldn't be putting burdens or hurdles in their way in that regard.

KENNEALLY: I know it's important to you and ACS. It's not about only making things as frictionless as possible, but to the extent that it can, to providing the researchers with as much freedom to publish where they want to – not only how they want to, but where they want to.

MILNE: Sure. In the last year, for instance, since the – what is it, September last year when cOAlition S announced their plans, we've been looking at how can we respond and move forward in a constructive way in that regard.

One of the things I'm very reluctant to do is, for instance, launch – we have 60 journals – launch another 60 journals that are pure open access to satisfy that need. I don't think that does anyone any favors.

So looking at how we can support the authors, who are mandated to publish open access through offset deals working with hybrid journals, but also creating the right pure open access journals, but not just for the sake of it, because the way I really focus on this is in the next 10 to 20 years when we look back at the decisions we make in 2019 and 2020, we want it to fit well within the ecosystem of science journals, certainly for the chemistry community so we're not undermining some long-established journals with great strengths, great usage, great readership. We want to preserve the infrastructure that can be preserved in that way because that infrastructure has taken decades to get to the point where we are. We've got phenomenal editors doing phenomenal work for us, and we don't want to



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undermine that momentum. So our solutions going forward are trying to blend whatever we can in a way that satisfies the funders, satisfies institutes, works in a sustainable way, but – I’m repeating myself – puts the researcher at the heart of everything we do because they want to do research, they don’t want to have to have a hassle with being published.

KENNEALLY: We’re here to try to offer some insights into how these deals get done. We can’t talk about the negotiations that happen behind closed doors. But maybe share with us a quick thought on some of the preparation that’s involved before you actually sit down with Max Planck, whoever the party might be.

MILNE: My take on this, and I don’t get integrally involved in the fine detail of the negotiations, but working with the sales team we actually work closely with the institute or the coalition to agree on the data that we can all share because it’s quite often the case that the coalitions or the institutes are less aware of the usage or the submission or the published output. So actually getting some clarity on the data, for instance, the number of articles published, the trends in those articles and number of articles published and how we can support them in that way. So the first thing is getting the right data there.

Some consortia, some institutes are in a sweet spot where it blends nicely so we can all agree very quickly about an offset deal because it matches nicely. But I’ll create an example without going into detail. If a organization wanted to publish 100% open access, but it’s going to treble their cost, they’re not in the sweet spot, and then we have to have a different discussion about how we can phase the approach to move forward. But equally the converse is that if the institute moves to an offset arrangement and they’re going to halve their cost they feel they’re in a very sweet spot because that’s what they’re wanting to do. Yet out there, of course, the mixed portfolio and the mixed portfolio of the customers is how we have to bring that together in a way that works and keeps the ecosystem moving smoothly.

KENNEALLY: And Sybille Geisenheyner with RSC, one of the stated objectives of funders is transparency in these deals in their relationships with publishers. Talk about the role transparency plays, how much of a challenge that is, and how you are responding to it.

GEISENHEYNER: Yes, maybe just one first thing. I’m in sales, then, more than 20 years, and even in subscription times I always agreed with my customers with a handshake at the end. So also in that times it was always the tough negotiation, but you agreed on a similar goal in delivering service or content, and it was always a mature agreement. In our times, now with those requests for transparency that is, in many ways a challenge, and this is, for example, one of the reasons, as well,



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where we took that challenge and saying if we move into that direction of read and publish and working actually together on a model with our customers, that they need to be transparency on what actually get transformed.

So what are we talking about with transformative – what actually get transformed? The author from the side to the center, or the workflows, or the money parts, or what is actually getting transformed? I think the original idea of the transformation was that in the end everything – there is a 100% open access goal, and this is something that we try to very transparently put into our contracts, that all our contracts have a similar element where all deals work towards too, it's like lowering the part or the content behind the paywall, so having more open access content and less paywalled content and so to get a transparency for all read and publish customers into that concept that was something we are working on.

KENNEALLY: Right. And the challenge is the number of institutions and the roles they play. The DEAL consortium is 700 various institutions around Germany, large and small, global reputations, others very specifically targeted to a certain student population. This is uncovering how they read, how they publish, what that means, and it's creating a series of unintended consequences for the institutions, is it not? They are seeing things in a new way.

GEISENHEYNER: Yeah, absolutely. In any consortia negotiations I'm involved in, I can say that also there's one consortia, the institutions or members behind that are so diverse that it's very difficult and complex to find a one fits all model. Some of them are prepared, others are not. Someone did a very controversial – with open access. It's not a one fits all situation you start with, and really to agree something centrally on one model is really a challenge.

KENNEALLY: Right. And RSC has done a lot of experimenting in this regard over the years, going back five, six years, at least, to the old RSC Gold and so forth. Talk about some of the lessons learned in their process and how perhaps transformative agreements are additive to everything you've been doing previously.

GEISENHEYNER: From that perspective we started the first transformative agreements with our Gold for Gold project in 2013. And from the lessons learned there was that to be an early adopter is not always an easy thing. Many things were not prepared, actually were close, were not in place and things like that, so that is something we had to develop and learn. Another thing was also that customers were completely not prepared. It was like forcing them to use the possibility for open access. It was more or less a fight to get those vouchers used. So it's really a long process. If you think that's now again six years ago, so if somebody is saying, OK, 20% OA after how many years of talking about OA, I think we've gone a big



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step forward, already, but it's not an equal process. If you take the global element into it – I just traveled in India and it's not an issue in India, so you have to keep that in mind as well. So it's a very European theme, still.

KENNEALLY: Right. Well, Mark Seeley, I want to talk to you about these transformative agreements. You're an attorney. There are some unique elements to all these agreements. As we say, it's rather like a marriage, each one is different. But there would also be some key elements that need to be there, and we've heard about some of them already – transparency, for example. But there's also elements regarding the copyright and licensing points, tell us about that.

SEELEY: That's right. It has to be kept in mind that the idea of the transformative agreements is as an alternative. It's meant to take a path towards open access. There are, for example, other methods of compliance with Plan S, have to do with the depositor repositories and the like, but this is about open access. So there are issues about the author retention of copyright, for example, which is a pretty traditional element in Gold Open Access, that certainly is identified here. The use of particular licenses, CCBY is encouraged. I don't think it's completely restricted, but I think it is encouraged. And then a number of the transparency elements that have already been discussed here today, progress reports and dashboards, are also quite important to the overall process. And then finally, many of the workflow requirements, including things such as particular methodologies in terms of ORCID identifiers and the like, these are all of the elements. You can go online and you can see many of these elements, and there is a repository of agreements which are being held and maintained. I have to say that there's a lot of variation amongst those templates, so it's sometimes difficult to just pick one, but these are the strong common themes.

KENNEALLY: And all those variations raise uncertainties, challenges in negotiations. Talk about some areas that you would be watchful of if you were involved.

SEELEY: Well, I think the question about transparency and progress reporting, I suspect that in most publisher relationships with individual institutions, the idea transparency is a positive one and not that difficult. It might be, however, that a publisher decided to be incredibly transparent about things to their competitors, to other publishers, could raise more concern. So I think sometimes the transparency issue is one that will be a bit delicate.

But frankly I also think a major question here really has to do with the fact that we have a lot of publishers and a lot of institutions and a real negotiation scrum, I would say there's a bit of a bottleneck there, and I think that does present a problem, and I'm



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sure that with more examples of agreements, more model agreements, that will be simplified over time. But I do sense at the moment there is a bit of a bottleneck.

KENNEALLY: Right. A quick last question for the publishers on the panel here, these are deals with specific terms – three years, four years and so forth. Tell us briefly about the things you're already thinking about when you're going to get there, 2021, 2022, 2023, and how you're working to ensure that the relationship is a good one, a strong one, and that you'll be back in negotiations on a strong footing.

WINTER: Picking up on, I think, on some points that Sybille and I think Jim said, as well, it is down to that relationship. These are deals are made on the basis of at the end of the day of those personal relationships, as well. And that element of trust and partnership as we go into – either it's a new negotiation or a renegotiation, those two elements actually still have to hold as true in the renegotiation as they held in the original negotiation in the first place.

KENNEALLY: Right. Sybille Geisenheyner look into the future.

GEISENHEYNER: That's a good question. I think there are quite some more challenges ahead in renewing those things because there are more or less two scenarios there, unsuccessful – what are you going to do as a publisher? Are you going to reset? Are you saying it was a pilot and we go back or whatsoever. Or they are really successful and you have an increase of publications of 10, 20%, then the library will say, oh, we can't cover those costs. So I think nobody knows the answer to that now, and that will be an interesting question to actually deal as well. What is going to happen in three years?

KENNEALLY: Well, Jim Milne, what's going to happen two, three years from now?

MILNE: I think the thing I would actually (inaudible) – the thing I would actually focus on is more at the macro level because I think Europe has taken the bold step forward, and we, as publishers, need to support everything we can do to move forward in that direction. In three years' time we don't know how the rest of the world will have responded, but I think there's an element here that we have to be very transparent about what's happening with funding, how does that work in a macro level so that the words double dipping don't come back in a offset style arrangement. We need to be able to show how the funding in these offset arrangements or open access complements whatever subscription model still exists. I think we all agree there wouldn't be flip to open access within two or three years, so we're already in that time zone you're talking about.



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KENNEALLY: A great way to end because I think the advice there is keep an eye on your business locally, but think about it globally, as well.

I want to thank the panel today, Mark Seeley, with SciPubLaw, Jim Milne, Acting President of American Chemical Society, Susie Winter, Director of Communications and Engagement at Springer Nature, and Sybille Geisenheyner, Sales Manager for Europe, Middle East, and Africa and India for the Royal Society of Chemistry. My name is Chris Kenneally for Copyright Clearance Center, thank you all for joining us this afternoon. Thank you.

(applause)

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