

7-2021

## **Transformative Agreements: Six Myths, Busted: Lessons Learned**

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# Transformative agreements: Six myths, busted

## Lessons learned

**T***ransformative agreement* (TA) is an umbrella term used to describe contracts between institutions and publishers intended to transform the current, primarily subscription-based, journal publishing model to a fully open access (OA) model. The idea originated in a 2015 white paper from the Max Planck Digital Library (MPDL), which posited that the current level of investment (\$10 billion worldwide) is sufficient to fund the transformation to OA within existing publishing structures: a system in which 60% of the market is controlled by five publishers who maintain excessive profit margins.<sup>1</sup>

Rather than transforming the market, TAs shift some portion of subscription investment to funding OA without altering the overall business structure. The OA2020 Initiative, through which institutions pledged to fully move to OA publishing by 2020, was based on the MPDL analysis.<sup>2</sup> TAs have played a central role in its implementation. The model received increased attention when a consortium of national and private funders known as cOAlition S announced its support of TAs as a compliant publishing route for its grantees.<sup>3</sup>

TAs are frequently read-and-publish (R&P) or publish-and-read (P&R) agreements, though a range of models fit under the term.<sup>4</sup> In R&P/P&R agreements, subscription contracts are reworked to include a reading fee, covering access to subscription content, and a publishing fee, a mechanism to make some or all outputs OA if the *corresponding author* is affiliated with the subscribing institution.

Some publishers and libraries market TAs as the best option for the transition to a fully open access ecosystem. But are they? The complexity of TAs obfuscates their true cost and this model's long-term implications remain undetermined. This article addresses six myths surrounding TAs to better inform libraries pursuing their OA goals.

### **Myth: TAs will lead to an equitable scholarly publishing ecosystem**

TAs fail to address the positionality of the broad range of researchers contributing to the scholarly publishing ecosystem, which these agreements aim to transform. To date, TAs are largely limited to research-intensive institutions and consortia. This creates a tiered access system to open publication for authors, potentially damaging both individual careers and the scholarly record's integrity.

In contrast to European and North American institutions, which advance TAs as equitable options, OA advocates in Latin America and Africa caution that such models will result in "further marginalizing research voices from the global south."<sup>5</sup> As with article processing charges (APCs), TAs risk moving the paywall from the ability to read a work to the ability to contribute to the scholarly conversation.<sup>6</sup> Instead of promoting dialogue that the Budapest Open Access Initiative stated would "share the learning of the rich with the poor and the poor with the rich . . . uniting

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humanity in a common intellectual conversation,” TAs reify existing inequities.<sup>7</sup>

TAs fail to create viable routes to paid OA publishing for the many researchers who do not have an institutional affiliation or are affiliated with less well-resourced institutions. Library services, such as interlibrary loan, can meet researcher needs for reading access, but there is no equivalent service under a pay-for-open-publishing model. Researchers not covered by a TA will be required to pay an APC, apply for a waiver, or be priced out of OA publishing. Authors may feel compelled to “shop around” for a researcher covered by an agreement and invite them to be the corresponding author, whether or not this role aligns with their contributions.

### **Myth: TAs are a proven way to transition the system from closed to open access**

The Efficiency and Standards for Article Charges (ESAC) initiative, a German Research Foundation Project, states that TAs “are temporary and transitional meaning that they are no end in itself but rather provide a framework in which a swift and irreversible shift away from the subscription model can be organized.”<sup>8</sup> R&P/P&R agreements have not yet led to this transformation. ESAC posits “[as] other research-intensive organizations and national consortia follow suit, the impact becomes immediately apparent,” but what that impact is and how TAs ultimately lead to transformation remains unclear.<sup>9</sup>

Furthermore, TAs are not available for all institutions, due to their cost and because publishers may be disinclined to negotiate complex contracts with institutions that have lower publishing volume or lower-priced subscription contracts. At least initially, large portions of the system will be left out of the transition. Publishers promoting TAs have not yet released their OA transition plans. Without transparency these agreements may lead to increased publisher revenue without a commitment to a full OA transition.

There exist a number of initiatives that transform publications to OA through collective funding models, allowing all authors to publish regardless of institutional affiliation or their ability to pay.<sup>10</sup> Libraries investigating routes to OA should strongly consider these initiatives.

### **Myth: TAs move away from an APC model of open access**

APCs remain at the core of TAs. The initial pricing of TAs is frequently based on historical subscription

costs. Many agreements also include pre-payment of APCs (sometimes with a discount).<sup>11</sup> Others are based on a per-article-published fee—essentially an artificial APC calculated by dividing total negotiated price by the annual expected number of articles published. The Wiley-Projekt DEAL agreement is based on an APC-equivalent high enough to secure Wiley’s current revenue levels.<sup>12</sup> This perpetuates the serials crisis: combining subscription agreements with APCs could lead to greater expenditures benefitting publishers.

Some TAs have a cap: if the number of OA articles an institution publishes exceeds expectations, that institution can be forced to limit OA publishing or pay individual APCs outside of the deal.<sup>13</sup> If output is lower than expected, institutions have likely agreed to a minimum spend, limiting risk for publishers. TAs don’t eliminate APCs, they obfuscate them.

### **Myth: TAs will lead to greater transparency regarding publication costs**

Price should not be conflated with cost. Neither subscription prices nor APCs are based on actual publication costs. Thus, *price transparency* is difficult to ascertain. Both funder and OA communities aim to shed light on publishing costs through initiatives including the price transparency frameworks from the Fair Open Access Alliance (FOAA) and cOAlition S.<sup>14</sup>

The same publishers who have traditionally lacked transparency have balked at providing this data, claiming that doing so would be in breach of anti-competition or anti-trust law.<sup>15</sup> Without transparent data it is hard to create and properly evaluate publishing models. Each new agreement compounds the opacity of this new model, making price transparency more difficult to achieve.

Without transparency, a single TA can unduly shape the market. MPDL recently signed a TA with Springer Nature establishing a cost of \$11,200 dollars per OA article.<sup>16</sup> This price was based on past subscription rates divided by articles published in a year. However, by agreeing to this per-article price, publishers can now use this as a baseline in future negotiations.

### **Myth: TAs will lead to competitive pricing**

*Competitive pricing* implies there is a market where publishers strategically price their product to vie for institutional spending. This, at a minimum, requires

transparency of price and license terms. As TAs are negotiated on an individual basis with widely varying structures, details are hard to obtain and difficult to compare, even without nondisclosure clauses.

As of February 2021, the ESAC Registry reported 222 current agreements with 44 publishers. Details were publicly available for 41% of the agreements, and only 25% had price information beyond noting cost increase, decrease, or spending “within the range of the previous spending level.” Publishers continue to enter negotiations with a full understanding of their agreements, and institutions have only partial data to inform their negotiations.

Agreements that decrease or maintain current spending levels may be displayed in a positive light, but don't indicate whether the prices are competitive across institutions or among different publishers at one institution. Electronic subscription prices are typically based on an institution's historical spend on print serials, despite the decrease in printing and shipping costs.<sup>17</sup>

Without knowing the true cost of publishing or what others have negotiated, TAs build on legacy pricing inequalities perpetuated by Big Deals, while extending the current serials crisis. Bundling publishing into these deals strengthens publishers' positions in negotiations instead of increasing competition.

### **Myth: TAs better position libraries to negotiate**

Libraries typically pay for R&P/P&R agreements, effectively insulating authors from price considerations. This positions libraries as intermediaries who bear the costs, and tempts authors with prestige for which they will not directly pay, perpetuating a scenario where libraries have little leverage.

Most academic libraries in the United States do not pay APCs for all articles. Libraries will need to find additional funding for agreements that are based on total institutional spending (subscription + APCs). Some argue that institutions will have a stronger negotiating stance if they require authors to use grant funding to pay their own APCs with an agreement.<sup>18</sup> Even when authors pay APCs themselves, they are price insensitive—they often favor publishing in more expensive, “prestigious” journals.<sup>19</sup>

TAs have the potential to set libraries up for difficult future negotiations—at the conclusion of a pilot agreement with favorable terms, publishers may direct pressure from authors to push libraries into less favorable agreements.

## **Transformative? Agreements**

As libraries advance OA, we must confront the economic realities of the system. Publishing costs money. Yet, TAs maintain the power imbalance that the oligopoly legacy commercial publishers currently enjoy. Instead of alleviating costs to institutions, they merely reframe the purpose of the spending—maintaining or increasing their current profits. The largest commercial publishers have gained the most momentum in converting subscriptions to TAs. If this growth continues, ever increasing portions of library budgets will be directed towards these companies rather than supporting a broad range of OA options.

Although TAs increase the OA output from participating institutions, they have unintended consequences for the ecosystem. “Transforming” payments for licensing materials to subsidizing publication fees simply moves the paywall from reading to publishing, further stratifying researchers. TAs reinforce existing inequity, rather than solve access issues.

TAs are too new to fully gauge their impact, but historical trends (Big Deals, the rise of APCs, the consolidation of publishing markets) and current data suggest that libraries should cautiously assess the “transformative” nature of these deals. We, as librarians, need to be informed when conversing about or when approached to negotiate TAs. We must be careful in the choices we make.

## **Notes**

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Unlatched (<https://knowledgeunlatched.org/>) and SCOAP3 (<https://scoap3.org/>).

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