

# open access and copyright

A short guide



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## How to use this guide

Are you a teacher, researcher, assistant or student at the university and you are writing an article, a thesis, a research report or other that should soon be published? This guide was written to give you an overview of the rights that may protect your work hoping that you will no longer systematically renounce them to publishers and that this will allow you to publish in Open Access in one of its many forms.

The first chapter explores the legal basis for publishing in Open Access. It explains what copyright is, how it is composed, as well as other rights that may be applicable when your work is published.

The second chapter explains the editorial process and the possibilities for transferring your rights when you sign a publishing contract. You will also learn about the legal differences between conventional and Open Access publishing.

You will also find in the third section a diagram that shows you your possibilities for publishing articles in Open Access and the resources associated with them to facilitate the task. Some suggestions are also given regarding the publication of Open Access books.

Finally, you can consult the frequently asked questions in the fourth section where you will find the answers to many questions about Open Access publishing and copyright.

## Legal basis for Open Access publication

Navigating the complicated waters of Open Access publishing is far from simple. Especially since different types of laws may govern the publication process. In order to fully understand the consequences of the researcher's decisions during the publication process, the following section briefly describes the potentially applicable laws.

### Copyright

Copyright protects the work in question as a concrete expression of an intellectual creation, regardless of its value and quality. A simple idea cannot be protected, it must be expressed in concrete terms in an individual form. The work is protected by copyright since its creation.

#### How is copyright composed?

Copyright contains several partial rights grouped into two major categories: hereditary rights and moral rights. These rights can be separated and distributed separately. For example, the right to reproduce the work may be granted to one person and the right to translate it to another.

Moral rights grant the author the right to have his authorship recognized, the right to decide on the first publication of the work, and the right to the integrity of the work (for example, the right to refuse modifications of the work).

Hereditary rights grant the author the right to decide whether or not to distribute the work and to dispose of the financial benefits resulting from the use of the work. This right includes the right to reproduce, distribute, adapt, translate, etc.

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<sup>1</sup> [Open Access - Access to scientific publications in Swiss Law, Prof. Dr. Reto M. Hilty and Dr. Matthias Seemann, Zurich, 2009](#)

<sup>2</sup> [Article 70 du Loi du 6 juillet 2004 sur l'Université de Lausanne \(LUL\)](#)

#### How do you acquire copyright?

In Switzerland, according to the creator principle, only natural persons can be considered as authors.<sup>1</sup> The latter must have contributed to the concrete expression of ideas and notions to be considered as authors. That is, you must have made a creative contribution to the work (not just a superficial or aesthetic contribution, nor the review or collection of data). Therefore it is possible to have several co-authors. In this case, where the consent of the authors is required, the consent of all authors is required, unless they have agreed otherwise.

At the University of Lausanne (UNIL), the authors are still the copyright holders of their publications. The "Law on the University of Lausanne"<sup>2</sup> states that UNIL is the owner of all intellectual property produced by its members in their functions, except for copyright.

#### Copyright restrictions

Copyright is subject to some restrictions. In some cases, the work may be used without the consent of the copyright holder. For academic publications, there are restrictions on copyright for private and internal use ([Art. 19, Para 1 LDA](#)), whereby published works can be used. The following cases are considered as private use:

Any use for personal purposes or in a circle of closely related persons, such as relatives or friends;

Any use of works by a teacher and his pupils for educational purposes;

The reproduction of copies of works within companies, public administrations, institutions, commissions and similar bodies, for internal information or documentation purposes.

## Contractual law

The copyright for scientific works is granted by contract. If the author decides to publish the work with a publisher, an agreement must be reached with the latter. For academic publications, there are general conditions or standard terms of business (STBs), which have the status of a contract when accepted.

Publishers often use STBs. In general, STBs favor those who wrote them (here, publishers) and for authors to be able to publish in Open Access, they must propose a supplement (or amendment) to the contract. A supplement - considered as part of the original contract or as an amendment to it - requires the consent of both parties to be valid. Amendments often focus on the right to the second publication of the manuscript in an institutional repository.

## Applicable law

When dealing with international contracts, it must be determined whether Swiss or foreign law applies. If the parties have reached an agreement on the law that applies in disputes, then that law applies. If this is not the case, a distinction must be made between copyright and contract violations. In the event of copyright infringement, the law of the country in which protection is claimed shall apply. On the other hand, publishing contracts are subject to the law of the country in which the publisher has its registered office.

## The publication process

In Switzerland, freedom of contract exists. This means that apart from the mandatory clauses, the parties are free to form their contracts as they wish and to accept - or not - the STBs. However, contracts (including essential parts, supplements, addenda and STBs) are invalid without the consent of both parties.

## Assignment and licensing

If a contract has been concluded, it is necessary to determine the rights that the author has assigned to the publisher. This is necessary to know whether the author has the right to deposit the work in an institutional repository and under what conditions.

In the event of **assignment** (or transfer), the author relinquishes his copyright and grants it to the publisher. Thus, the publisher has the absolute right that can be used against anyone, including the author himself.

In the event of a **license**, the author retains his copyright and the publisher only receives permission to use the work. There are two types of licenses: exclusive (where the author agrees not to grant licenses to other parties) and non-exclusive (where the author is authorized to grant other (non-exclusive) licenses to other parties).

## Creative Commons licenses

Creative Commons (CC) offers six useful and easily recognizable licenses for publishing creative works.

## Conventional publishing

With conventional publishing, the author usually transfers his rights to the publisher and access to the article is restricted to those who have paid for it. Partly because of the prestige and interest generated when publishing in

CREATIVE COMMONS LICENSES		COPY & PUBLISH	ATTRIBUTION REQUIRED	COMMERCIAL USE	MODIFY & ADAPT	CHANGE LICENSE
	PUBLIC DOMAIN	✓	✗	✓	✓	✓
	CC BY	✓	✓	✓	✓	✓
	CC BY-SA	✓	✓	✓	✓	✗
	CC BY-ND	✓	✓	✓	✗	✓
	CC BY-NC	✓	✓	✗	✓	✓
	CC BY-NC-SA	✓	✓	✗	✓	✗
	CC BY-NC-ND	✓	✓	✗	✗	✓

Legend:

- You can redistribute (copy, publish, display, communicate, etc.)
- You have to attribute the original work
- You can use the work commercially
- You can modify and adapt the original work
- You can choose license type for your adaptations of the work.

Creative Commons licenses by Foter (CC-BY-SA)

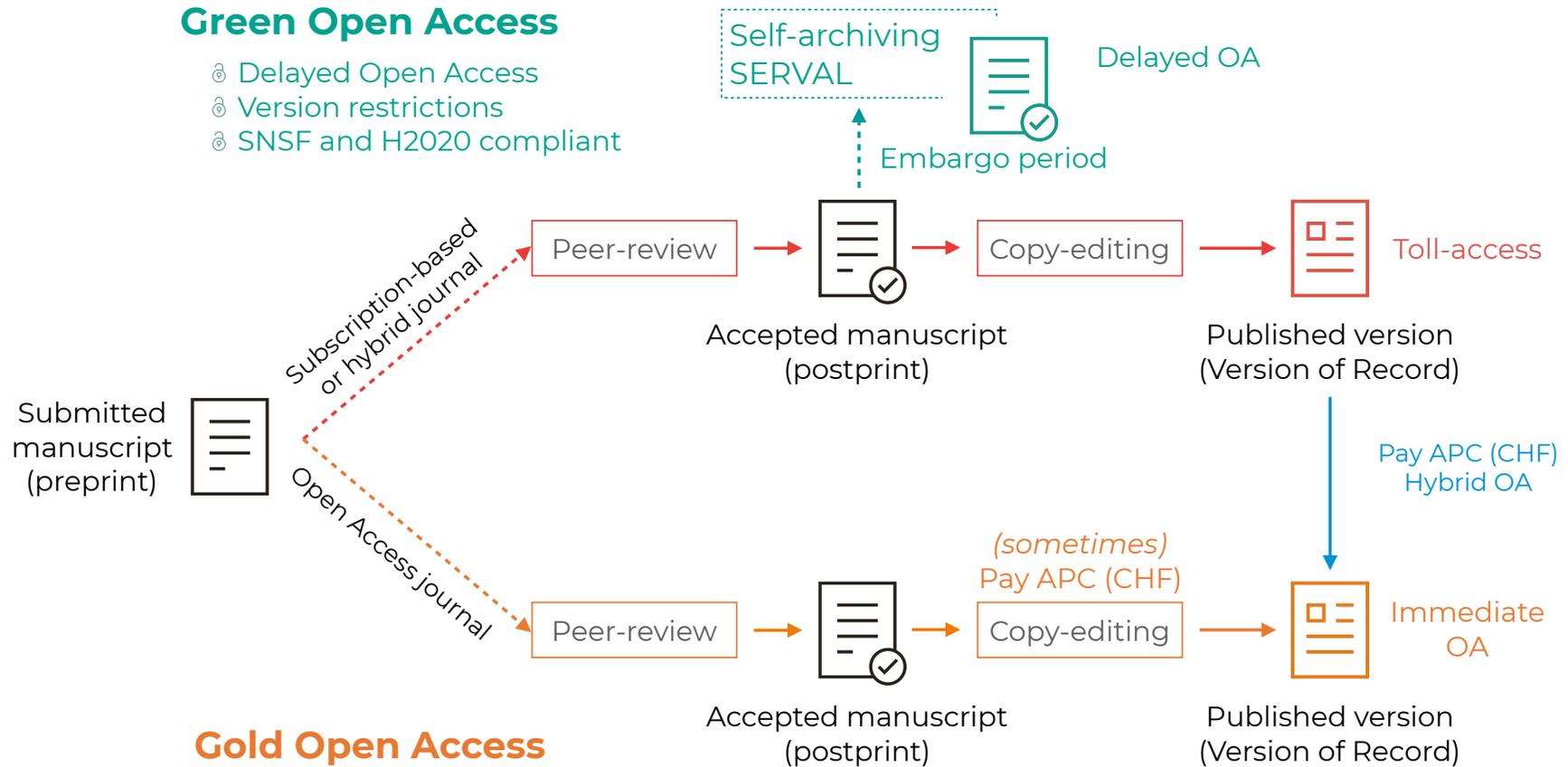
renowned journals, this type of publication remains the main mode of academic communication. In general, authors consider the assignment of their rights as the price to pay for their work to receive the attention it deserves.

## Publishing in Open Access

Open Access is a global movement launched by the Budapest Open Access Initiative in 2002, which seeks to share the fruits of research with everyone via the Internet. Open Access allows documents to be opened by two main means: the Gold Road (when the document is immediately accessible to all upon publication) and the Green Road (when a copy is deposited in an institutional repository and becomes accessible after a waiting period, or embargo).

## Green Open Access

- ⌚ Delayed Open Access
- ⌚ Version restrictions
- ⌚ SNSF and H2020 compliant



## Gold Open Access

- ⌚ Immediate Open Access
- ⌚ Pay article processing charges (APC)
- ⌚ SNSF and H2020 compliant
- ⌚ Hybrid APC not reimbursed by SNSF

## Gold Road

In the Gold Road, the work is published in an Open Access journal or book and made available immediately. This is often, but not always, accompanied by publication costs. From a legal point of view, this path is simpler than the Green Road: the author or an institution pays the publication fees and makes the work, which remains protected by an open license such as CC, immediately available to all.

This type of publication is a change from a model where the reader pays to a model where the author pays. To encourage publication in Open Access, some institutions and funders (such as the Swiss National Science Foundation or the European Commission) cover these publication costs.

It should also be mentioned that Open Access journals often use CC licenses to protect the work. This means that authors retain copyright and grant a non-exclusive license to publish their works to publishers.

Some subscription journals also allow individual articles to be published in Open Access under a CC license provided that authors pay publication fees (often higher than in the Gold Road). These so-called "hybrid" journals produce the problematic effect of double-dipping where publishers are paid via their subscribers and via authors who wish to publish in Open Access.

## Green Road

In the Green Road, the work is published conventionally (cf. section 2.2), but a copy or version of the manuscript is simultaneously deposited in an institutional repository and intended to be opened after a waiting period (embargo). It should be noted, however, that this mode of publication implies free access to the work, but not necessarily under the same conditions as with CC licenses. It is in [SERVAL](#) (SERVeur Académique Lausannois), the institutional repository of UNIL, that your academic publications can be legally archived and shared.

To be able to deposit a work in an institutional repository, it must be determined whether there were any prior restrictive agreements in the contract. If it is assumed that the author has assigned his rights to the publisher, the publisher's consent must be obtained in order to publish in Open Access via the Green Road. The author can check the signed contract to determine whether the publisher had given its prior consent. The author can also check the publisher's STBs on their website, or by checking [SHERPA/RoMEO](#), which lists the publishers' Open Access policies and provides a summary of their self-archiving requirements. For French language publishers, [Héloïse](#) offers the same service.

It is therefore common to see STBs requesting a waiting period (embargo) before the work is made available. For works financed by the Swiss National Science Foundation, the embargo is a maximum of 6 months for articles (regardless of discipline). Another common restriction in the Green Road is the obligation to publish in Open Access a version different from the final version of the work (version of record or Editor version). For post-print versions (accepted manuscripts, after peer review, but before copy-editing by the publisher), many publishers already allow their publication in an institutional repository or on the author's personal website. This is why it is very important to recognize and carefully preserve each version of the manuscript:

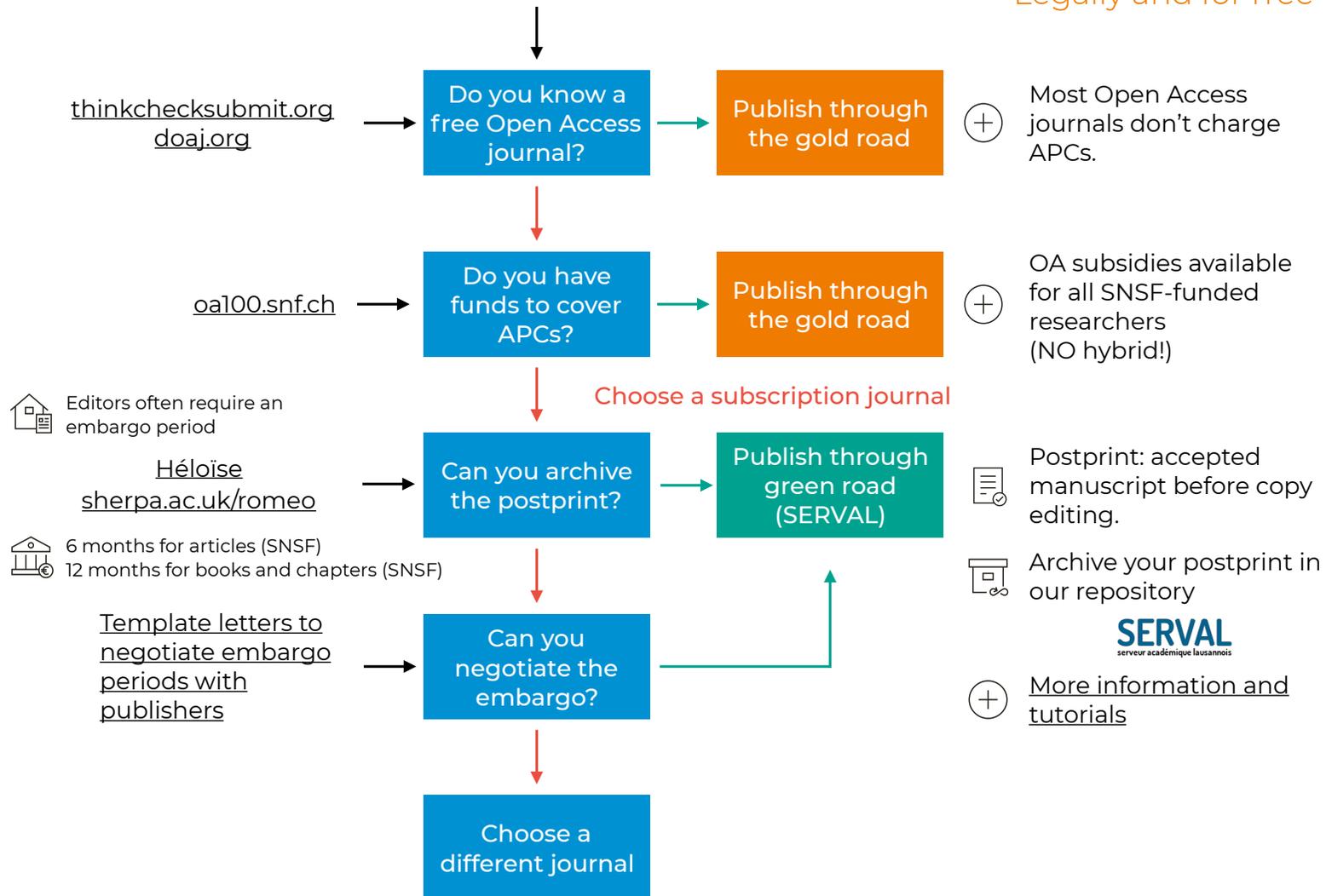


From the author's point of view, ideally no rights should be assigned to the publisher, but rather a non-exclusive publishing license should be granted. In practice, publishers use their influence to obtain an assignment of rights and are only willing to make concessions as long as it does not compromise sales.

If the contract signed by the author or the STBs of the journal are incompatible with the Open Access mandates of the employer or funders, then the author may ask the publisher to allow him to deposit the work in an Open Access repository through an addendum. UNIL makes available to its research community [a model addendum](#) for negotiating the embargo period. The European Commission, as part of Horizon 2020, [also proposes a model](#) for this purpose.

# How to make your research available to everyone

Legally and for free



## FAQ<sup>3</sup>

### Lack of information

#### **I lack specific information on Open Access and its advantages, what should I do?**

Open Access helps researchers disseminate their work to the widest possible audience, thereby increasing visibility and strengthening international collaboration. For more information, visit the [UNIL Open Access website](#).

#### **I am not well informed about researcher-publisher agreements in Open Access, do I lose control of my work?**

Once your work is published in Open Access, the publisher is required to provide you with publication identification tools to avoid any plagiarism or unwanted recontextualization. In addition, clear conditions for reuse are defined in the chosen license (e. g. CC).

### Availability of Open Access publishing locations

#### **I can't find a suitable Open Access journal or book collection for my discipline. Existing journals or collections of Open Access books do not seem to ensure the quality of my publication.**

Consult [DOAB](#) and [DOAJ](#) for approved publishers and places of publication. Quality does not depend on the economic model, but for example on the quality of the scientific committee, a rigorous peer review process and on the availability of services (interoperability, metrics, altmetrics, annotations, etc.).

#### **The self-archiving in SERVAL does not give enough visibility to my work and takes too long.**

Self-archiving is the easiest way to make your work openly accessible and reusable. You will find guides and videos on how to use SERVAL on [UNIL Open Access website](#).

Social networks such as Academia.edu and ResearchGate do not offer enough transparency on how your publications will be used in the future or whether they will even be available. In addition, depositing your publication in these platforms is not in line with the Open Access mandates of most funders.

On the contrary, self-archiving in SERVAL perfectly meets current Open Access requirements. SERVAL also guarantees the long-term preservation of your manuscripts. SERVAL is now indexed in Google, Google Scholar and PubMed and others. The full texts filed in SERVAL therefore enjoy good visibility. In September and October 2018 we reached almost 100,000 downloads. [You can check SERVAL usage statistics](#).

### Reputation and evaluation of research

#### **My research community has certain expectations and judges my work according to the prestige of the publishing venue. I am concerned that Open Access publishing may damage my reputation and, as a result, reduce my chances of receiving grants and advancing my career.**

Always ensure that the publisher has a high quality peer review process and can guarantee the quality of your publication. This can have a positive impact on your academic reputation. [DOAB](#) and [DOAJ](#), for example, certify publishers of monographs and articles.

#### **Publishers who charge authors may be primarily interested in profits and, therefore, provide poor quality peer review and generally inferior publications.**

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<sup>3</sup> This section is based mainly on Elisabeth Heinemann, Andrea Bertino, Francesca Di Donato, Aysa Ekanger, Elena Giglia, Barbara Jędraszko, Alessia Smaniotto. 2018. OPERAS Advocacy White Paper. <http://doi.org/10.5281/zenodo.1324036>

Publication costs are usually justified. [QOAM](#), for example, reveals the prices of many Open Access journals. Ask your publisher about cost transparency.

**If I publish my work in Open Access, traditional and prestigious publishers may not accept my research in the future.**

That's a misconception! Editors can evaluate your work more easily if it is in Open Access. If you absolutely must publish with paid access, deposit a version of the manuscript in SERVAL. Consult [SHERPA/RoMEO](#) for publishers' self-archiving policies.

### Financial issues

**I do not have access to funds to cover the costs of Open Access publishing.**

Journals may offer fee waivers for authors who do not have access to Open Access funds. For both journals and monographs, you can search for Open Access publishers that do not require the payment of publication charges. If the only alternative is toll-access based, don't forget to deposit a version of your work in SERVAL. Consult [SHERPA/RoMEO](#) for publishers' self-archiving policies.

**If I publish my monograph in Open Access, I will lose potential royalties.**

Monograph sales are declining, and royalties for scholarly monographs are generally low, including for paid monographs. Ask your publisher for an estimate of expected sales and royalties and compare them to the benefits of Open Access.

### Legal issues

**My searches will not be protected when published in Open Access.**

Make sure that your Open Access publication is licensed under a CC license. All CC licenses must be attributed, unless it has been explicitly stated that the

author does not wish his work to be attributed to them. CC licenses make it unacceptable to misrepresent or misuse an author's work.

**Open Access makes it more difficult to use third party content in my publications.**

There is no difference in the compensation of third party rights for closed or free access works. CC licenses, for example, greatly facilitate the inclusion of third-party content by allowing exclusions in the license.

**I don't know which license to choose.**

Talk to your publisher and consult [the CC License Selector](#) to help you define appropriate terms of use and reuse for your work.

## Glossary of terms

### Assignment

A term used when you transfer your copyright to a third party, who becomes the exclusive owner. The alternative is to license your rights.

### Creative Commons

A non-profit organization that promotes the sharing and reuse of works and offers legal tools. It offers Creative Commons licenses.

### Copyright

System for the protection of authors and their works.

### Licence

Term used when the author retains his copyright but allows the work to be used by a third party. There are two types: exclusive and non-exclusive.

### Open Access

International movement promoting free access to the fruits of scientific research for everyone.

### Hybrid journals

Subscription journals that offer the possibility of publishing certain articles in Open Access mode for a fee.

### SERVAL

SERVEur Académique Lausannois. It is the institutional repository of the University of Lausanne and the works should be deposited there. More information and tutorials.

### Standard Terms of Business

A term that describes the general terms and conditions frequently used. If accepted, these conditions have the same status as a contract. Content may change depending on the company.

### Gold Road

A way to publish in Open Access. In exchange (sometimes) for a publication fee, the article is published in Open Access immediately.

### Green Road

The other main way of publishing in Open Access. This approach involves reaching an agreement with the publisher to allow the simultaneous deposit of the work (or one of its versions) in an institutional repository, which is then made available to everyone typically after a waiting period (embargo).