



**MINISTÈRE
DE L'ENSEIGNEMENT
SUPÉRIEUR
ET DE LA RECHERCHE**

*Liberté
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**Observations from the French Ministry for Higher Education and Research on
the Open Science and Copyright Report presented to the Higher Council of
Literary and Artistic Property (CSPLA)**

The French Ministry for Higher Education and Research (MESR – Ministère de l'Enseignement Supérieur et de la Recherche) wishes to recall the international background to open science policies. The announcements made by the President of the Republic of France on 7 December 2023 further reinforce France's ambition as a major scientific power, against a backdrop of heightened competition, geopolitical uncertainties, reindustrialization and the need to adapt to rapid changes related to the boom of artificial intelligence and cyber risk. The open science policy is one of the catalysts of this scientific policy and a decisive factor for the influence and visibility of French research around the globe.

Open science policies have become widespread around the globe and reach far beyond the scope of scientific publications. They concern all scientific processes, covering not just publications but also research data and clinical trials. This paradigm is now strongly promoted by UNESCO, the European Union and the G7. It represents a major public policy challenge as regards the influence of French science around the globe. It also represents a decisive challenge for research advancement in general, and reproducibility in particular. In this respect, there is no French exception: France is part of this movement and must pursue its role as a major scientific power.

France namely introduced the concept of "bibliodiversity" (cultural diversity applied to the writing and publishing world) into the public debate, to uphold the principle of great diversity in the publishing landscape, versus the ever-growing publishing concentration of a few scientific publishing giants. Generally-speaking, the publishing expenditure of higher education and research establishments and bodies is not just very high, but has been increasing very rapidly due to the development of abnormally-high publishing costs. At the same time, the French Ministry for Higher Education and Research (MESR) and higher education and research establishments and bodies have secured the turnover of French publishers, over five years, as part of the support plan for scientific publishing.

The mission report on open science and copyright contributes, as such, to the public debate in this area. The French Ministry for Higher Education and Research (MESR) wishes to make a certain number of observations on this report.

1. With respect to the rights retention system

As Article L. 122-7-1 of the French Intellectual Property Code (CPI) provides, researchers may make their works available to the public, by disseminating the results of their research in open access on platforms such as HAL, the open archive platform, for example.

Prior to disclosing these, researchers may protect their works through open licences, which allow the copying, transmission and, at times, even the modification of their creation, under specific conditions. A "Creative Commons" licence attached to the work as such informs readers of

permitted uses and unlawful uses based on the version selected (sharing, modification, commercial use, etc.).

The authors explicit consent is hence clearly required before their publications are used, including in the case of an open licence. The rule for using an open licence should only mean that researchers are offered this type of licence if they have no other choice. By default, there is no free access rule for research publications.

Criticisms (page 47) relating to the mention of the reversibility of the licence in the guide on the rights retention strategy for authors are based on what is, without doubt, too quick a reading of the CNRS guide. This guide aims to enable authors to keep the licence they have chosen and, in no way, directly or indirectly prevents authors from changing the licence they have selected. As such, nothing prohibits researchers from disseminating their works under an open licence and research funders (State operators, funding agencies, supervisory bodies, etc.) from offering such a licence, provided it is not compulsory.

No legal or regulatory provision requires researchers to conclude a publishing agreement to publish their research results. The publisher, as an intermediary, has no exclusive right under laws or regulations as regards publishing scientific work. Notwithstanding, the French Ministry for Higher Education and Research (MESR) has long recommended that a balanced, non-exclusive assignment of rights agreement be drawn up between authors and publishers.

The Ministry wishes to reiterate that a "Creative Commons" (CC BY-NC, for non-commercial) licence type exists, which excludes commercial use and which authors may use.

Moreover, it is important to state that the use of "Creative Commons" licences is widespread throughout gold open access publishing. Elsevier, Springer and Wiley, for example, announce on their site that all their open access publications are published under the "Creative Commons" licence system. Consequently, this type of licence is currently becoming widespread in gold open access as well as diamond open access.

Finally, it should be recalled that, during the French Presidency of the Council of the European Union, Council conclusions were approved by the 27 member states; conclusions that namely stipulated that "authors of research publications or their institutions should retain sufficient intellectual property rights to ensure free access, leading to broader dissemination, valorisation and reuse of results improving the fair balance of the publishing business models"¹. In this text, as in the rest of public policy items, these provisions are not compulsory but proposed.

2. With respect to publishing without publishing costs

The existence of publishing referred to as diamond open access has become necessary given the inequalities in access to the right to publish, in the field of publishing with publication costs. The model, which is becoming widespread, is not the diamond open access publishing one but publishing with compulsory publishing costs in order to be able to publish. This represents a significant budget risk as well as a major risk for researchers around the globe. It is actually an economic stumbling block to publishing in many journals. The model known as gold open access is potentially the most serious threat to academic freedom, as it introduces an economic barrier to the ability to publish in a growing number of journals, when scientific criteria alone should prevail. This is also clearly stated in the conclusions of the Council of the European Union, in June 2022, on Research assessment and implementation of Open Science, which underlines "*that the publication of any research output should be based on the assessment of its quality, and that any potential bias,*

¹ "The authors of research publications or their institutions should retain sufficient intellectual property rights to ensure open access, leading to broader dissemination, valorisation and reuse of results improving the fair balance of the publishing business models".

*inter alia due to expenditure capacities, at researcher or organizational level should be tackled*².

There is no public policy aimed at the widespread use of the diamond open access model. To date, according to the Open Science Barometer, diamond open access publishing represents 4.5% of articles produced by French researchers. And the trend is towards reducing this percentage.

3. With respect to Article L. 533-4 of the French Research Code (taken from Article 30 of French Act No. 2016-1321 of 7 October 2016 for a Digital Republic) and the consideration of wages in the 50% calculation

Contrary to what is stated in the report (page 53), wages must be taken into account when calculating funding "at least half of which must come from public funds". Preparatory parliamentary work also shows quite clearly that the calculation method must, realistically within the framework of public research, include wages on a "full cost" basis.

The impact study of Article 30 of the French Act of 7 October 2016 as such provides the following clarifications: "*By choosing a threshold of 50% of public funding to classify the research activities covered by the measure proposed, the French Government has chosen a simple, quantifiable criterion, addressing the need to clearly distinguish between activities funded essentially by private funds, which are not intended to be covered. The criterion can naturally be included and assessed in agreements concluded between public research operators and businesses. This approach is also the one retained by Germany and Italy, main countries to have legislated on open access. Funding costs are determined based on a "full cost" analysis, which namely includes the labour costs related to research work*".

4. With respect to bibliodiversity

Proposal 16 suggests that the European Union and Coalition S are developing a policy that benefits a single model, whereas the three models (gold, green and diamond open access) are being developed. It is indeed a bibliodiversity system that is promoted.

5. General points

- The French Ministry for Higher Education and Research (MESR) agrees with the authors of the report the ambition to give authors a free choice of publishing licence and also agrees with the idea that copyright should not be a stumbling block to open science. The French Ministry, as such, agrees with the proposal to consider rights retention as a simple option offered to researchers.
- The French Ministry for Higher Education and Research (MESR) also agrees with the ambition to promote a well-developed, diversified publishing sector that is effectively complementary between private and public publishing.
- Finally, the French Ministry for Higher Education and Research (MESR) also agrees on the importance given to submitting work to open archives to increase the French open access rate. Considerable progress has been made in this area since 2018. The observation made since the mid-1990s confirms that green open access can coexist harmoniously alongside strong, thriving publishing, as the two activities are distinct (open archiving and publishing) and perfectly complementary.

² "*That the publication of any research output should be based on the assessment of its quality, and that any potential bias, inter alia due to expenditure capacities, at researcher or organizational level should be tackled*".