Universität Zürich[UZH]

Kolloquium für Doktorierende im Öffentlichen Recht

Prof. Dr. Elisabetta Fiocchi Malaspina

20 May 2025

Universität Zürich[UZH]

Open Science

Marc Thommen

Universität Zürich[UZH]

1. What is Open Science?
2. What is Open Access?
3. What is Open Data?
4. What is the Law?
5. What can I do?

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1. What is Open Science?
2. What is Open Access?
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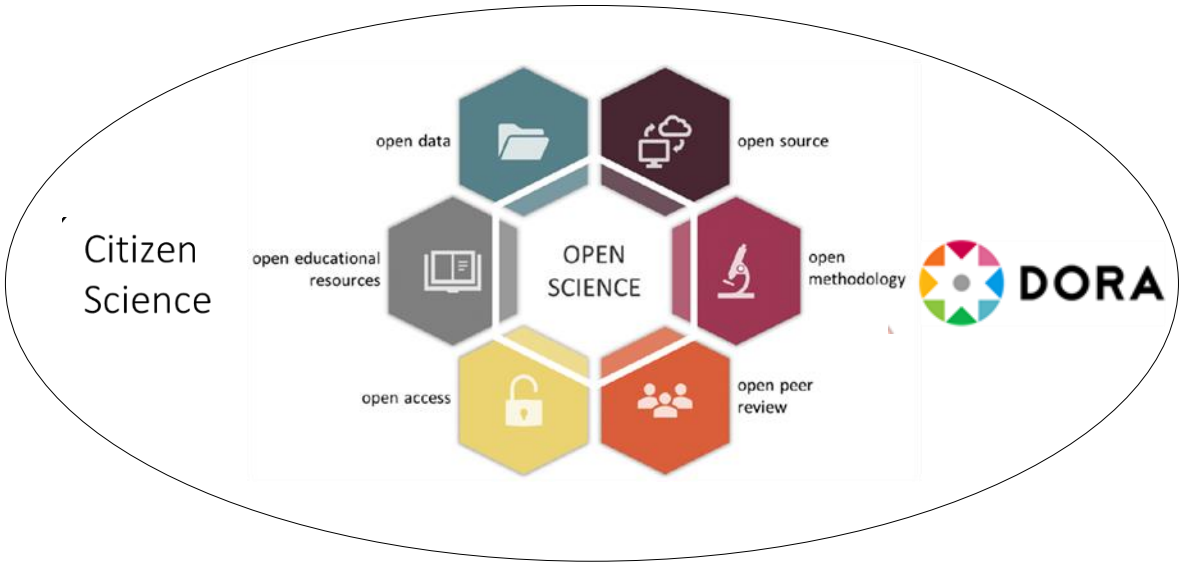
What is Open Science?

Open Science aims to make any academic output, be it data, publications or methods, accessible at any stage of the research process.



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1. What is Open Science?
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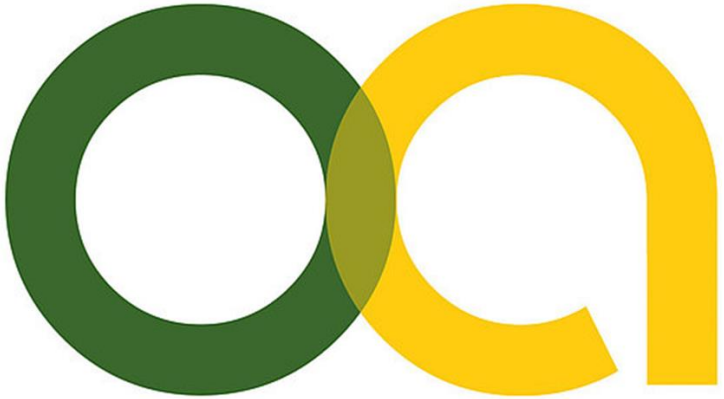
What is Open Access?

Scholarly output is considered Open Access if it is «digital, online, free of charge, and free of most copyright and licensing restrictions», P. Suber (2012), Open Access, MIT Press



Open-access.net

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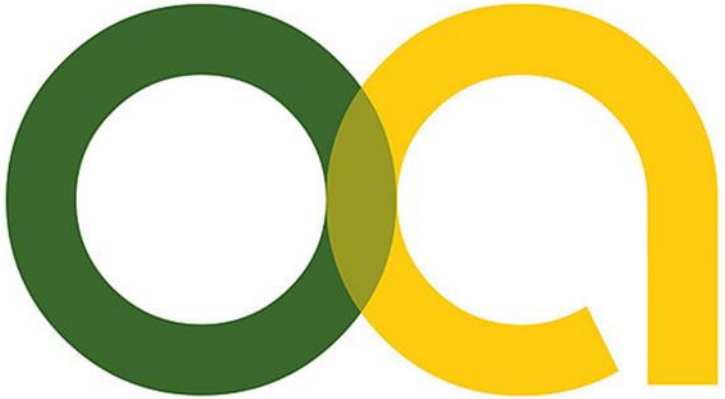
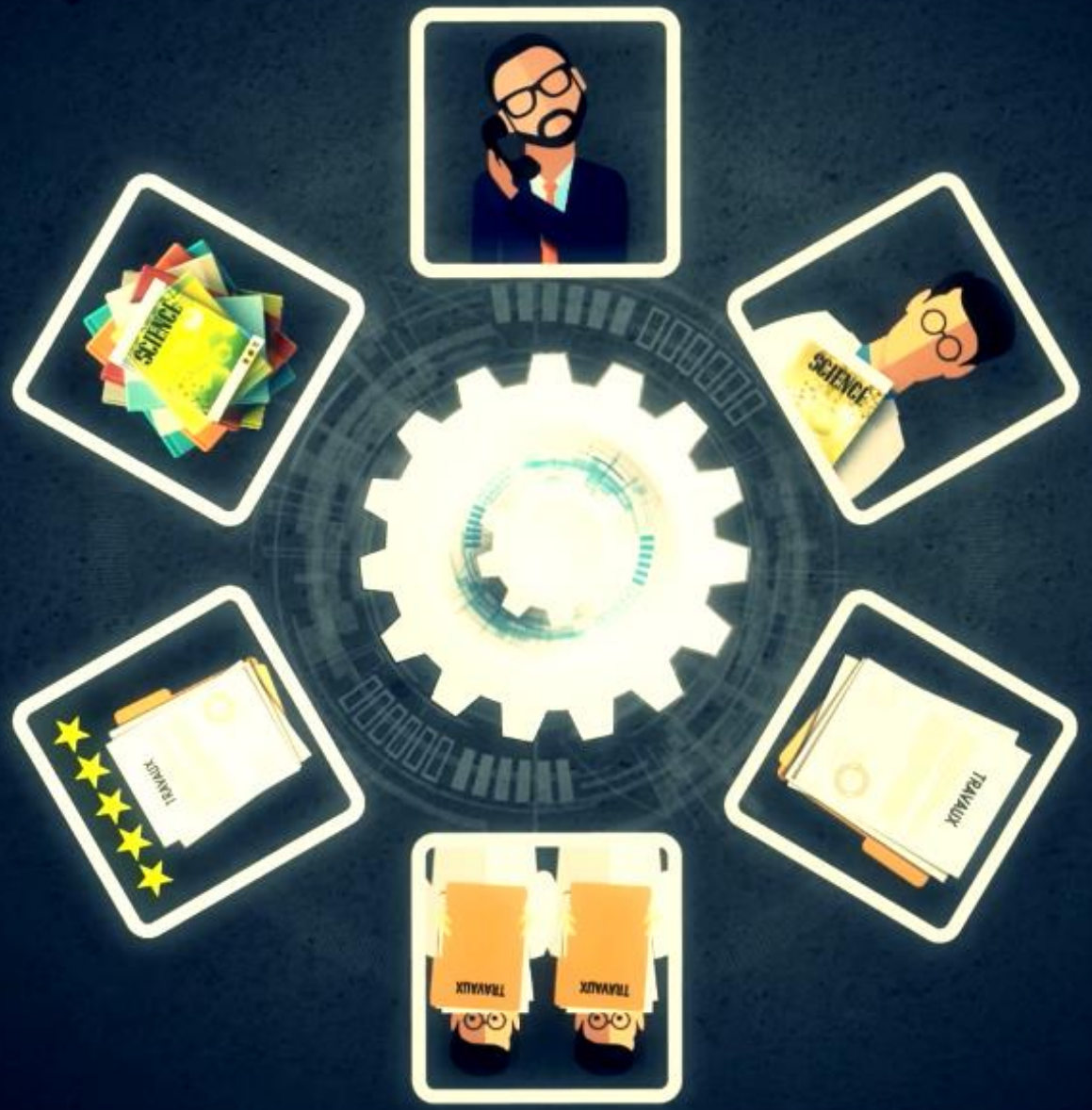
What is Open Access?

- 2015: Swiss Libraries spend 70 Million Swiss francs on licenses and fees for publishers.
- Researchers pay another 6 million CHF to publish results in scientific journals.



Swissuniversities – Nationale Open-Access-Strategie für die Schweiz Aktionsplan, 8. Februar 2018



Quelle: https://www.youtube.com/watch?v=WnxqoP-c0ZE

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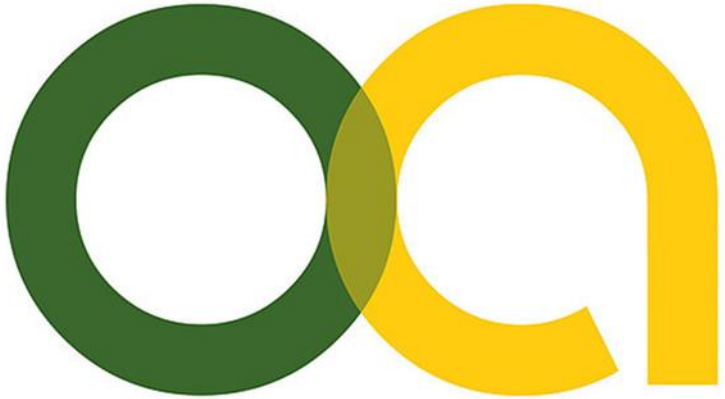
What is Open Access?

Who owns the knowledge generated at universities?



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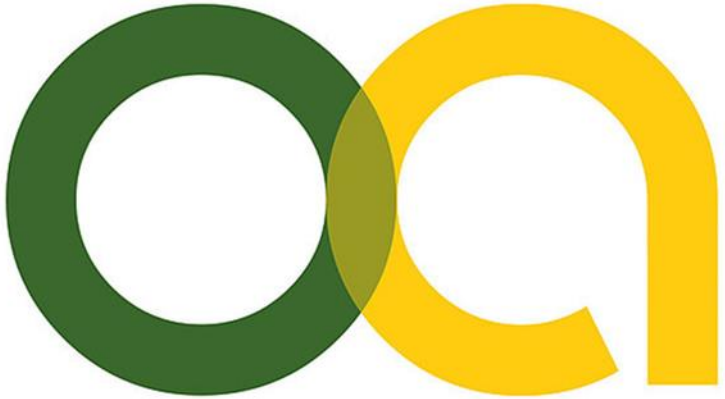
What is Open Access?

Which paths lead to open access?



HSLU – Wege zu Open Access

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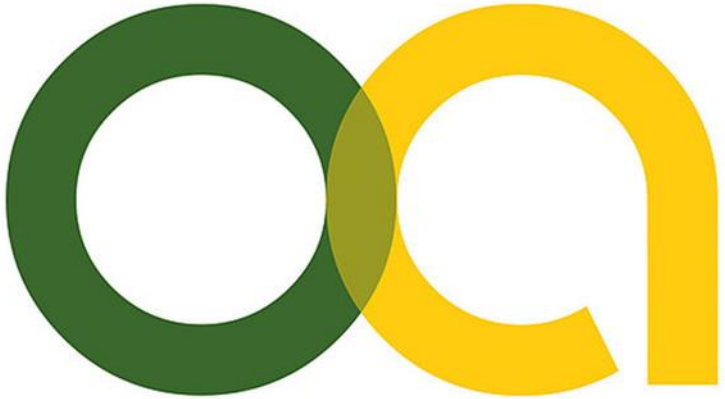
Platinum/Diamond Open Access

The work will be made freely available right away and in its entirety to anyone worldwide. No APC will be charged to the authors. Creative Commons licences allow sharing and reuse.



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Platinum/Diamond Open Access

Pros:

- Immediate Open Access
- No costs for authors

Cons:

- Need for institutional funding

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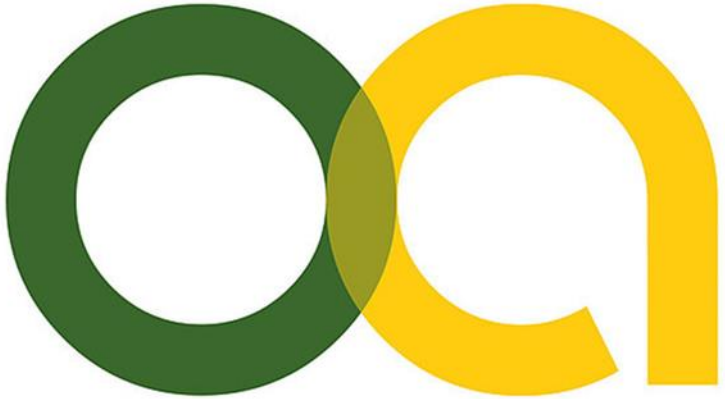
Gold Open Access

Articles/books are immediately freely accessible. Article/Book Processing Charges (APC/BPC) levied. Creative Commons licences allow sharing and reuse.



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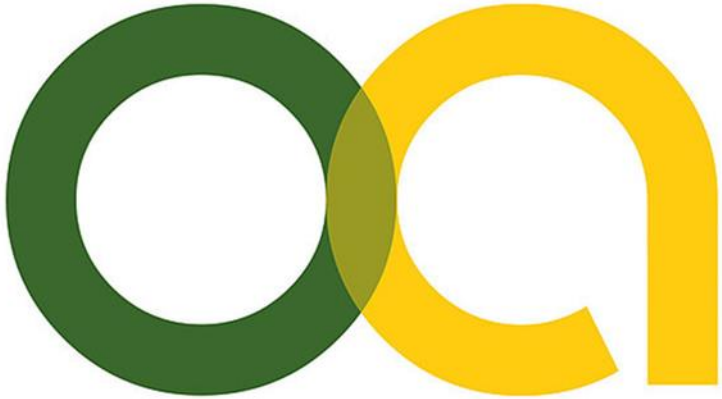
Gold Open Access

Pros:

- Immediate open access

Cons:

- APC/BPC for authors
- False incentives for publishers
- Predatory journals



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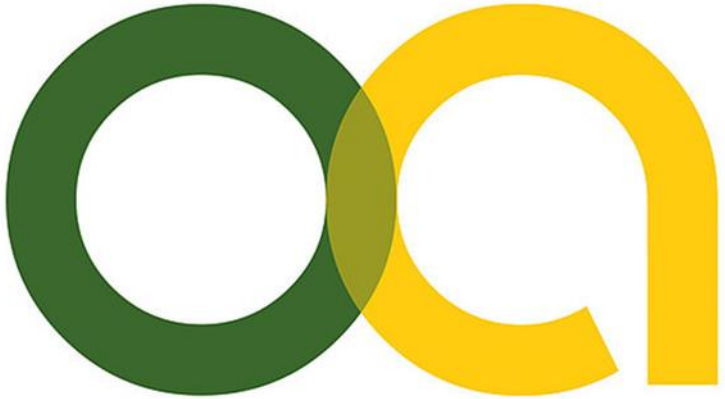
Green Open Access

Article and books are first published traditionally in a subscription journal or book series. Publishers then allow a version of the work to be published (usually after an embargo period) via a repository.



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Green Open Access

Pros:

- No APCs

Cons:

- No immediate Open Access
- Advantage for subscribers (primeur)
- Authors pay BPCs
- Publishers retain copyright

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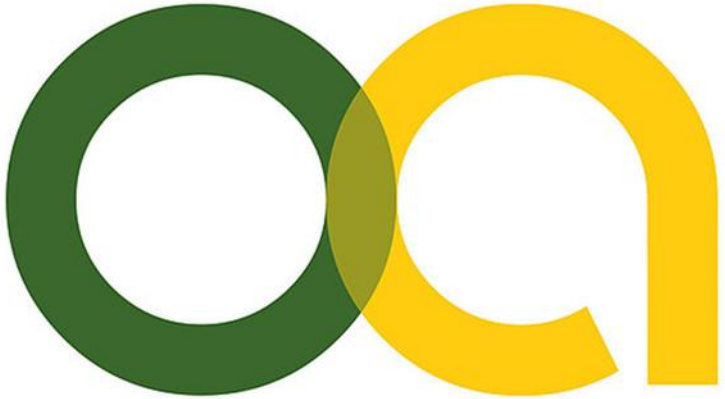
Hybrid Open Access

"Many journal publishers offer authors to buy out individual articles from traditional paid journals, which are then immediately open access."



HSLU – Wege zu Open Access

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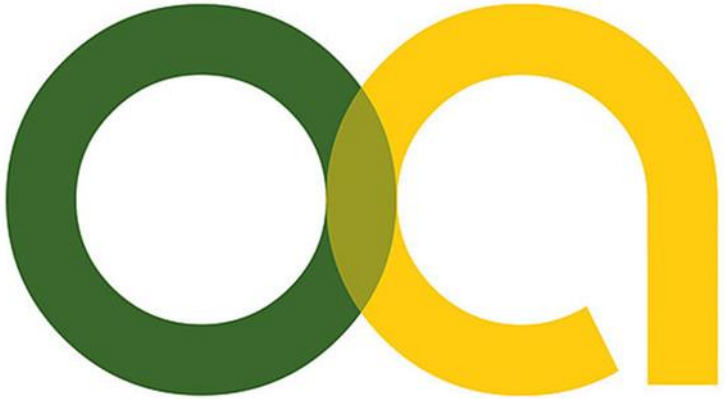
Hybrid Open Access

Pros:

- Articles are immediately available open access

Cons:

- Hybrid leads to double dipping (APC and subscription costs).



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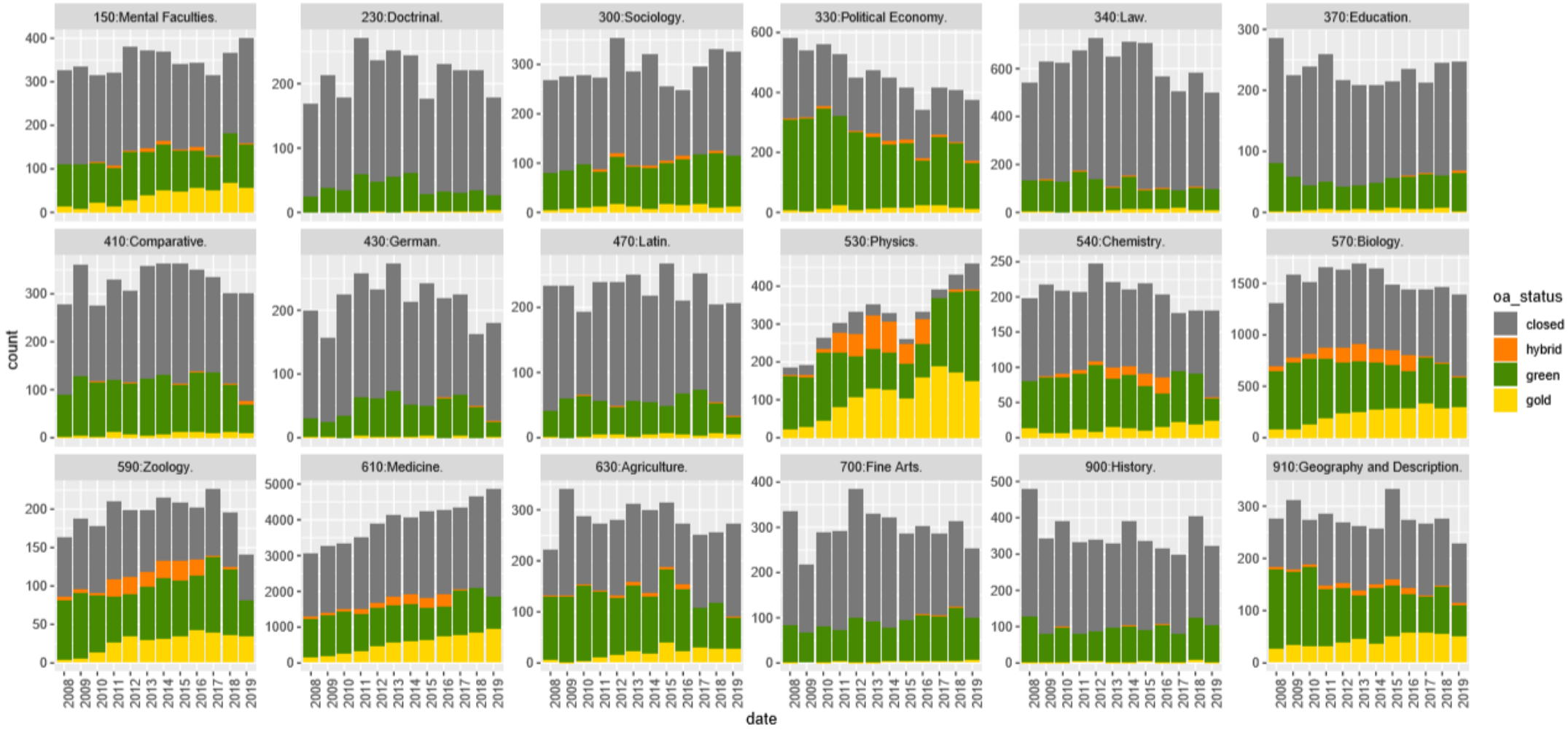
What is Open Access?



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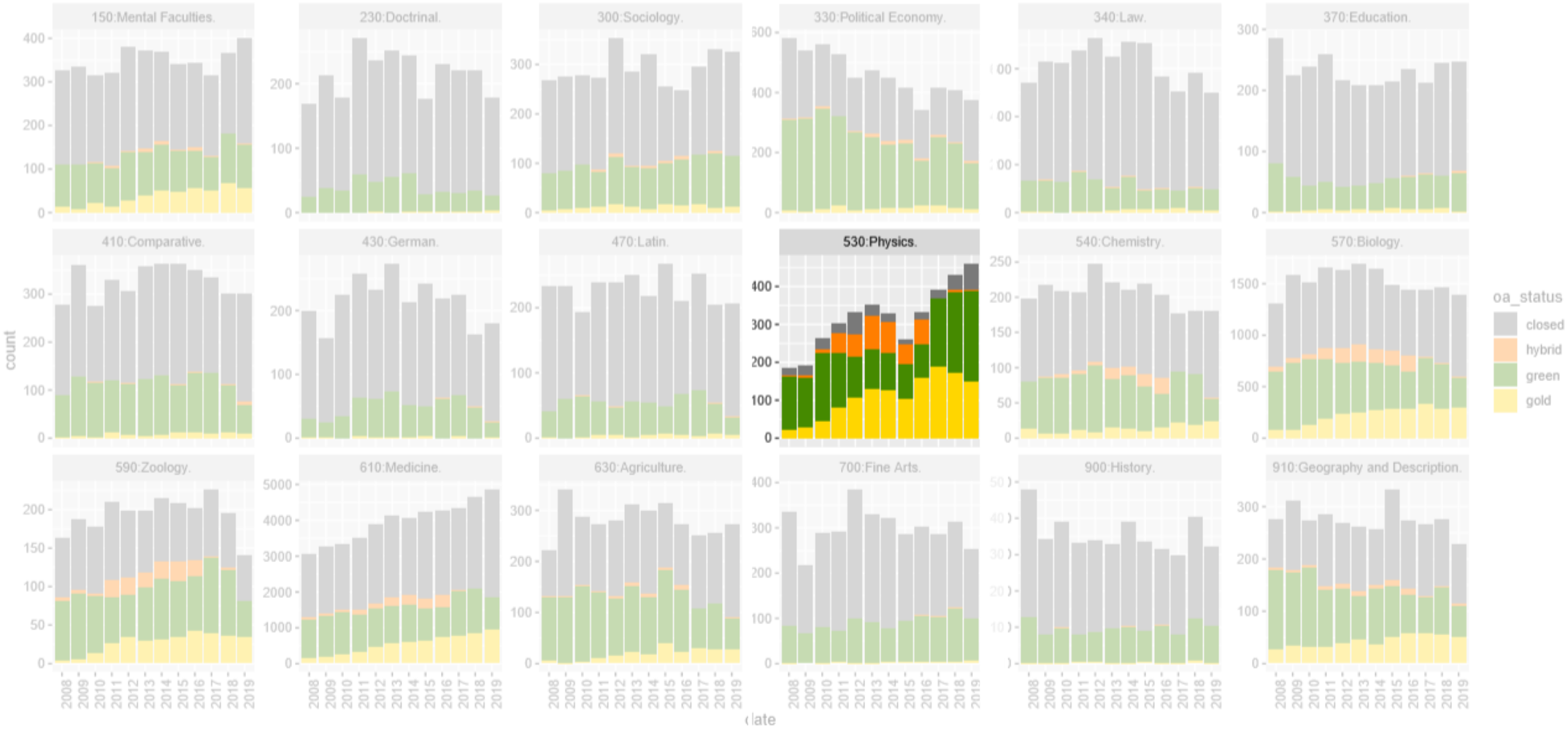
What is Open Access?



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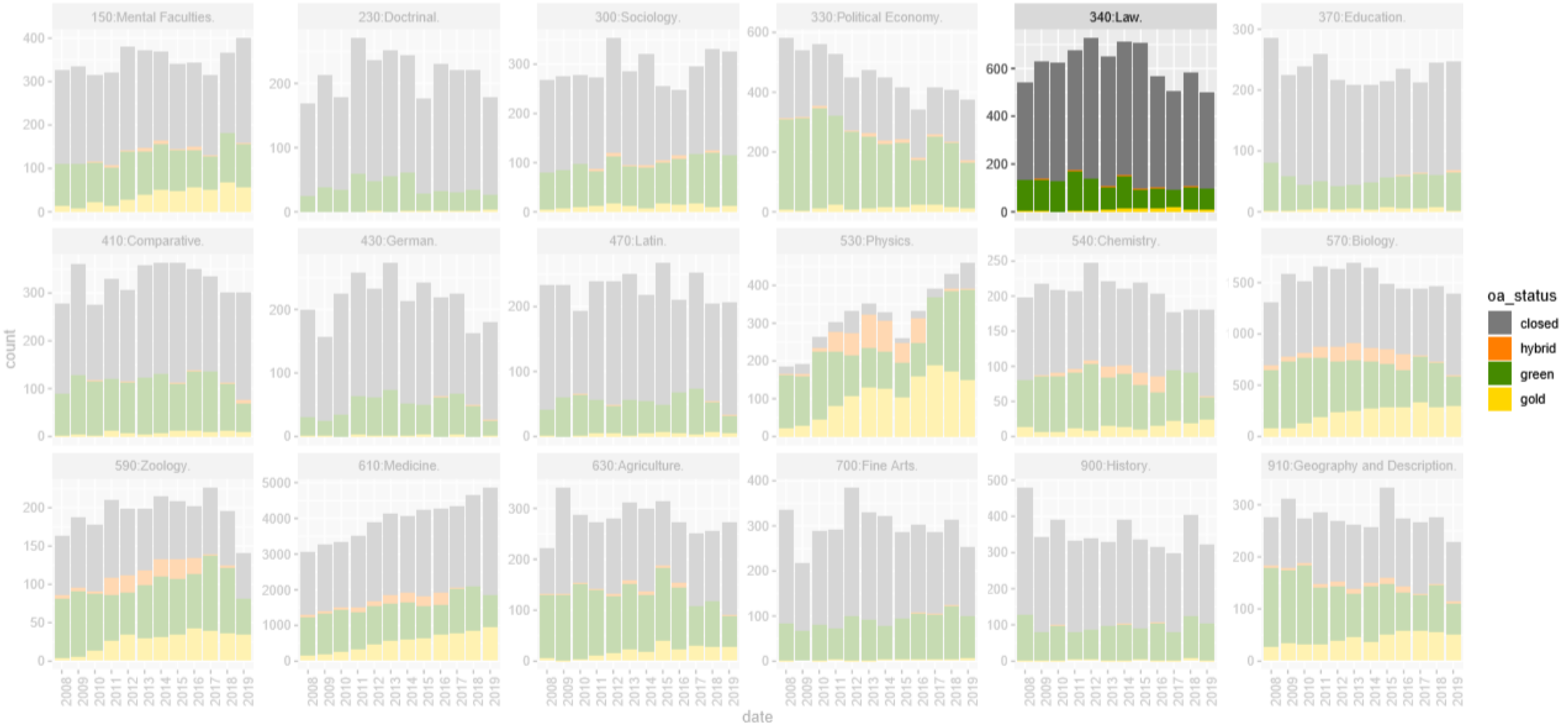
What is Open Access?



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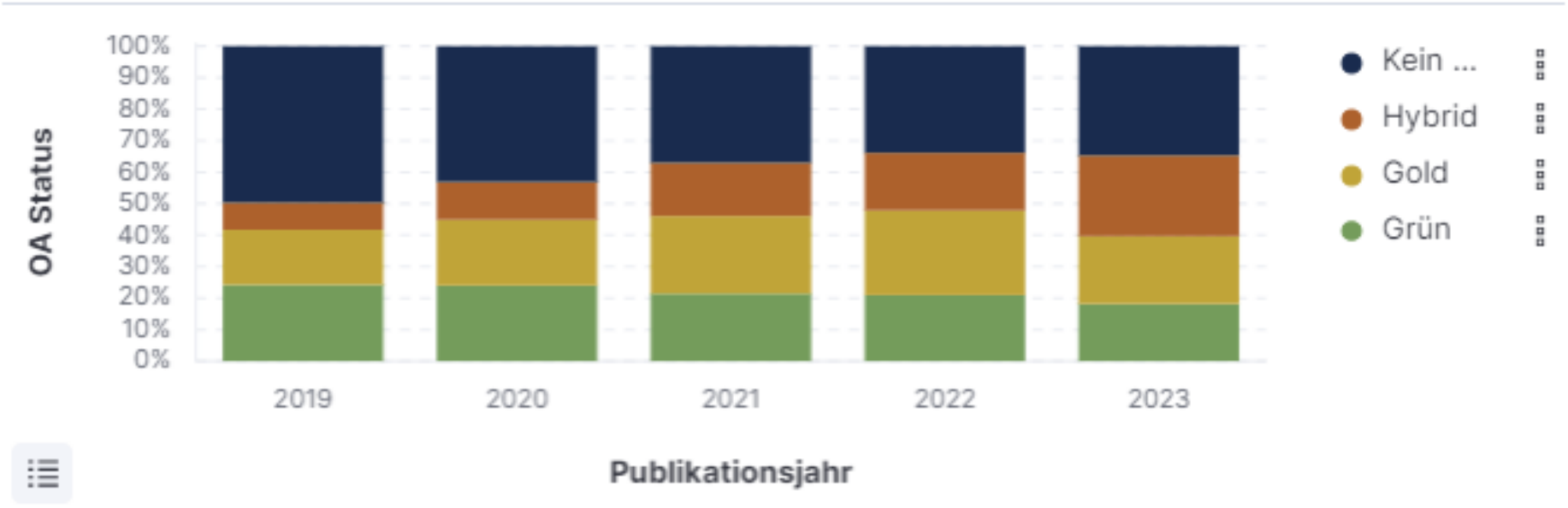
Open Access Verteilung



Weitere Analysen und Dashboards im Open Access Monitor der UZH

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What is Open Data?

Open data means making data available without restriction. UZH expects the research community to make research data as openly available as possible.

UZH Open Science Policy 2.2

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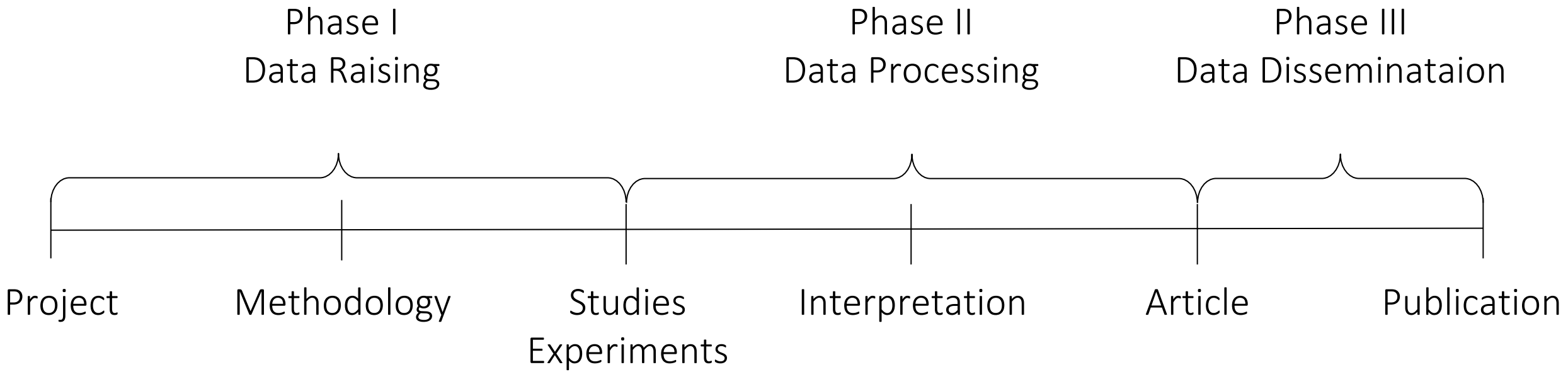
What is Open Data?



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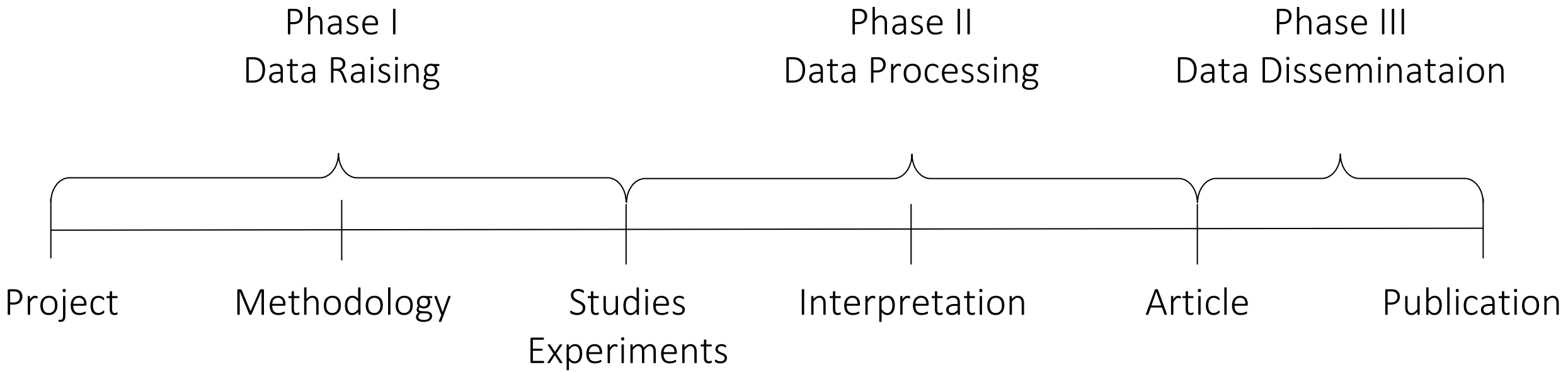
What is Open Data?



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Art. 20 Constitution – Academic freedom

Freedom of research and teaching is guaranteed.

Freie Bahn für Open Access

Geteiltes Wissen · Die Verfassung und die Wissenschaftsfreiheit in der Schweiz lassen es zu, dass staatlich geförderte Forschungsergebnisse für jedermann kostenlos einsehbar sind.

Das im Urheberrecht verwurzelte Persönlichkeitsrecht eines Autors ist in den letzten Jahren durch verschiedene Gerichtsfälle bekannt geworden, so etwa kürzlich durch einen Entscheid des Bundesgerichts (BGE 142 III 387 vom 19. April 2016). Dieses gab einem Waadtländer Ehepaar recht, das die Terrasse seiner Wohnvilla gegen den Willen des Architekten baulich anpassen wollte. Der Architekt machte vergeblich geltend, durch den Umbau werde sein Werk entstellt, was sein Urheberrecht Anteil hat und ob dieser Anteil nicht auch verfassungsrechtlich geschützt ist. Diese Situation liegt in der Bundesrepublik Deutschland vor, wo das Urheberpersönlichkeitsrecht eben durch Artikel 2 Absatz 1 i. V. m. Artikel 5 Absatz 3 GG verfassungsrechtlich geschützt ist. Dieses schützt die Beziehung des Urhebers zu seinem Werk in umfassender Weise. Er kann demnach autonom entscheiden, ob er sein Werk überhaupt verwerten möchte, und wenn ja, in welcher Form. Bei dieser Rechtslage werden geschützt werden, vom Anteil am verfassungsrechtlichen Schutz aus. In der Schweiz gibt es daher kein verfassungsrechtliches Urheberpersönlichkeitsrecht. Sollte der Gesetzgeber mittels Open-Access-Pflichten in die Urheberrechte von Wissenschaftern eingreifen, so steht Artikel 10 BV nicht zur Verfügung. Es bleibt allein die Wissenschaftsfreiheit übrig.

Die Wissenschaftsfreiheit (Artikel 20 BV) zählt als Kommunikationsgrundrecht zwar zu den klassischen Freiheitsrechten und bildet eigentlich einen Sonderfall der Meinungsfreiheit und der persönlichen Freiheit. Sie unterliegt als Freiheitsrecht der Schrankenregelung des Artikels 36 BV. Damit lassen sich die allgemeinen Voraussetzungen von solchen Eingriffen, die gesetzliche Grundla-

Andreas Kley, plädoyer 3/18, 36 ff.

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§ 65 Personnel Ordinance UZH

If university employees create a copy-righted work in the performance of their employment contract, they shall be entitled to the exploitation rights to this work.

Personalverordnung der Universität Zürich (PVO-UZH)

(vom 29. September 2014)[1, 2]

Der Universitätsrat,

gestützt auf § 11 Abs. 2 des Universitätsgesetzes (UniG) vom 15. März 1998[5],

beschliesst:

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Public Procurement Laws

Publicly funded research institutions and their researchers are fundamentally subject to public procurement law... Consequently, the basic principles of public procurement law are applicable to traditional publication models. In the light of the principle of economic efficiency, ... the purchase of state-funded publication services from commercial publishers ... appears to be an inefficient use of state funds. From a procurement law perspective, there is even an obligation for universities to encourage their researchers to publish in open access journals... [Translation by DeepL]

swissuniversities

Thouvenin et al. Regulatory Framework: Zweitveröffentlichungsrecht und Open Access als regulatorische Herausforderung, 2023

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Soft Law

- Strategie Open Access 2024 SNF/swissuniversities
- LERU Open Science Roadmap 2018
- UZH Open Science Policy 2020
- San Francisco Declaration on Research Assessment (DORA)

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SNF - Monitoring

- In 2023 SNSF started monitoring Open-Access-Publication of funded research

Swiss National Science Foundation

Open Access Reminder 2023

Dear Prof. Elisabeth Stark

The SNSF is committed to ensure Open Access to all publications resulting from its funding. Since 2008, Open Access is required by the funding regulations. Unfortunately, our monitoring shows that 13% of all publications emanating from SNSF-funded research are not yet meeting this requirement.

Our Open Access monitoring workflow was unable to identify any openly accessible version of the following article(s):

- Dürscheid Christa (2020) *Handbuch Sprachkritik* https://doi.org/10.1007/978-3-476-04852-3 resulting from grant *What's Up, Switzerland? Language, Individuals and Ideologies in mobile messaging. (160714)*

- Pinzin Francesco and Poletto Cecilia (2021) *Indefinite Objects in Micro-variation. A Cross-linguistic Analysis of the Distribution of Partitives Articles, Bare Nominals and Definite Determiners in Northern Italy* (published in: Studia Linguistica)* https://doi.org/10.1111/stul.12187 resulting from grant *Distribution and function of 'partitive articles' in Romance (DiFuPaRo): a microvariation analysis (172751)*

- Siebenhaar Beat (2020) *Informalitätsmarkierung in der WhatsApp- Kommunikation (published in: Register des Graphischen)* https://doi.org/10.1515/9783110673241-004 resulting from grant *What's Up, Switzerland? Language, Individuals and Ideologies in mobile messaging. (160714)*

- Felder Samule (2020) *Individuelle Verschriftungsmuster in schweizerdeutschen WhatsApp-Chats (published in: Register des Graphischen)* https://doi.org/10.1515/9783110673241-005 resulting from grant *What's Up, Switzerland? Language,*

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Secondary Publication Right/Duty

Art. 381 para. 1bis Code of Obligations: The right to make publicly available free of charge a contribution to a scientific journal or a scientific collective work financed wholly or partly from public funds and to make the necessary reproductions may not be transferred to the publisher.

Thouvenin et al. Regulatory Framework: Zweitveröffentlichungsrecht und Open Access als regulatorische Herausforderung, 2023

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What is the Law?

1. Third-party funded research MUST be published Open Access
2. University-funded research SHOULD be published Open Access
3. Private research MAY be published Open Access

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1. What is Open Science?
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What can I do?

Get yourself an ORCID

(Open Researcher Contributor Identification)

Example; https://orcid.org/register

ORCID
Connecting Research and Researchers

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What can I do?

Pay attention to DOI

(Digital Object Identifier)

Example; https://www.doi.org/

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What can I do?

- arXiv (physics, maths, statistics…)
- Zenodo (general)
- LawArXiv
- Social Science Research Network (SSRN)
- ZORA (working papers)

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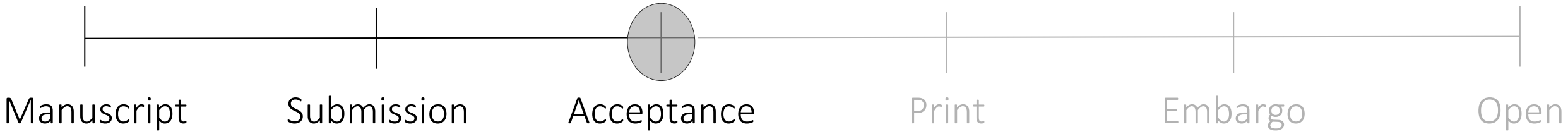
What can I do?

- Publish (Author accepted manuscript)
- Green Open Access (pre-print)



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What can I do?

sui generis

- Immediate Open Access
- Platinum Open Access Journals

What can I do?

Summers (2022); Blattner (2019)

Publish your Book Open Access

- Editions Juridiques Libres
- EIZ-Publishing
- sui generis
- Oxford/Cambridge University Press
- Carl Grossmann…

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What can I do?

creativecommons.ch

With a CC BY license, the author permits use by others on the condition that the author and license are specified. We recommend: CC-BY-SA

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What can I do?

Schweizerischer Nationalfonds

- Funding for open access publication of dissertations, even if they do not originate from SNF projects.
- Max. Embargo: 0 months
- Application on mySNF.ch

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What can I do?

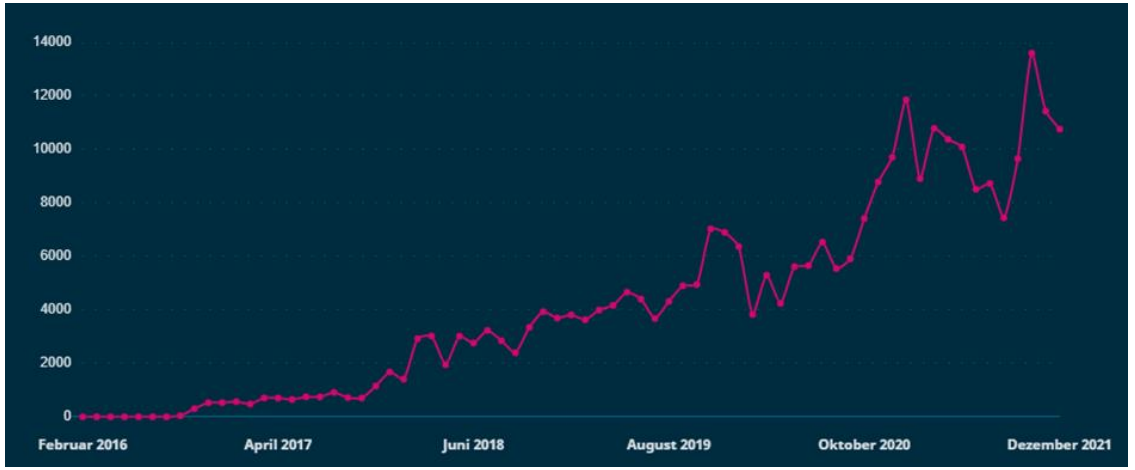
- Green Open Access
- institutional repositories
- Geissbühler (2021): 3 months
- lexcampus.swisslex.ch

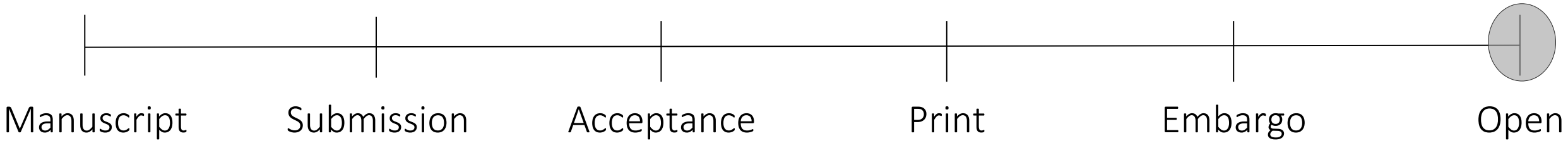
What can I do?

- Recommendations for safeguarding copyrights from the beginning and a template with recommendations for obtaining subsequent consent for self-archiving can be found here: [Verlagsvertrag und Autorenrechte | Universitätsbibliothek Zürich | UZH]
- Fixed guidelines of large publishers for self-archiving/secondary publication: [Welcome to Sherpa Romeo - Sherpa Services]

What can I do?

- 10.000 Downloads/month
- Ø 480 Downloads/article
- Top articles over 25.000 downloads





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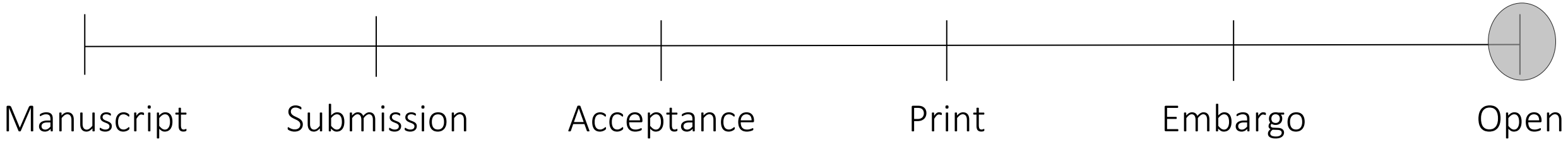
What can I do?

Get engaged, we need your support!



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Kolloquium für Doktorierende im Öffentlichen Recht

Prof. Dr. Kerstin Vokinger

Prof. Dr. Tilmann Altwicker

Freitag, 20. September 2024

Universität Zürich[UZH]

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Marc Thommen