



“Open access” provisions in copyright contract law to the benefit of (scientific) authors

*Prof. Marie-Christine Janssens – CiTiP (Centre for IT & IP
Law) KU Leuven*

European Copyright Society – University of Oslo – 24 May 2019



Peculiarity of scientific authors (2)

(& Differences with other sectors of content production)

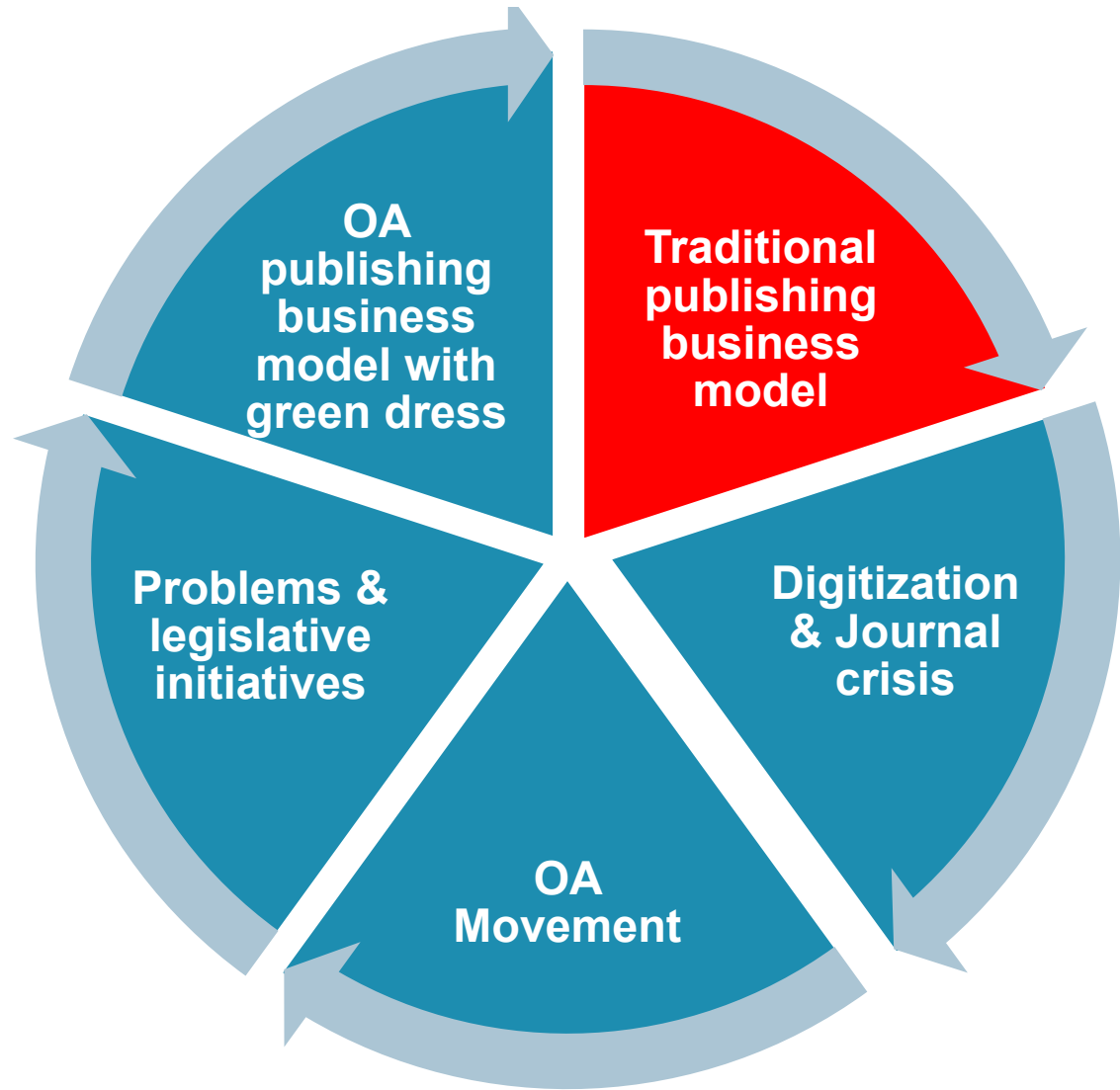
□ Different context of scientific research

- Specific values (“universalism, disinterestedness, originality, organized skepticism and communalism” (Merton 1942))
- Specific goals: Contribute to advancement of science through open exchange of ideas and own results
 - Sharing and re-use of scientific outcomes is part of duties
- Specific incentives: publication = to gain reputation rather than economic benefits
 - In the scientific publishing industry, authors are seldom paid

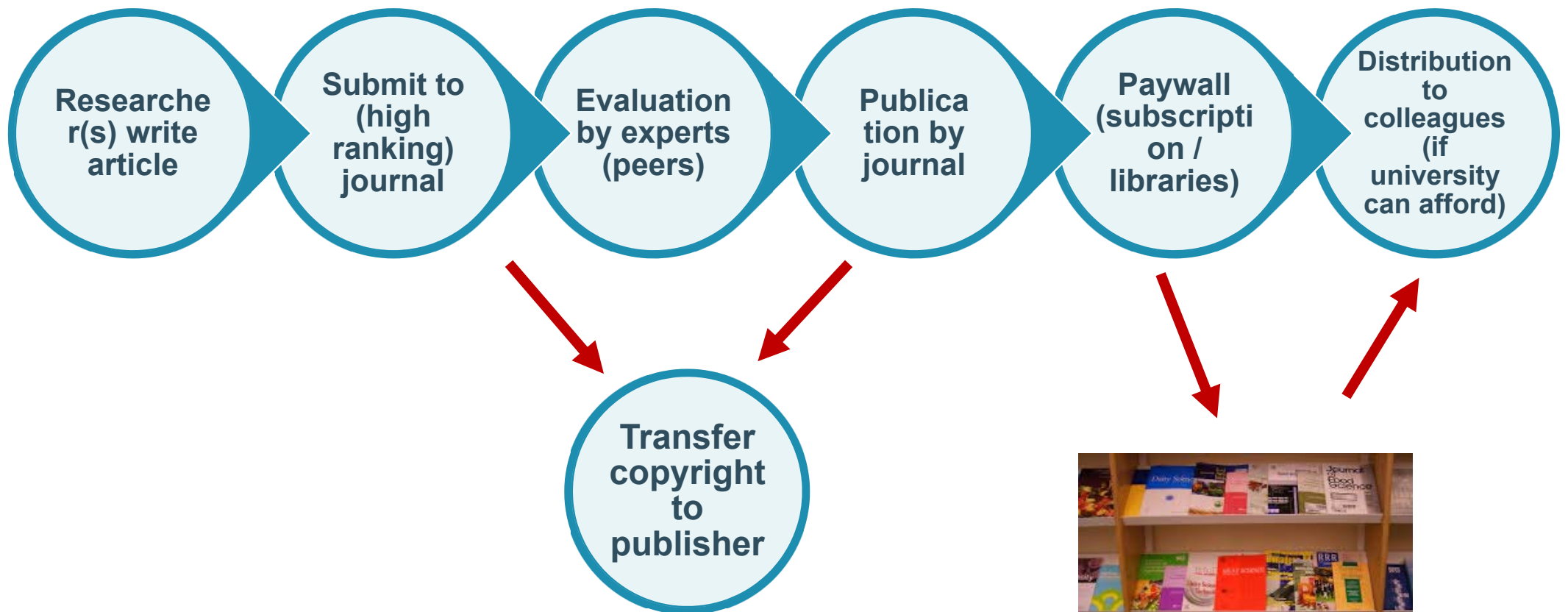
□ Different economic reality

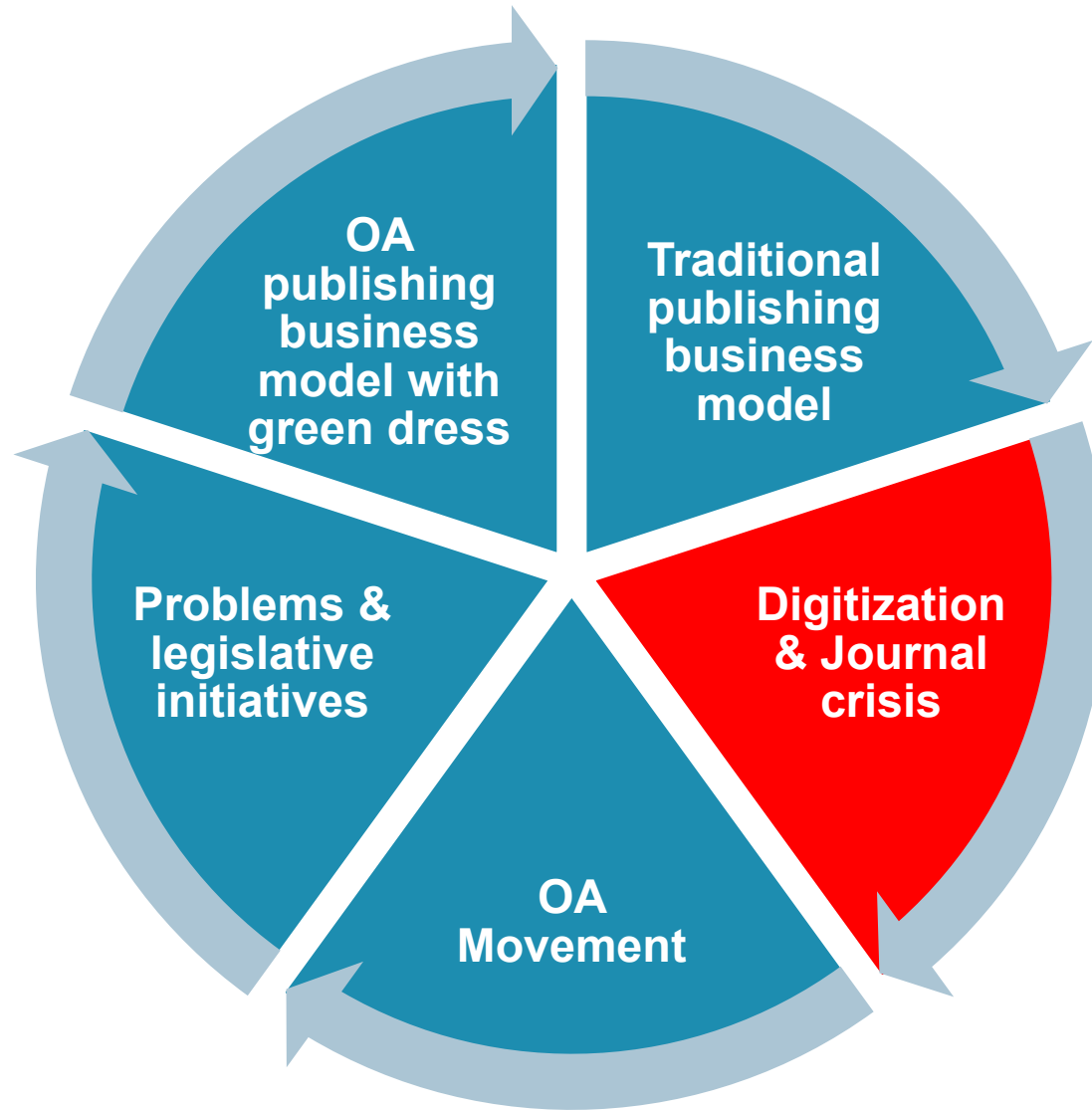
- Knowledge is gained and articles are written in a publicly funded context (taxpayer money)
 - Compensation and salary security are guaranteed *ex ante*
 - Less interested in ‘owning’ their work (as long as they can use & share it)

Open Access A story of a vicious circle



Traditional publication model (paper journals)



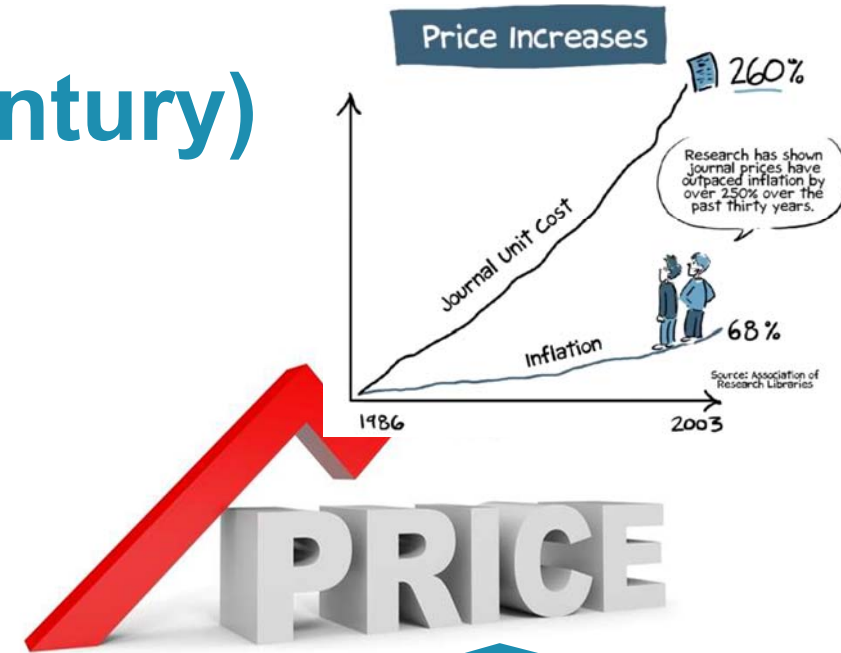


Boosters of OA (end of 20th century)



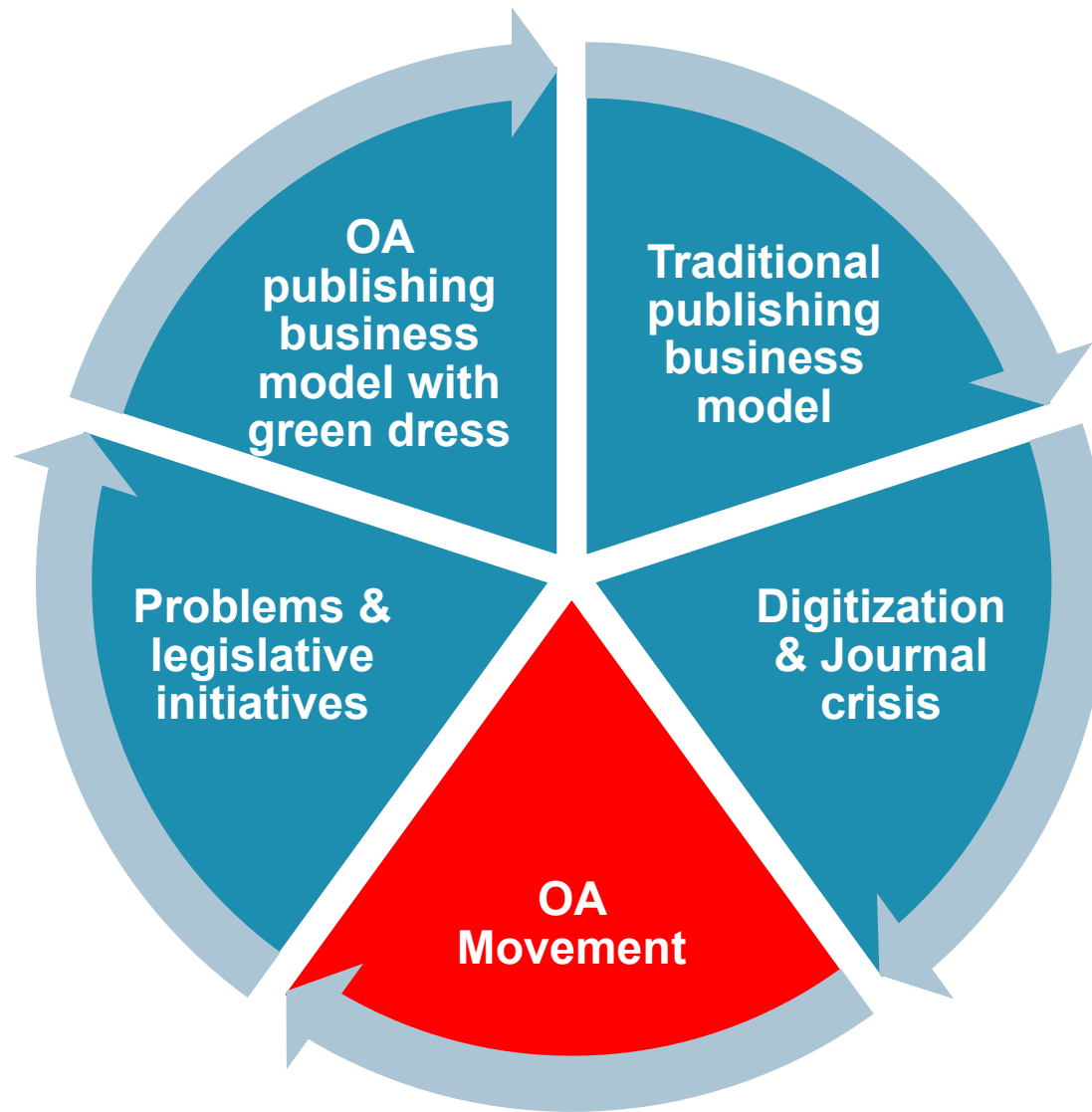
Digitization & networking

- Promising ways to achieve ultimate goal of sharing knowledge
- (Oeps) – copyright is owned by publisher



Journal subscriptions outpaced inflation by over 250 % over the past 30 years

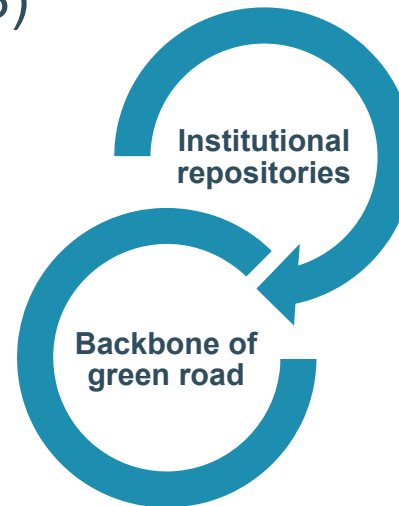
- Justification ? (digital is cheaper ?)
- Lack of resources (taxpayers' money !)



Building up the OA Principles

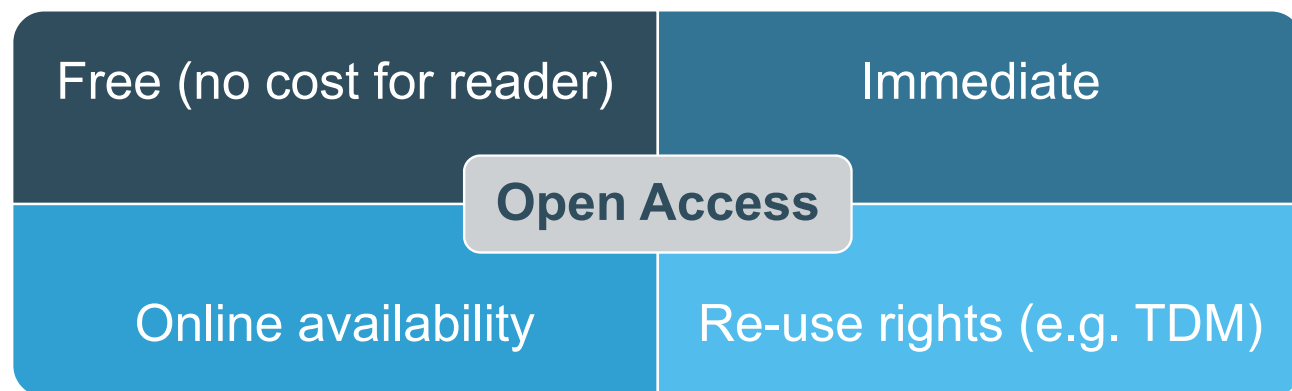
□ International level

- Budapest Open Access Initiative (Open Society Institute 2002)
- Bethesda Statement on Open access Publishing Declaration (Howard Hughes Medical Institute 2003)
- **Berlin Declaration** on Open Access to Knowledge in the Sciences and Humanities (Max Planck Institute 2003)



OA : definition

- **Open Access** (OA) provides world-wide and immediate online access to research outputs at no cost to the reader, including the right to fully use these outputs digitally (e.g. for text and data mining).



The many faces of Open Access (not either/or)

□ Green OA (often post-print version + delayed): self-archiving

- The author self-archives a version of the subscription article in an online repository or website + decides on free availability (unless institutional policy mandates this)
 - Institutional repository, Own website, Subject-based repositories, Research communities (*arXiv*, *PubMed Central*, *ResearchGate*, *SSRN*, ...)



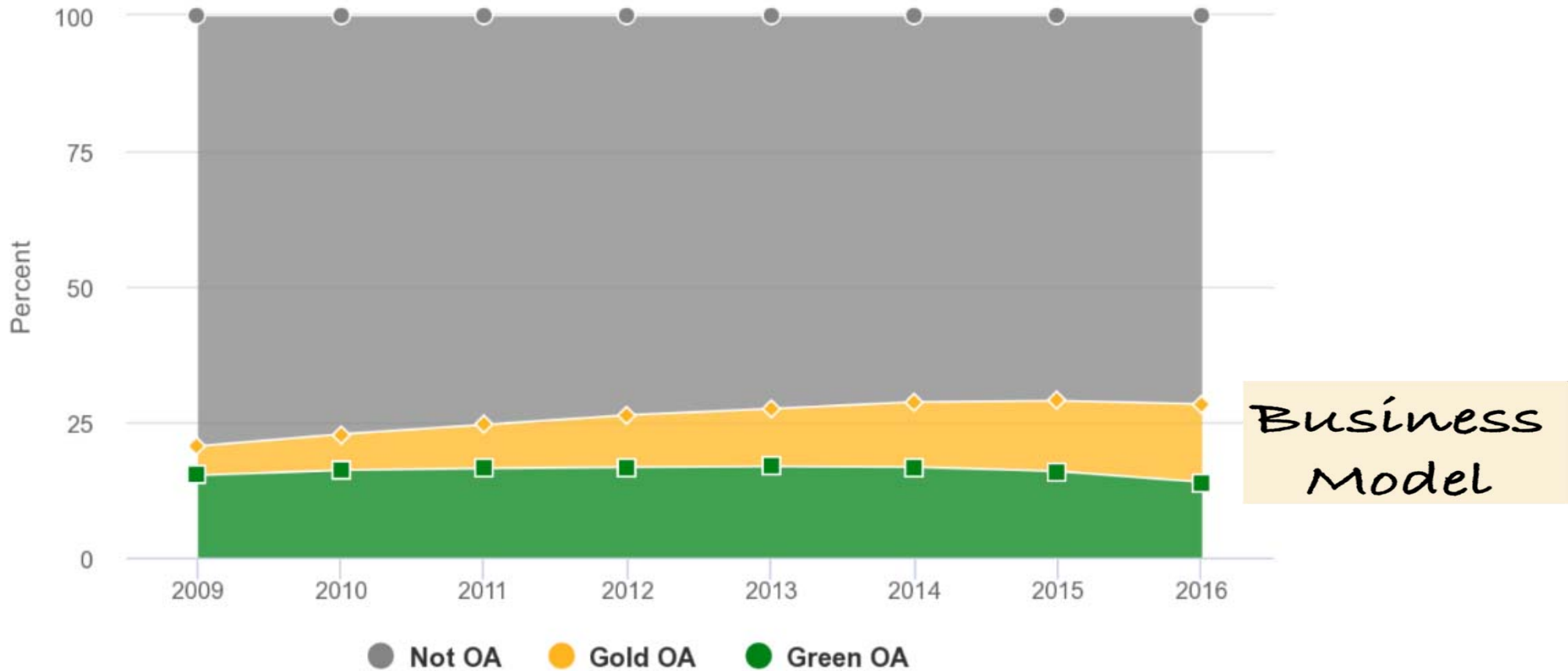
□ Gold OA (publisher's pdf + immediate): publication

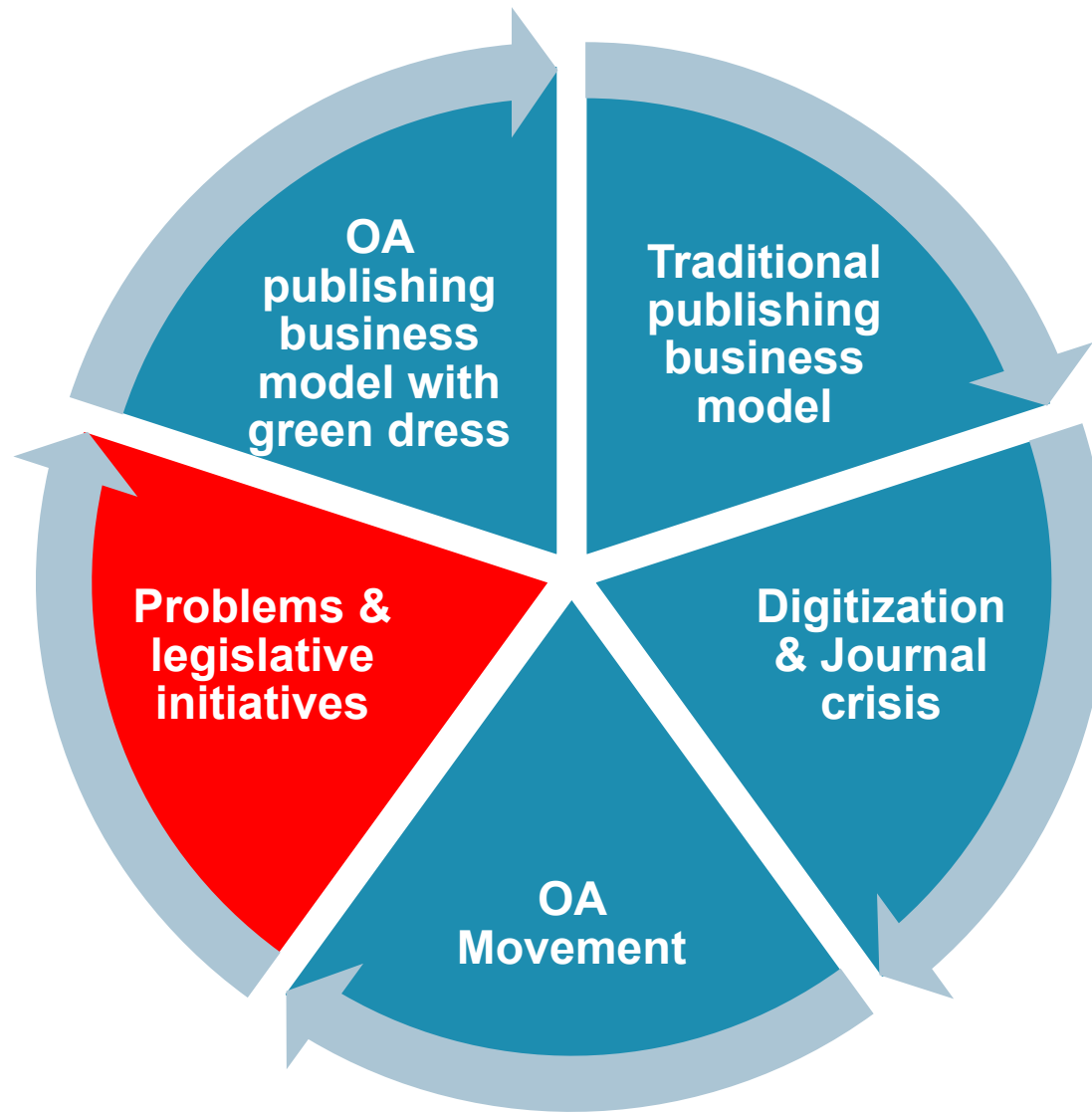
- The author (often) pays an APC - Article Publication Charge and the published article is immediately freely available online for all to read, download, and share (Author pays instead of user)
- 3 ways - authors may publish in a:
 - Fully open access journal without APC ('diamond road') (e.g. JIPITIC)
 - Fully open access journal with payment of APC (e.g. PLOS journals) – 1000 → 4.500 euro !
 - **Hybrid journals** with a mix of subscription content and open content (APCs paid) – problem of 'double dipping'
 - Made up 80 % of APC's expenditure in 2014-2015 in the UK
- In many cases, the publisher still requires transfer of the copyright



Percentage of open access publications (gold and green) by year on total

Source: Consortium's own analysis of Scopus database





Problems with Green Road

❑ Copyright 'ownership'

- Not all scientific journals allow a method of self-archiving (SherpaRomeo database)
- **Initiatives legislator**

❑ Embargo (unless Gold)

- Scientists cannot wait

❑ Postprint version

❑ Lack of peer review & recognition within evaluation system

❑ Social norms

- Researchers are very conservative in changing how they do things



Copyright contract law at the intersection

of



and



- The conflict between authors and publishers about access to scientific work refers to an underlying, more fundamental fact, namely the free transfer of copyright.

Influence from important funder

□ EU level

- EU Recommendation 17 July 2012 on access to and preservation of scientific information
- EU Communication 2012 “Towards better access to scientific information: Boosting the benefits of public investments in research”
- EU Recommendation 2018/790 on access to and preservation of scientific information of 25 April 2018

□ Dictates that results resulting from research programs should be published in OA

- (FP7), H2020, Horizon Europe

Legislative initiatives in the EU

□Italy

- Law concerning the valorization of culture of 7 Oct. 2013

□Spain

- Law 14/2011 of 1 June 2011 (art. 37.2)

□Germany

- Art. 38 (4) Copyright Act (1.1.2014)

□Netherlands

- Art. 25fa Copyright act (1 July 2015)

□France

- Art. L. 533-4 – code de recherché (28.09.2016)

Belgian (copyright contract) law (30 July 2018)

- ❑ Authors of *articles in scientific journals* have the right to make a post-print (*or authors' accepted manuscript*) available to the public free of charge, provided the source of the first edition is mentioned and the embargo period of 6 (STEM) or 12 (HSS) months after publication is expired.
- ❑ This right has **priority over (national and international) copyright contracts** or publishing provisions. So even if you have transferred all ownership rights or an exclusive license to third parties, you can exercise your open access right!
- ❑ This right also **applies retroactively** so that all post-prints previously deposited in Lirias can be made available, subject to compliance with the aforementioned embargos

(cont)

❑ 50% of public funds

- The scheme applies to authors of scientific journal articles that are the result of research that has been financed for at least 50% with public funds (both domestic and foreign funds).

❑ 6 or 12 months embargo

- The post-print version of every article can be made available to the public after an embargo of 6 (STEM) or 12 (human and social sciences) months after the first publication, provided that the source of the first edition is mentioned.
- This right applies to any author with a reference point in Belgium (e.g. associated with a Belgian university, residence in Belgium, financed with Belgian funds etc.).

❑ Mandatory nature

- The new regulation prevails over the agreement signed with a publisher. The publisher cannot ask the author to waive this right.

❑ Retroactive

- These regulations also apply retroactively to older works:

❑ Open Access right for the author

- For KU Leuven researchers, there is a duty to deposit a full-text version of any published article. The author decides for him/herself whether he/she wants to make use of the OA right. An author can give KU Leuven the mandate to make use of the Belgian legislation.

Difficulties to apply OA

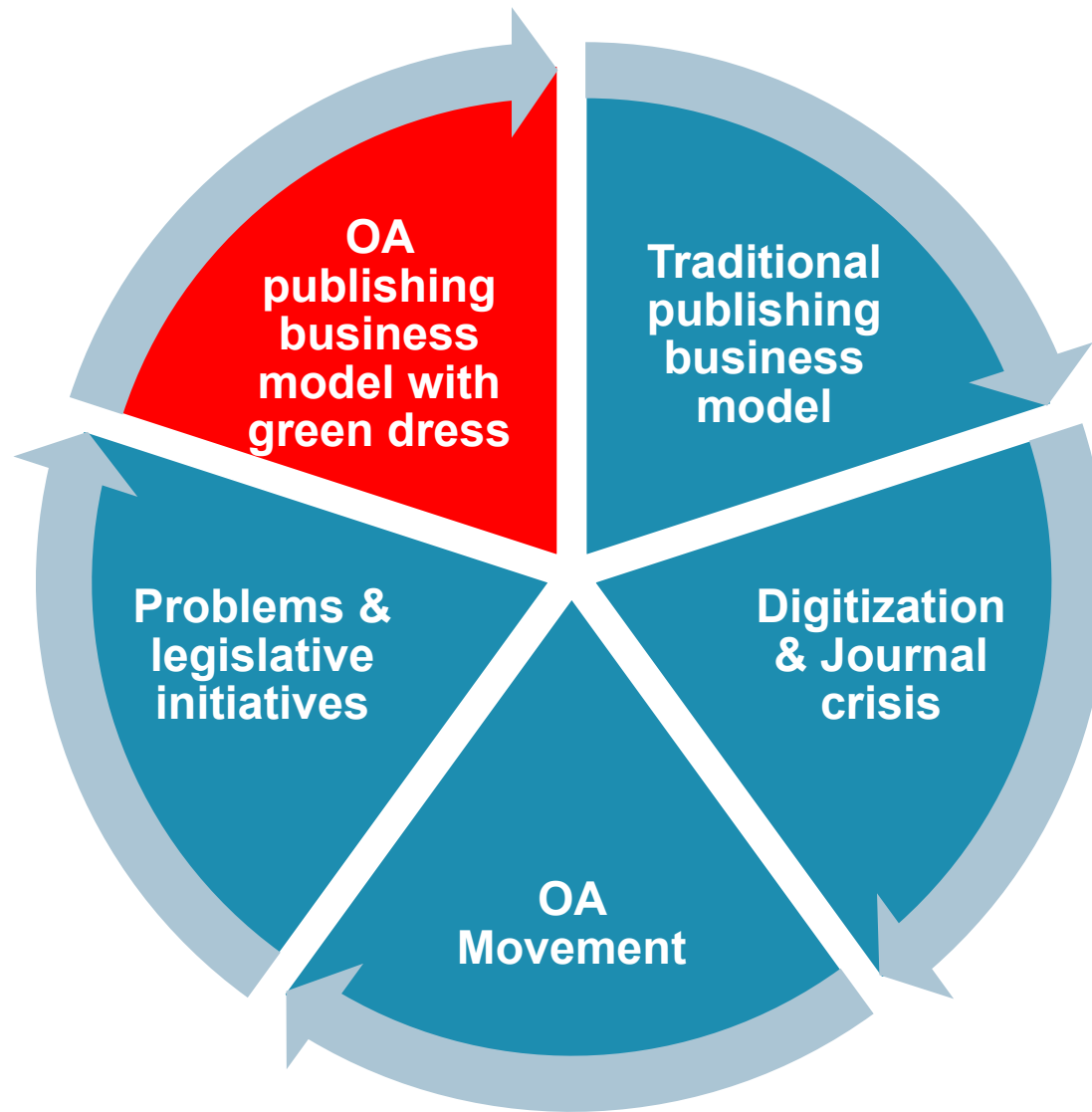
Multitude
of
'authors'

THE AUTHORSHIP
QUESTION

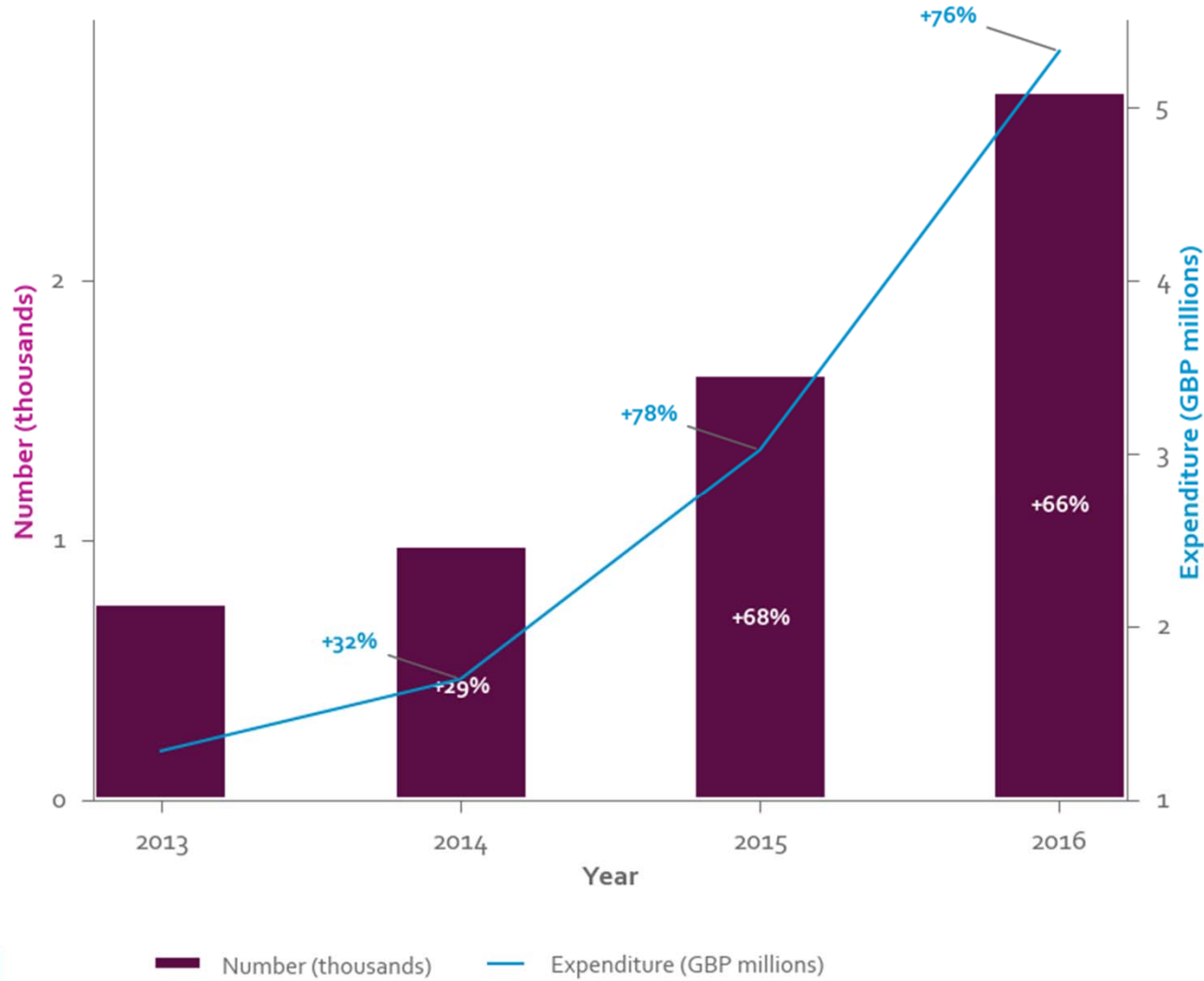
Copyright
rules

Scientific
norms

J. Craig Venter,^{1*} Mark D. Adams,¹ Eugene W. Myers,¹ Peter W. Li,¹ Richard J. Mural,¹ Granger G. Sutton,¹ Hamilton O. Smith,¹ Mark Yandell,¹ Cheryl A. Evans,¹ Robert A. Holt,¹ Jeannine D. Gocayne,¹ Peter Amanatides,¹ Richard M. Balow,¹ Daniel H. Hauss,¹ Jennifer Russo Wortman,¹ Qing Zhang,¹ Chinnappa D. Kodira,¹ Xiangjun H. Zheng,¹ Lin Chen,¹ Marian Skupski,¹ Gangadharan Subramanian,¹ Paul D. Thomas,¹ Jinghui Zhang,¹ George L. Gabor Miklos,¹ Catherine Nelson,¹ Samuel Broder,¹ Andrew G. Clark,¹ Joe Nadeau,¹ Victor A. McKusick,¹ Norton Zinder,¹ Arnold J. Levine,¹ Richard J. Roberts,¹ Mel Simon,² Carolyn Slayman,¹⁰ Michael Hunkapiller,¹¹ Randall Bolanos,¹ Arthur Delcher,¹ Ian Dew,¹ Daniel Fasulo,¹ Michael Flanagan,¹ Lilliana Florea,¹ Aaron Halpern,¹ Sridhar Hannenhalli,¹ Saul Kravitz,¹ Samuel Levy,¹ Clark Moberly,¹ Knut Reinert,¹ Karin Remington,¹ Jane Abu-Threideh,¹ Ellen Beasley,¹ Kendra Biddick,¹ Vivien Bonazzi,¹ Rhonda Brandon,¹ Michele Cargill,¹ Ishwar Chandramouliswaran,¹ Rosane Charlab,¹ Kabir Chaturvedi,¹ Zuoming Deng,¹ Valentina Di Francesco,¹ Patrick Dunn,¹ Karen Ellbeck,¹ Carlos Evangelista,¹ Andrei E. Gabrielian,¹ Weiniu Gan,¹ Wangmao Ge,¹ Fangcheng Gong,¹ Zhiping Gu,¹ Ping Guan,¹ Thomas J. Helman,¹ Maureen E. Higgins,¹ Rui-Ku Ji,¹ Zhaoxi Ke,¹ Karen A. Ketchum,¹ Zhongwu Lai,¹ Yiding Lei,¹ Zhenya Li,¹ Jiyin Li,¹ Yong Liang,¹ Xiaoying Lin,¹ Fu Lu,¹ Gennady V. Merkulov,¹ Natalia Milshina,¹ Helen M. Moore,¹ Aadwainikumar K Nair,¹ Vaibhav A. Narayan,¹ Beena Neelam,¹ Deborah Nusskern,¹ Douglas B. Rusch,¹ Steven Salzberg,¹² Wei Shao,¹ Bixiong Shue,¹ Jingtao Sun,¹ Zhen Yuan Wang,¹ Aihui Wang,¹ Xin Wang,¹ Jian Wang,¹ Hing-Hui Wei,¹ Ron Wides,¹³ Chunlin Xiao,¹ Chunhua Yan,¹ Allison Yao,¹ Jane Ye,¹ Ming Zhan,¹ Weiqing Zhang,¹ Hongyu Zhang,¹ Qi Zhao,¹ Liansheng Zheng,¹ Fei Zhong,¹ Weryan Zhong,¹ Shiaoqing C. Zhu,¹ Shaying Zhao,¹² Dennis Gilbert,¹ Suzanna Baumhueter,¹ Gene Spier,¹ Christine Carter,¹ Anibal Cravchik,¹ Trevor Woodage,¹ Feroze Ali,¹ Huijin An,¹ Aderonke Awe,¹ Danita Baldwin,¹ Holly Baden,¹ Mary Barstead,¹ Ian Barrow,¹ Karen Beeson,¹ Dana Busam,¹ Amy Carver,¹ Angela Center,¹ Ming Lai Cheng,¹ Liz Curry,¹ Steve Danaher,¹ Lionel Davenport,¹ Raymond Desilets,¹ Susanne Dietz,¹ Kristina Dodson,¹ Lisa Doup,¹ Steven Ferreira,¹ Neha Garg,¹ Andres Gluecksmann,¹ Brit Hart,¹ Jason Haynes,¹ Charles Heynes,¹ Cheryl Helser,¹ Suzanne Hladun,¹ Damon Hostin,¹ Jarrett Houck,¹ Timothy Howland,¹ Chinyere Ibegwam,¹ Jeffery Johnson,¹ Francis Kalush,¹ Lesley Kline,¹ Shashi Koduru,¹ Amy Love,¹ Felecia Mann,¹ David May,¹ Steven McCawley,¹ Tina Mcintosh,¹ ky McMillan,¹ Nee Moy,¹ Linda Moy,¹ Brian Murphy,¹ Keith Nelson,¹ Cynthia Pfannkoch,¹ Eric Pratts,¹ Vinita Puri,¹ Hina Qureshi,¹ Matthew Reardon,¹ Robert Rodriguez,¹ Yu-Hui Rogers,¹ Deanna Romblad,¹ Bob Ruhfel,¹ Richard Scott,¹ Cynthia Sitter,¹ Michelle Smallwood,¹ Erin Stewart,¹ Renee Strong,¹ Ellen Suh,¹ Reginald Thomas,¹ Ni Ni Tint,¹ Sukyee Tse,¹ Claire Vech,¹ Gary Wang,¹ Jeremy Wetter,¹ Sherita Williams,¹ Monica Williams,¹ Sandra Windsor,¹ Emily Winn-Deen,¹ Keriellen Wolfe,¹ Jaysree Zaveri,¹ Karena Zaveri,¹ Josep F. Abril,¹⁴ Roderic Guigo,¹⁴ Michael J. Campbell,¹ Kimmen V. Sjolander,¹ Brian Karlak,¹ Anish Kejarwal,¹ Hualyu Mi,¹ Betty Lazareva,¹ Thomas Hatton,¹ Apurva Narechania,¹ Karen Diemer,¹ Anushya Muruganujan,¹ Nan Guo,¹ Shinji Sato,¹ Vineet Bafna,¹ Sorin Istrail,¹ Ross Lippert,¹ Russell Schwartz,¹ Brian Walenz,¹ Shibu Yooseph,¹ David Allen,¹ Anand Basu,¹ James Baendele,¹ Louis Blick,¹ Marcelo Caminha,¹ John Carnes-Stine,¹ Parris Caulk,¹ Yen-Hui Chiang,¹ My Coyne,¹ Carl Dahlke,¹ Anne Deslattes Mays,¹ Maria Dombroski,¹ Michael Donnelly,¹ Dale Ely,¹ Shiva Esparham,¹ Carl Foster,¹ Harold Gire,¹ Stephen Glanowski,¹ Kenneth Glasser,¹ Anna Glodek,¹ Mark Gorokhov,¹ Ken Graham,¹ Barry Gropman,¹ Michael Harris,¹ Jeremy Heil,¹ Scott Henderson,¹ Jeffrey Hoover,¹ Donald Jennings,¹ Catherine Jordan,¹ James Jordan,¹ John Kasha,¹ Leonid Kagan,¹ Cheryl Kraft,¹ Alexander Levitsky,¹ Mark Lewis,¹ Xiangjun Liu,¹ John Lopez,¹ Daniel Ma,¹ William Majoros,¹ Joe McDaniel,¹ Sean Murphy,¹ Matthew Newman,¹ Trung Nguyen,¹ Ngoc Nguyen,¹ Marc Nodell,¹ Sue Pan,¹ Jim Peck,¹ Marshall Peterson,¹ William Rowe,¹ Robert Sanders,¹ John Scott,¹ Michael Simpson,¹ Thomas Smith,¹ Arlan Sprague,¹ Timothy Stockwell,¹ Russell Turner,¹ Eli Venter,¹ Hel Wang,¹ Heiyuan Wen,¹ David Wu,¹ Mitchell Wu,¹ Ashley Xia,¹ Ali Zandieh,¹ Xiaohong Zhu¹



Problems with Gold Road



New
approach
Plan S ?

(Not really) The End

Thank you for your attention

