

THE OAPEN FOUNDATION Agreement

The undersigned:

The OAPEN Foundation, having its registered office at Prins Willem-Alexanderhof 5, 2595 BE The Hague, represented by its director Mr. E. Ferwerda
hereinafter referred to as 'the OAPEN Foundation'

and

mediastudies.press, having its registered office at 414 W. Broad St., Bethlehem, PA 18018,
represented by its Director Jefferson Pooley
hereinafter referred to as 'the Publisher'

Preamble

Whereas OAPEN's mission is to promote Open Access publishing of peer-reviewed digital publications;

Whereas OAPEN strives to fulfil as much as possible the principles set out in the Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities;

Whereas OAPEN Library serves as a branded collection to increase discoverability and retrievability of high-quality research and to improve quality assurance for Open Access content.

Agree to the following:

1. Definitions

1. Attribution: Statement of the complete source (including at least the Author's name, the title and the ISBN number of the Publication, and the name of the Publisher) of the work in the manner specified by the author or publisher, or according to the custom in the field (but not in any way that suggests that they endorse you or your use of the work).
2. Publications: Catch-all term which includes all publications in digital form, whether new or existing, including the abstract, text, images and related data in the publications;
3. Derivative Work: Any new publication created by the editing, modification, adaptation or translation of the Publications in any media or form.
4. OAPEN Library: the OAPEN website which provides free and unrestricted access to all Publications.

2. Licence of rights on Publications from Publisher to The OAPEN Foundation

1. The Publisher hereby grants the OAPEN Foundation a non-exclusive, worldwide, royalty-free, perpetual licence on copyright with respect to all Publications included in the OAPEN Library, whereby The OAPEN Foundation shall have the right to make available, reproduce, distribute, display, transmit, and store the Publications in those forms and formats provided by the publisher. OAPEN Foundation has the right to migrate formats if this is required for long-term availability and long-term archiving;

2. The OAPEN Foundation must ensure that Attribution is given to the authors and the Publisher of all Publications included in the OAPEN Library, by keeping all Attribution information intact, when distributing, displaying or making the Publications available;
3. The Publisher hereby grants the OAPEN Foundation, for the duration of this agreement, the right to grant third parties a licence to use Publications included in the OAPEN Library. The rights granted under the licence to use Publications may vary per Publication according to the specification of the original contract signed with the author. The Publisher may choose to grant third parties a non-exclusive, worldwide, royalty-free, perpetual licence to use a Publication included in the OAPEN Library, whereby third parties shall have either:
 - a) The rights as mentioned in section 1 above, provided that Attribution is given to the authors and the Publisher for each Publication included in the OAPEN Library; or
 - b) The rights as mentioned in section 1 above, provided that Attribution is given to the authors and the Publisher for each Publication included in the OAPEN Library and that the use be made for non-commercial purposes only; or
 - c) The right to browse, download, and print the Publications, as well as do any of the acts in respect of the Publications that are permitted pursuant to the exceptions and limitations on copyright provided for in the national copyright act.
4. The rights granted to third parties pursuant to section 3 above are communicated to Third Parties with respect to each Publication or to a group of Publications by the Publisher, either through a Creative Commons licences v. 3.0 Netherlands, or a Creative Commons jurisdiction licence (either this or a later license version) that contains the same License Elements as the chosen license, or another compatible licence containing the same licensing elements as follows:
 - a) Creative Commons-Attribution v.3.0 or higher
 - b) Creative Commons-Attribution-Non-Commercial v.3.0 or higher
 - c) Creative Commons-Attribution-No Derivatives v.3.0 or higher
 - d) Creative Commons-Attribution-No Derivatives-Non-Commercial v.3.0 or higher
 - e) All rights reserved

Where it is understood that preference should be given to the licences mentioned in subsection a) and b) above, since they are the best suited to implement the principles of the Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities. The licence mentioned in subsection e) above should be used in exceptional cases only.

3. Moral rights

This Agreement does not affect any moral rights of the Publisher or any other party that may persist in or to the Publications. More specifically, the Publisher and the appropriate party assert their right to be identified as the author and the Publisher, as well as the right to object to derogatory treatment.

4. Obligations of the Publisher

1. It remains the responsibility of the Publisher to approve Publications for inclusion in the OAPEN Library. Every submission of a Publication for inclusion in the OAPEN Library should be accompanied by the relevant metadata, including keywords and an abstract.

2. All Publications included in the OAPEN Library must be peer-reviewed. The Peer-review process remains the responsibility of the Publisher and shall occur according to the description provided in Annex 1. The description of the Publisher's peer-review process shall also be made available in the OAPEN Library, as information for authors and the public;
3. The Publisher warrants that the creation and use of the Publisher's Publications, do not constitute:
 - a) A violation of the intellectual property rights of third parties;
 - b) An infringement of personality, privacy, publicity or other rights (slandering, private life, etc.);
 - c) An infringement of public order or morality (hate speech, obscenity, etc.).
4. The Publisher warrants that if the Work has been commissioned, sponsored or supported by any organisation, all obligations required by such contract or agreement have been fulfilled.
5. Publications are deemed accepted for inclusion in the OAPEN Library whenever the OAPEN Foundation is of the opinion that the Publication meets the specific or usual quality requirements and conditions.
6. The Publisher must make best efforts to ensure the correctness of rights information, including links to the appropriate information on the internet.

5. Obligations of the OAPEN Foundation

1. The OAPEN Foundation is responsible for the maintenance of the OAPEN Library, which includes maintaining or improving (when necessary) the search and hosting functionalities of the Library, as well as maintaining the capacity of the platform and technology integration;
2. The OAPEN Foundation will make the Publications available through the OAPEN Library and improve discoverability by providing the metadata to discovery services and other scholarly collections;
3. The OAPEN Foundation shall be under no obligation to reproduce, make available, distribute, display, or transmit the Publications, in the same format or using the same software as that in which it was originally created;
4. The OAPEN Foundation shall collaborate with the Publisher, upon the latter's request, for the correction, update and removal of the Publications provided by the Publisher. The OAPEN Foundation is entitled to remove the Publication from the OAPEN Library at its own discretion, including for professional or administrative reasons, or if the Publication is found to violate the legal rights of any person;
5. The OAPEN Foundation agrees to collaborate with the Publisher in taking, upon the latter's request, all reasonable steps and appropriate measures to stop or prevent any infringement by a third party of the rights of the Publisher on the Publications.

6. In case the agreement is not renewed pursuant to article 8, or is terminated pursuant to article 10 below, it shall be the responsibility of the OAPEN Foundation to remove the Publications from the OAPEN Library within a reasonable timeframe from the date of termination of the agreement, if the Publisher requires the OAPEN Foundation to do so. The OAPEN Foundation shall not be responsible for any copies outside the OAPEN library even if they exist beyond the termination of this agreement.
7. The OAPEN Foundation holds the Publisher free and harmless of any action, recourse or claims made by any third party due to the non-observance of The OAPEN Foundation's obligations under this agreement.

6. Payment of fee

The Publisher shall pay the OAPEN Foundation an annual fee in consideration of its participation in the OAPEN Library. The first payment is payable upon signature of the agreement. An annual payment will thereafter be payable the 1st of January of every year that this contract remains in force. The fee is calculated according to the tariff structure in Annex 2. The OAPEN Foundation reserves the right to modify the tariffs on an annual basis. Any modification to the tariffs must be notified to the Publisher who then has two months from the date of reception of the notice to accept or reject it. If the modifications are not accepted in writing within this period by the Publisher, the modifications are presumed rejected.

7. Liability Disclaimer

1. Except to the extent required by applicable law, in no event will the OAPEN Foundation be liable on any legal theory for any special, incidental, consequential, punitive or exemplary damages arising out of this agreement or the use of the Publications, even if the OAPEN Foundation has been advised of the possibility of such damages.
2. In particular, the OAPEN Foundation will not be liable for the following:
 - a) Accuracy, completeness, etc. of the Publications;
 - b) Any infringement of privacy, publicity or other rights;
 - c) Any use by third parties that goes beyond the rights expressed in this agreement;
 - d) Re-use by third parties of material in obscene material, hate speech, etc.
3. The Publisher holds The OAPEN Foundation free and harmless of any action, recourse or claims made by any third party due to the non-observance by the Publisher of its declarations and guarantees written in the above article.

8. Duration of the Contract

The agreement shall end on the 31st December following the date of signature by both parties. The agreement will be renewed automatically for a period of one year every 1st January, unless terminated by one of the parties. Written notice is required at least three months before the end of a calendar year.

9. Modification of Agreement

This agreement may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this agreement shall be binding unless it is in writing and signed by the parties. Any modification proposed by the OAPEN Foundation must be notified to the Publisher who then has two months from the date of reception of the notice to accept or reject the new agreement. If the modifications are not accepted in writing within this period by the Publisher, the modifications are presumed rejected.

10. Termination

1. Either party may terminate this Agreement at any time on the material breach or repeated other breaches by the other of any obligation on its part under this Agreement by serving a written notice on the other identifying the nature of the breach. The termination will become effective thirty (30) days after receipt of the written notice unless during the relevant period of thirty (30) days the defaulting party remedies the breach.
2. This Agreement may be terminated by either party on written notice if the other party becomes insolvent or bankrupt, or if the Publisher withdraws or ceases operations. The termination will become effective thirty (30) days after receipt of the written notice.
3. If the OAPEN Library ceases to exist, the rights granted to the OAPEN Foundation under this agreement may be transferred to the KoninklijkeBibliotheek Nederland exclusively for purposes of depositing the Publications in the KoninklijkeBibliotheek.
4. Termination of this agreement does not affect any prior valid agreement made by The OAPEN Foundation with third parties.
5. Termination of this agreement puts an end to any action, recourse or claim that the parties may have entertained against each other pursuant to this agreement.

11. Miscellaneous

1. If any term of this agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.
2. Nothing in this agreement shall be deemed to require the Publisher to breach any mandatory statutory law under which the Publisher is operating.
3. This agreement is drawn up in English, which language shall govern all documents, notices, meetings, arbitral proceedings and processes relative thereto.
4. This agreement shall be construed in accordance with and governed by the laws of the Netherlands.
5. All disputes arising out of or in connection with this agreement, which cannot be solved amicably, shall be referred to mediation. The outcome of the mediation process will be binding on the parties. The place of mediation shall be The Hague if not otherwise agreed by the conflicting parties.

6. Nothing in this agreement shall limit the Publisher's right to seek injunctive relief in any applicable competent court of law. The commencement of mediation will not prevent the concerned Publisher from commencing or continuing court proceedings.

12. Final clause

This agreement enters into force as of the date of signature of the parties.

Publisher's name and signature:

Jefferson D. Pooley

mediastudies.press

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Date: 23 November 2020

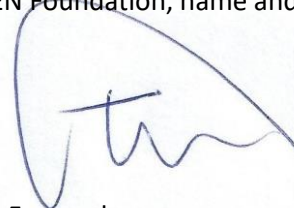
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Place:

Bethlehem, PA 18018 USA

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OAPEN Foundation, name and signature:



Eelco Ferwerda

Date: 7 December 2020

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Place:

The Hague, Netherlands

Annex 1 : Peer review procedure

All mediastudies.press manuscripts undergo vigorous peer review: double-blind by default, as well as more open modes at authors' discretion.

Manuscripts are first reviewed by the director, to assess scholarly quality and suitability for the press.

Authors that pass this first round of review are consulted about their peer review preferences. The default option is a **double-blind review** by at least two subject experts. Authors may select from other, more open options:

- **signed review**, in which the (two or more) reviewers sign their comments and may continue to consult with authors through the revision process
- **community review**, in which a draft version is published, with public, signed comments encouraged and solicited

The review type (*double-blind*, *signed*, or *community*) is indicated in the published book's front matter, and—in the case of the signed option—reviewers are typically named.

For all review types, authors are responsible for considering suggestions and comments in the revision process. Revised manuscripts may be returned to reviewers or may be assessed solely by the director.

Annex 2 : Tariff Structure for Publishers

OAPEN membership – 2020

Introduction

OAPEN provides a platform for the dissemination of Open Access books through the OAPEN Library, creating a quality controlled collection of Open Access books and improving visibility and discoverability of the collection.

This document describes the tariff structure for publishers as of 2020.

This tariff structure does not apply:

- for other organizations (non-publishers such as Libraries or Library Consortia, Funders of Research, Aggregators or Intermediaries or other academic institutions);
- in case the OAPEN Foundation provides its services to publishers in the context of separate projects or partnerships;
- in case the books are subject of an agreement with a third party, such as a funder or intermediary.

Annual fee

The annual fee for a publishing entity to participate in OAPEN consists of one-time fees for front-list books and recurring fees for back-list books, with an annual minimum total of € 175.00:

Front-list publications (a single book, or one or more chapters from a book, published in 2020)	One-time fee	€ 10.00
Back-list publications (a single book, or one or more chapters from a book, published before 2020)	Annual fee	€ 2.00

This fee does not apply for publications that are subject of an agreement with a third party (i.e. a book provided by a funder, such as Wellcome or the European Research Council, or an intermediary, such as Knowledge Unlatched).

Membership

Membership includes the following basic services:

- Dissemination of publications that are made available in the OAPEN Library
- Basic quality assurance of the publications within the OAPEN Library through a reviewing procedure
- Support for uploading new publications and metadata
- Metadata conversion and export for third party aggregators, intermediaries and libraries
- Six monthly usage reports, providing COUNTER compliant, monthly download statistics per title
- Preservation of publications with Portico
- Submitting DOI's for publications that do not have a DOI at time of submission

Additional services

The OAPEN Foundation may offer other services, either independently or in collaboration with third parties, and either as part of the membership fee or as one or more separate services for an additional fee. Separate services will require a separate agreement between OAPEN Foundation and the publisher, enclosed as annex to this agreement.