

## From the DEAL engine room – an interview with Bernhard Mittermaier

Bernhard Mittermaier

A few years ago it seemed far out of reach (at least for OA advocates and maybe even for the heads of acquisition) and for more than two years now something has been on everybody's lips: Whether management in higher education, scholars, librarians, or science journalists – "DEAL" is repeatedly associated with a project that aims at closing a national deal for scholarly publications, first and foremost with the three top dog publishers Elsevier, Springer Nature and Wiley, and – later on – maybe even further academic publishers.

What's special about that? The deal shall not only include access to scholarly journals, with one price tag and transparent pricing. It shall also include an open access component for all "German" articles. In other words, authors affiliated with institutions that are part of the DEAL consortium shall be able to publish their articles open access. Publish and Read (PAR), one deal at one transparent price. It would mean a huge step for the open access transformation of the journal market.

The (tough) negotiations with Elsevier have in particular been in the national and international spot. Since the beginning of 2017 as many as 76 German research or higher education institutions did not have a license agreement with the publisher. Scholars from these institutions cannot access Elsevier journals directly.<sup>1</sup> Some feared scholars would riot, this fear turned out to be unsubstantiated, though.<sup>2</sup> As of end of October 2017, 109 institutions have announced not to renew individual agreements with Elsevier when the year closes. Thus, from January 2018 on 185 institutions<sup>3</sup> will either be part of a national DEAL consortium, or Elsevier journals cannot be accessed.

Reports on the DEAL project have been numerous, on the project's aims as well as the negotiation progress (or rather negotiation deadlock).<sup>4</sup> Our primary interest was different though.

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<sup>1</sup>In the meantime Elsevier has restored access for most institutions, see <http://www.sciencemag.org/news/2017/02/elsevier-journals-are-back-online-60-german-institutions-had-lost-access>

<sup>2</sup>See e.g. <http://www.nature.com/news/german-scientists-regain-access-to-elsevier-journals-1.21482>, [https://www.helmholtz.de/en/current\\_topics/press\\_releases/artikel/artikeldetail/helmholtz\\_zentren\\_kuendigen\\_die\\_vertraege\\_mit\\_elsevier/](https://www.helmholtz.de/en/current_topics/press_releases/artikel/artikeldetail/helmholtz_zentren_kuendigen_die_vertraege_mit_elsevier/) or <https://www.berliner-zeitung.de/berlin/hohe-preise-berliner-universitaeten-kuendigen-vertrag-mit-grossem-wissenschaftsverlag-27926974>

<sup>3</sup>Since beginning of 2017 there has been 76 institutions without license agreement: 30 universities, 16 universities of applied science, 27 research institutions as well as 3 state libraries. In total, 109 institutions with subscriptions ending by December 2017 have announced not to renew their individual license agreements, whereof 29 universities, 57 universities of applied science and 23 research institutions. See <https://www.projekt-deal.de/vertragskundigungen-elsevier-2017/> (as of 12.11.2017)

<sup>4</sup>See press review on the project website <https://www.projekt-deal.de/press-review/>

The endeavor is of high relevance for the current and future publishing landscape in German academia. How can it be accomplished? Which wheels have to mesh to complete the project successfully? What do the negotiations require from people and institutions involved? We have interviewed Bernhard Mittermaier, member of the DEAL negotiating team. The interview was led and translated by Michaela Voigt and Maxi Kindling.

## Chronology and team

*LIBREAS: When was the idea for project DEAL born? Is there a point in time that can be considered as starting point?*

**BM:** In summer 2013 the rector of the Universität Leipzig approached the German Rectors' Conference ("Hochschulrektorenkonferenz" or "HRK" in short) and suggested to negotiate licensing agreements with the major journal publishers on a national level.<sup>5</sup> The HRK in turn approached the Alliance of Science Organisations in Germany that finally commissioned an already existing working group ("AG Lizenzen") to investigate the matter. The expert report should assess under which conditions the portfolio of major academic publishers could be part of a national license agreement. Anne Lipp (German Research Foundation), Hildegard Schäffler (Bavarian State Library) and myself were then jointly heading the working group AG Lizenzen and took on the matter on behalf of the working group. Building on this expertise the Alliance of Science Organisations in Germany set up a project team – a group that, with a few additions, exists to this very day.<sup>6</sup> The project team was later joined by the steering committee and, in 2016, the negotiating group. Furthermore, two full-time positions have been funded since 2015.

*LIBREAS: That sounds rather straightforward. With some insight in the landscape of libraries and higher education in Germany, one can suspect this to be rather difficult. What did it take to turn the idea into a project?*

**BM:** Two things are essential – many institutions, whether higher education sector and other research organisations, want central negotiations and want them to be led in a completely new context, and they are prepared to conduct these negotiations with the necessary severity. It is equally important to have support from all areas – management, scholars and libraries.

*LIBREAS: The team is quite heterogeneous. Coincidence or intention?*

**BM:** The team as such consists of three groups – the actual project team, the negotiating group and the project steering committee.<sup>7</sup> Care was taken to ensure that libraries and academics, the various disciplines and various types of institutions were adequately represented in all three groups. The widest representation of all perspectives is given in the project steering committee. The project team consists of librarians only, whereas academics dominate the negotiation team. To use a nautical analogy: The engine room is staffed with librarians, the ship's bridge is staffed with academics.

*LIBREAS: And you are certainly also exchanging ideas with colleagues from abroad?*

<sup>5</sup><http://www.tagesspiegel.de/wissen/teure-fachzeitschriften-nationallizenzen-fuer-uni-bibliotheken-gefordert/8624114.html>

<sup>6</sup><https://www.projekt-deal.de/about-deal/>

<sup>7</sup>See figure "Project structure" at <https://www.projekt-deal.de/about-deal/>

**BM:** Well, we are talking with others, during conferences for example. But the negotiations are conducted separately.

*LIBREAS:* There are two project positions – “only two” or “two after all”, whichever way you prefer. Do all others contribute to DEAL as part of their official duties? How much time do you invest in the project, for example?

**BM:** DEAL massively ties up resources, this holds true for both members of the project and the negotiation team. Personally, I probably invest at least 20 hours a week.

## The publishers

*LIBREAS:* How was the DEAL initiative taken up by publishers?

**BM:** The publishers initially assured themselves that the DEAL negotiations were indeed mandated by the German research institutions. Consequently, they were open for negotiations.

*LIBREAS:* How many persons are involved on the publisher’s side, can you give a rough estimate?

**BM:** During negotiation talks, five people are present on the publisher’s side on average – at least two hierarchical levels from sales, as well as dedicated experts, also in the field of Open Access. We can not estimate how many persons are involved behind the scenes.

*LIBREAS:* Press reports suggest that both parties pull no punches. How would you describe the appearance of the publishers – both during the negotiating sessions and in public?

**BM:** Overall, the appearance is correct and professional. Still, neither party gives something away for free. For official announcements we have come to good terms with both Wiley and Springer Nature: We coordinate what information is released to institutions and retailers; in the meantime there were even joint press releases. Details are released very discreetly. This does not satisfy the understandable need for information of the public. But it helps to continue negotiations without major disruptions.

Looking at Elsevier, the situation is more difficult: Although we agreed not to release details publicly, Elsevier gradually shied away – when communicating with individual institutions at first, and little by little even when communicating with journal editors. Meanwhile, the present offer is fairly open – some “dirty details” are missing though and, above all, financial aspects are left in the dark.

*LIBREAS:* In general, how is the project received by the (national and international) publishing market? Are you in contact with other publishers already?

**BM:** Other publishers are following the project closely. It is understandable that deals with the three largest publishers in Germany, which account for more than half of the market, would have an impact on other publishers in Germany as well as on publishers’ international business. At the beginning there was an antitrust complaint of the Börsenverein, the interest group of German publishers. The lobby expressed concerns that by joining the DEAL consortium the entire budget would be consumed and libraries would not have the funds for other publishers. This concern was apparently based on the assumption that one would have to spend more on a DEAL contract than before. The German Federal Cartel Office (Bundeskartellamt) did not take

up on this path, but apparently some publishers submit to the propaganda of their own association: they now want to conduct own DEAL negotiations in order to get a (supposedly larger) piece of the cake. For reasons of capacity the DEAL negotiating team currently can not take up negotiations with other publishers. However, there are some negotiations under the umbrella of the proposal "Open Access Transformation Contracts" of the German Research Foundation DFG. They are negotiated by individual institutions, similar to the DFG funded "Alliance licenses".

## Getting prepared and negotiations

*LIBREAS: How is the DEAL office organised?*

**BM:** There is no actual DEAL office. The Alliance of Science Organisations in Germany funds two project positions: One position has a focus on data collection and analysis, located at the Max Planck Digital Library in Munich, one position has a focus on public relations, located at the University Library Freiburg. Furthermore, we are supported by the office of the regional consortium Baden-Wuerttemberg, which is also located at the University Library Freiburg.

*LIBREAS: The DEAL team is preparing for a new negotiating session. How does that look like? Is there a flood of emails, strategy papers...?*

**BM:** Initially, there were many meetings, face to face and videoconferencing, for example to set the DEAL negotiating goals. In the meantime, the preparation mainly takes place via email and before the actual negotiating session, in the form of preliminary meetings. The negotiating team is now very well established.

*LIBREAS: How do negotiations come about, who sets the dates?*

**BM:** The office of Professor Hippler proposes dates, which are then coordinated in the negotiating group – we doodle, to put it briefly. We always try to gather as many academics as possible and at least one librarian. The result will then be coordinated with the publishers. It's easy to imagine that finding a date is not easy, also because based in the Netherlands, Great Britain and even the USA are involved on the publishers' side.

*LIBREAS: How should one envision the atmosphere in the negotiating room?*

**BM:** The sessions last between two and four hours and usually take place in the rooms of the German Rectors' Conference in Bonn or Berlin. Professor Hippler, President of the German Rectors' Conference HRK, is the main negotiator for the DEAL team. As already mentioned, the negotiation team consists of academics and librarians, the team is very well established. Sure, the mood is tense more often than it is resolved, most of the time words are not minced. But there has always been a handshake – even at the farewells.

*LIBREAS: How common is the term "SciHub" during such a session?*

**BM:** In the meantime, only rarely. The publishers know that ultimately we are interested in signing a deal – and not in choosing between a DEAL contract and Sci-Hub. Conversely, if it is claimed that a research institution could not do without the publisher's journals, we point out that the experience of Elsevier dropouts teaches something different: various legal ways of alternative document delivery are used to ensure the literature supply at the individual institutions.

## Criticism

**LIBREAS:** *You negotiate a DEAL with publishers that have a focus on the traditional publishing model. What does this actually have to do with Open Access?*

**BM:** A lot, by now. Sure, the initial focus was negotiating subscription deals. But all parties realized very quickly that this could not be the end of the road. Apart from access to all of the publisher's journals for all participating institutions, the negotiations also aim at unleashing articles by academics of the participating institutions. That is to ensure that if an academic from a participating institution is corresponding author, the article is published Open Access and under CC BY, an Open Access compliant license. In addition, the costs incurred should be fair and forward-thinking – and they should be based on the number of articles. In other words, for all subscription journals of the publishers concerned the DEAL project would put participating institutions almost in the same position as if it were open access journals: own articles are Gold OA and are published under CC BY. All other articles can be accessed, but not used under the terms of a Creative Commons license. No further costs are incurred for publishing Gold Open Access. The same goes for all gold open access journals – they would be included in the DEAL contract with the according publisher, authors would not have to pay additional article processing charges.

**LIBREAS:** *OA advocates criticize that DEAL leads to a further commercialization of the scholarly publication market and gives preference to the "big ones" – while grassroots initiatives and newly founded OA publishers, especially in the field of OA monographs, are under constant financial pressure. What do you think about this?*

**BM:** DEAL wants to make a contribution to the Open Access transformation of scholarly publishing. It is true that the actual DEAL negotiations are limited to these three publishers. However, there are also discussions with other publishers in connection with the call for proposals "Open Access Transformation Contracts" by the German Research Foundation DFG. All publishers who are ready to embark on a journey to transformation are invited to participate. Apart from that, DEAL does not presume to intervene in the freedom of research and teaching guaranteed by the constitution. Also, we do not want to dictate scholars where to publish, but we want to make sure the publishing options that scholars can select freely from meet the needs of the scholarly system. In our view, this means that they should become open access if they are not already.

## Outlook

**LIBREAS:** *When will we have reached a DEAL?*

**BM:** Talks with Springer Nature and Wiley are well on their way. When it became apparent in September 2017 that the agreement could not be concluded by the end of the year, a transitional solution had to be found in order to avoid a contractless status from January 2018 on.<sup>8</sup> Such a transitional solution was possible with both publishers and agreed upon via email, in telephone conferences and at the recent Frankfurt book fair. Due to the good atmosphere during these

<sup>8</sup><https://www.projekt-deal.de/vertragskundigungen-elsevier-2017/>

talks and the publishers' willingness to sign up for the DEAL route, which has now become contractually evident, I am optimistic that a deal can be reached, probably in the first or second quarter of 2018.

With Elsevier the situation is very different. Although the negotiations have lasted almost a year longer, they are less advanced than those with Springer Nature and Wiley. Elsevier has not yet accepted the approach of exclusively paying for publishing. Also, the mutual setup is much more confronting: institutions have not extended their expiring contracts. At the beginning of 2017, this involved almost 70 institutions, and now the number is up to 180 and more. At the beginning of October, the first resignations of editors were handed over to Elsevier and announced publicly.<sup>9</sup> Elsevier, on the other hand, is reaching out to individual institutions – even though there are no negotiations to be held. Editors are contacted and invited to "Editors Dinners", and contact with rectorates and ministries is sought. The alleged purpose is to break up the lines on the side of DEAL – so far without success. One can only hope that the transitional solutions with Wiley and Springer Nature, which have met great interest in the public, trigger some action on Elsevier's side. If this does not happen, there will be further escalation: more institutions will terminate agreements, editors will resign at regular intervals. Eventually DEAL will announce Elsevier's latest offer to the institutions, including financial details. At the latest when deals with Wiley and Springer Nature are concluded, Elsevier will have to put their cards on the table. If there is still no progress to be seen, one must assume that Elsevier would rather forego sales in Germany than to question their business model. But even that would be very risky for the publisher: After all, it is a large field trial to the question of whether you can live without Elsevier journals.

*LIBREAS: From the DEAL team's perspective – what is desirable?*

**BM:** That involved institutions remain calm. Rarely, if ever, has there been such an attempt. It receives international attention, not to say admiration. And it has the best chance of success.

*LIBREAS: Dear Mr. Mittermaier, thank you very much for your time!*

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<sup>9</sup>[https://www.projekt-deal.de/herausgeber\\_elsevier/](https://www.projekt-deal.de/herausgeber_elsevier/)