

Open access, copyright and licensing: basics for open access publishers

The purpose of this editorial is to cover as succinctly as possible the basics of copyright and licensing that open access publishers need to know, and to provide some guidance in making decisions in this area.

In every country that has signed the Berne Convention (World Intellectual Property Organization, 1995 [1]) author copyright is automatic, extends 50 years after the life of the author, and involves a bundle of rights, including both moral and economic rights. Under Berne, moral rights are not transferred even when authors transfer all economic rights. Berne covers some user rights (for e.g. the right to translate, the right to transform the work through adaptations or arrangements, the right of public performance, the right to recite in public, the right to communicate the performance of works to the public, the right to broadcast, the right to reproduce and the right to use the work as a basis for an audiovisual work), but leaves much to the discretion of each country. For this reason, user rights are variable from one country to another, so it is important for open access publishers to clarify user rights.

Although copyright is vested in the author, an author can grant all the rights that a publisher requires through licensing. Copyright transfer is not necessary. A license to publish can be implicit or explicit. An implicit license means even without a contract, when an author has submitted an article for publication and subsequently sent revised drafts after peer review, approved copyedited drafts, etc., the author has implicitly granted a right to publish. However, a simple explicit license clarifying how rights are shared between the author and the publisher is good practice to avoid potential confusion – and is necessary even with Creative Commons licensing.

The terms of an author - journal license should address the requirements of both parties. Following are some things that publishers and/or authors commonly look for in scholarly publishing and/or should think about, loosely based on the elements of the Creative Commons (2015) licenses [2].

Attribution: it is common for both the journal and the author to want to be appropriately acknowledged and cited for their work. This can be confusing in the case of Creative Commons licenses, which were originally designed for individual creators. It is good practice to clarify this in the author – journal agreement. An example of wording would be: “both parties agree to the attribution of this article as follows: journal x agrees to acknowledge the author(s) [insert how authors would like to be cited] and the author agrees to acknowledge journal x as the site of original publication of the article [insert details of how the journal would like articles to be cited]. Note that it is common for third party works to be included in other scholarly works; these works require separate attribution. This should be noted in the work, for example indicating the copyright and attribution of the third party along with explanatory notes about rights, e.g. “copied with permission of [x]. All rights reserved.” Information about the license of an article should be in close proximity to a caveat that the article's own license does not include third party works.

Commercial / noncommercial: there is no clear legal definition of what constitutes commercial use. We argue that with respect to copyrighted works this traditionally has a very limited meaning, either selling the work or making use of the work itself for advertising purposes (to be distinguished from search engine using their search services for advertising purposes). Many open access journals use the most open license available, CC-BY.

Retaining commercial rights using the Noncommercial (NC) element:

Journals may wish to retain exclusive commercial rights, so that competitors cannot simply take the works and sell them or copy the whole journal and sell advertising in competition with the original publisher. If this is the case, the author-journal agreement should specify either that the author and the journal both have exclusive commercial rights (so that the author can re-publish, for example as a chapter in a book for royalties), or that just the journal has exclusive commercial rights. If Creative Commons licensing is used the Noncommercial (NC) element should be included. The rights to exclusive commercial rights can belong either to the journal, or to the author (with limited commercial rights granted to the journal through the author-journal agreement).

<p>Access this article online</p> <p>Website: www.jocr.co.in</p> <p>DOI: 2250-0685.360</p>	<p style="text-align: center;"><i>Author's Photo Gallery</i></p> <div style="display: flex; justify-content: space-around;">   </div> <p style="display: flex; justify-content: space-around;"> Dr. Heather Morrison Lisa Desautels </p>	<p>¹Department University of Ottawa, Canada.</p> <p>Address of Correspondence Dr. Heather Morrison University of Ottawa, Canada. Email: Heather.Morrison@uottawa.ca</p>
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An alternative to Creative Commons

The CC licenses are useful for open access journals, but may not be optimal. For this reason we recommend that authors and journals continue to explore new approaches to licensing. Here is one alternative approach, inspired by the following text: “The content of this book may be reproduced without the authors' permission in part or in its entirety provided it is distributed and made available to the reader for free, without service charges or any other fee. The authors further stipulate that the editors, individual writers, and visual artists all be credited for their work” [4].

For open access journals, this approach might be translated into the following user license and author-journal license.

User license

The content of this work may be reproduced without the authors' permission in part or in its entirety provided it is distributed and made available to the reader for free, without service charges or any other fee. The authors further stipulate that the editors, individual writers, and visual artists all be credited for their work.

Author-journal license

The author grants to the journal the right to publish [this work], [and exclusive commercial rights if desired], on the condition that the work will be published under the terms of this user license [insert user license above].

This approach could be developed into an online click-through license. Note that this would need to provide some flexibility. For example, not all authors would be able to agree to exactly the same terms. In the U.S., for example, federal government employees are required to publish their work as public domain. Other authors must comply with funding agency requirements such as a CC-BY license, or may have employers with other conditions of publication that must be met.

References

1. World Intellectual Property Organization (WIPO). (1995). Berne Convention for the Protection of Literary and Artistic Works: Paris Act of July 24, 1971, as amended on September 28, 1979. Geneva: World Intellectual Property Organization.
2. Creative Commons. (2015, November 23). About the licenses. Retrieved from <http://creativecommons.org/licenses/>
3. Creative Commons. (2013, November 20). Considerations for licensors and licensees. Retrieved from https://wiki.creativecommons.org/wiki/Considerations_for_licensors_and_licensees#Specify_precisely_what_it_is_you_are_licensing.
4. van der Zon, M. (2010). Excerpt from the copyright page from Langlois, Sakolsky, & van der Zon (2010) Islands of Resistance (Vancouver: New Star Books, 51 – 70), as cited in Elliott & Hepting (eds.), Free Knowledge: confronting the commodification of human discovery: University of Regina Press, 2015. P. 114. <http://www.uofrpress.ca/publications/Free-Knowledge>

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