

## An Introduction to Copyright and Licensing

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### Introduction

Digital technologies have led to the emergence of new models of scholarly publishing, such as Open Access publishing, which have in turn raised important issues in relation to intellectual property. The latter is an umbrella term including copyright, patents and trademarks. Copyright is a bundle of rights protecting the rights of authors, composers, artists, film makers and other creators by ensuring that they receive recognition, payment and protection for their works. It includes moral and economic rights: moral rights relate to the right to claim authorship for the work and the right to object to any derogatory action in relation to their work; economic rights relate to issues of ownership in the use and reuse of material.<sup>1</sup> Put differently, copyright determines where, when and how a work is made available to the public and how it is used. The principal mechanism for exercising copyright and related rights is licensing. In the context of scholarly written work, the copyright relates to what may be done in terms of making copies, derivative works, citing or quoting etc. In traditional academic journals the copyright is transferred from the author to the journal publishers, with minor variations. With Open Access publishing bringing about change in this practice, the present brief aims to introduce copyright and licensing by examining some of the key issues raised in relation to authors' rights.

### Current Practice

The European Union's (EU) copyright legislation includes a set of ten directives aimed at enabling copyright protected goods and services to move freely within the EU. With regard to the Horizon 2020 funding programme, the European Commission sets its copyright rules in the Guidelines on Open Access.<sup>2</sup> In particular, the European Commission encourages beneficiaries of Horizon 2020 funding to retain their copyright as authors and to grant adequate licences to publishers. Creative Commons licences are regarded by the Commission as offering useful solutions and a good legal tool for providing Open Access in the broadest sense. Creative Commons licences are also encouraged for deposited research data.<sup>3</sup>

With regard to funder practices at Member State level, Research Councils UK (RCUK), for example, has the following policy in relation to Open Access. In cases where an Article Processing Charge (APC) is paid, RCUK requires the publisher to make the paper freely available under a Creative Commons Attribution licence (CC BY). Where Open Access is achieved through the Green Route (i.e. through deposit of the final accepted manuscript in a repository) RCUK would like researchers to make their papers available using the most liberal and enabling licences, ideally CC BY. RCUK policy requires "only that the manuscript is made

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1 European Commission. Digital Single Market ([link](#))

2 European Commission. Guidelines on Open Access to Scientific Publications and Research Data in Horizon 2020. Version 2.1. 15 February 2016 ([link](#))

3 European Commission. Guidelines on Open Access to Scientific Publications and Research Data in Horizon 2020. Version 2.1. 15 February 2016 ([link](#))

available without restriction on non-commercial re-use".<sup>4</sup> The policy does not require a specific licence, therefore the requirement can be met by using the Creative Commons Attribution non-commercial licence (CC BY NC). The Wellcome Trust has required from April 2013 that all original, peer-reviewed research articles for which it pays the APC to be published under a Creative Commons Attribution licence (CC BY), thus enabling further re-use, including text and data mining. For research articles where an APC does not apply, the Wellcome Trust encourages researchers to use a CC BY licence. The Wellcome Trust's policy also covers monographs and book chapters. In cases where a publication fee is levied a strong preference is made for Creative Commons Attribution licence (CC BY), while also accepting non-commercial and no derivatives licences (i.e. CC BY-NC, CC BY-NC-DC).<sup>5</sup>

There are examples of funders beyond the EU also requiring specific licences: the Bill and Melinda Gates Foundation's Open Access policy requires publication under a Creative Commons Attribution Generic Licence (CC BY 4.0) or equivalent to permit unrestricted use of the publication.<sup>6</sup>

### Author assigned licenses

The new copyright models that have been developed as a response to the new publishing models stand in sharp contrast to those used in the traditional publishing system where copyright is usually transferred, as a complete bundle of rights, from the author to the journal. In practical terms, this means that in subscription-based journals authors are not allowed to use their article beyond the exceptions provided under copyright law. A typical example is the possibility to self-archive the publication (i.e. the "Green Route"): publishers may allow authors to deposit their work in a repository, but might not necessarily allow it to be made Open Access, or they may allow it to be made accessible but not permit full re-use by others (i.e. the publisher may restrict the re-use rights the author may offer).

A web survey conducted among 1,226 corresponding authors of Open Access articles in Biomed Central journals, PLoS Biology and PLoS Medicine, BMJ and EJCL showed that a large majority (71%) prefer to keep the copyright, while only 2% prefer a full transfer of copyright to the journal publisher.<sup>7</sup> Creative Commons licences allow authors to specify the terms under which third parties can use their work and are therefore a useful tool for authors who wish to retain some rights to their work.

The figure below presents the different licences and the different combinations they offer in terms of distribution. Since 2004, all licences require attribution of the original author (the BY element of CC licences).

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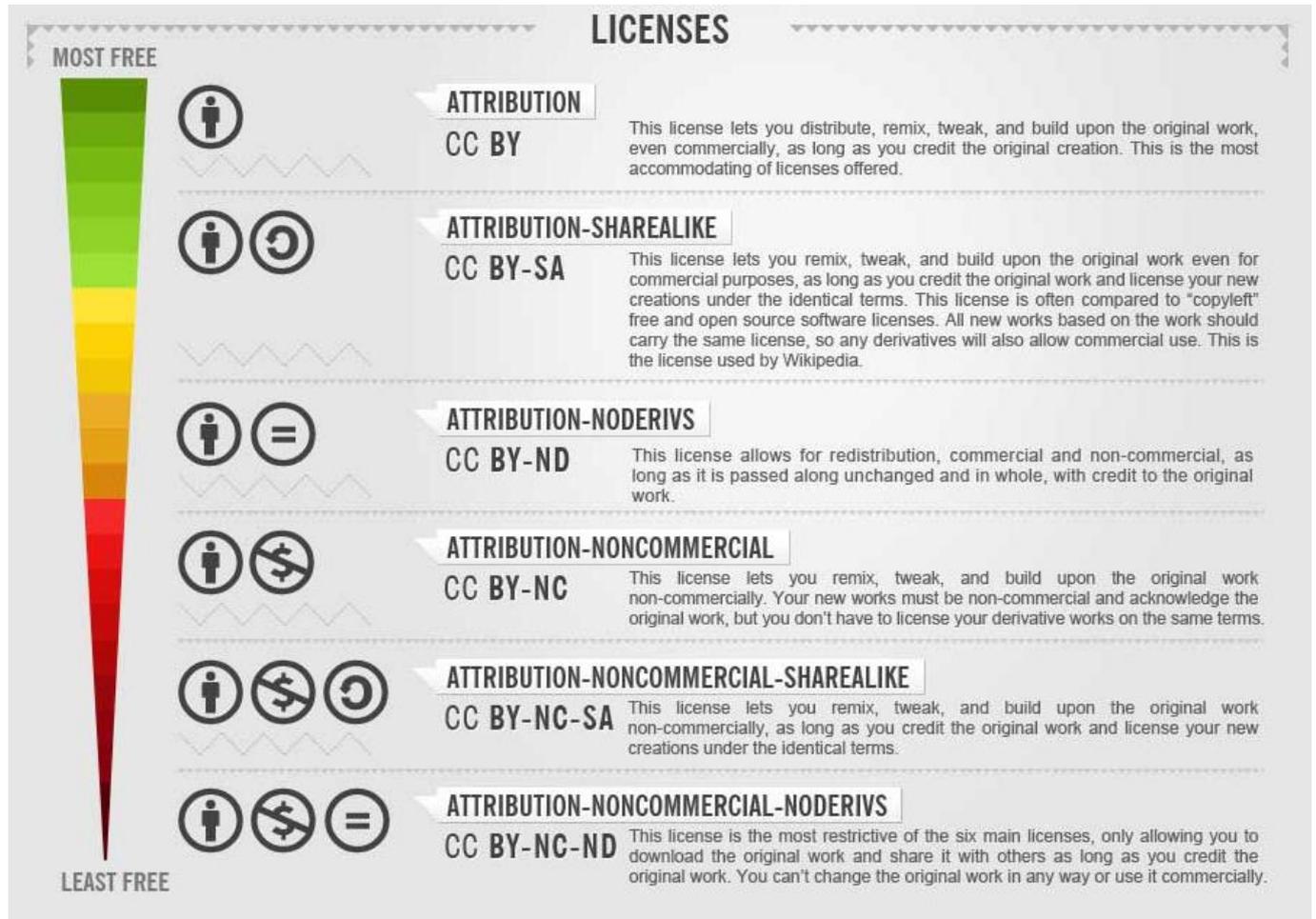
<sup>4</sup> RCUK Policy on Open Access and Guidance ([link](#))

<sup>5</sup> The Wellcome Trust. Authors' Guide and FAQ ([link](#))

<sup>6</sup> Bill and Melinda Gates Foundation Open Access Policy ([link](#))

<sup>7</sup> Hoorn, Esther and van der Graaf, Mauritz. 2006. Copyright Issues in Open Access Research Journals. D-Lib Magazine. Volume 12. Number 2. ([link](#))

Figure 1: Creative Commons licences



Source: Creative Commons

### Alternatives

While the traditional publication agreement transfers rights to the journal/ publisher, authors can use an Author Addendum to modify and supplement the publisher's agreement and keep key rights to their articles. An Addendum specifies the rights that the author will retain once his/her article is given to the publisher for publication.

SPARC Europe developed such an Addendum in cooperation with Creative Commons and Science Commons.<sup>8</sup> Both organisations also provide resources to help authors understand their rights. A further widely used Addendum is the one developed from SURF/Jisc.<sup>9</sup> Authors' Addenda have also been developed by institutions. Examples include the MIT's Copyright Agreement Amendment which was subsequently followed by the Addendum of the Committee for Institutional Cooperation, a consortium of 12 universities in the USA.<sup>10</sup> A list of Addenda for authors to use is also provided by the Open Access Directory.<sup>11</sup>

As noted by SPARC, if the publisher rejects the author Addendum, then the author should explain to the publisher the importance of keeping his/her rights, and ask the publisher to explain the reasons for rejecting the Addendum. In cases where the publisher's response is considered insufficient or unhelpful, in light of the growing need for authors to retain some of their key rights, authors should consider switching to a publisher that facilitates the widest possible dissemination.

As there is considerable variation between the different Addenda, authors must make sure to use the one that suits them (or their institution) best. For example, some Addenda exclude commercial use (through related restrictions on use) which might create restrictions in certain types of work.

### Text and Data Mining (TDM) and licensing issues

Digital technologies have also led to opportunities for efficient text and data mining (TDM): computers now allow to automatically search, filter and interpret large amounts of digital online content, thus creating new knowledge through the combination of information gathered from them.

While TDM for research purposes is about mining content that researchers have already paid for in the form of subscriptions to the journals they are mining, publishers' positions on TDM vary as many of them consider that text-mining is excluded from their agreements with research institutions. In other words, they consider that their agreements are about making material available for researchers to download and read, but not to mine. Some publishers have gone some way towards enabling TDM by developing their own proprietary tools for text and data mining: this makes life more complicated for researchers who wish to run their text-mining tools over thousands of articles in one sweep rather than using separate proprietary tools for the content of each publisher's journals. Other publishers have considered charging researchers for TDM, if a commercial product is the end result. This is a different position from that of libraries who generally consider that, having paid for access to content, mining should be allowed as well.<sup>12</sup> Given the above restrictions, researchers have in many cases felt discouraged from using such tools in analysing digital content to the detriment of innovation and of facilitating future research.

More recently, the largest publisher, Elsevier, updated its TDM policy, allowing researchers at subscribing institutions to text mine subscribed content for research purposes (non-commercial use).<sup>13</sup> In response to Elsevier's new policy on TDM, LIBER has

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8 The SPARC Author Addendum can be found [here](#). Further information from SPARC Europe on authors' rights can be found [here](#)

9 Jisc/SURF Foundation, Copyright Toolbox ([link](#))

10 OASIS. Author's Rights and Author's Addenda ([link](#))

11 Open Access Directory ([link](#))

12 SPARC. Developments in Publishers' Text and Data Mining Policies ([link](#))

13 Elsevier updates text-mining policy to improve access for researchers ([link](#))

produced a discussion paper highlighting that some of the terms and conditions related to content mining might be unnecessarily restrictive, ultimately hampering both the progress and dissemination of data driven research.<sup>14</sup>

The European Commission has responded by proposing in late 2015 a mandatory exception for research in the EU copyright legislation. The exception will allow the EU to unlock its potential for Open Science and Open Innovation, while fostering growth and innovation in Europe. At Member State level, the UK introduced in 2014 a copyright exemption whereby copies for text and data analysis for non-commercial purposes do not infringe copyright.<sup>15</sup>

While moves are underway in Europe to free up research for text- and data-mining, it will take some years before there is effective legislation across the whole EU on this matter. In parallel, the issues presented in the policy brief highlight the importance of providing adequate support to researchers allowing them to become familiar with copyright and with the different Open Access policies licence requirements and how to comply with them.

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<sup>14</sup> LIBER Responds to Elsevier's Text and Data Mining Policy ([link](#))

<sup>15</sup> The Copyright and Rights in Performances (Research, Education, Libraries and Archives) UK Regulation 2014.