

## Creative Commons licences

### Society of Biology Guidelines for Authors and Users

Research Councils UK (RCUK) and the Wellcome Trust now require that the research they fund must be published under an open access model. If this is done through the 'gold' route, then it must be made available under a "CC BY licence". This briefing document is intended to explain

- the differences between the commonly used Creative Commons (CC) licences,
- the implications for you as an author if you publish your work under one of these licences, and
- why the funding bodies wish to use the CC BY licence.

### Creative Commons licences

We need to start by recognising and understanding the basic principle of copyright: if you create something (e.g. a literary work, a painting, a piece of music) it is your intellectual property. No-one can reproduce it without your permission. Traditionally, in order to publish a research article, you assigned your copyright to the publisher or you retained your copyright but assigned the publisher some or all of the rights in it.

Under these arrangements, what the reader can do with your article (reproducing it, quoting substantial portions, etc.) without asking for permission is limited to what is allowed by under the publisher's licensing terms. There are also certain copying provisions ('exceptions') under copyright law in various parts of the world. In the UK, for example, copyright law allows the reader to photocopy one article from a journal issue for private study, or quote a certain amount for review purposes. Publishers' licensing terms may grant further rights to the reader.

The point of the Creative Commons licences is that the owner of intellectual property – such as the author of a research article – explicitly grants more sweeping rights than this to the user, and does so in a readily understandable, standardized way. The Creative Commons licences set out the permissions in his or her work that the author (or other copyright owner) is granting so that others can use the work in various ways without the need to ask anyone for permission.

### CC BY, CC BY-NC and -ND

There are many different CC licences: more detail is available on [the CC website](#). The ones most commonly mentioned in current discussions about open access publishing are the two usually referred to as 'CC BY', and 'CC BY-NC'. Each of these may be further modified by adding '-ND'.

CC BY is the *Creative Commons attribution licence*: the author says that anyone may use his or her work in any way ("may copy, distribute, display and perform the work and make derivative works based on it") provided that he or she is acknowledged as the original author (who it is **BY**). CC BY-NC is similar except that only non-commercial (**NC**) re-use is allowed. CC BY-NC is not *imposing* restrictions but *reserving some rights* to the author or publisher.

If the licence also has '-ND' in its abbreviated name, it means that the user may not create 'derivative works' without permission. They may not, for example, make translations of it into another language, or

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extract the content (such as the text or tabulated data) and present it in a different way. There is further detail on 'ND' below.

### **Why do the funding bodies wish to use the CC BY licence?**

RCUK and the Wellcome Trust are insisting, when they pay for immediate ('gold') open access, that authors use, and publishers accept, the CC BY licence rather than CC BY-NC. This is to maximise the exploitation of the research that they have funded – so that it is not merely easily accessed and read but also used, with benefits to scholarship, innovation and the economy. They see many benefits of the CC BY license; it allows for content to be redistributed so that it is read by a wider audience, translated into other languages or used in novel informative resources such as podcasts or audio files, or teaching material.

Specifically, CC BY would also allow articles to be posted in any repositories without restrictions and to be subject to text-mining. Mark Thorley outlines this in the [RCUK Blog](#), and it is explained in the [Wellcome Trusts Open Access FAQs](#).

### **Is CC BY the only way to deliver these benefits?**

It could be argued that CC BY-NC limits commercial re-use only in the context of intellectual property: it prevents the copying or adapting and then selling of published work. In other words, CC BY-NC does not prevent the ideas and results in published research findings from being used commercially to develop further innovations. Nevertheless, it is the case that the definition of what constitutes commercial use is unclear (for example, whether text-mining is allowed or barred), and the lack of clarity about what is permitted under CC BY-NC might discourage re-use (see this article by the [Open Access Scholarly Publishers Association](#)). The spectrum from simple copying and selling to being inspired by ideas is broad and the line between what CC BY-NC allows and does not allow is unclear.

### **What are the implications for the author and publisher?**

First, from April 2013 you as author must publish your research funded by RCUK or Wellcome either in an open access journal ('gold' open access) under a CC BY licence or in a journal that allows deposit of the article in an open repository ('green' open access). For the green case, these funders allow an embargo period before the archived copy becomes freely available, provided it is no more than their stipulated maximum – 6 months in Wellcome's case.

Your first steps are to ensure that your preferred journal is open access, or has an open access option, or an option to self-archive. In either of the first or second case, you will then need to ensure that the publisher will accept a CC BY licence. In publishing your research under a CC BY licence, you are permitting anyone to reproduce your article, to incorporate it in collections, to adapt it (making clear how it has been adapted), and to distribute it, including commercially, provided that you are acknowledged.

Until the announcement of their new policies by RCUK and Wellcome, many publishers had asked authors to use CC BY-NC, because journals can generate significant supplementary revenue, for example through selling reprints of articles or translation rights. It is true that it is rare for the author to benefit financially from this activity. However, the author does have some reassurance that the publisher thus knows and has some control over who is reusing the content. Also, this revenue does help fund journals, and if publishers lose this secondary income from commercial re-use they may need to recoup it through higher open access fees or subscription/licence fees. Nevertheless, most major publishers are now accepting the CC BY licence in order for authors to comply with the funding body requirements.

CC licences set out the terms under which rights are licensed out to the reader/user. Publishers, for example, will still need to acquire rights from the original copyright owner, whether or not this involves transfer of copyright. A publisher has no legal basis for publishing or granting any rights to readers/users unless they have first been granted those same rights by the author or other copyright owner, usually by means of a publishing agreement including a licence to publish. This may or may not include transfer of copyright.

### **More detail on ND**

Publishers are also offering the 'No-Derivatives', or ND license option. The CC BY-ND license, for example, allows for the redistribution of material, either commercially or non-commercially, as long as it is unchanged and complete, with credit to the author. Some authors, particularly in the social sciences and humanities, have called for this option.

The CC BY-NC-ND is the most restrictive of the Creative Commons licenses. Here, users can only share the material as long as it remains unchanged and attributed to the author, and is not used for commercial purposes.

There is some uncertainty as to whether ND licenced material can be available for text mining. Elsevier have [publicly stated](#) that NC-ND licensed articles are not available for data or text mining since text-mining may require a user to transform the document in order to search it (for example transforming a pdf document into a text file); this could be seen as a derivative and thus fall foul of the ND clause.

### **Conclusion**

Authors will increasingly need to comply with mandates regarding publishing licenses and these are likely to change further over time. It is important that you understand the key principles involved and it is wise to get definitive advice from your institution if you are unsure as to what you need to do.

### **Disclaimer**

Nothing in these guidelines should be construed as legal advice. Please consult your professional legal advisors before formulating any policies.

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