Birkbeck
UNIVERSITY OF LONDON

BIROn - Birkbeck Institutional Research Online

Collins, Ellen and Milloy, Caren and Stone, Graham (2013) Guide to Creative Commons for humanities and social science monograph authors. OAPEN-UK and Jisc Collections.

Downloaded from: https://eprints.bbk.ac.uk/id/eprint/12217/

Usage Guidelines:
Please refer to usage guidelines at https://eprints.bbk.ac.uk/policies.html or alternatively contact lib-eprints@bbk.ac.uk.

Guide to Creative Commons for Humanities and Social Science Monograph Authors

Developed by the OAPEN-UK team:
Ellen Collins, Caren Milloy and Graham Stone

Edited by: James Baker, Martin Paul Eve and Ernesto Priego

An output of the OAPENUK project

Managed by JISC collections

Funded by Arts & Humanities Research Council

This guide has been checked by creative commons

Contents

About this guide ... 3

About copyright and Creative Commons ... 6

Questions about process ... 12

Questions about repercussions for scholarship ... 17

Questions about derivatives and reuse ... 23

Questions about commercial use ... 26

Questions about benefits ... 28

Conclusion ... 30

About this guide



The photo 'Books - Then and now' is © 2011 Spykster, used under a CC BY licence.

THE FINCH REPORT, published in 2012, paved the way for a big change in the way academic journals are published. Following the report, Research Councils UK (RCUK) revised their open access policy to require journal articles based on research, that they have funded, to be published as open access. Crucially, this policy also required that any publications made available through payment of an Article Processing Charge[1] (one route for so-called 'Gold' open access) must use a Creative Commons Attribution licence (known as CC BY) to specify how content can be reused, within the copyright framework. Articles made available through self-archiving ('Green' open access) must simply be made available without any restrictions on at least non-commercial reuse: there is no mandate for a specific licence. Creative Commons licences have subsequently become a topic of considerable debate, confusion and concern among academics.

[1]An **Article Processing Charge** is a payment by the author (or their funder) to the publisher, after which the publisher makes the article available in open access immediately on publication

Current open access mandates from RCUK funders only apply to journal articles, but the Wellcome Trust has recently extended their open access policy to include scholarly monographs and book chapters (although CC BY is strongly preferred, it is not mandated). The Higher Education Funding Council for England (HEFCE) is currently considering its approach to open access publishing, and is also looking into monographs. At the same time, publishers are beginning to offer open access routes for monograph authors, an option that may appeal to some - even without a mandate. It is important, therefore, that authors understand issues of Creative Commons licensing, as they apply to monographs, in order to make informed decisions about how to licence their work.

This guide explores concerns expressed in public evidence given by researchers, learned societies and publishers to inquiries in the House of Commons and the House of Lords, and also concerns expressed by researchers working with the OAPEN-UK project. We have also identified a number of common questions and have drafted answers, which have been checked by experts including Creative Commons. The guide has been edited by active researchers, to make sure that it is relevant and useful to academics faced with making decisions about publishing.

This guide is specifically about Creative Commons licences, not about open access in general.

For more information on open access and funders' requirements visit the Research Councils UK (RCUK)[2] website, SHERPA/JULIET[3] and SHERPA/FACT[4], for research funders' open access policies.

[2] http://www.rcuk.ac.uk/research/Pages/outputs.aspx
[3] http://www.sherpa.ac.uk/juliet/index.php?la=en
[4] http://www.sherpa.ac.uk/fact/index.php

Monograph Publishing and OAPEN-UK

Print sales of scholarly monographs are in decline. In the US, between 1980 and 2000, average library sales of a monograph descended from around 2,000 to about 200. Print runs have reduced to reflect this with publishers reporting a reduction from 1,000 to around 200–300. The monograph business model has always been delicate, often cross-subsidised by other areas of publishing. The continued pressure on library book budgets, combined with a move to electronic resources, makes it even more fragile. This has caused concern among academics, who worry that important academic works may never be made available because they are not financially viable, or that dissemination of their research is being limited. Publishers are experimenting with a number of business models to try and revive the monograph market and support increased dissemination: one of these is open access. OAPEN-UK is a collaborative research project gathering evidence to help stakeholders make informed decisions on the future of open access scholarly monograph publishing in the humanities and social sciences.

The OAPEN-UK project is funded by the Arts and Humanities Research Council (AHRC) and Jisc. It is managed by JISC Collections. For more information on the project visit: http://oapen-uk.jiscebooks.org/

About copyright and Creative Commons



The photo 'Photocopying photocopies' is © 2009 de Faria, used under a CC BY-NC licence.

COPYRIGHT is the exclusive right, held by the creator of a work, to reproduce, publish, modify and sell copies. It arises automatically as soon as the work is created in 'a material form'. For an academic work, this usually means as soon as it is written. In the UK, copyright will remain with the creator during their life and for at least 70 years after their death. Copyright can be transferred to a third party by the author in an assignment. In broad terms, for traditional monograph publishing models, the publisher will require the author to either assign or license the copyright to the publisher on a temporary or perpetual basis so that the publisher can generate revenue from the book. This is determined in the contract that the author signs with the publisher, which also defines other rights and responsibilities of the author and the publisher.

Two existing models are Transfer of Copyright Agreements and Licences to Publish. The main difference between these two models is that in the Transfer of Copyright Agreement, the author assigns all their rights in the work to the publisher, including those pertaining to electronic forms and transmissions, and can no longer exercise control over how the publisher uses those rights, whereas

in a Licence to Publish, the author retains copyright and licenses specific rights to the publisher, thus maintaining control over their rights.

This distinction affects, to some extent, the way in which an author is able to use and distribute their own work. It is therefore essential that authors discuss the contract with their publishers and check that they are happy with the rights that have been assigned or licensed and the clauses of the contract that determine what they can and cannot do.

Common rights reserved by authors or granted by publishers in a standard book contract, whether based on a Transfer of Copyright Agreement or an exclusive Licence to Publish, are:

- the right to make further copies of all or part of the work for private use and classroom teaching
- the right to reuse all or part of the work in a compilation of a work or text book of which you are the author
- the right to make copies of the published work for internal distribution within the institution that employs you

If a publisher does not expressly allow the author to exercise those rights as standard in the contract, the author will have to seek permission to do any of these things unless the use is one of the statutory exemptions in copyright law. These include 'fair dealing', which allows reproduction of limited amounts of content, such as single photocopies of short extracts of a copyright work for: non-commercial research or private study, criticism or review, or reporting current events.

Authors can always try to retain more rights over the work through negotiation with the publisher. For inspiration have a look at the SPARC Author Addendum[5], or the SURF/JISC Copyright Toolbox[6].

[5] http://www.sparc.arl.org/bm~doc/SPARC_AuthorRights2006.pdf
[6] http://copyrighttoolbox.surf.nl/copyrighttoolbox/

What is a Creative Commons licence?

Creative Commons (CC) is an international not-for-profit organisation publicly launched in December 2002 that aims to improve clarity about what people can do with published content. For researchers, this generally means academic books or journal articles, but Creative Commons licences are used by all kinds of content creators – photographers, musicians, artists, Wikipedia contributors and people collecting data, to give just a few examples. Creative Commons has developed a legal and social framework in the form of licenses that complement copyright by permitting sharing and reuse of published content with conditions. The licence is expressed in three forms: the legal code (the licence itself); a human-readable deed summarising the principal terms and conditions of the licence, and a machine-readable form that computers can parse to identify the key licence features.

Creative Commons licences were originally written to work within the US legal system: as of version 3.0, the licences were internationalised for use around the world. In order to promote understanding of the licences, Creative Commons allowed version 3.0 and earlier versions to be 'ported', which means they were translated and adjusted to use terminology aligned with national copyright laws; however, all licences (even the ported licences) are suitable for use in other jurisdictions. Version 3.0 and earlier versions have been ported to over 55 jurisdictions. The ported version for England and Wales is presently version 2.0, and for Scotland version 2.5.

The Creative Commons licences are in constant development – the international 'unported' licences are now on version 3.0 which was launched in 2007. At the moment, Creative Commons is working on version 4.0. You can choose which version of the Creative Commons licences you want to use. It is very important to read the versions that are available for the UK before you use them. The advice from the Creative Commons UK affiliate is to use version 3.0 unported until version 4 unported has been released.

There are six Creative Commons licences to choose from as shown in the table opposite. All Creative Commons licences require attribution: this is signified with the 'BY' in each licence name.

Licence designation	Licence name	What does this mean for you as an author?
CC BY	Attribution  View License Deed View Legal Code	The most liberal of the Creative Commons licences apart from CC0 Public Domain Dedication (see below). This licence allows others distribute, remix, tweak, and build upon your work - even commercially - provided they credit you for the original creation and clearly indicate that changes were made to your work.
CC BY-SA	Attribution-ShareAlike  View License Deed View Legal Code	Similar to CC BY, however, others must license new creations under identical terms. Therefore, all new works based on your work will carry the same licence, so any derivatives will also allow commercial use. This is the licence used by Wikipedia.
CC BY-ND	Attribution-NoDerivatives  View License Deed View Legal Code	This licence allows for redistribution, commercial and non-commercial, provided it is passed along unchanged and in whole, with credit to the author.
CC BY-NC	Attribution-NonCommercial  View License Deed View Legal Code	Similar to CC BY, however, others must not remix, tweak, or build upon the original work for commercial purposes. Although new works must also acknowledge the author and be non-commercial, they do not have to license their derivative works on the same terms.
CC BY-NC-SA	Attribution-  View License Deed View Legal Code	This licence lets others remix, tweak, and build upon the authors work non-commercially, provided they credit the author and license their new creations under the identical terms.
CC BY-NC-ND	Attribution-NonCommercial-NoDerivatives  View License Deed View Legal Code	This is the most restrictive of the six licences, only allowing others to download works and share them with others as long as they credit the author, but they cannot change them in any way or use them commercially.

Table 1: The six Creative Commons licences

Adapted from the Creative Commons licence pages at http://creativecommons.org/licenses/ made available under a Creative Commons Attribution 3.0 Licence.

Creative Commons licences allow you, as a creator of content, to be precise about how others may, and may not, use your work. The licences are flexible enough to say exactly what is and is not allowed. All Creative Commons licences should be used unamended. You can choose one of the six but once you have done so you are not allowed to change the wording.

Creative Commons has also developed a tool (CC0 Public Domain Dedication[7]) by which you can dedicate creations to the public domain. The dedication is done through legal code hosted by Creative Commons (just as the licences are) in which you waive all copyright and related rights, such as your moral rights - to the extent they are waivable - that you have over your work. Once this has been done, anybody who reuses or builds on your work does not have to credit you, although citation is encouraged. The tool may be of use in certain situations, particularly pertaining to data. Before using CC0, you will need to ensure that all possible rights holders in the work are notified, as the dedication to the public domain is irreversible.

[7] For further information on CC0 please visit http://creativecommons.org/about/cc0

Are Creative Commons licences an alternative to copyright?

It is important to be very clear that Creative Common licences are not an alternative to copyright. They are, in fact, built on copyright and last for the same length of term as the copyright in the work. They enable you, as an author, to specify the conditions of re-use that best suit your needs, while ensuring that you are credited for your work.

You will also retain all the moral rights (see below) to your work under all Creative Commons licences.

Why are Creative Commons licences linked to open access, and why has CC BY been prioritised?

Open access publishing aims to make research publications available for anyone to read and reuse. Creative Commons licences are used because they offer an

internationally established legal structure that is aligned with the aims of open access. The move by RCUK is not unilateral: open access academic publishers in the sciences, such as PLOS, have been using CC BY licences for a number of years to disseminate peer-reviewed articles, and the Budapest Open Access Initiative[8] – a key driver of open access developments in Europe – has recommended CC BY as the preferred licence for open access publication.

[8] Find out more on the Budapest Open Access Initiative at: http://www.budapestopenaccessinitiative.org/

As shown in table 1, CC BY is the most permissive Creative Commons licence, allowing sharing, commercial reuse and modification as long as the original author is credited and the fact that changes were made to the original work is made clear. Its proponents argue that this gives users the greatest possible degree of flexibility, allowing (among other things) businesses to use published research and, by doing so, potentially encourage innovation and economic growth.

Questions about process



The photo 'Spider web' is © 2008 Andrea Kirkby, used under a CC BY-NC licence.

How do I publish under Creative Commons?

If you want to use a Creative Commons licence for your book, you will need to discuss this with your publisher and agree an appropriate contract. You can find out what copyright and self-archiving policies different publishers have on SHERPA/RoMEO[9], for example. Although many publishers do not yet offer a Creative Commons option explicitly for monograph publishing, you should feel empowered to discuss the licensing conditions of your work directly with your publisher.

[9] SHERPA/RoMEO is a useful resource available at: http://www.sherpa.ac.uk/romeo/. There is also SHERPA/FACT - Funders and Authors Compliance Tool and SHERPA/JULIET - Research funders' open access policies.

Are there other licences that publishers might use to provide open access?

Yes, some publishers have designed their own licences to provide open access. It is not clear whether these licences are acceptable to RCUK for journal articles made open access on publication, but there is no reason why monograph authors should not consider them.

What if my publisher will not offer a Creative Commons option?

Many monograph publishers do not yet offer a Creative Commons option for their authors. Moving to an open access business model is a challenge for publishers and many – particularly smaller and specialist publishers – have not yet found a way to do so.

This might be one of the factors that you should consider when choosing a publisher for your book, alongside the prestige of the publisher or imprint and their ability to reach the target audience. If the publisher will not offer a Creative Commons option and they do not wish to grant you the rights you would like to retain in the work, you could seek another publisher for your book - although this may not be an attractive alternative. However, if you are able to agree with the publisher that the copyright reverts to you after a certain amount of time, or that the contract allows you to do more with your monograph after a period of time, you may be able to make the book available using a Creative Commons licence once that amount of time has elapsed. You might also see whether the publisher will allow you to make an earlier draft of the book available for example, through an institutional repository, using a Creative Commons licence.

Who holds the copyright for a publication published under a Creative Commons licence?

Under Creative Commons, the copyright remains with the licensor (usually the author unless the publisher has been given the right to exercise copyright). Publishers working with a Creative Commons licence do not usually ask the author to assign the copyright to them, but they might ask the author to grant them a Licence to Publish and under a Creative Commons licence the right to identify themselves as the original publisher. As with many aspects of publishing, however, this is all subject to the agreement between the publisher and the author, and there is no reason why the author should not assign copyright to the publisher on the condition that their work is subsequently licensed using Creative Commons.

Can I change my mind about a Creative Commons licence after the work is published?

Once your work is published under a Creative Commons licence, you cannot

prevent use under the terms of that licence. Creative Commons licences are irrevocable for the duration of applicable copyright. You are not obligated, however, to continue to maintain the Creative Commons licensed work online, and may stop doing so at any time. You can make the work available under different terms and conditions because you are the copyright owner and Creative Commons licences are non-exclusive.

You can also waive the existing conditions or grant additional permissions that are not covered by the Creative Commons licence that you used to publish the work. For example, if you use a Creative Commons licence with a non-commercial clause and are contacted by a publisher who wants to include a chapter of your book in an edited collection which will be sold for profit, you can choose to permit this. The best way of doing this is to apply the CC+ protocol (it can be used with any of the licences). CC+ is a protocol providing a simple way for users to request or agree rights beyond those granted by a certain Creative Commons licence. In other words you can always grant more than you granted in the licence you used to publish the work, but you cannot grant less.

Can my book still be sold if it is published under a Creative Commons licence?
Yes, your book can certainly still be sold if it is published under a CC BY licence. Indeed, this may be at the heart of your publisher's business model. Often, a PDF will be made available for free, and the publisher will continue to charge for print and other e-book versions, although some publishers will also make the e-book available for free and only sell a print version, for example, Palgrave Open.[10]

If you license your work under a Creative Commons non-commercial (NC) licence, your publisher will not actually be able to sell the book on your behalf unless you choose to grant them permission to sell the book commercially.

[10] For more information on Palgrave Open visit: http://www.palgrave.com/open/

Will my book still be made available in print if it is published under a Creative Commons licence?

This will depend upon your publisher and what you agree with them during your negotiations prior to signing a contract. As we have said, some publishers will

rely upon selling print versions of the open access book to support their business model. Some are moving to a print-on-demand option for open access content, but this should not affect the availability of your print book through, for example, third parties such as Amazon.

Will I still get royalties from a Creative Commons book?

That will depend upon the agreement between you and your publisher, but in principle there is no reason why you should not receive royalties on any sales of a book published under a Creative Commons licence. However, in most open access models, author royalties are not paid.

Initial research undertaken by the OAPEN-UK project found that royalties were viewed as relatively unimportant by academics seeking to publish their work. Issues such as reputation and prestige, which were closely tied to promotion and grant awards, were more important. If you think your book is likely to produce significant royalties, you should consider this in negotiations with your publisher.

If I publish a book in open access with a Creative Commons licence, will it still be peer reviewed?

Publishing a book in open access, with or without a Creative Commons licence, has no effect on the peer review process. Established publishers using a Creative Commons licence or reputable open access publishers should follow the traditional publishing workflow, which includes peer review. Authors may wish to seek a different publisher if peer review is not part of the manuscript submission process.

I thought that the point of Creative Commons was to give authors flexibility: why am I being forced to use a Creative Commons licence that I do not agree with?

At present, the only requirement for researchers to use a Creative Commons licence for their monographs is from the Wellcome Trust and although they prefer use of a CC BY licence, other Creative Commons licences are accepted. Even if other research funders such as RCUK and HEFCE do decide to support open access for monographs, there is no guarantee that they will select a Creative Commons licence to enable this, although it seems likely that they will.

Funding bodies are entitled to set such terms as a condition of funding, just as publishers do as a condition of publishing. Researchers can choose whether or not to accept these conditions when the funding is offered and can, in theory, decline the funding if they disagree with the terms.

If major funders such as HEFCE decided to move towards supporting Creative Commons licences, there would be very little choice for researchers who did not want to use them. Ultimately the funder is free to decide how it wants the outputs of its investment to be made available as a condition of contract.

It is clear from our work with OAPEN-UK that many researchers feel their considerable investment in a book justifies more negotiations with funders when it comes to licence terms. This is something that researchers and their representatives still have an opportunity to consider, as open access for books is not required by all funders.

How can I share a book that has been published under a Creative Commons licence?

You have lots of options for sharing a book that has been published using a Creative Commons licence. Your publisher will probably make it available via their website and through third parties so that it will appear in library catalogues and web scale discovery systems such as Summon, Primo and Google Books. They might also make it available via a specialised open access book aggregator such as the OAPEN library[11], a collection of open access books from across Europe, and the Directory of Open Access Books (DOAB)[12], a directory for peer reviewed books in open access. A Creative Commons licence will also allow you to make the book available in a university or subject repository.

[11] The OAPEN Library is a central platform that contains freely accessible academic books, mainly in the area of humanities and social sciences. http://www.oapen.org/home

[12] The primary aim of DOAB is to increase discoverability of peer reviewed open access books. It provides a central location to see which publishers offer an open access option. http://www.doabooks.org/

Questions about repercussions for scholarship



The photo 'Dominos' is © 2010 koocbor, used under a CC BY-SA licence.

I am worried about third party rights: what if I cannot get permission for text or images to be published under a Creative Commons licence in my book?

This is seen by some researchers as a problem which only affects researchers in the humanities and social sciences, as they might be using images and text owned by third parties who need to protect their commercial interests. In fact, open access science publishers have been facing this challenge for some time. If a researcher wants to use a graph or diagram from an article that was not published in open access, they need to get permission from the person – often a publisher – who holds the rights.

It is important to understand that a Creative Commons licence only covers a new piece of scholarship, as an author can only license their own work, not that of others. Third party content is therefore excluded from the scope of the Creative Commons licence. Even if an author includes in their work a piece of third party content, such as an image, that has been licensed under CC BY, the image is excluded from the Creative Commons licence that the author applies to their work. This is because the image has been licensed under a separate Creative Commons

licence –granted by the image creator. Therefore all third party content, including content which the author has permission to use in a monograph published with a Creative Commons licence, must be clearly marked - in a similar way to a traditional monograph, which would also recognise third party content.

Marking by the author ensures that users understand the different licence conditions which apply to the third party content. An example from the Creative Commons wiki illustrates this:

Example of marking your own work:
Except otherwise noted, this blog is © 2009 Greg Grossmeier, under a Creative Commons Attribution-ShareAlike licence: http://creativecommons.org/licenses/by-sa/3.0/.
Example of marking the differently licensed item:
The photo X is © 2009 Jane Park, used under a Creative Commons Attribution-Noncommercial licence: http://creativecommons.org/licenses/by-nc/3.0/.

Clearly marking the excluded elements and stating the terms under which third party content has been made available, means that anybody who reuses that content without permission from the original rights holder may be violating the third party's copyright, even if they found the content in an open access publication.

This measure protects third parties to some extent, but it may not remove all their concerns. The aim of open access is to ensure that more people can read and reuse academic publications. So even though exclusions may ensure that third party material is protected, there could be a much bigger audience for that material, and therefore a perception on the part of third party rights holders that there are more opportunities for illegal misuse. Third parties may also be concerned that inclusion of their content may undermine their business model/ revenue streams. For example, a poet may not give permission for their poem to be included if they are worried that fewer people will buy the poetry, however, this is more a question for open access than Creative Commons. It is by no means certain that making content such as poems more widely available will reduce sales, indeed it could have quite the opposite effect. This is a decision for the rights holder to make about the inclusion of their work. Some of these concerns are already in evidence in relation to traditional publishing business models – for example, the reluctance of some third party rights holders to allow their content to be used in e-books.

If you are unable to get agreement from the rights holders to include content in a publication with a Creative Commons licence, you would either have to choose an alternative licence, or alternative content. Again, this is no different to current practice for third party content in traditional publishing.

I have some ethical concerns about including data I have collected from human subjects within a Creative Commons licence for my book: how can I deal with that?
Some scholars in the humanities and social sciences are working with human subjects. Their consent agreements with these subjects may include permission to publish on their research, but not permission to allow others to reuse or reanalyse the data that they share in publications.

The question of reuse of this data is a similar one to the use of third party content and could be dealt with using the same process (described above). Allowing others to reanalyse data is a more difficult issue, particularly as in many cases it is difficult to separate out data and analysis in humanities and social sciences writing. Again, this is not specifically a question for open access or Creative Commons licensing, as there is nothing to stop others re-analysing data contained in a printed book. If there are genuine ethical concerns about the use of such data then the data probably shouldn't be made public in this way, regardless of licence or media.

Will Creative Commons licences discourage international authors from publishing books with UK publishers?
There is no reason to assume that Creative Commons licensing would discourage international authors from publishing with UK publishers. In most cases, Creative Commons licences are one of several licensing options offered by publishers, including more traditional choices such as Transfer of Copyright Agreements or Licences to Publish. International authors are perfectly free to choose any of these licences.

It may turn out that UK publishers who offer Creative Commons licences become more attractive to international authors who want to publish using Creative Commons licences but do not have this option in their country.

In cases where joint authors may be from more than one country, for example in an edited work, a Creative Commons international licence (those not ported to individual jurisdictions) would be appropriate.

Will Creative Commons licences make it harder for UK researchers to publish books with international publishers?

If an author chooses to publish with a Creative Commons licence then clearly they should choose a publisher that offers this option. Some publishers, particularly small companies both in the UK and internationally, do not, although there is nothing stopping the author from negotiating this. The Directory of Open Access Books[13] is a growing resource of international open access monograph publishers.

Since, at present, there is no obligation to publish monographs with a Creative Commons licence, authors who wish to work with a publisher who does not offer this option can choose an alternative licence.

[13] DOAB contains over 1,400 academic peer-reviewed books from over 45 publishers. Visit: Directory of Open Access Books http://doabooks.org/

Will Creative Commons licences encourage plagiarism?

It is important to begin by stating that plagiarism is primarily an issue of academic ethics rather than the law. It has some crossover with copyright, but content can be plagiarised regardless of how it is licensed, even after it is out of copyright. In addition, sanctions for plagiarism, in academia, are usually carried out through institutions and via employment decisions, rather than through the courts.

The purpose of Creative Commons licences is to allow copyright holders to offer their works to the public on conditions expressed in the selected licence. All Creative Commons licences require that the original author is attributed, meaning that any plagiaristic use is unacceptable; failure to attribute constitutes copyright infringement. The author can also require users to cite the original publisher of the work. Users must also provide a link to the original version of the work, if the author has made this available - this makes it easier to discern changes that have been made.

http://wiki.creativecommons.org/FAQ

As with the issue of third party rights, mentioned above, the problem of plagiarism is related to enforcement rather than protection. Plagiarism remains a serious issue of academic misconduct as it always has been. What changes is that suddenly many more people are able to see the book, because it has been distributed so widely. Therefore there is a perception that the potential pool of 'plagiarisers' is much greater, but, if plagiarism is detected, the author retains every right to enforce sanctions.

Again, this is not a new problem and relates to all forms of publishing rather than specifically to Creative Commons licences. On a more positive note, if a work is openly available it should also become more traceable in a plagiarism case. It is also worth noting that there is no evidence than open access leads to more plagiarism.

Can I pursue a breach of a Creative Commons licence in a court of law?

The Creative Commons website is very clear about this[14] - Creative Commons licences are drafted to be enforceable around the world, and have been upheld in court in various jurisdictions. To Creative Commons' knowledge, the licences have never been held unenforceable or invalid[15].

[14] Find out more by exploring the FAQ http://wiki.creativecommons.org/Frequently_Asked_Questions#Are_Creative_Commons_licenses_enforceable_in_a_court_of_law.3F or
[15] the case law database http://wiki.creativecommons.org/Case_Law

Aren't these principles and mechanisms more relevant to the sciences than to humanities or social sciences?

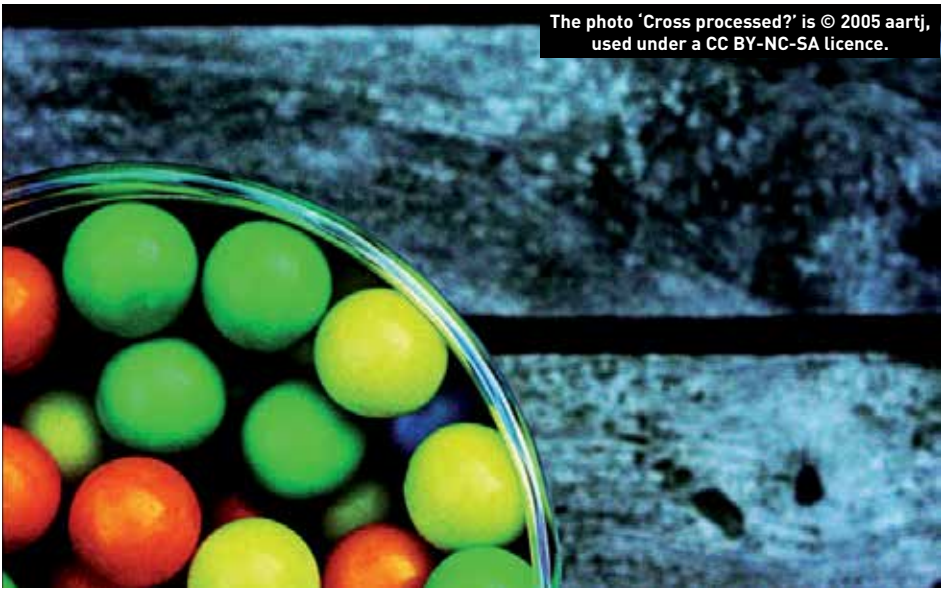
Although Creative Commons licences have been used extensively in scientific open access publishing, they have been developed to cover a much broader area including data, databases, photography and the written word, regardless of discipline.

There are considerable advantages in research funders mandating a single type of licence for open access content, not least to support interdisciplinary work.

If I am reading a book which has been licensed using Creative Commons, how do I know I am reading the author's original version and not one that has been changed and made available by another user?

Any adaptations or derivative works based upon a Creative Commons licensed work must clearly state that they are not the original work. They are also required to provide a link to the original work (unless the author has asked that this be removed or did not supply a link). So you should be able to track back and see whether you are reading the original version or one that has been amended. Organisations such as CrossRef are investigating ways to help researchers understand which version of an open access publication they are using.

Questions about derivatives and reuse



The photo 'Cross processed?' is © 2005 aartj, used under a CC BY-NC-SA licence.

Does a CC BY licence mean that anyone can reuse my work however they want to? What about my moral rights?

A CC BY licence means that anyone can use your work, but they must abide by certain conditions. They must attribute you (unless you have specifically said that you do not want to be attributed). They must also clearly indicate that changes have been made to your original work. And they must not imply that you endorse or support the changes that they have made or the new work that they have produced.

In other words, your moral rights are specifically protected by the Creative Commons licences. Moral rights vary by jurisdiction, but usually include the right to be identified as the author of the work, the right to have a work published anonymously, and the right to the integrity of the work.

What happens if somebody uses my work in a way I do not condone or support?

If your work is adapted or used in a way that you do not agree with, for example,

because it is incorrect, or because you do not support the stance of the users, you have several options. The simplest is to waive your right to attribution for that specific instance of use: the user must then remove the attribution or they will be in breach of the Creative Commons licence.

Creative Commons licences all contain a 'no endorsement, no sponsorship' clause, which explicitly says that users may not imply that the original author supports or endorses their reuse of the work. If they violate this clause, they are in breach of the Creative Commons licence and must stop using the work. In such cases of violation, the violator becomes liable to action under copyright law. Users must also be very clear about any changes they have made to the work – for example, removing words – or they will be in breach of the Creative Commons licence.

As with plagiarism, above, misuse of academic research is a longstanding and recognised problem. Nothing in a Creative Commons licence makes it acceptable for a user to misrepresent or misuse an author's work. With open access, more people will be able to find academic content because it is no longer behind a pay wall and unfortunately, some of these people may put the content to uses that are not acceptable to the original author. The issue is again one of enforcement.

Can I specifically ask not to be attributed for a certain piece of work?

Yes, you can. If you do not want to be associated with a certain piece of work, you can ask for your attribution to be removed and the user must comply if reasonably practical.

What is text and data mining and why is it relevant to me?

Text and data mining are algorithmic techniques for processing bodies of texts or other types of data in ways, and at scales, that would not be viable manually. For example, a historian may wish to examine instances and contexts of a specific phrase across all digitised documents within a collection. With works that are still in copyright, this may not be possible. Under the Creative Commons Attribution licence (and some other of the licences), however, this type of work may be undertaken.

Academic work forms a similar corpus that people may wish to study. For instance, a researcher might wish to examine the ways in which a specific issue has been represented throughout academic journal articles in the past fifty years. Deploying computational methodologies on these bodies of works may not be possible unless more permissive licensing arrangements, such as those offered by Creative Commons licences, are put into place.

Who is responsible for enforcing the Creative Commons licence?

The parties to a Creative Commons licence are the 'Licensor' and 'You'. The Licensor is defined as the individual or entity that offers the work under the terms of the Creative Commons licence. In the event that the publisher has the authority to licence the work to the public it will be the publisher that is responsible for enforcement and in the event that the author is the 'Licensor' and licenses the work to the public, it will be the author. In short, it depends upon the agreement between the author and the publisher, and should be subject to negotiation.

Questions about commercial use



The photo 'Money Tree in the Lake District' is © 2010 Pondspider, used under a CC BY-NC-SA licence.

Why should somebody else be allowed to make money out of my research, which is my intellectual property?

Data suggests that research monographs are not, in general, very profitable – indeed, this is at the root of the monograph 'crisis' identified in the introduction to this guide. Furthermore, authors, when surveyed by the OAPEN-UK project, did not rate monetary compensation as an important reason to publish a scholarly monograph. In general, researchers do not make a great deal of money from sales of their books, and in many cases the publishers do not either. Creative Commons licences may offer researchers new opportunities to make money. For example, open access may make their work visible to commercial or media companies who subsequently seek partnerships with the academics (for example, for a television documentary).

You may find it galling to think that somebody else might be making a profit from your work without passing any of that back to you. Ultimately the issue comes down to funding. If you enter into a contract with a funder or organisation, which requires you to publish findings from your funded research in a certain way, you

must either abide by that or negotiate to change the conditions of your funding or employment.

Will using Creative Commons licences for my books make me less attractive to commercial funders who support my research?

This is currently unknown. However, having used Creative Commons licences in the past does not mean that they must be used for future projects. The best advice to be offered here is to check with the funder and to ask them for a statement clarifying their position.

Why can't I use a non-commercial Creative Commons licence?

The definition of 'non-commercial' in Creative Commons is open to interpretation. It is difficult to know what constitutes commercial reuse – for example, if someone posted a copy of your book on an educational website that generates even a small amount of revenue from advertising, it could be considered a commercial reuse. There is some debate about whether non-commercial means not-for-profit. A study commissioned by Creative Commons[16] into the interpretation of 'commercial' and 'non-commercial' by creators and users indicated that uses for charitable purposes are considered less commercial but not decidedly non-commercial. Therefore, reuse of your book could prohibit organisations that make a profit from redistributing the work – this could have the negative impact of discouraging the commercial funders discussed above. Permitting all commercial reuse removes this problem, and allows people to reuse the work without worrying about whether they may unintentionally make money from it.

It is also worth noting that supporting UK economic development and growth is a key reason for the Government's support for open access publishing.

[16] Further information on the study and the work of Creative Commons on the definition of non-commercial for version 4 of the licenses is available at: http://wiki.creativecommons.org/Defining_Noncommercial

Questions about benefits



The photo 'good-bad-ugly-17th-surf_272' is © 2007 mikebaird, used under a CC BY licence.

What are the benefits of publishing with a Creative Commons licence?

We hope that this guide has gone some way to dispel some of the myths surrounding Creative Commons licences. In summary the benefits of using a Creative Commons licence include:

- The author keeps ownership of copyright
- The six Creative Commons licences are flexible enough to say exactly what is and what is not allowed
- They enable an author to modify copyright terms to best suit their needs
- They ensure that authors get the credit they deserve for their work
- Although once a Creative Commons licence is applied it cannot be altered, the author can waive the existing conditions or grant additional permissions
- The author is not prevented from selling the work or making a profit, unless otherwise specified in their contract with the publisher
- Creative Commons does not affect the format of the publication; print copies can still be produced
- Depending on the agreement between you and your publisher, royalties - where received - are not affected

- The peer review process is also unaffected
- Third party content can be included in a work published under a Creative Commons licence subject to the content owner's agreement
- The Creative Commons licence can be applied as an international licence
- Breach of a Creative Commons licence can be pursued in a court of law
- An author's moral rights are unaffected
- An author can waive their right to attribution if the work is adapted or used in a way that they do not like

How will Creative Commons content affect my teaching?

One of the biggest hurdles to those wishing to use 'Open Educational Resources' (digital materials that can be used, re-used and repurposed for teaching, learning and research and made freely available online) is the content licensed from third parties and the lack of agreed pricing structure from publishers of such content to use the material for open access purposes.

By licensing your work under Creative Commons licences, you ensure that you and others can teach using your scholarly outputs. As noted above, certain forms of existing copyright transfer can interfere with this practice, fair-dealing provisions notwithstanding.

Licensing academic content under Creative Commons licences implies awareness that the web facilitates sharing and reuse. Books made available online and licensed with Creative Commons licences pose fewer restrictions for their distribution and access, therefore potentially increasing the likelihood of an impact outside higher education.

Conclusion



The photo 'Empty Tunnel' is © 2005 Patrix, used under a CC BY licence.

MANY CONCERNS about Creative Commons licensing have been expressed in response to the findings of the Finch Report and the subsequent RCUK policy. These are apparent in public evidence given by researchers, learned societies and publishers to inquiries in the House of Commons and the House of Lords.

Researchers feel strongly about their intellectual output, and especially monographs, which are often the culmination of years of work. Creative Commons licences offer what appear to be significant changes in the way that work is made available to the public. It is understandable that this leads to some apprehension.

As this guide has attempted to show, there are some misunderstandings about what is permitted by the Creative Commons licences. Plagiarism and misuse of content, for example, are expressly prohibited by the terms of all Creative Commons licences. In many cases, the real concern is about what happens when breaches of these prohibitions occur, and this is where effort needs to be focused. Open access makes content available to a much wider audience, many of whom are not familiar with the conventions of academia. CC BY licences give

greater rights to reuse work, while still protecting the author's moral rights. As a consequence there may be some users who do not respect the terms of the CC BY or other Creative Commons licences, either through malice or just through lack of comprehension, but this would be the same with any licence and terms and conditions of use. The main issue is to ensure that authors and publishers have agreed how these licence terms will be enforced.

Many academic conventions around scholarly communication have developed to accommodate changes in the way that researchers communicate their knowledge. For example, the conventions which govern citation of online work are relatively new, developed from existing behaviours for print work but with added elements to make them robust in an online world. With Creative Commons licences, we need to ensure that the right conventions grow up around areas where there are potential problems, such as identifying changes made within derivative works and acknowledging the original source of the content. Students and researchers will need to learn to be critical and discerning about the version of the source that they use, as well as the source itself (as they are currently taught to be).

Understanding new ways to share and communicate information, and securing enforcement when things go wrong, are key to developing new business models.

For more information on Creative Commons, please refer to the website http://creativecommons.org and wiki http://wiki.creativecommons.org/Main_Page

This guide does not provide legal advice. Always consult a lawyer when in doubt about the meaning of provisions in or consequences of using a Creative Commons licence.

This guide is an output of the OAPEN-UK project managed by JISC Collections and is available online at:
http://oapen-uk.jiscebooks.org/ccguide/

DEVELOPED BY:

Ellen Collins,
Research Consultant, Research Information Network

Caren Milloy,
Head of Projects, JISC Collections

Graham Stone,
Information Resources Manager, University of Huddersfield

EDITED BY:

James Baker,
Digital Curator, British Library

Martin Paul Eve,
Lecturer, Faculty of Media Humanities and Performance, University of Lincoln

Ernesto Priego,
Lecturer in Library Science, City University London

WITH SPECIAL THANKS TO

Diane Peters,
General Counsel, Creative Commons

Emanuella Giavarra LLM,
Chambers of Prof. Mark Watson-Gandy

For enquiries please contact
Caren Milloy, Head of Projects, JISC Collections on
c.milloy@jisc-collections.ac.uk

Except where otherwise noted, this work 'Guide to Creative Commons for Humanities and Social Science Monograph Authors' by JISC Collections is licensed under a Creative Commons Attribution 3.0 Unported License.

The photo 'empty' is © 2006 eirikso and is used under a CC BY-SA licence. A colour hue has been added for this publication.