

## Point & Counterpoint: Is CC BY the Best Open Access License?

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## Point & Counterpoint

# Is CC BY the Best Open Access License?

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The only aim of scholarly communication should be the widest possible distribution of knowledge and scholarly results. In order for this to be possible, published research—which scholars give away for free to publishers—should be open access. And in this context, “gratis” open access (free to access) isn’t enough; only “libre” open access, which removes permission barriers, allows the widest distribution of knowledge.

Before considering which Creative Commons license best meets this requirement, it is worth considering the role of copyright in general. We should ask whether copyright even has a valid function in the context of science and scholarship. Ideas, principles and scientific results aren’t protected by the copyright. And reputation is the currency in science, not money. No researcher needs an incentive (such as that provided in copyright law) to do research or to publish his results. Copyright, with its restrictions, simply isn’t an appropriate instrument in this sector. “The only constraint on reproduction and distribution, and the only role for copyright in this domain,” says the Budapest Open Access Initiative (2001), “should be to give authors control over the integrity of their work and the right to be properly acknowledged and cited.”

The Creative Commons Attribution license (CC BY) is the license which best fits this description—as well as the criteria of the other authoritative Open Access definitions of Bethesda and Berlin (2001-2003), and the [definition of the Open Knowledge Foundation](#). CC BY is the “little brother” of the public domain; it makes re-use as easy as possible (the attribution requirement is not a significant barrier).

Furthermore, CC BY is accepted as the means of ensuring libre open access by the most prestigious open access publishers: Public Library of Science and BioMedCentral (now part of Springer). If Hindawi and other publishers who use the CC BY license are included, there must be thousands of authors using the license (keep in mind that, since 2003, PloS has published since nearly 50,000 articles). If there

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Recently there have been calls for all authors of STM journal articles to use the CC BY license as the one that best accords with the widely accepted Budapest Open Access Initiative’s definition of open access. There is concomitantly an effort being made to dissuade authors from using the CC license that restricts reuses to “noncommercial” ones (CC BY-NC). A good summary of these objections may be found [here](#).<sup>1</sup> Legal scholar Michael Carroll has also [made the case](#)<sup>2</sup> for “Why Full Open Access Matters” well.

I understand the reasons for promoting the CC BY license as the one that best embodies the idea of what Peter Suber has called “libre” compared with “gratis” open access, but I think that it is a strategic mistake for the OA movement to restrict its endorsement to just this single type of approach because it can both serve to divide the community that supports OA and limit the opportunities for both authors and publishers to achieve goals that are important for their own success.

Most publishers that are experimenting with OA approaches to monograph publishing including The National Academies Press, Bloomsbury Academic, University of Michigan Press, and Penn State Press (where I was director until 2009) have, for lack of alternative sources of funding, been compelled to rely on revenue generated by the sale of POD and/or PDF versions of their books to support these ventures. These could not have been initiated if authors had made their monographs available only under a CC BY license, because then anyone could sell these versions legally. It is important for political, intellectual, and many other reasons that OA not be limited to just STM journal publishing, but the insistence on using only the CC BY license would have this effect. It makes no sense intellectually for journal literature to be digitally available via OA while monographic literature is not, as this will create an unfortunate “digital divide” between naturally symbiotic forms of scholarly writing.

But even if this were not a major problem, authors and publish-



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are problems with this license, they are not apparent.

Others say that other Creative Commons licenses/terms, like No Derivatives or Non-Commercial Use, are just as appropriate for open content. However:

- No Derivatives (ND) isn't an option for scholarly publications. Scholars and scientists build upon the work of their predecessors, to stand on their shoulders. To forbid derivative works doesn't make sense if science and scholarship are to be seen as collaborative work.
- Non-Commercial Use (NC) isn't an option either. To choose a non-commercial license would mean that, e.g., an image in a CC BY-NC journal could not be re-used in a scholarly journal published by a commercial publisher. Course pack use of NC articles is also problematic if the university acts commercially and charges for the course. And let's not forget: commercial use can mean more impact for a work.

CC BY also solves the problem of orphan (or semi-orphan) works. Some countries like Germany don't have full copyright transfer to publishers. Contacting authors is therefore necessary in order to obtain re-use rights. However, it can be difficult to find scientific authors because of the common use of initials instead of first names in article metadata. And in the humanities (which do use first names) it isn't always easy to get current contact information 10 or more years after an article is published.

There is, I must concede, some loss of control for authors when using the CC BY license. One can, for example, publish a translation of an article without asking the author, and the author may not like the translation. But this is a minor disadvantage given the great potential of this license. To quote Google in regard to its Public Domain Books: "Your imagination is the limit." We cannot know the possible benefits in the next decades but we know (especially from the example of orphan works) that permission barriers are evil.

The "all rights reserved" approach isn't a substitute for ethical conduct in science or scholarship. The CC BY license is the expression of a culture of respect and appropriate attribution, while "all rights reserved" is a ridiculous attempt to try to control things you cannot control and to ignore the fact that the rules of the copyright system and the rules of the research community are different. All research results should be made CC BY (and all data CC 0).

If open access, then libre open access. If libre open access, then CC BY!

**IN-TEXT LINKS**

<sup>1</sup> <http://opendefinition.org/okd/>

ers have other reasons to be concerned about losing all control over subsequent reuses of their copyrighted works. One important consideration that authors of articles and books in the humanities and social sciences have especially is that translations of their writings be done competently. Using a CC BY license makes it impossible for an author or publisher to exert any control over how translations are prepared and published abroad, unless it could be proven that the translations were done in such a malicious way as to run afoul of the provision in the CC BY license that obliges a reuser not to "distort, mutilate, modify or take other derogatory action in relation to the Work which would be prejudicial to the Original Author's honor or reputation." This provision might provide grounds for action against an intentionally bad translation, but not just a poor one innocently done. Authors also sometimes are worried about how their articles or book chapters are reproduced alongside other articles or book chapters in anthologies. For example, a conservative author might object to the tendentious use of his work in a volume edited by a Marxist. Such use would also not likely run afoul of the provision just cited.

In short, while the CC BY license has many virtues and may be preferred by authors in STM journal publishing, it can cause real harm to the potential for expansion of OA monograph publishing, create a new "digital divide" between book and journal literature, and interfere with legitimate concerns authors and publishers have about low quality and tendentious reuses of their works.

**IN-TEXT LINKS**

<sup>1</sup> <http://www.kuro5hin.org/story/2005/9/11/16331/0655>

<sup>2</sup> <http://www.kuro5hin.org/story/2005/9/11/16331/0655>