

# Making your article freely available: Some clarifications about OnlineOpen and Creative Commons

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## Introduction

*BioEssays* offers the Wiley-Blackwell OnlineOpen service whereby an author may choose to pay to make his or her article openly accessible. This is essentially a rights transaction, in as much as the author is purchasing extra rights that go beyond the 'fair use' or 'fair dealing' exceptions to copyright that exist in many jurisdictions. These extra rights include not just open access to the article but also full non-commercial reuse rights, including, for example text and data-mining and derivative works such as adaptations and translations, as long as the authorship of the original article is fully attributed. (For a full description of OnlineOpen's terms and conditions, go to [http://www3.interscience.wiley.com/authorresources/funded\\_access.html#OnlineOpen\\_Terms](http://www3.interscience.wiley.com/authorresources/funded_access.html#OnlineOpen_Terms).)

Some authors have asked us why we do not use Creative Commons licences on our OnlineOpen articles, and this paper discusses that issue.

### Keywords:

■ Creative Commons licences; open access; OnlineOpen

DOI 10.1002/bies.201000047

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## History of Creative Commons licences

Creative Commons (CC) was founded in 2001 and its first licences were released in 2002. **It lets the author retain copyright but allows specific acts that go beyond fair use.** This is often characterised as being **'some rights reserved' rather than 'all rights reserved'**, and proponents of CC licences argue that they provide a better balance between the rights of the author and other investors in intellectual property to protect and exploit their work and the right of the public to access information. (All copyright laws attempt this balance between 'permitted acts' and 'restricted acts', but CC licences offer a different balance from the one enshrined in statute.)

CC licences have been ported to over 45 jurisdictions, 12 of them English-speaking (Australia, Canada, Hong Kong, India, Malta, New Zealand, Philippines, Singapore, South Africa, England and Wales, Scotland, USA). Needless to say, the copyright laws in these countries will vary, so CC can be seen as a way of harmonising different statutory laws, although it pretty much starts from the principles of US copyright law.

## Advantages and disadvantages of CC licences

What are some of the advantages of CC licences?

- They can lower permission transaction costs for material that most publishers are happy to distribute widely (e.g. abstracts, tables of contents).
- They are in tune with the Open Access movement, and are regarded by some as achieving a finer balance between protection and access, especially for research material.
- They provide a certain degree of clarity compared to the broad sweep of copyright law, in whatever jurisdiction.
- They give a clear moral right of 'paternity' (i.e. attribution) to US authors, who are otherwise unprotected by the moral rights that are common in other jurisdictions.

What are some of the disadvantages?

- **Only some of the intellectual property rights granted under statute are reserved, and users may believe that copyright itself is being waived.**
- The licences have not been prepared by the rightsholder, who has no input into the development or codification of the licences.
- Some terms are weakly defined, e.g. our terms and conditions for OnlineOpen are much more explicit about what we mean by non-commercial use.
- There is some debate about whether a user has actually agreed to all of the licensing terms simply by virtue of having opened a document with a CC licence logo on it – how robust is

the implied consent of the user to all of the terms and conditions?

## Types of CC licence

There are six CC licences, described below from the least to the most restricted:

1. *Attribution* licence (abbreviated to 'by') – giving due credit to the author is sufficient.
2. *Attribution Share Alike* licence (abbreviated to 'by-sa') – allows material to be adapted as long as the adapted work is licensed under the same terms as the original work. This is similar to open source software licences.
3. *Attribution No Derivatives* (abbreviated to 'by-nd') – the original material cannot be changed or adapted in any way.
4. *Attribution Non-commercial* (abbreviated to 'by-nc') – the original work cannot be used for commercial purposes, defined (under 'Restrictions' rather than 'Definitions') as being 'primarily intended for or directed towards commercial advantage or private monetary compensation'. Our OnlineOpen terms and conditions are the equivalent of this CC licence, although we define them more precisely.
5. *Attribution Non-commercial Share Alike* ('by-nc-sa') – as for 'by-sa' but with the restriction that further uses can only be non-commercial.
6. *Attribution Non-commercial No Derivatives* ('by-nc-nd') – as for 'by-nc' but the original material cannot be changed or adapted in any way.

There is a further CC licence called 'CC zero' (or CCO), which was launched in

March 2009. Unlike the six licences described above, this licence waives all copyright and puts material straight into the public domain, with no restrictions as to use. We would not recommend this licence.

Each of the CC licences has a 'Legal Code', which is the full licence, plus a 'human-readable summary' called the License Deed, and logos and buttons that can appear on the licensed material itself (see <http://creativecommons.org/about/licenses/>). The Legal Code makes it clear that CC-licensed material is 'protected by copyright and/or other applicable law' and that 'any use of the work other than as authorised under [the] license or copyright law is prohibited', and it is important for users to realise that a CC licence does not mean that copyright has been waived (unless it is a CCO licence).

The main licences have been released in four versions: 1.0 (December 2002), 2.0 (May 2004), 2.5 (June 2005) and 3.0 (February 2007). The prime purpose of version 3.0 was international harmonisation, but earlier national versions are still cited. There has been some talk about versions 3.01 and 3.5, but that seems to have died down, and 3.0 should be regarded as stable, with 4.0 in long-term development.

Pre-version 3.0 licences may differ in subtle ways. For example, the latest version of the CC by-nc-nd licence for England and Wales can be found at <http://creativecommons.org/licenses/by-nc-nd/2.0/uk/legalcode>. Despite its 'uk' filename, this only applies to England and Wales, since there is a 2.5 version for Scotland (see <http://creativecommons.org/licenses/by-nc-nd/2.5/scotland/legalcode>). The licence for England and Wales defines "non-commercial", whereas the one for Scotland does not, and there are some differences in wording

that may or may not be significant, e.g. the version for England and Wales says the licensee may 'publish, distribute, archive, perform or otherwise disseminate the work', whereas that for Scotland says 'publish, perform or communicate' – has the word 'archive' been deliberately excluded, or omitted by mistake?

## Other initiatives

There are also a number of other initiatives linked to CC that are not licences *per se*. For example, ScienceCommons was launched in 2005 as a project with a number of initiatives (Scholar's Copyright Project, Biological materials Transfer Project, NeuroCommons, Health Commons, Patent Licenses) all supporting the more open use of scientific data and content. iCommons is a charitable organisation 'incubated by CC'. Citation Commons has been proposed by JISC and SURF as a possible project to explore making reference lists freely available.

## Conclusion

In conclusion, we prefer to specify our terms and conditions so that they are clear, rather than delegate this to an organisation with whom we have no influence and which has a particular agenda. Our OnlineOpen option is fully compliant with the Wellcome Trust and other funders' mandates (all OnlineOpen articles are posted to PubMed Central, in their published format, with no post-publication embargo), and is equivalent to a CC "by-nc" licence.