



TO: Business, Innovation and Skills Committee
FROM: Creative Commons Corporation and Creative Commons United Kingdom
DATE: 6 February 2013
RE: Business, Innovation and Skills Committee inquiry on the Government's Open Access Policy

To Whom It May Concern:

Please find below the jointly submitted comments from Creative Commons Corporation and Creative Commons United Kingdom to the Business, Innovation and Skills Committee inquiry on the Government's Open Access Policy. We comment specifically on the CC BY license provision. We thank you for the opportunity to comment and we're happy answer any follow-up questions you may have.

Catherine M. Casserly, Ph.D.
CEO, Creative Commons
cathy@creativecommons.org

Introduction

1. Creative Commons¹ is a nonprofit corporation dedicated to making it easier for people to share and build upon the work of others within the framework of national copyright laws. The Creative Commons suite of free copyright licenses provides a simple, standardized way to give users permission to share and use creative and scholarly work. Creative Commons United Kingdom² is the affiliate partner that supports education and adoption efforts in the UK. The proposed Research Councils UK (RCUK) Policy on Access to Research Outputs requires that the Creative Commons Attribution licence (CC BY) be applied to articles funded through RCUK.
2. Creative Commons wrote to the RCUK in March 2012³ and we applaud the stated commitment to full open access, which "allows unrestricted re-use of content with proper attribution—as defined by the Creative Commons CC-BY license." The right to read articles online for free is essential, of course, but unless researchers are given—and clearly informed about—their legal right to copy, amend and redistribute the research, those publications will be reused less, and the overall impact lessened. CC BY communicates these rights in advance, removing the burden of seeking and possibly having to negotiate for permission to use the resource. CC BY's machine-readable metadata makes for easy search and provides clear statements of permissions and requirements; and under those requirements, authors will receive the credit they deserve."

¹ <http://creativecommons.org>

² <http://www.creativecommons.org.uk/>

³ http://wiki.creativecommons.org/RCUK_comments

Responses of Creative Commons to House of Lords comments⁴ concerning the CC BY license

3. Several respondents to the earlier House of Lords Science and Technology Select Committee consultation on Open Access provided written evidence concerning the operation of CC BY. Some of these comments are misleading and at times incorrect. We identify and respond to these errors below.

Misuse of research

4. A few commenters suggested that the use of CC BY licenses will cause authors to “lose control of their work” or “enable the misuse of research, for example by presenting extracts in ways that appear to contradict or undermine the author’s meaning.” Creative Commons licenses are copyright licenses that grant certain rights to the public while retaining others, such as the right of attribution, to the author of the article. Creative Commons licenses do not obviate or replace norms and best practices for scholarly citation. In fact, Creative Commons licenses add to these standard requirements by providing a sophisticated, flexible requirement for attribution that respects the needs of authors. The attribution requirement is a condition of all Creative Commons licenses. This requirement calls for preservation of any copyright notice; attribution of both the author and of any other persons or entities that the licensor dictates (such as a sponsoring institute or journal); and provision of the URL (link) to both the original work (if provided) and the CC license the work is under. This attribution requirement thus serves the dual purpose of ensuring that the author receives appropriate credit and that the provenance information for the work is kept intact. Authors who release their work under CC BY may request not to be attributed at all, and can require users to remove the credit otherwise required. This removal mechanism enables the authors to distance themselves from re-uses of their work they may find objectionable, a feature that may be used to protect their reputation.
5. CC licenses contain a number of additional mechanisms designed to protect an author’s reputation. These include a “no endorsement, no sponsorship” clause, which is a standard feature of all CC licences. This clause prohibits users of a work from implicitly or explicitly asserting or implying any connection with, sponsorship or endorsement by the author of that work without express, prior written consent. Any violation of this clause results in automatic termination of the user’s right to use the CC-licensed work. Furthermore, when a work is licensed under any CC license that permits alterations (including CC BY), anyone modifying the work must clearly label or identify the changes have been made when they distribute their new version. This marking requirement puts users of the new work on notice that the original has been modified, helping ensure that modifications are not wrongly associated with the original author of the work. Also, the Creative Commons international licenses (those not ported to individual jurisdictions, such as <http://creativecommons.org/licenses/by/3.0/>) explicitly maintain the users moral rights of attribution and integrity, where such rights exist.
6. When articles are released under a CC BY license, any modifications that are made do not affect the integrity of the original material because any changes are made (and noted) on a copy of the released information only. The original published version remains intact and preserved, exactly as released (most typically) in an institutional repository. Furthermore, this original

⁴ <http://www.parliament.uk/documents/lords-committees/science-technology/Openaccess/OpenAccessEvidence.pdf>

version must be linked to from the new work, ensuring that downstream users are able to verify any statements.

7. We are unaware of instances where the CC BY license (as opposed to other factors) was the cause per se of a work being misrepresented. The CC BY license does not exacerbate the long perceived problem in scholarly communication that research may be misinterpreted or miscommunicated. This challenge has always existed. Indeed, given the requirements for removal and marking as indicated above, CC BY helps with this problem by giving the author recourse against the mis-user under its specific terms. The CC BY license—and copyright law in general—cannot prevent misuse of research data. This is because the underlying laws already allow for selective quotation and reuse of copyright content under exceptions and limitations to copyright law. The CC BY license makes reuse rights clear to downstream users, so that they may, for example, conduct data mining on articles. To summarize, Creative Commons licenses are copyright licenses, and do not obviate or replace norms and best practices for scholarly citation.

Third party rights and downstream distribution

8. Some commentators argued against the CC BY requirement because they claim that where articles include third party material—such as photography or artwork as is common in the humanities and social science research—it will be unlikely that those rights holders will be in a position to grant the necessary rights to allow the author of the article to release the work under CC BY.
9. In general, CC BY does not purport to license or sublicense in any respect any content that the author doesn't own or control. Indeed, by the very terms of the CC licenses, the licenses cover only the rights held by the licensor. The particular concern here can be managed by clearly stating the terms on which the third party content (which is not under the CC license) is made available to users. Other open access publishers such as PLOS and BioMed Central have used this practice for years. The Wellcome Trust provides one example where an article is licensed under the CC BY license⁵, whereas a figure inside the article is Crown Copyright⁶. Proper marking is the solution in such a situation, so that users of a work are on notice that different license terms apply to different parts of that work, or that an exception or limitation permitted inclusion of some parts, but that the same exception and limitation may not apply to their particular reuse.
10. Creative Commons maintains an informational page to help licensors properly mark third party content⁷. By clearly communicating through marking (or perhaps at the point of download or in the copyright notice) that other rights apply to some discreet pieces of the CC BY-licensed work, authors are applying copyright best practices, providing a useful service to end users and honoring the agreements they may have with third party content providers. Clearly marking third party content as such should be standard practice for all journal publications, regardless of the licence that the article is under, just as it is for works published without an open license:

⁵ <http://www.ijbnpa.org/content/9/1/37>

⁶ <http://www.ijbnpa.org/content/9/1/37/figure/F1>

⁷ http://wiki.creativecommons.org/Marking/Creators/Marking_third_party_content

ordinary academic courtesy no less than the copyright law requires notation of the circumstances that permits the inclusion of the work of others.

Plagiarism

11. At least one commenter suggested that the adoption of CC BY “[a)] offers virtually no protection against plagiarism ... [and (b)] unfettered creative commons licensing would constitute a serious infringement of intellectual property rights and pose a threat to UK intellectual capital.” As to (a), plagiarism is the practice of taking someone else’s work and passing it off as one’s own. Plagiarism is a completely orthogonal issue to copyright infringement, and there is simply no evidence we know of that would support a claim that CC BY would promote or encourage plagiarism in a way any other solution would not as well. As to (b), CC licensing does not infringe IP rights; rather, it is a conditional permission for the public to exercise some rights on specific terms that can only enhance UK intellectual capital by making it more readily available for wide distribution and innovative use.

CC BY licenses not widely used by OA publishing

12. One commenter says, “no major commercial publisher or not-for-profit academic press allows a commercial or derivative use of their publications.” This is simply incorrect. Sustainable, professional, and respected open access publishers such as PLOS and BioMed Central have published hundreds of thousands of peer-reviewed articles under the CC BY license. And, both Springer and Wiley have begun to offer CC BY on many of their publications. The BOAI10 Expert Group on Open Access recommends CC BY⁸ as the preferred license for open access publication.

Licensing requirements as a condition of funding

13. One commenter noted that the authors are in the best position to make judgments about how their work may be reused, and by extension they should be able to choose the best license to accomplish this—such as a license more restrictive than CC BY. However, a funding body is entitled to set commercial terms as a condition of funding just as publishers do as a condition of publishing. A grant recipient may choose or decline to accept those terms when funding is offered; the choice is theirs to make: they can accept the funding and the accompanying terms, or decline of their own free will if they disagree with the terms offered. The government should be granted a wide berth in setting the terms for the copyright of the materials its funding generates. It is reasonable for funding bodies to require a specific license if such a license will be the best way to fulfill the mission and goals of the funding program.

⁸ <http://www.opensocietyfoundations.org/openaccess/boai-10-recommendations>