

Authors' Choices, Authors' Rights

Making Informed Decisions when Publishing Open

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1 SUMMARY

Wondering if publishing in an open access journal is the right move for your research? Join Scholarly Communications Librarian Mary Elmquist to chat copyright ownership, authors' rights, and how to choose the right license for your work. This session, aimed at faculty interested in or curious about publishing open, will leave you with a better understanding of open culture and copyright in the context of your rights as an author.

2 AUDIENCE

Faculty at Gettysburg College interested in publishing open access and wanting a better understanding of open culture and copyright in the context of authors' rights.

3 LEARNING OUTCOMES

At the end of this session participants will be able to:

- Explain the basic rights afforded by copyright ownership and the difference between exclusive and non-exclusive rights in the context of academic publishing contracts;
- Compare permissions granted by different open licenses and to make informed choices when applying such licenses to their work; and
- Understand the core principles of open culture and distinguish between “levels of openness” in order to begin the process of developing a personal open policy.

4 LESSON PLAN

4.1 SUPPLIES

- Opening activity/feedback sheet
- Copies of Elsevier sample contracts (commercial, CC-BY, and CC-BY-NC-ND; all page 2)¹
- Activity worksheet/Resources & next steps handout
- Slide deck

4.2 OPENING ACTIVITY

As participants settle in, hand them the double-sided half-sheet. Ask them to consider before we get started how they would define “open” and jot that down.

¹ “Copyright,” accessed August 30, 2019, <https://www.elsevier.com/about/policies/copyright>.



4.3 INTRODUCTION

- Who am I? Well, not a lawyer, let me just say that much up front.
 - I worked in a law library for almost two years—and that was enough to teach me I don't want to be a lawyer! But I am very passionate about open access and author rights
- What are we talking about today? Well, first I am going to be doing a lot of the talking for a little bit as you all eat your lunches, but we will have some activities so you have the chance to apply some of what we're talking about.
 - We're discuss copyright and licenses, but instead of thinking about how you can *use* copyrighted material, we're going to talk about what rights you have as a copyright *owner*.
 - We'll also talk about the different “kinds” of openness and how open licenses can give you the freedom to choose what happens to your work.
 - Then we'll take a little time to reflect on your publishing priorities going forward, and you'll all leave with some next steps to help you make a plan for what you want to do with your research.
- But before we get started, since I'm still relatively new, I'd love to go around and have everyone say your name, department, and one sentence about what interested you about today's presentation.

4.4 COPYRIGHT

4.4.1 What (is it)?

- Copyright is a set of protections for “original works of authorship”. You may often hear it referred to as a “bundle of rights.” A copyright owner automatically has the exclusive (we'll come back to that) right to
 - reproduce
 - distribute/profit from
 - make derivatives of
 - display/perform (if applicable)that work.

4.4.2 Who (owns it)?

- Most people already own one—you own the copyright to your original work as soon as it is “fixed”, i.e., you put it down in some kind of concrete/tangible form.
 - Let's say you have a really cool idea for a short story? No copyright (yet).
 - But once you write it down? Copyrighted and yours!

4.4.3 How (is it assigned)?

- Copyright is automatic. In the earlier example, once you've written that short story, you own the copyright right away.
 - You may choose to register your copyright with the US Copyright Office, but you don't *have to* in order to own the copyright. Doing so will essentially make it easier to protect your copyright in court.
- Copyright can also be transferred from one owner to another.
 - A copyright transfer has to happen in writing and be signed by the copyright owner—generally in a contract.
- In the case of a joint work with multiple authors, all authors have all of the rights in the bundle (including profits, which get split). In a case of multiple authors where each is contributing something distinct to a whole (like an anthology), each author owns their distinct part (depending on contract).



4.5 ACTIVITY – BUNDLE OF RIGHTS

Look over the bundle of rights—which are most important for you to keep? Which will the publisher need? Is there overlap?

4.6 LICENSES

4.6.1 What (is it?)

- Where copyright describes *ownership*, a license describes *permission*.
- It is an agreement between the owner and a “user” of a copyrighted work, granting the user specific permissions.
 - The permissions can—and often will—include options from the “bundle of rights” included in copyright (e.g., distribution, profit)

4.6.2 Who (owns it)?

- Ownership of the work is still defined by copyright. The license holder doesn’t *own* the work—rather, they’ve been permitted to do something with it.

4.6.3 How (is it assigned)?

- A license is an agreement—typically it will be spelled out in writing by the owner and then agreed to by the user. Sometimes a license will be something users are required to sign or click through, but other types of licenses can be applied passively with the expectation that users agree to them through use of the work.

4.6.3.1 *Exclusive v. non-exclusive*

- License agreements often assign rights on either an “exclusive” or “non-exclusive” basis.
 - “Exclusive” is basically a promise that the owner will only give the specific permission to a single party.
 - In a “non-exclusive” agreement, the owner retains the right to give the same permissions other people as well.
- Sometimes in contracts you may also see the terms “exclusive” or “non-exclusive rights”. Using the word “rights” instead of “license” doesn’t make it a copyright transfer! This is simply the agreement to giving the other party some part of the “bundle of rights” allowed by copyright.

4.7 ACTIVITY – READING CONTRACTS

Take a minute to look over the (closed) sample publishing contract, and discuss with a partner:

- What can you do with the article after publication?
- What rights does the publisher have?
- What overlap is there?

Feel free to reference the list from the first activity. We’ll come back to discuss briefly what everyone found.

4.8 OPEN ACCESS & AUTHORS’ RIGHTS

4.8.1 Quick share-out

What was the definition of “open” you wrote down at the beginning of the session?



4.8.2 “Spectrum of open”

- It’s not uncommon to hear people well versed in open publishing argue about what is and what is not “open access.”
 - The most common definition you may hear is some variation on “free of cost *and* free of permissions restrictions” (or “free as in beer *and* free as in speech.”)
 - By this definition, making a paper available for free is not “real” open access.
 - *This is not to say that just making a work available for free isn’t sometimes the right choice for your work!*
 - There can be significant benefits to making your work truly open.
 - The theme for this year’s OA week (Equity in Open Knowledge) prompts us to think about how we interact with open.
 - Are you allowing other scholars the potential to both access *and* build on your work freely?
 - What are the practices of the publishers you work with?
 - Is it a “hybrid” journal—where you have to pay a fee to publish open and others (like the library) still have to pay to access closed articles in the same journal?
 - Does the publisher put up a “datawall” around what should be free content—requiring users to provide personal data in order to access in lieu of a fee?
 - *Still, what degree of openness gets applied to it should be your choice as the author.*

4.8.3 Creative Commons licenses

At this point, gauge how much participants already know about the different Creative Commons licenses. The amount of explanation re: how CC licenses are constructed & used will depend on the audience.

- A type of license frequently used in OA publishing and designed to assign share-ability to a work, while imposing some other restrictions of the copyright owner’s choosing in combination:
 - Attribution (BY)
 - Share Alike (SA)
 - Non-Commerical (NC)
 - No Derivatives (ND)

4.9 ACTIVITY – BUILD (AND EXAMINE) YOUR CC LICENSE

Use the worksheet to choose a CC license. When you’re done, take a moment and revisit the license—what rights from the bundle list will users have?

We have a couple of sample open contracts from the same publisher whose closed contract we examined before. Feel free to look these over later, but for now, let’s focus on the “scholarly communication rights.” With some exceptions—you become an end user on this license. Does that affect how you feel about the possible license choices?

4.10 OPEN & YOUR WORK

4.10.1 Recommendations, resources, and tools

- Negotiate!!!
 - As Janelle often says, “If you don’t ask, you don’t get.” It’s intimidating, but publishers aren’t generally going to pull the rug out from under you just because you asked.



- Be polite, explain why it's important that you retain the rights you're asking for. Be willing to have a conversation about why the publisher feels that they need certain rights as well.
- Publishers never *need* your copyright, even if you're not publishing open. All they need is a license (often they'll want an exclusive one) to publish the work and make a profit on it.
 - Conversely, if you want to transfer copyright, you may be able to negotiate a license for yourself that allows you permissions that are important to you.
- SPARC Author Addendum
 - Does some of the negotiation for you. This addendum is primarily used to negotiate basic author rights (noncommercial redistribution, creation of derivative works) and rights to publish in an OA repository or database (think: The Cupola or PubMed Central).
- Contact Janelle or myself!
 - We would be more than willing to help you look over a publishing contract.

4.11 QUESTIONS/TAKEAWAYS/NEXT STEPS

4.11.1 Final questions?

4.11.2 Takeaway points

- You own the copyright to your work until otherwise given away in writing, which includes the *exclusive* rights to do a number of things (e.g., distribute, profit, create derivatives).
- You (or the copyright owner) can apply licenses to your work that allow other parties to exercise either specific exclusive or non-exclusive rights from that bundle.
- Although there's a lot of discussion over what "real" open is, what is right for your scholarship is dependent on you and your work, and it's worth your time to figure that out. Knowing what you want and why will make reading contracting and negotiating rights much easier.

4.11.3 Next steps

- We took a really quick pass at figuring out some of your priorities in our activities, but carve out some time to really think about it. What if anything would you have loved to change about your last publishing contract?
- Go through the checklist and reflect on what is most important to you—these answers can form the basis of your own personal open access policy.
- Commit to your new policy—this may mean changes for your next publication. If the changes seem unfeasible, figure out what part of your policy is the problem. Is it really a priority? Are you willing to make it one?
 - Again, reach out to Janelle or me if you have questions. We'd love you help you find the right place to publish your work.

Ask participants to fill out the feedback questions on the back of their initial definition sheet.

5 SUPPLEMENTARY MATERIALS

Continued on next page:



OPENING REFLECTION

How would you define the “open” in open access?

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How did you hear about this session?

Is there anything you would like to learn more about in future sessions like this?

Other comments?

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1 COPYRIGHT – BUNDLE OF RIGHTS

You're planning to publish an article. Which rights from the bundle of rights do you want to keep? Which do you think the publisher will need?

Author (You)		Publisher
<input type="checkbox"/>	Reproduce	<input type="checkbox"/>
<input type="checkbox"/>	Create derivatives (e.g., revised editions)	<input type="checkbox"/>
<input type="checkbox"/>	Distribute (profit from)	<input type="checkbox"/>
<input type="checkbox"/>	Perform/Display	<input type="checkbox"/>

2 CHOOSE-YOUR-OWN CC LICENSE

1. Do you want others to be able to use your work commercially?

- Yes
- No (Add –NC to the CC license below)

2. Do you want others to be able to make and share derivative works? (e.g. revised editions, compilations/anthologies)

- Yes
- No (Add –ND to the CC license below)

a. If yes, do you want others to be required to share any derivative works under the same license you're using?

- Yes (add –SA to the license below)
- No

Your ideal license: CC-BY-



3 YOUR PERSONAL OPEN ACCESS POLICY - SOME QUESTIONS TO CONSIDER

- What works do you want to prioritize when publishing open?
 - Papers? Book chapters? Whole books? Conference proceedings?

- What parts of “openness” are most important to you?
 - Do you care if your work is free as in speech, or is your priority free as in beer?
 - Does publisher/journal ethos matter to you?
 - Do you want to publish in hybrid journals?
 - With publishers who practice datawalling?

- Considerations when reading your contract/talking to your publisher
 - Copyright – Who will it belong to?
 - Do *you* want to be able to...?
 - Share a version of your work in your institutional repository? Personal website?
 - Immediately?
 - Make derivatives of your own work?

- If you’re applying an open license (CC specifically)
 - Do you want others to...?
 - Be able to “remix” your work (i.e., make derivative works)?
 - Share derivative works under the same license?
 - Be able to use your work commercially?

4 FURTHER RESOURCES

SPARC – Author Rights & Author Addendum

<https://sparcopen.org/our-work/author-rights/>

HowOpenIsIt?

<https://www.plos.org/how-open-is-it>

Your librarian

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