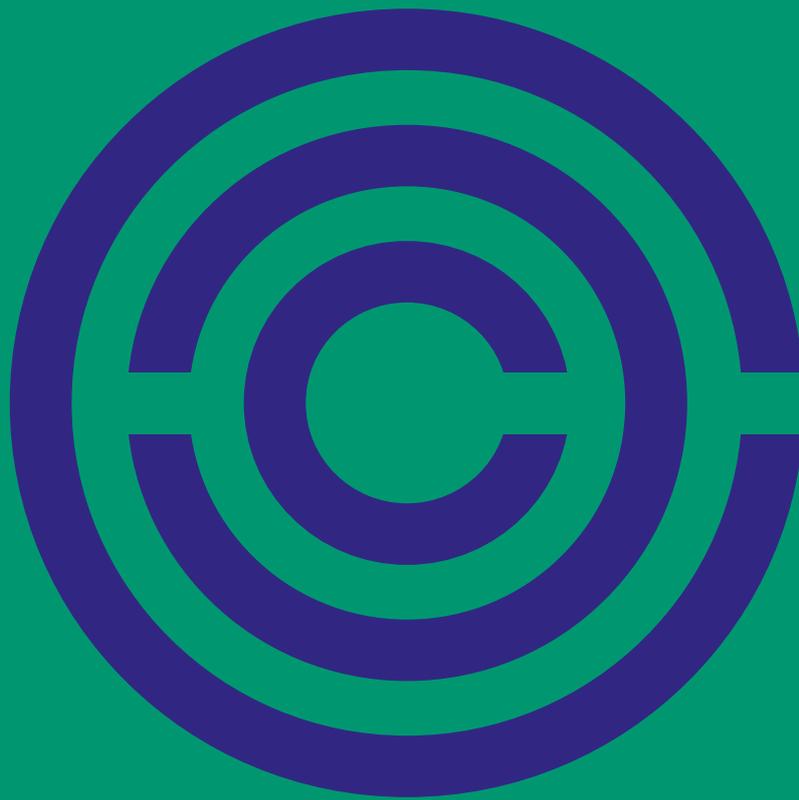


Legal aspects of converting a scientific journal to an open- access model



Guidelines for publishers

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Warsaw, June 2018

Introduction

There has been an ongoing debate on scientific communication models since the release of the Budapest Open Access Initiative in 2002, which started a period of intense development of the open access movement for free and universal access to research literature. Initially accepted by a group of a few specialists, its principles are now followed by thousands of researchers, publishing houses, university authorities and scientific institutes. With time, it has become understandable for researchers and scientific institutions that open access brings profits: making a publication widely available results in greater recognisability of the study as such and a more significant number of quotations, which in turn translates into the position of the author and the institution in the scientific world. The problem of whether to choose open access has been replaced by a more pragmatic question of how to do this. The decision to implement open access principles in a journal can be taken at its very beginnings or – in the case of already-existing journals – at any moment of its existence. In each case, however, it requires changes in the way the journal and its editorial staff are functioning and in the co-operation with the authors.

These guidelines explain the process of converting a journal to open access and briefly present the essential legal considerations together with their possible solutions. Detailed information about turning journals to open access can be found in many publications, and the following text should be considered as supplementary to previous materials on the issue. It devotes particular attention to legal problems connected with open access as seen from the perspective of the editors of a scientific journal.

The gold road to open access in Poland

The most crucial issue in deciding on gold open access (meaning open-access publishing, as opposed to green open access based on publications in repositories) is the journal's business model. Periodicals published in paid distribution models usually bring at least a small profit, whose loss is often the main argument against open access. It is worth mentioning, though, that general changes in distribution models and the development of open access among other journals might decrease the profit incurred so far.

To protect themselves against loss of income, large publishing houses often adopt a hybrid model with Article Processing Charges (APC) imposed on authors or their institutions. Large publishers and the business model based on the free use of published research results that are then sold for large sums of money to libraries subscribed to databases are more and more often criticised.

The situation is dynamic: an increasing number of European Union countries is re-negotiating agreements with large publishers, and the European Commission has recently announced that they would no longer finance the hybrid model through grants in the next framework programme (Horizon Europe). Moreover, with further development of the data-based economy in mind, the European Commission has proposed a cloud service project that would support open access to scientific data and serve as an element of the introduction of the Digital Single Market Strategy.

The model of open publications (i.e. available in electronic form, online, free of charge, without the need to log

in and – optimally – with a possibility of free redistribution) seems to be easier to introduce in Poland for at least two reasons. First of all, the activities of research institutions and most scientific publishers are based on public funding, and, secondly, the model of financing journals from state funds that is most common in Poland is consistent with open access rules. It is confirmed by the fact that many publications are distributed in an open format (for instance, a research report *Otwarta nauka w Polsce 2014. Diagnoza [Open science in Poland 2014. A diagnosis]* indicates that more than a half of all research journals in 2014 had their issues openly available).

It is easier for journals that enjoy different forms of funding to resign from distribution profits. The introduction of open access increases the journal's visibility and makes its content more accessible to use. This, in turn, translates into the position and prestige of the title, which is of crucial importance for its publishers. The rank of the journal has influence on how the research unit or university to which the publishing house is affiliated are evaluated (so, at least in theory, it can also increase the unit's guarantee fund allotted for its statutory activity, including publishing) and indirectly supports its efforts to obtain funding from other sources. The business model in which financial support from public funds is a consequence of the journal's position is based on open and easy access to its content.

In a traditional publishing model, access to scientific materials is restricted and enjoyed mainly by researchers and students using international subscriptions to paid databases. Of course, one can still access publications in libraries or purchase them, but this is often impossible for readers from smaller academic centres. We should also remember that the number of printed copies of scientific journals and books is usually meagre, which is yet another obstacle to successful distribution.

As a result, such a journal does not reach the full range of its potential readers, including those outside of purely academic circles, for example, commercial entities (and it is precisely cooperation with such institutions that opens up the possibility of grants as part of public-private partnerships). Last but not least, science can serve its social function much more effectively because open access to publications makes it much easier to popularise research results.

The following publication presents conclusions drawn from the process of converting a journal to open access carried out at the Publishing House of the Institute of Literary Research of the Polish Academy of Sciences (*Wydawnictwo IBL*) as part of the project "EAST. Enhancing Accessibility and Sustainability of *Teksty Drugie*. Design and Implementation of a Sustainable Open-Access Business Model for

Polish Journals in the Humanities" funded by OpenAIRE as part of the programme "Alternative Funding Mechanism for non-author fee based Open Access Publishing". The project aimed to develop an optimal open access model for scientific journals in Poland. The magazine selected for the pilot implementation of open access is a bimonthly entitled *Teksty Drugie* published by IBL PAN and the Pro Cultura Literatura Association since 1990.

Preparations for the project included the analysis of legal and institutional considerations of journals published by IBL PAN. The print was the main form of publication of the journals, and digital copies were made available in the open Digital Repository of the Scientific Institutes (*Repozytorium Cyfrowe Instytutów Naukowych*, RCiN) after a year-long embargo. The publisher has never felt the need to introduce a hybrid model (i.e. Article Processing Charges), since the journals enjoy different sources of public funding: statutory resources of IBL PAN and its co-publishers (the University of Warsaw, scientific associations), publishing programmes of the Ministry of Culture and National Heritage and grants from the Ministry of Science and Higher Education. The aim of the project was thus to develop a sustainable model that would help the Institute implement the open access policy and at the same time ensure funding options for its journals.

During the project, we also analysed the existing business models of Polish and foreign journals and the technical accessibility and legal status of journals published by the Publishing House of IBL PAN. We paid particular attention to the visibility of those titles in international scientific communication networks, participation in which is the primary objective of the modernisation works on the online availability of journals. Moreover, we analysed IBL PAN institutional policies on intellectual property and publishing activities.

It was of crucial importance to select the right platform for the journal distribution. Although *Teksty Drugie* is regularly deposited in the institutional RCiN, it cannot serve as an equivalent to digital publication. Since IBL PAN does not run a publishing platform, we have considered it reasonable to use available solutions instead of building its own service from scratch. To ensure the openness and international distribution of the journal, we have decided in the implementation phase to use OpenEdition as the publishing tool.

OpenEdition is a comprehensive infrastructure for digital communication in humanities and social sciences, whose main aim is to promote digital publications in open access. OpenEdition is based on the OJS (Open Journal Systems) software connected with a dedicated text editor (Lodel). The articles are available in different formats (HTML, ePub,

PDF) and automatically assigned DOI numbers (Digital Object Identifier). The platform is also a source of detailed statistical information about the usage of the portal that can be an advantage while evaluating the journal. OpenEdition is also one of the founders of the international OPERAS consortium (Open Access in European Research Area through Scholarly Communication), which connects different European open science initiatives and develops infrastructure for open scientific texts.

OpenEdition is run by the French Centre for Open Electronic Publishing (Cléo), a public and non-profit initiative supported by prestigious research organisations. Apart from OpenEdition Journals, OpenEdition develops three other platforms: OpenEdition Books (monographs and edited volumes), Hypothèses (research blogs) and Calenda (academic events calendar). To summarise, we have decided that using a reliable and developing platform will make the journal internationally visible and eventually help connect access to journals with the distribution of IBL PAN books. Another advantage of using a large international platform is the considerable number of institutional subscribers (academic libraries) that pay fees for restricted content or content available in ePub and PDF formats (freemium model).

During the preparations, we have developed an **open model of indirect institutional benefits** for IBL PAN. It assumes that adopting open access to one's publications and putting them in international circulation is a means to increase the journal's importance, which indirectly translates into more measurable benefits for the institution. These include a higher mark during the evaluation of scientific units, more points for articles published in the journal, a solid argument in the process of seeking financial resources for the journal (usually in programmes that demand open publications, for example, Horizon 2020). The model also assumes that the institution benefits from supporting and opening a journal because profits from other sources and unmeasurable benefits (e.g. prestige) exceed possible earnings from subscription-based distribution. It has to be added that the model does not exclude paid distribution altogether: the journals can still use the freemium model described below (paid access to selected formats). Furthermore, the model applies to journals published at scientific institutions or associations that can at least partially support their work.

The main disadvantage of the model is its dependence on the fluid and unpredictable scientific system in Poland. The adopted solutions meet the requirements set by the European Commission and the declarations of the Ministry of Science and Higher Education, but the potential indirect benefits (e.g. the result of the unit in evaluation or assessment of the journal) can depend on detailed regulations. It

seems, however, that with the above-described trend in access to scientific texts in mind, open access remains a wise investment for the future.

While analysing the business model, we have also considered the freemium model for open-access publications popularised by OpenEdition (the HTML version is available free of charge in open access, but more advanced formats like ePub or printable versions are downloadable for a fee). We, however, decided to choose full open access and distribute journals under Creative Commons Attribution license to maximise the accessibility of our scientific content. Visibility for all groups without unnecessary restrictions increases the possible range of the journal, including audiences from outside strictly scientific circles. Presence in the international network is in turn recommended by the Ministry of Science and Higher Education and appreciated in European funding programmes.

As a consequence of our decision on the technological and legal availability of IBL PAN journals, we have formulated the openness policy of IBL PAN, which contains a set of rules for the whole Institute and describes issues relating to access to scientific texts and openness-related recommendations for IBL employees. The project also included the development of a Polish version of the OpenEdition interface and informational materials for editors of Polish journals who would like to use the platform.

We realise that the process described above will vary depending on the institutional conditions and editorial policies in different institutions. We have described subsequent stages of the process in detail to show arguments in favour of the decisions taken. The next part of the publication will present the process of selecting an optimal legal model for a journal to be published in open access. It leads the interested editors through the decision-making process concerning the legal openness of a journal.

Open-access Journal – primary legal considerations

Converting a scientific journal to open access is a process that consists of organisational, technical and legal activities. In the case of journals available online, the organisational and technical activities are limited to making the files available free of charge. Open access does not rule out the traditional distribution of printed copies, although changing the model may indeed have some influence on such distribution as well. Paradoxically, cases are known of sales of printed copies increasing after making electronic versions

available in open access. This might be caused by the promotional function of the open access model.

The scope of legal activities depends on whether the journal will be made available under a free license or not. If the publisher decides to make the journal available under fair use (that is without granting a free license), the reader will be able to use the publication to the extent permitted by laws on fair use, which allow, among others, personal use and the right to quote.

If the publisher decides to make the journal available under a free license (for example under one of the Creative Commons licenses), they will have to make sure that it is possible and plan it in such a way as for the process to be legally valid.

It sometimes happens that the legal status of a journal needs clarification and settling, which does not have to stem from the decision to introduce open access but from previous erroneous practice. That is why it is always crucial to analyse the current legal status of the journal.

Disclaimer

It is important to note that this document was prepared for Polish journals and, although it addresses somewhat universal issues which are faced by publishers in Europe and elsewhere, certain detailed remarks may be limited to the Polish copyright law. Hence, readers from other countries are advised to consult experts familiar with their national legal acts regulating intellectual property. The Authors believe that despite this shortcoming, this document may serve as a comprehensive roadmap to address and control legal issues concerning converting journals to Open Access.

Advantages of free licenses

When in a dilemma whether to choose a free license and if yes, which one, publishers often conservatively claim that if no one forces them to approve the use of a given beyond fair use, they will maintain *status quo*.

The increasing popularity of CC licenses among publishers of scientific works has, however, reasonable grounds that result from the rules governing the scientific world. The most fundamental guideline for deciding on a free license is the rule of realism. The publisher should consider the possible ways in which their publication will be used, including especially the possibility of its commercial use. If

it turns out that the publisher does not see a potential for additional revenue in the foreseeable future, there is nothing against allowing others to use the works in a way that does not contradict the publisher's interests.

Proprietary copyrights control the way in which works are used, which also means limitations in their distribution. Yet, the financial model in the case of scientific publications is very often independent of the number of copies sold: the publishing process is funded with grants, and sales revenues are of a somewhat subsidiary nature.

At the same time, each periodical aims to distribute as many copies and gain as many quotations as possible to strengthen or improve the journal's scientific standing. If so, then it is in the publisher's interest to eliminate those barriers, including legal ones, which make achieving this aim difficult. The role of CC licenses is to remove legal obstacles considered by the publisher to be contrary to their interest, and the result of using such licenses is, in turn, allowing a broader audience to distribute the publications with the use of various ideas and participation of multiple people.

Legal analysis of a journal. What needs particular attention

1. The following guidelines have been written especially with current journal issues in mind. As far as archival journal issues are concerned, one has to bear in mind that their legal status can be regulated by provisions that were effective at the time of their publication. For instance, the Polish Act on Copyright of 1994 drastically changed the copyright protection of photographs and made them equal to other works what has some effect on articles published after the law became effective.
2. The essential Polish regulations applicable to converting journals to open access can be found in the Act on Copyright and Related Rights of 4 February 1994 (*ustawa z dnia 4 lutego 1994 r. o prawie autorskim i prawach pokrewnych*) (**Copyright Act**). Readers from other countries are advised to identify the relevant national bills (see Disclaimer above).
3. Journal publishers may be bound by various agreements (e.g. distribution agreements) that may impose certain obligations or restrictions on them. As part of the transition process, all contracts and agreements concerning a given journal should be carefully analysed regarding liabilities connected with the journal and possibly the conditions on which the arrangements can be altered or terminated.
4. If foreign authors have written the published texts or there are other connections with foreign parties, one should also take into account applicable external law (depending on the author's nationality). It is also advisable to draft contract templates in such a way as to include provisions that would specify local law (i.e. effective in the publisher's country) as the governing one to the fullest extent possible.
5. **The analysis of the journal's legal status** should cover the following copyright issues:
 - Identifying works and their authors:
 - Specify the works under protection explicitly (e.g. a single article).
 - Does it contain any other works that may be protected independently of the work in question (e.g. photographs, illustrations, maps)?
 - Have one or more authors prepared the work? If more, did they exercise their rights themselves, for example, granted a license or transferred their rights to the publisher? If one author worked on behalf of the others, was he rightfully authorised to do so by the other authors?
 - If the rights were traded several times, is it possible to reconstruct each of the legal steps of the process? Are they consistent, for instance in their fields of exploitation?
 - Rights to the journal as a whole (publisher's right):
 - Who is the publisher? Who owns the right to the journal?
 - Are the works published based on an agreement

on the transfer of rights or a license agreement? Is it an exclusive or a non-exclusive license?

- Which fields of exploitation (i.e. means and scale of reproduction) were specified in the agreement mentioned above?
 - Is the planned use of the work remains within the fields of exploitation specified in the agreement? For instance, if the author transfers copyright only to the printed version of the journal, the publisher does not have the right to make that work available online without the author's additional consent.
- Was the manner of use of the works specified?
 - The author may limit the purchaser's rights to a specific way of using the work within the specified fields of exploitation.
- Were the agreements formally correct?
 - Were the parties to the agreement correctly specified? (Were the signees allowed to enter into the agreement effectively? Did they have the right to represent the given institution?)
 - Was the proper legal form maintained (e.g. written form for transfer of rights or an exclusive license)?
 - Were the fields of exploitation listed?
 - Were the works explicitly specified?

Work and author

1. **Work** is any manifestation of human creative and individual action that has been established in any form (a work is established when at least one person apart from the author can familiarise themselves with it thanks to, for instance, a presentation or a written form). Works do not have to be of artistic or scientific value, and the threshold of creativity that is necessary to place the work under protection is quite low. Copyright protection does not demand any activity (like registration) from the beneficiary. They are entitled to it automatically from the moment the work is established.
2. **A work of joint authorship** is one that has been created as a result of an agreement of at least two people; the agreement can be reached at any moment of the creation process. All authors collectively enjoy the rights to the work. If several authors have written the work, it is

necessary to obtain consent from all of them, but one of them can represent others if duly authorised.

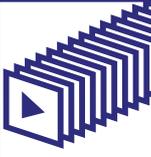
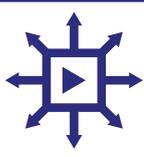
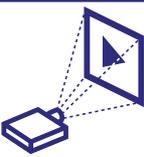
3. **A derivative work** is one that has been created as a result of the transformation of the original, underlying work, for example, a translation. The author of the underlying work has the right to give their consent to disseminate the derivative work, which is also under protection.
4. While converting a journal to open access, one should identify the types of works that are used in the journal and their creators and determine whether the latter are just authors (and co-authors) or also translators, photographers, illustrators etc.

Publisher's rights

1. A collective work is, for example, an encyclopaedia or a journal issue. It consists of many works (e.g. articles), which are independent of each other with regards to copyright protection. The rights to particular works included in the collective work belong to their authors (as long as they are not transferred through an agreement). The right to the joint work (e.g. a journal issue) as a whole is in turn granted to the publisher.
2. There might be more than one publisher, in which case each of them exercises their part of the rights.

Transfer of rights vs granting a license

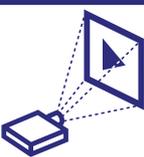
1. To publish an article (or any other work), the publisher needs to be rightfully entitled: **the person who owns the copyright to the work can either transfer the right to the publisher or grant the publisher a license.** Transferring the proprietary copyright has far-reaching consequences and in principle is final. The person who transferred their copyright to another person no longer holds it, just as a person who sold their car loses all rights to the car.
2. **Moral rights**, on the other hand, have a different character than **proprietary copyrights**. The former protects the connection between the author and the work (e.g. the authorship or integrity of the work), whereas the latter protect the way the work is used and can be subject to trade. Given the Polish law, moral rights are inalienable, which means they cannot be transferred to another person (they cannot be sold nor donated).

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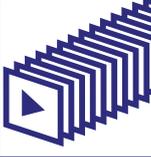
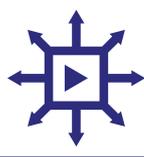
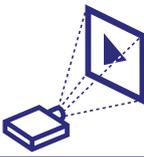
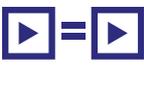
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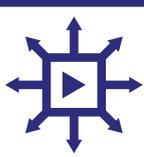
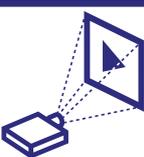
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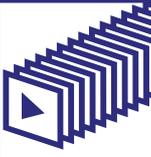
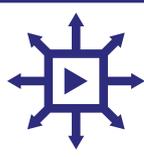
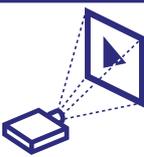
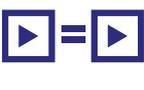
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3. Authors who grant a **license** do not lose their copyright to the work. The license is merely a sign of consent to another person using the work in a specified manner. The difference between an exclusive license and a non-exclusive one is that in the case of the former the person who is granted the license agrees not to grant third parties additional licenses to the given work.
4. A non-exclusive license can be granted in any form, for example verbally. **An exclusive license and transfer of rights require a written form, which means that the agreement has to be signed in person** (a scanned version does not meet the requirement) by both parties (the author's unilateral statement about the exercise of their right is not an agreement, even if signed in person). It is the person that uses the right (e.g. the publisher of a journal) who – in the case of a dispute – will have to prove that they have been granted the license or that the rights have been transferred to them in the right form (if required).
5. Creative Commons licenses are a particular type of non-exclusive licenses (see below). A CC license is granted through the licensor's statement. A person using the work agrees to the conditions specified in the license and as a result enters into the license agreement.

Fields of exploitation

1. An agreement on the transfer of rights or a license agreement needs to indicate the fields of exploitation it concerns. **A field of exploitation is an economically or technically isolated form of using a specified work**, for example printing a journal, making it available online, putting it into circulation or copying it. Article 50 of the Copyright Act contains a sample catalogue of fields of exploitation:
 - within the scope of recording and reproducing the work: producing copies of the work using a specific technique, e.g. print, reprography, magnetic recording or digital technology;
 - within the scope of circulation of the original work or copies on which the work was recorded – introducing into circulation, lending for use or rental of the original work or its copies;
 - within the scope of distribution of the work in a manner different than in the point above: public performance, exhibition, screening, presentation and broadcast or rebroadcast, as well as making the work publicly available in such a way as

to let anyone access it in a place and at a time individually chosen by them.

2. The agreements can be based on the above catalogue, but the fields of exploitation may be defined quite freely. The expression “making the work publicly available in such a way as to let anyone access it in a place and at a time individually chosen by them” includes numerous ways of making the work available online.
3. Any provision concerning the fields of exploitation that is unknown when the agreement is concluded is ineffective. It means that – given the Polish law – even if the author transfers the rights to the work to the fullest extent possible, if a new field of exploitation becomes available, it will be the author who enjoys the right to use the work in the new field. This is often the case with old publishing agreements for printed works which had not provided for digital distribution, what in consequence does not allow publishers to disseminate the content online without an additional contract with the author.

The scope of the use

4. Fields of exploitation need to be distinguished from how the work will be used. If the agreement does not specify otherwise, the license or transfer of rights allows the beneficiary to use the work in a manner that complies with the character and purpose of the work. But the scope can be defined differently in the agreement (it can be for example limited to specific ways of use).

Agreements

1. It is often the case in Poland that copyright-related agreements are erroneous in that they wrongly specify the parties of the agreement as, for instance, the “editors of the journal”. Such entities do not have legal personality and as such cannot enter into agreements. The agreement should be entered into by a person (or persons) that represents the given institution, for example, a university that publishes a journal. The editor-in-chief of the journal may enjoy a power of attorney that entitles them to enter into such agreements, but this has to be verified and cannot be taken for granted.

2. If the agreement was not prepared in a written form although it had been required by law, the rights were not successfully transferred, or the exclusive license was not granted. In such cases and in cases when there is no evidence of any agreement having been conducted, but there is no doubt that both parties accepted the publication, it is presumed that a non-exclusive license has been granted. It might be problematic, however, to indicate the fields of exploitation the license applies to. In the case of a legal dispute, prior failure to indicate the fields of exploitation might be considered a reason for deeming the whole agreement invalid, although there are discrepancies between court rulings on the matter.
3. It is also necessary to indicate the work the agreement refers to, but there is no need to mention the title (which might not yet be specified). It can be a work that is yet to be created, but it has to be described in such a way as to leave no doubt that the agreement concerns this particular work.

Settling the legal status

4. As regards works published in the past and based on agreements that did not contain provisions on making the journal available in open access, a journal needs to settle the legal status of those works, i.e. obtain the necessary rights to distribute the work in open access in accordance with the law.
5. The process first step in the process of settling the legal status of a work may require an individual approach, but in principle will look like this: the first step is to identify the following: target access model, which entails:
 - A) Identifying the current rights of the publisher.
 - B) Selecting the target model (e.g. one of the CC licenses).
 - C) Preparing an offer for the beneficiary if the rights of the publisher are insufficient.
 - D) The beneficiary might grant the publisher a non-exclusive license (which does not require a written form; an email is sufficient) or a CC license suggested by the publisher or sign a written agreement transferring their rights to the publisher or granting an exclusive license.

Creative Commons licenses

1. While converting a journal to another access model, it is worth considering one of the Creative Commons licenses.
2. Creative Commons licenses (CC licenses) have been released as a response to the conclusion that extensive copyright protection is not always necessary for authors and in some cases might even make it harder to reach one's objectives and protect the beneficiaries' actual interests. Hence, the approach in the CC licenses is "Some Rights Reserved" (in comparison with the classical "all rights reserved"). **CC licenses are a universal legal tool that enables distribution of works in such a way that the recipients have a wider range of rights than under regular provisions of law** (and – in turn – the author's rights are restricted).
3. It is highly recommended to use standard licenses such as Creative Commons. It helps users quickly recognise what rights they are granted, which is of particular importance in the case of machine analysis of large amounts of works (*Text and Data Mining*) when there is practically no possibility of analysing all of the license provisions separately. Drafting a custom license that will describe the licensor's intent with absolute precision will have only one advantage: it will precisely indicate the author's will. However, using such a work will be complicated as it requires reading and analysing the license each time. In most cases, it is more effective to use a universal, internationally known license.
4. Scientific works can be made available under a CC license in two ways. Firstly, the author might be at the

same time the licensor and grant the license while handing the text over to the editors (granting the license might be conditioned by accepting the manuscript for publication). In such a case, the publisher is the licensee. Secondly, the publishers can grant the license themselves. Yet, to do that effectively, they should be entitled to do so by the author. The simplest way to achieve that is to transfer full rights to the work from the author to the publisher. Such an agreement can specify that the author transfers the copyright to the publisher and at the same time obliges them to make the work available under one of the CC licenses. In the latter case, the author may rest assured that her work will be openly available and the publisher will be shielded from a possibility of author's revoking or altering the license in the future. Practically, both ways lead to the same outcome, in which the work is publicly available in the open access.

Six CC licenses

1. **CC licenses consist of four conditions, whose combinations give us a range of six different licenses that match licensors' different interests.**
2. Attribution (BY): the licensee has to state the author and the source of the work.
3. Share-alike (SA): the licensee may distribute the works (including derivative works) only under an identical

license. The condition aims to enforce openness of derivative works. Using this condition may lead to conflicts between licenses, for example when a derivative work makes use of two works that include the SA condition, but only one of them additionally has the No Derivative Works clause.

4. Non-commercial (NC): restricts the distribution of the work to non-commercial purposes only.
5. No Derivative Works (ND): the licensee cannot distribute derivative works (e.g. translations of the original work).
6. The above conditions appear in six main combinations. Two licenses are called “free licenses” because they grant the licensees a wide range of rights:
 - CC BY – Attribution;
 - CC BY-SA – Attribution-ShareAlike.
7. The four remaining CC licenses are not considered “free”:
 - CC BY-NC – Attribution-NonCommercial;
 - CC BY-ND – Attribution-NoDerivs;
 - CC BY-NC-SA – Attribution-NonCommercial-ShareAlike;
 - CC BY-NC-ND – Attribution-NonCommercial-NoDerivs.
8. CC BY-NC-ND is a license that only slightly exceeds regular rights granted to users under regulations on fair use.

License versions

1. The latest CC license version is 4.0 (e.g. CC BY 4.0). The previous ones are for instance 3.0 and 2.0. Version 4.0 has been translated into Polish but not adapted to specific Polish regulations. This is because it has been decided that the content of each license should be the same in all countries. Previous versions were not only translated into particular languages but also adapted to local legal systems. In the case of Poland, such localised versions end with “PL”, e.g. CC BY 3.0 PL.
2. It is generally better to use newer versions as they include necessary changes which remove problems encountered in the previous versions.

How to correctly indicate a license?

3. One of the advantages of CC licenses is the possibility of using their short notation (e.g. CC BY-ND 4.0). It has

to be remembered, however, that it is the complete text that forms the license, not the name itself, so one should always refer to the full text of the right license, for example, CC BY 3.0 PL.

4. Lack of a reference to the full text of the license or using its incomplete name may be considered a mistake that causes the license to be invalid.

How to select the right CC license?

1. If you are considering a CC license for a journal, you should, first of all, decide what you want to achieve. What is your goal? If you would like to make your work available to the broadest audience possible, do not see any prospects of its commercial use and, at the same time, accept the fact that someone may find a way to use it commercially without the need to obtain your approval and to share the profit or that they may distribute derivative works such as translations into other languages, you should choose CC BY. It will ensure your right always to be credited as the author of the work (you keep your moral rights).
2. But **the reflection on your needs should be realistic.** Keeping your rights “just in case” (thinking that you “will find a way to use them in a few years”) will probably turn out to be unrealistic if you are not able to specify how the work can be used in a relatively short time. Over this time, the copyright you have kept might be working against you; for example, an article may not be quoted as often as it would be in the case of a free license.
3. The prospect of commercial use without an additional approval often triggers an automatic negative response, but it has to be remembered that **the borderline between what is commercial and what is not is very fluid.** There are numerous unclear situations in between the obvious ones. Imagine a blogger who uploads PDF files with scientific articles to his blog. If there are advertisements placed on the blog too, the materials can be considered to be commercially used. On the other hand, text and data mining (i.e. using vast textual corpora for statistical analyses) is becoming more and more popular. For practical reasons, such projects focus on the works for which no additional approvals are needed.

Recommended steps



Defining the objectives which the publisher sets for the journal: is it increased income or increased number of quotations?



Analysing the legal status.



Deciding whether the journal should be available under a free license, e.g. CC BY 4.0.



If a CC license is chosen, decide whether the author makes it available under a CC license, or transfers full rights to the publisher, who in turn commits itself to distribute the work under such license.



If a CC license is rejected, the publisher may decide that a non-exclusive license would be sufficient. Such a solution will make the whole procedure easier as it does not require additional agreements.



Marking the articles with the proper license and including the necessary information in the metadata of the article.

