

# Copyright and Creative Commons Licenses

Research  
note

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The online dissemination of scholarly journals has changed how copyright has been managed since the print era. Much confusion still surrounds copyright for digital scientific publishing; scholars responsible for journals do not always have access to the resources needed to formalize their management of copyright.

What are the options available in terms of copyright management and what are the best practices in line with fair and sustainable open access?

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**Érudit**



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# What is copyright?

According to section 3 of the Copyright Act:

copyright, in relation to a work, means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever [...] or, if the work is unpublished, to publish the work or any substantial part thereof, and includes the sole right [...] to produce, reproduce, perform or publish any translation of the work [and] and to authorize any such acts.<sup>1</sup>

Accompanying copyright are moral rights, related but distinct under Canadian law. These can be waived, but not ceded. A following section will address moral rights in more detail.

Copyright is attached to all works, including scientific publications; one cannot freely reproduce a scientific publication in paper or digital format without being the owner of the copyright. The digital communications ecosystem that emerged in the 1990s thus requires greater rigour on the legal front, and not all journals have adjusted. A French study found in 2019 that a solid majority of humanities and social science journals did not require their authors to sign contracts.<sup>2</sup>

Digital publishing platforms (such as erudit.org), databases (such as the MLA Bibliography), and citation indexes (such as Web of Science) require that journals have the right to authorize the indexing of the metadata and/or the full text of the articles published:

- by copyright assignment, in which the authors transfer their copyright to the journal (which is indicated by the mention “© [Journal Title]”), or
- through licenses to publish signed with the authors, in which they agree that the journal can use their work for specific purposes (indicated by the mention “© [Author’s Name]”).

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<sup>1</sup> Department of Justice Canada. Copyright in works, R.S.C., 1985, c. C-42, s. 3 (1). [laws-lois.justice.gc.ca/eng/acts/C-42/page-2.html](https://laws-lois.justice.gc.ca/eng/acts/C-42/page-2.html)

<sup>2</sup> IDATE DigiWorld. “Étude sur l’économie des revues de sciences humaines et sociales: Rapport final – Phases 1 & 2.” Service du livre et de la lecture du ministère de la Culture, January 2020. [enseignementsup-recherche.gouv.fr/cid148895/etude-sur-l-economie-des-revues-de-sciences-humaines-et-sociales-shs.html](https://enseignementsup-recherche.gouv.fr/cid148895/etude-sur-l-economie-des-revues-de-sciences-humaines-et-sociales-shs.html)



## COPYRIGHT ASSIGNMENT, MORAL RIGHTS, AND OPEN ACCESS

Copyright assignment is the practice through which a journal asks its authors to sign a contract making the journal the sole owner of economic copyright “avec toutes les prérogatives que cela comporte [and all the prerogatives that come with it],” including “le droit de traduction, d’adaptation dans une nouvelle forme, l’inclusion dans un ouvrage collectif [the right to translate, to adapt into a new form, or to include in an edited collection]”.<sup>3</sup> The law however specifies that “[a]n assignment of copyright in a work does not by that act alone constitute a waiver of any moral rights.”<sup>4</sup>

Even though journals can obtain an article’s copyright, they cannot hold moral rights to the work. The author has “the right to the integrity of the work and, in connection with an act mentioned in section 3 [quoted above], the right, where reasonable in the circumstances, to be associated with the work as its author by name or under a pseudonym and the right to remain anonymous.”<sup>5</sup> That is exactly the role that the Budapest Open Access Initiative (2002) suggests for copyright: it should “give authors control over the integrity of their work and the right to be properly acknowledged and cited.”<sup>6</sup>

Journals that have an embargo period — during which access to articles is restricted to subscribers before becoming freely accessible — usually turn to copyright assignment. Open-access journals must rely on licenses to publish and generally choose a Creative Commons open license.

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<sup>3</sup> Couture, Marc. “D2 - Le droit d’auteur.” In SCI 1013 Introduction aux méthodes de recherche scientifique. Téléuq. Accessed November 12, 2020. [benhur.teluq.ca/ST/sciences/sci1013/textes/D2.htm](http://benhur.teluq.ca/ST/sciences/sci1013/textes/D2.htm)

<sup>4</sup> Department of Justice Canada. Moral Rights, R.S.C., 1985, c. C-42, s. 14.1 (3). [laws-lois.justice.gc.ca/eng/acts/C-42/page-4.html](http://laws-lois.justice.gc.ca/eng/acts/C-42/page-4.html)

<sup>5</sup> Department of Justice Canada. Moral Rights, R.S.C., 1985, c. C-42, s. 14.1 (1). [laws-lois.justice.gc.ca/eng/acts/C-42/page-4.html](http://laws-lois.justice.gc.ca/eng/acts/C-42/page-4.html)

<sup>6</sup> “Budapest Open Access Initiative,” February 14, 2002. [budapestopenaccessinitiative.org/read](http://budapestopenaccessinitiative.org/read)

# What is a Creative Commons license?

The use of a Creative Commons license is considered best practice in an open-access publishing environment. Created in 2001, the Creative Commons organization prepared standard contracts to simplify things for creators and users alike, following in the footsteps of the open-source software movement. Creative Commons licensing was established to regulate the terms and conditions of reuse – reproduction, distribution, broadcasting, or modification/adaptation – of all works, including scientific articles.

There is no single “Creative Commons license”; there are many. The most permissive is the CC0 license (Creative Commons Zero) which allows the copyright owner to waive as many rights as possible within the bounds of applicable law, including the right to be acknowledged as the author. The work is thus as close as it can be to the public domain into which it will move when the copyright expires.

03

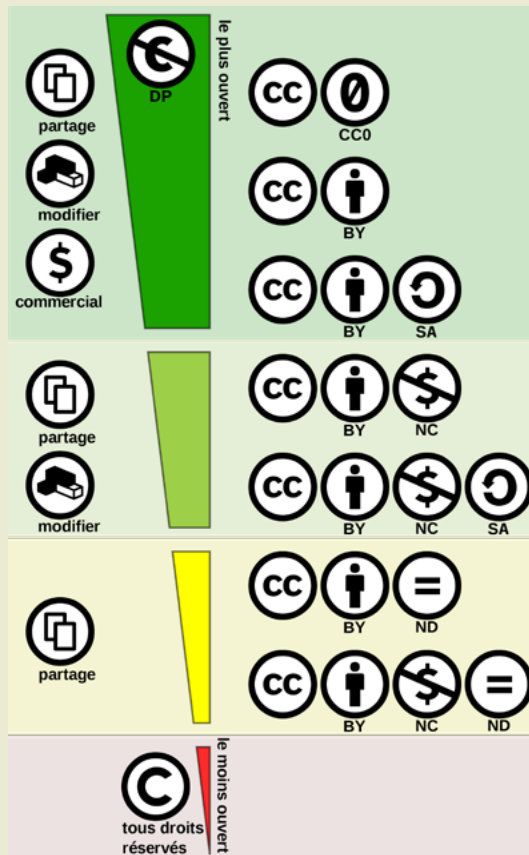


## **CC0 1.0: Public Domain Dedication**

Beyond the CC0 license, Creative Commons offers four options which can be combined to create six additional licenses.

The four options that handle potential reuse are:

- Attribution (BY): credits must be given to the author, and a link to the original work must be provided;
- Non-commercial (NC): reuse cannot be aimed mainly at gaining a commercial advantage or a financial compensation;
- Share-alike (SA): without prior permission from the copyright owner, any reuse must be published under the same license as the original work;
- No Derivative Works (ND): without prior permission, the modified work cannot be disseminated or distributed.



The following six licenses result from the combination of the four above options:

**CC BY 4.0:** Attribution

**CC BY-SA 4.0:** Attribution + Share-alike

**CC BY-NC 4.0:**  
Attribution + Non-commercial

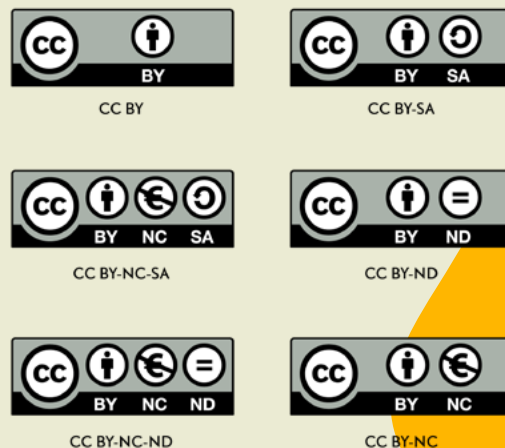
**CC BY-NC-SA 4.0:** Attribution +  
Non-commercial + Share-alike

**CC BY-ND 4.0:**  
Attribution + No Derivatives

**CC BY-NC-ND 4.0:** Attribution +  
Non-commercial + No Derivatives

- Illustration 1: "Creative commons license spectrum.svg" on Wikimedia Commons is under the CC BY-SA 4.0 license.

Scholarly journals can choose between these licenses, but the most permissive are favoured by the movement promoting open science and open access in the interest of maximum dissemination and reuse of works. It should be noted that in cases in which the journal does not specify the license, the "all rights reserved" regime applies by default, which severely restricts the circulation of scientific output.



# Why are Creative Commons licenses becoming so prevalent at the moment?

The Creative Commons licenses are the easiest way for a journal to satisfy open-access requirements.

Indeed, the first principle of Plan S, an international initiative to promote open-access research publication [see "[Note on Open Access](#)"], is that "[a]uthors or their institutions retain copyright to their publications," choosing when possible the CC BY Creative Commons license.<sup>7</sup> For academic journals, using a CC license has the additional benefit of eliminating the burden of establishing copyright arrangements with article authors. Creative Commons licenses apply to all publishing venues and repositories, whether they be a platform, a website, or an open archive.

CC BY (Attribution) is the license best suited to self-archiving, as well as text and data mining. It is favoured both by the *Directory of Open Access Journals* (DOAJ) and Plan S.<sup>8</sup> Although the DOAJ prefers the CC BY license, it also endorses journals that use the CC BY-SA (Attribution + Share-alike) and CC BY-NC (Attribution + Non-commercial) licenses.

The DOAJ and Plan S recognize that the CC BY license renders possible uses that can be problematic. During the consultations regarding the implementation of Plan S, various non-commercial actors within scientific publishing underscored important issues raised by imposing the very permissive license. Research involving human subjects may require the collected data to be anonymized and for it to be impossible to commercialize the data. In contrast, the CC BY license poses problems for data anonymization and makes it possible to commercialize data.

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<sup>7</sup> Plan S. "Principles and Implementation: Principle 01." Accessed February 26, 2020. <https://www.coalition-s.org/addendum-to-the-coalition-s-guidance-on-the-implementation-of-plan-s/principles-and-implementation/>

<sup>8</sup> Directory of Open Access Journals. "4) Copyright, Licensing, Publishing Rights." Accessed February 26, 2020. [doaj.org](http://doaj.org); Plan S. "Principles and Implementation: Principle 01."

# On the road toward better copyright management

Scholarly journals do not always formalize their copyright management. This oversight creates problems — for instance, for the aggregation and indexation agreements signed by a journal or its online publishing platform. These agreements require that journals have the right to transmit to third-party companies the metadata and/or full text of the articles published. To choose a copyright management model that best meets its needs, a journal must take into account numerous financial, logistical, and ethical considerations. It must also balance editorial imperatives since the copyright management model on which it settles must, in the end, be aligned with its intellectual aims and in service of its development.





## BEST PRACTICES FOR JOURNALS

- Display your copyright policy on your website where it can easily be found
- Make sure all members of your journal's team know the policy
- Read carefully the terms and conditions of the distribution agreements of the distribution platforms and databases in which your journal is indexed before signing them

For journals using or wishing to use a Creative Commons license:

- Determine which license best fits your principles and editorial activities
- Display your license icon on the home page of your journal
- Display your license icon on all versions of all the articles you publish (HTML, PDF)
- If your journal has the technical capacity, integrate the license in article metadata to ensure the information is machine-readable
- Display your journal's policy regarding the terms of use and reuse of licensed content

For information from the point of view of the author, consult the Canadian Association of Research Libraries (CARL) Guide to Author Rights, April 2019 ([carl-abrc.ca/wp-content/uploads/2019/05/CARL\\_Guide\\_author\\_rights\\_EN\\_2019.pdf](http://carl-abrc.ca/wp-content/uploads/2019/05/CARL_Guide_author_rights_EN_2019.pdf)).