

Open Access journals copyright policies: An analysis of the information available to prospective authors

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<http://www.telug.ca/spersonnel/mcouture/home.htm>

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Introduction

As evidenced by the number of titles in the Directory of Open Access Journals (DOAJ; doaj.org), the number of OA journals has steadily increased since the creation of this directory in 2002 (table 1), to more than 4000 in mid-2009.

TABLE 1

Number of titles in DOAJ (2002-2008)

Source: Data file downloaded May 25, 2009 from <http://doaj.org>

Year	End-of-year total	Newly added
2002	27	–
2003	596	569
2004	1187	591
2005	1802	615
2006	2347	545
2007	2943	596
2008	3808	865

Reasons to publish in an OA journal are well known: increased visibility, uptake, and impact (v.g. as measured by citation counts) are among the most often cited (Harnad, 2001). But once an author has opted for this type of venue, how does she choose a specific journal, for instance from the relevant category in DOAJ's list? Again, many criteria may play a role in that decision. One of them is copyright. In a survey conducted among OA authors (Hoorn & van der Graaf, 2005), 68 % ranked their interest in copyright as medium or high, and 49 % stated that journal copyright policies influenced their choice of journal (in a major way for one-third of the respondents).

An important dimension of copyright involved in publishing is ownership. Traditionally, (mostly fee-based) publishers required the complete transfer of copyright; in turn, they grant authors some more or less "generous" distribution, web posting or reuse "rights", more aptly named "permissions". It has been suggested that alternative, less encompassing agreements, for instance licenses (exclusive or not), which would nevertheless allow journals to profit from their business, should be offered by publishers, or demanded by authors (Bachrach *et al.*, 1998). One can wonder if OA journals differ from their traditional counterparts in this respect, considering that there is not much potential revenue at the horizon once their articles are available for free, thus no real need to restrict further uses by the author.

End-user (or reader) rights are another important aspect of copyright in publishing. When, say, an article available online (OA or not) is accessed, users are very limited in what they can legally

do (on top of reading it onscreen, of course), absent any explicit statement to the contrary. This is the realm of fair use, fair dealing or similar “exceptions” embedded in most national copyright laws. These are very limited: the rights to make a private copy for oneself, usually for research or study purposes, to distribute copies in a very limited fashion, and to reproduce a (very) small part of the article in another work.

This second dimension of copyright is most important in the Open Access movement, as exemplified by the three B’s (Bethesda Statement, 2003; Budapest Initiative, 2002; Berlin Declaration, 2003): OA is more than toll-free access, but also about end-user rights. For instance, the Budapest Open Access Initiative (2003) states:

By "open access" to this literature, we mean [...] permitting any users to read, download, copy, distribute, print, search, or link to the full texts of these articles, crawl them for indexing, pass them as data to software...

Prospective authors may very well look, among other things, for specific stances in copyright ownership or management when they choose an OA publishing venue. But where do actual OA journals stand on these issues? And how clearly and effectively do they, or could they, inform prospective authors about their copyright policy, in view of the goals of the OA proponents?

The following analysis of these issues and the model which will propose rely upon two principles:

- The deal (of which copyright is part) between author and publisher involved in publishing an article must be fair, from both legal and ethical perspectives.
- A balance must be struck between the rights of the parties, taking into account the interest of the journal (to generate revenues or profits, or simply to survive), the author (to reuse her work in further scholarly endeavours), and the end-user (to use the works in his personal or professional activities). To that end, Hoorn & van der Graaf (2005) proposed a set of four models (called “good practices”) among which a journal could choose, consisting of various combinations of rights retained by or granted to the three parties involved.

More specifically, we wanted to answer the following questions:

- Where and how easily can information about copyright be found on OA journals websites?
- To what extent this information allow a prospective author to ascertain (1) if she will keep the copyright in her article; (2) what reuse rights (if any) she will retain, and (3) what permissions (if any) will be given to end-users?
- Are the four models (“good practices”) proposed by Hoorn & van der Graaf (2005) actually used by journals? Are there other, emerging models?

Method

A random sample of 320 journals was picked from DOAJ list (3800 journals as of Dec. 2008). From these, 20 were rejected, mostly for language issues; web sites in English, French, Spanish and Portuguese/Brazilian were analyzed. The 300 remaining journals came from 251 different publishers.

We carefully examined the content of each journal website, looking for statements, explanations, and icons (like CC or ©) in individual pages, in copyright transfer or license forms, and in a

sample article, noting how prominent, or how deep in the website structure it was located. Relevant information was either directly coded, when it fell obviously into a predefined category (for instance, publisher owns copyright of articles), or copied into an Excel file for further analysis.

Results

It became soon obvious that information about copyright is often scarce, fuzzy or, in some cases, incoherent or contradictory. For instance, the website may feature the © icon along the publisher’s name, while the articles bear the same icon along the author’s name. In fact, it’s possible for a work to be subject to two simultaneous copyrights: one for the content (which may be held by the author), and the other for the actual formatting and presentation (held by the publisher). It’s also possible that © [publisher] applies to all the site content *except* the articles. In such cases, identifying the copyright holder requires some interpretation. In other cases, it wasn’t even possible: about one-tenth of journals websites contain no mention of copyright whatsoever, let alone copyright ownership.

Location of information about copyright

Information about copyright is rarely found (Table 2) in the home page (only 10 % mention copyright there), but mainly (63 %) in “inside” pages, sometimes buried into general instructions or guidelines, or in the copyright agreement form available from the site (20 %). Note that this doesn’t mean that only 20 % of journals require a signed copyright agreement. A further 3 % state that a copyright agreement (not available on the website) must be signed, and some others may send the author an agreement form once an article is accepted. The point here is that the author will often know the terms of the agreement only after his article has been accepted.

TABLE 2

Location of information about copyright in journals websites.

Location	%
Home page	10
Other pages	63
Copyright agreement form	20
Articles	13
Nowhere	9

Copyright ownership and transfer

Copyright ownership is explicitly stated in 70 % of journals (Table 3). Among the remaining 30 %, 12 % offer no or contradictory information as to ownership, while in the other 18%, some interpretation of the available information is required to reach a conclusion about ownership, a requirement which may well be out of reach (or patience) of the average author, as we will discuss below.

Overall, 38 % of journals (54%, with interpretation) require transfer of copyright, while 32 % (34%, with interpretation) allow the author to keep the copyright. So, even if one assumes that all journals without indication as to who owns copyright actually don’t require its transfer, less than

half of the journals let authors keep their copyright. This is to be compared to the figure obtained by Hoom (2005) of 71% of OA authors preferring to keep their copyright.

TABLE 3
Copyright ownership and transfer.

	Author (%)	Journal (%)	n/d (%)	Total
Total	34	54	12	100
Explicitly stated	32	38		70
– no transfer (implicit license)	24	–		
– non-exclusive license	5	–		
– exclusive license	3	–		
Interpretation required	2	16		18
– hints in text	1	4		
– © in journal website pages	–	5		
– © in articles or download page	1	7		
No hint as to ownership	–	–	12	12

The combination of journals requiring copyright transfer and the absence of copyright agreement in most websites raises a serious issue. In Canadian, U.S. as well as UK law, the transfer of copyright requires a signed agreement to be effective. But among journals stating, in a way or another, that they own the copyright, transfer agreement forms are found in less than a quarter of websites; in another quarter, one finds only a statement that authors transfer their copyright, and in the remaining half, only an indication of publisher ownership of copyright, with no mention of transfer whatsoever.

Journals that don't require copyright transfer, thus only a license, fare better in this regard: 70 % of them ask authors to sign (or click, which is legally valid) a licence agreement, or mention on the website the terms of the licence authors grant them.

Permissions

This was by far the most difficult part of the analysis, mostly due to two factors:

(1) The wide spectrum of legal, quasi-legal, and “normal” words used to describe:

- the acts that can be performed or authorized only by the copyright owner (terms used include: copy, reproduce, quote, print, photocopy, transmit, communicate to the public, make available, distribute, issue copies, display publicly, download, store, archive, modify, tweak, alter, build upon, adapt, transform, recast, make derivative works);
- the context to which these permissions apply (terms include: personal, internal, private, scholarly, educational, and non-commercial).

(2) The more or less verbose character of the permissions description.

For instance, consider the following excerpt:

Excerpt 1

The full text of articles can only be used for personal or educational purposes...

Migracijske i etničke teme (<http://hrcak.srce.hr>)

Is this explanation sufficient to allow one to find a definitive answer to the following questions:

- a) Can a teacher post the article on his personal website?
- b) Can an engineer working in a private sector company distribute printed copies of the article to her team members?
- c) Can one use, for educational purposes, only a part of the article?

One may wonder if it is better to use more detailed explanations, instead of sparse, succinct one. Here is second excerpt, at the other end of the spectrum.

Excerpt 2

The Journal, however, grants to all users a free, irrevocable, worldwide, perpetual right of access to, and a license to copy, use, distribute, perform and display the work publicly and to make and distribute derivative works in any digital medium for any reasonable non-commercial purpose, subject to proper attribution of authorship and ownership of the rights. The journal also grants the right to make small numbers of printed copies for their personal non-commercial use.

Important notice on reuse, reproduction or commercial use:

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Contents of this site, partial or as a whole, should not be included in a framed web page.

Contents of this site, partial or as a whole, should not be included in a password protected site or a site which requires registration, even if free.

Contents of this site, partial or as a whole, should not be included in a site which charges for other contents but provides the content from this site for free.

A site or any electronic media reproducing content from this site if includes advertisements placed along with our content or generates any form of revenue due to our content, should share the revenue with us. For purchase of reprints, printable PDF or commercial reuse please contact Medknow Publications, Copyright Clearance Centre, USA or Infotrieve.

Indian Journal of Human Genetics – Disclaimer and Copyright: <http://www.ijhg.com/disclaimer.asp>

This intricate set of permissions and conditions is certainly described in all its details, but its sheer length and its use of numerous legal terms whose precise meaning may elude most authors except copyright specialists. There is certainly a middle road, which is exemplified by the Creative Commons licence summaries; the text of the unported CC-BY-CY is reproduced below.

Excerpt 3

You are free:

to Share — to copy, distribute and transmit the work

to Remix — to adapt the work

Under the following conditions:

Attribution — You must attribute the work in the manner specified by the author or licensor (but not in any way that suggests that they endorse you or your use of the work)

Noncommercial — You may not use this work for commercial purposes

Creative Commons – CC-BY-NC 2.5 licence summary: <http://creativecommons.org/licenses/by-nc/2.5>

Although these explanations are the result of a dedicated effort to make their licences (whose legal code is by far more obtuse than the text of Excerpt 2) widely understandable, some questions remain hard to answer. For instance, there is no precise definition of “commercial purposes”: Does it include a work offered by a not-for-profit organization and sold only to recoup the production and communication costs? Or one offered for free, along with ads in the website?

Despite such difficulties, a careful examination of the website contents allowed us to classify 90 % of the journals into one of four broad categories concerning uses allowed to authors and end-users, respectively.

On the one hand, there is a fair amount of generosity in OA journals (Table 4): about 45 % of them grant authors CC-type permissions (34 % similar to CC-BY); 30 % grant also end-users CC-type permissions (15 % similar to CC-BY). Overall, CC licenses are used in 21 % of the journals.

TABLE 4

Permissions granted to authors and end-users.

Extent of permissions	Author (%)	End-user (%)
All uses allowed (CC-BY or similar)	34	15
Broad uses with CC-type restrictions (NC, ND, SA)	9	15
Uses with more restrictive conditions	13	9
No use allowed (above fair use/dealing)	34	61
Not determined	10	–

On the other hand, one sees also a fair amount of the opposite: a third of the journals allow no permission at all (i.e. above fair use / fair dealing provisions) to authors, and 6 out of 10 do the same for end-users. This restriction to article reuse is somewhat hard to explain, considering that OA journals can't expect to make much money, in any, from the commercial exploitation of works they make available to all without fee.

Models proposed by Hoorn & van der Graaf (2005)

We wanted to verify to what extent OA journals have followed Hoorn & van der Graaf's (2005) suggestions of “good copyright practices” (Table 5), based in part upon a survey among more than 1200 authors who had published in OA journals.

The dividing line between these models is commercial use: in model B, the publisher obtains an exclusive license for commercial use, while others (including the author) get permissions for all non-commercial uses. With the other models, in which the publisher gets a non-exclusive license, authors keep rights for all uses; the models differ by the extent of end-users' rights: any use (A), any OA use (C), or any non-commercial use (D).

Note that authors keep copyright in all cases, and that models A, C and D are equivalent to CC-BY, CC-BY-SA and CC-BY-NC licences respectively.

TABLE 5
Hoorn & van der Graaf's (2005) four copyright models ("good practices").

	Author's rights	Publisher's rights	Others' rights
A	all uses allowed, for all purposes	publishing (non exclusive)	all uses allowed
B	all uses allowed except for commercial purposes	exclusive commercial exploitation rights	all uses allowed except for commercial purposes ¹
C	all uses allowed, for all purposes	publishing (non exclusive)	all uses allowed; if republished in part, must be OA
D	all uses allowed, for all purposes	publishing (non exclusive)	all uses allowed except for commercial purposes

In this study, we found that 55 (18 %) journals in our sample conform to these models: A (49 journals; 16%), B (2 journals), and D (4 journals). This last figure is to be contrasted to Hoorn & van der Graaf's results of model D being preferred by ~50% of authors. However, 25 other journals with CC or CC-type licenses add the ND (no-derivatives) condition, and it's possible that Hoorn & van der Graaf's respondents, when choosing between the four models, had in mind uses of the article in its integrity. With this assumption, one finds that 17 journals (6 %) follow model D, which is still a low figure, for a total of 23 % of journals following Hoorn & van der Graaf's models.

In the remaining journal, no other model seems to emerge; in fact, one finds a broad spectrum of combinations of uses and conditions, concerning:

- the permitted domains, settings or purposes: educational, academic, scholarly;
- the extent of the distribution: personal, institutional;
- the media: print, e-mail, web.

One should note that in some cases, the stated conditions of use don't even reach what is conceivably allowed by fair use / fair dealing. For instance, one finds the following in the *Reprints and Permissions* page of the JNS Publishing Group website, which hosts a few journals, including *Neurosurgical Focus*, an OA journal that was part of our sample.

1. There is a discrepancy in Hoorn's (2005) definition of these rights between the explanation and the companion figure: the first mentions "*scholarly and educational uses*". We used the latter because in the survey questionnaire, the answer boxes were located just under the figure, so one can assume that this was what respondents had in mind.

Non-subscribers may download material from the online version of the Journal on a pay-per-view basis (one machine-readable copy and one printed copy) for their own personal non-commercial use only.

JNS Publishing Group – *Reprints and Permissions*: <https://thejns.org/action/permissions>

Such restrictions are essentially void, as fair use / fair dealing provisions neither include a predefined limit in the number of copies that can legally made, nor forbid commercial use per se, but users have to be well-informed in the matter to reach this conclusion. One could argue that this is just a technical error, as the other journals of this publisher are not OA, but it illustrates well the difficulty of finding sound and accurate information about copyright in publishers' websites.

Model of a tool for at OA publishers

Our last objective was, in view of the inefficiency an inaccuracy with which OA journals often deal with copyright issues, to define the outline of a software tool which would help publishers in providing authors and readers clear, understandable information about their rights.

Such a tool was devised with the following guiding principles.

- It incorporates the actual variety of OA journals' copyright policies.
- It generates (that could be put on the website) describing its policy to end-users and (prospective) authors in a complete and (hopefully) unambiguous manner, using casual words closely related to the actual actions that authors and users may want to do.
- Without imposing a specific model, it suggests “fair” practices, like no transfer of copyright, no more rights granted to publisher than required, and broad end-users permissions (CC licenses, preferably).

As a side effect, such a tool could help a publisher define its policy according to its needs, taking into account legal and ethical principles.

We present in Fig. 1 and Fig. 3 facsimile user interfaces of a two-step tool, with an example of the text that would be generated upon specific choices made by a publisher.

As a an example, if at Step 1 a publisher makes a selection corresponding to a CC-Licence (Fig. 1), the text shown in Fig. 2 is generated; HTML/XML code with all relevant metadata could also be provided. Note that in this case step 2 is irrelevant.

STEP 1. GENERAL CONDITIONS

1. Does the Journal get exclusive rights for commercial uses?
 No Yes, for all commercial uses
 Yes, but not for all commercial uses (to be specified at step 2a)

2. Do you want to restrict the non-commercial use rights of the author?
 No Yes (details to be specified at step 2a)

3. Do you want to restrict the rights of end-users?
 No Yes => Non-commercial uses only
 Share-alike (if republished, must be OA)
 No derivative works (no modification)
 Others (to be specified at step 2b)

SUBMIT

Figure 1. Facsimile of the first interface (Step 1) of a copyright policy description generator.

The author keeps the copyright of the article.
 Upon acceptance of the article, the author grants the publisher an exclusive license for all commercial uses of the article.
 The author agrees to make the article available under an Attribution-Noncommercial-No Derivative Works 3.0 Unported Creative Commons License.

Figure 2. Facsimile of text generated by the choice at step 1 illustrated in Figure 1.

If the publisher indicates at Step 1 that he wishes to restrict either authors’ or end-users’ rights more than what is possible with CC-licences, a second (and possibly, a third) interface is displayed to allow a precise description of the uses allowed to authors (Step 2a) and end-users (Step 2b, not shown). Notice than, by default, all uses are allowed (all cells green), except the first two cells in the \$ column, which will be red at the onset if the publisher has selected in Step 1 exclusive commercial rights for all uses.

STEP 2a. USE RESTRICTIONS AND CONDITIONS - AUTHOR					
	Conditions of use				
Use / acts	Object	Market	Domain	\$	Media
All other	All other	All other	All other	All other	All other
Publish in another venue	Translation of article	Institutional	Not-for-profit organization	Revenue but no profit or personal advantage	Online
Distribute / make available on the web	Modified version (same language)				E-mail
	Article in collective work	Personal (small group)	Scholarly	Charge up to cost-recovery	CD-ROM
Send / transmit individual copies	Original article		Educational		Print
Click on a green cell if you want to exclude a use or condition of use. Conditions go for less to more restrictive from top to bottom.					SUBMIT

STEP 2a. USE RESTRICTIONS AND CONDITIONS - AUTHOR					
Use	Conditions of use				
Act	Object	Market	Domain	\$	Media
All other	All other	All other	All other	All other	All other
Publish in another venue	Translation of article	Institutional	Not-for-profit organization	Revenue but no profit or personal advantage	Online
Distribute / make available on the web	Modified version (same language)				E-mail
Send / transmit individual copies	Article in collective work	Personal (small group)	Scholarly	Charge up to cost-recovery	CD-ROM
	Original article		Educational		Print
Click on a green cell if you want to exclude a use or condition of use. Conditions range from more liberal to more restrictive from top to bottom.					SUBMIT

Figure 3. Facsimile of second interface (Step 2a) of proposed generator of copyright instructions for authors, when a publisher wishes to limit the authors' rights. Top (previous page) : interface at the beginning of step 2a; bottom : interface with some exclusions selected.

Again, when a selection is submitted, a text (Fig. 4) which could be displayed on the website is generated.

AUTHORS' RIGHTS AND PERMISSIONS

The author keeps the copyright on the article.

Upon acceptance of the article, the author grants the publisher an exclusive license according to which:

- The author retains the right:
 - to send or transmit individual copies AND
 - to distribute, or make available, copies of the article or any modification of it; in print or digital format (CD-ROM, e-mail or online);
 - to be sent, or made available at no charge, to:
 - small groups related to the author (class, team, colleagues) AND
 - members of the author's institution or organization;

provided distribution or availability is limited to educational and scholarly settings.
- The publisher acquires exclusive rights for all other uses.

Figure 4. Facsimile of text generated by the choice at step 2a illustrated in Figure 3.

Finally, a similar interface (Step 2b, not shown) would be displayed next if the publisher has indicated in Step 1 that end-users' rights must be restricted.

Conclusion

A detailed study of the websites of a random sample of 300 OA journals reveal that information about copyright is sometimes absent or hard to find, and often not detailed or explicit enough to allow a prospective author to draw sensible conclusions about either copyright ownership or authors' and end-users' rights.

Furthermore, while one can easily argue that an OA journal doesn't need to own the copyright in the articles it publishes, about half of the journals studied require its transfer, most of the time without allowing a prospective author to examine the copyright agreement (in the event that such a document is used) that must be signed to that effect in many jurisdictions, including US, UK, and Canada.

But Open Access is not only about toll-free access; it includes end-user rights, as exemplified for instance by the Creative Commons licenses. In our sample, such rights were granted to end-users by less than a third of the journals, and to authors in less than half. All in all, less than 25 % of journals use one of the four models identified as "good practices" in Hoorn & van der Graaf's (2005) study among OA authors.

In view of this situation, we describe the outline of a software tool that would help OA publishers define their copyright policy, based on "fairness oriented" guidelines, stressing the importance of obtaining from authors no more rights than they need to do their business. Notably, this tool would not suggest copyright transfer, but licences, exclusive or not. It would also generate (hopefully) unambiguous and easily readable explanations about copyright ownership as well as authors' and end-users' rights that could be displayed in the journals' websites.

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