# Creative Commons Licensing in Research

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IV International Conference «OPEN SCIENCE AND INNOVATION IN UKRAINE 2025», 22-23.10.2025, Kyiv, Ukraine - Hanover, Germany (online)



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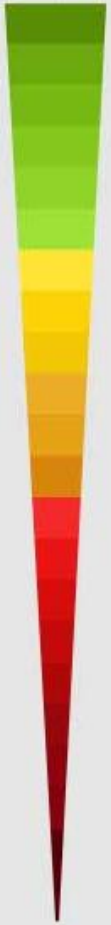

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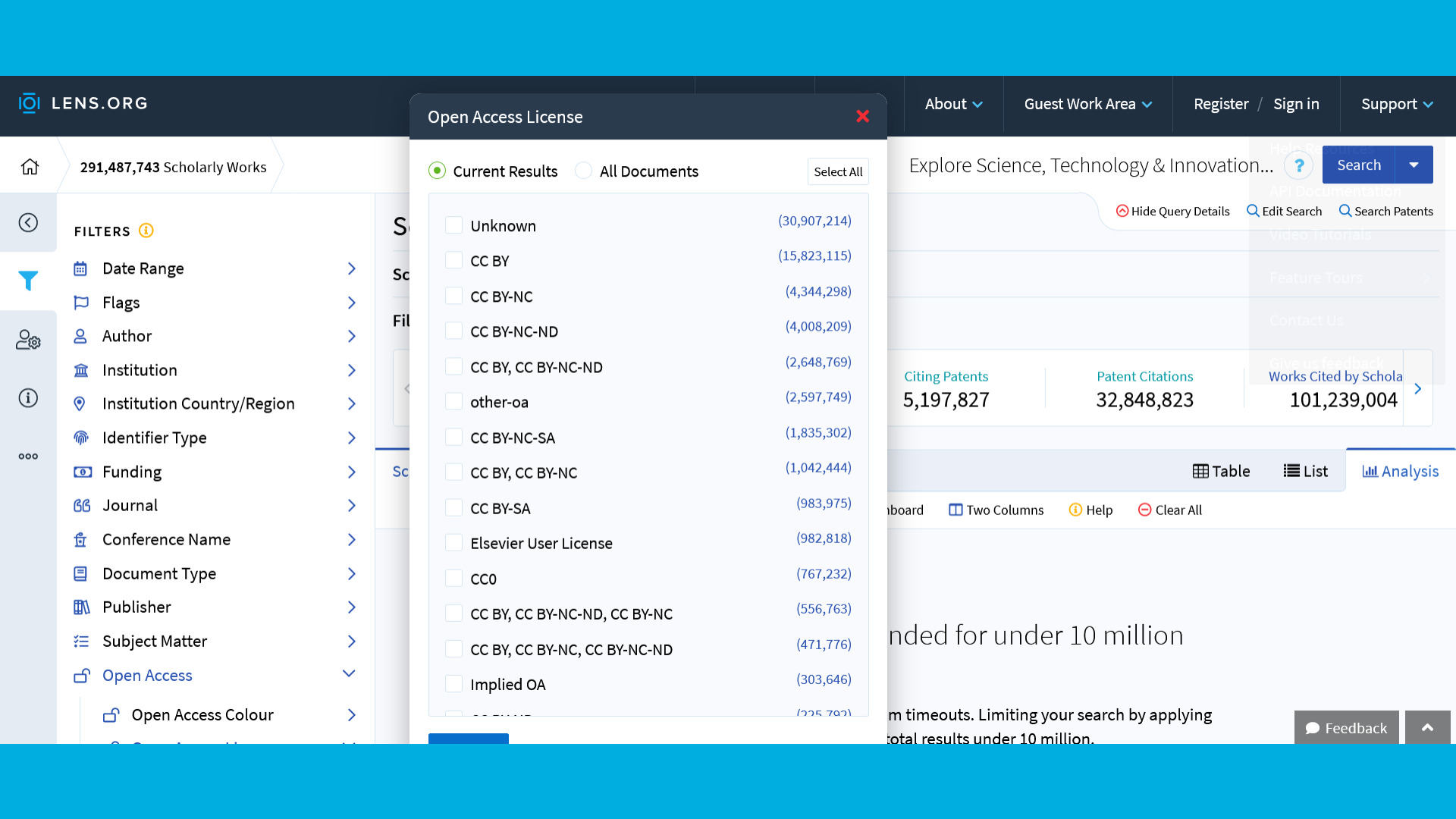
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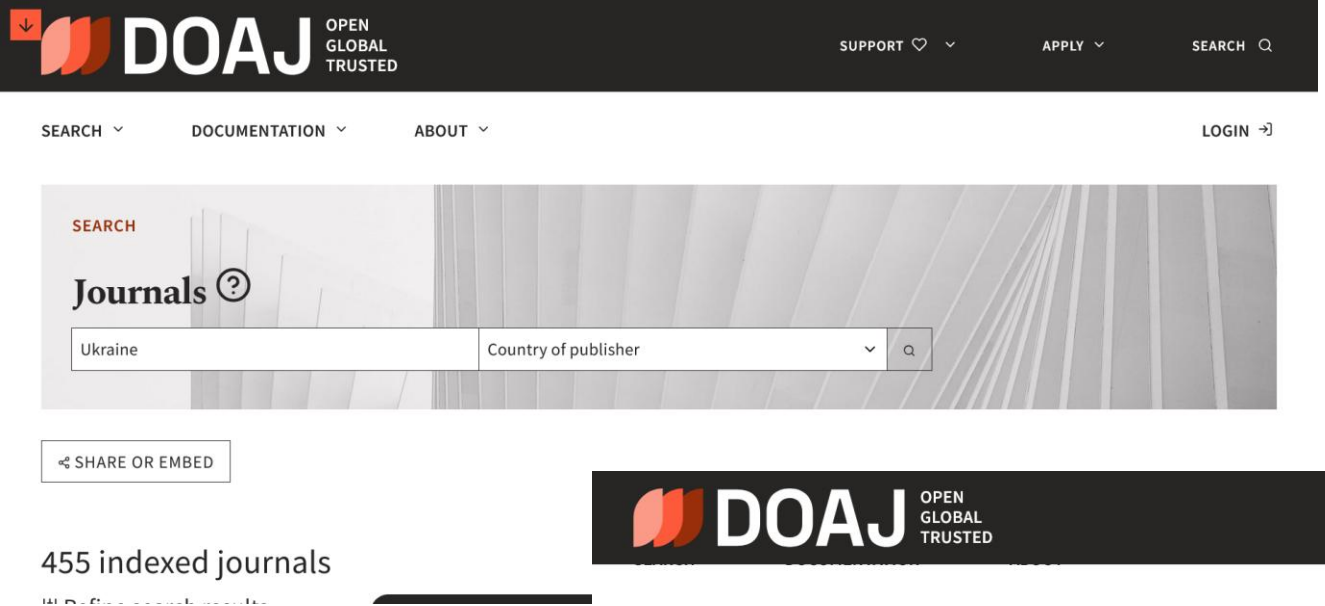
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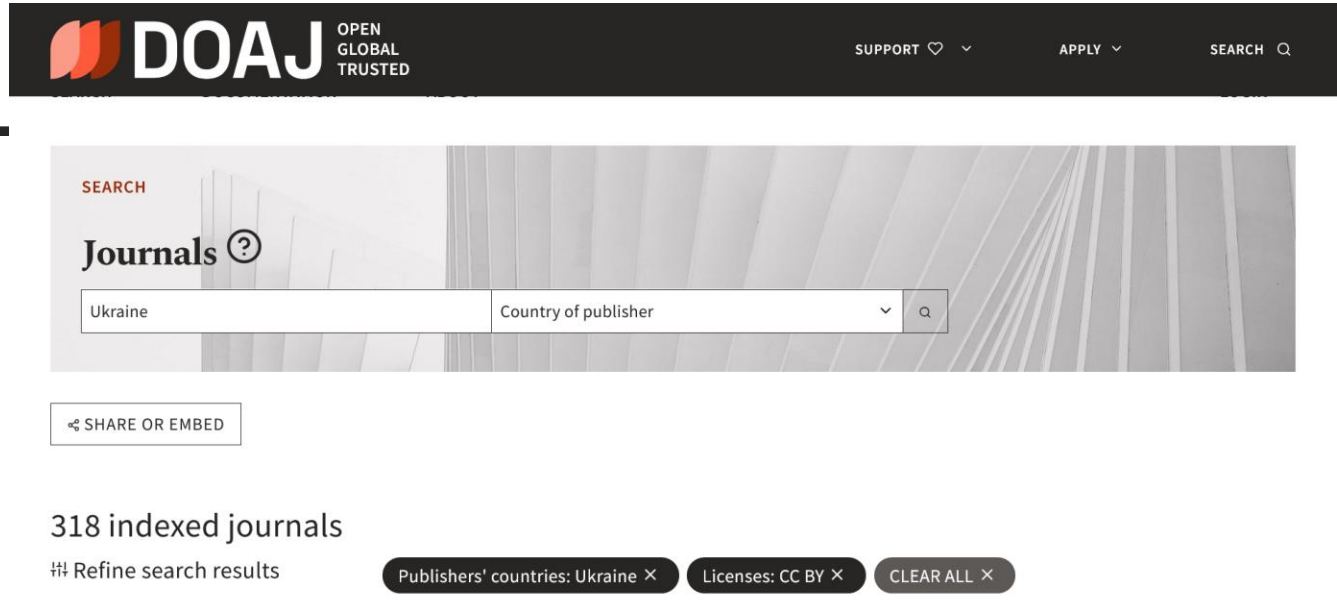
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# How open licensing works

When a book (or article) is made available open access, this is signalled by the application of an open licence to the work. This tells the reader how they can use the book without asking permission of the copyright holder. There are different open licensing systems, but the most commonly used in academia is Creative Commons.

There are a range of Creative Commons licences. Some are very permissive – for example, a CC BY licence means that the book can be freely shared, remixed and reused in any way in whole or in part, including derivative works (e.g. translations) or for commercial gain, all without asking permission from the copyright holder, as long as the original work is fully credited. Some are more restrictive: for example, a CC BY-NC-ND licence means that the book can be freely shared with attribution, but the book cannot be used commercially (NC = Non-Commercial) nor can derivatives be made (ND = No Derivatives) *unless prior permission is sought from the copyright holder.*

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## The licence to publish

When an author signs a contract with a publisher, they typically retain their copyright but they give the publisher a licence to publish their book, and both parties agree to various terms. Some publishers, including Open Book Publishers, allow the author to retain the right to make decisions about whether and how to grant permission for types of reuse that aren't automatically permitted by the open licence.

Other publishers might require other terms. For example, they might require that the author gives *them* the right to make decisions about reuse that doesn't fall under the open licence. So if you've used a CC BY-NC-ND licence to make your book open access, but you've signed a contract that gives your publisher the right to decide on permissions for commercial or derivative reuse, your publisher will be the one saying yes or no to the request, setting the price or other conditions, and most likely collecting the income.

## So, is CC BY the answer?

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## So, is CC BY the answer?

Because the relationship between these two types of licensing is not well understood, authors, funders, or librarians can be taken aback if they find that, for example, a publisher is making income from selling commercial rights to a CC BY-NC-ND book. One solution, it has been suggested, is for all open access work to be maximally reusable under a CC BY licence and for this to be insisted upon as a condition of funding. (Indeed, some open access advocates maintain that any licence more restrictive than CC BY is not really open access at all, and that maximal openness should always be the aim.)

However, some authors are unhappy with the idea of applying a CC BY licence to their book. They might be uncomfortable with it being broken down and reused in part only, or translated without their permission; or they might not want commercial use to be made of their work (or they might want to be paid if this occurs). CC BY books have also been resold at high volume by commercial outfits that take the content and sell it at an expensive price, as in the case of Saint Philip Street Press. If third-party content within these books (such as images or extensive quotations) is not openly licensed, it is stripped out by the reselling 'press', so that these expensive closed versions of CC BY books are inferior to the version the author made openly available. This is completely legal under a CC BY licence, because the 'press' in question credits the original book each time – which is the only condition required by the CC BY licence.

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## What is the solution?

Ideally, the author should understand the contract they are signing with their publisher, and advocate for the rights they want to retain. For example, if they want to licence their book CC BY-NC-ND (or they are being advised to do so by their publisher), but they also want to retain the right to make decisions over use that is not permitted by that licence, this should be stipulated in their contract.

However, such conversations with publishers are not always straightforward. Libraries can support their academic authors with this process by raising awareness about this issue and sharing examples of the language the author should ask to be used in their contract. In case it is helpful, the language we use in our contracts with authors at OBP is shared at the end of this post.

This problem was also discussed by my colleague Rupert Gatti in a 2021 blog post, where he argued that some form of rights retention clause – similar to the approach now often taken with journal articles – might be a useful strategy:

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Sample language used in OBP's standard contract with authors:

> *The Author grants the Publisher the non-exclusive rights to sell and distribute hard copies of the Work in the original language in which the Work is published and to make copies of the Work available by electronic means anywhere in the world. The Work shall be published under a Creative Commons licence which will be clearly stated in the front matter therein.*

> *The Author shall retain the copyright on the Work and the rights to publish it for both commercial and non-commercial purposes. The Author shall not require permission from the Publisher for any subsequent publication of the Work including holding it in repositories, creating derivative works and reproducing, distributing, publicly performing, and publicly displaying the Work in connection with the Author's teaching, conference presentations, lectures, other scholarly works and/or professional activities. The Author shall not require permission from the Publisher to make digital editions of the Work freely available to read or download from any other platform, including the Author's personal website.*

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Published September 5, 2024 | Version v3

Report Open

# Guide to Creative Commons for Scholarly Publications and Educational Resources

Pascal Braak[1]; Hans de Jonge[2]; Giulia Trentacosti[3]; Irene Verhagen[4]; Saskia Woutersen-Windhouwer[5]

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This guide wants to inform researchers about the Creative Commons (CC) licence system. What licence to choose when publishing a paper or book or sharing an article through a repository? And what licence to apply when sharing your teaching materials? The guide wants to help choose the right licence by addressing several frequently asked questions and common concerns expressed by researchers about the use of CC licences.

CC licences have been developed to provide a clear legal framework to underpin the open online sharing and reuse of creative works. For researchers this often means scholarly papers, books or chapters. When you publish 'open access' most publishers will ask you to choose a CC licence for your work. Increasingly, also funders have requirements as to which CC licence has to be applied, because they want to make sure that the research they fund is reused as widely as possible.

This guide is a derivative of Ellen Collins, Caren Milloy and Graham Stone, Guide to Creative Commons for Humanities and Social Science Monograph Authors, ed. James Baker, Martin Paul Eve and Ernesto Priego (London: Jisc Collections, 2013). Available at: http://oapen-uk.jiscebooks.org/ccguide/. Licensed under a Creative Commons Attribution 3.0 Unported License. We have updated it such that we hope it will be useful for researchers in the Netherlands. Whenever useful we refer specifically to the Dutch context.

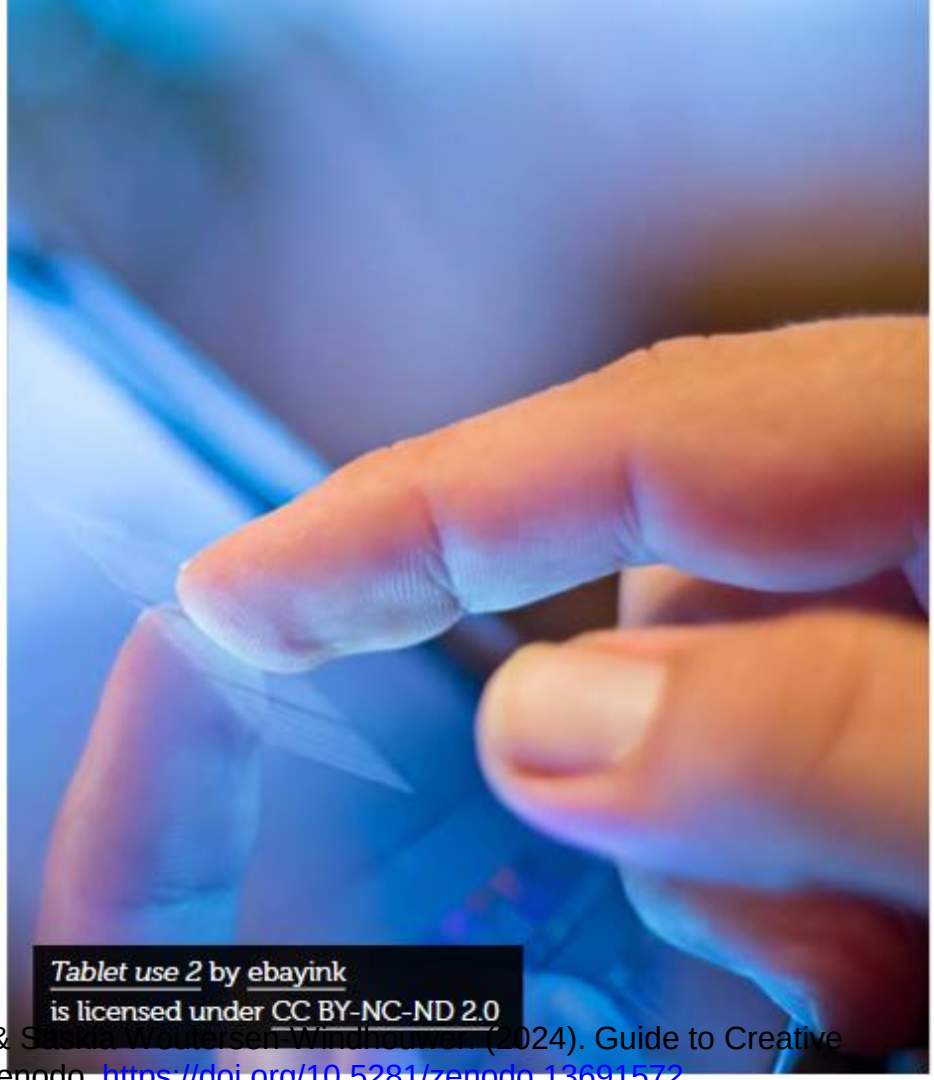
## Files



Pascal Braak, Hans de Jonge, Giulia Trentacosti, Irene Verhagen, & Saskia Woutersen-Windhouwer. (2024). Guide to Creative Commons for Scholarly Publications and Educational Resources. Zenodo. https://doi.org/10.5281/zenodo.13691572

# Examples of reuse allowed under a CC BY licence[4]

- Distribute the full-text of a publication freely to students or colleagues.
- Copy a text for indexing or text mining purposes for commercial and non-commercial purposes.
- Include the full-text of a publication in a repository (e.g. institutional repository) or upload it on academic social networks.
- Combine parts of a work, along with other openly licensed resources, into a collection (e.g. a student handbook or textbook).
- Translate a work into another language.
- Modify tables and charts contained in a journal article and reproduce them in a new publication.

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# Why is CC BY encouraged by open access proponents?

Open access publishing aims to make research publications available for anyone to read and reuse. The Budapest Open Access Initiative (2002) – a key driver of open access developments in Europe – has recommended CC BY as the preferred licence for open access publication. CC licences are used because they offer an internationally established legal structure that is aligned with the aims of open access. As shown in the table, CC BY is the most permissive CC licence, allowing sharing, commercial reuse and modification as long as the original author is credited and it is clearly indicated if changes were made to the original work. Its proponents argue that this gives users the greatest possible degree of flexibility, allowing published research to be used for commercial purposes and, by doing so, potentially encouraging innovation and economic growth.

Pascal Braak, Hans de Jonge, Giulia Trentacosti, Irene Verhagen, & Saskia Woutersen-Windhouwer. (2024). Guide to Creative Commons for Scholarly Publications and Educational Resources. Zenodo.

## A special note of caution on the use of NC and/or ND licenses by publishers

When selecting a CC BY license with an NC or ND restriction for an article, authors commonly (but unknowingly) transfer the exclusive right to manage the license to their publisher. This is stated in the "License to Publish agreement", but not all publishers communicate this clearly to authors (see publisher policy examples). When a license with an NC and/or ND restriction for the end user is chosen by the author, the right to manage the license includes the right to reuse the publication either commercially or in adapted form and grant third parties the right to do so. Publishers can authorize commercial reuse at their sole discretion and charge third parties for the permission to reuse, redistribute, adapt (e.g., translate), and/or make the work further known. In this way, the right to commercially reuse a publication or make adaptations becomes an extra revenue stream for publishers, as these rights are no longer in the hands of the author.

**NB**:
By using a CC BY license, crediting the original work and stating the license under which the work is licensed is mandatory for all types of reuse.

## What alternative do you have?

It is important to consider what you want to protect with a non-commercial or non-derivative license. If it is a model, an image, or data that you wish to protect, we recommend the following steps.

STEP 1: Determine the object you want to protect.
STEP 2: Deposit the object in a trusted repository and apply a CC BY-NC or CC BY-ND or CC BY-NC-ND license, depending on your needs.
STEP 3: Publish the article under a CC BY license and reference the object previously deposited in the repository in the article.

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## 7.1 Does a CC BY licence mean that anyone can reuse my work however they want to?

A CC BY licence allows users to share (copy and redistribute the material in any medium or format) and adapt (remix, transform, and build upon the material) for any purposes, also commercially. However, users must attribute you (unless you have specifically said that you do not want to be attributed) and clearly indicate if changes have been made to your original work. Additionally, users must not imply that you endorse or support the changes that they have made or the new work that they have produced.

## 7.2 How can I avoid the misrepresentation of my work in derivatives?

As with plagiarism (§6.3), misuse of academic research is a longstanding and recognised problem. Nothing in a CC licence makes it acceptable for a user to misrepresent or misuse an author's work (see also §6.5). If your work is adapted or used in a way that you do not agree with, for example, because it is incorrect, or because you do not support the stance of the users, you have the option to request removal of attribution.[8]

CC licences also contain a 'no endorsement, no sponsorship' clause, which explicitly says that users may not imply that the original author supports or endorses their reuse of the work. If they violate this clause, they are in breach of the CC licence and must stop using the work. In such cases of violation, the violator becomes liable to action under copyright law.

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## 7.3

## Can I specifically ask not to be attributed for a certain piece of work?

Yes, you can. If you do not want to be associated with a certain piece of work, you can ask for your attribution to be removed and the user must comply if reasonably practical.

## 7.4

## Creative Commons licences and text and data mining and why is it relevant to me?

### Examples of reuse not compatible with a ND licence

- Modify images – change the colors, edit someone in or out, crop the image.
- Edit (parts of) a text and reproduce them in a new publication.
- Customize content to a specific location/ discipline/focus – change examples, add different scenarios, change terms to reflect a different discipline.
- Translate a work into another language.
- Reuse for open educational resources (9.1)

## 8.1

## Why is the use of a non-commercial Creative Commons licence discouraged?

That is because the definition of 'non-commercial' in Creative Commons is open to interpretation. It is difficult to know what exactly constitutes commercial reuse. For example, if someone posted a copy of a paper on an educational website that generates even a small amount of revenue from advertising, it could be considered as commercial reuse. As such, the use of NC licences could have unwanted consequences on the possibilities of distribution of your content.

There is considerable debate about whether 'non-commercial' coincides with 'not-for-profit'. A study commissioned by Creative Commons into the interpretation of 'commercial' and 'non-commercial' by creators and users indicated that uses for charitable purposes are considered 'less commercial' but not 'decidedly non-commercial'.[10] Therefore, applying a NC licence to your work could prohibit all types of organisations that generate revenue from redistributing your work. Permitting all commercial reuse removes this problem, and allows people to reuse the work without worrying about whether they may (unintentionally) make money from it.

Apart from the mentioned interpretation issue – and for some more importantly – is the principle that 'research that is publicly financed should be available for reuse for all purposes' because it may help generate products and services that benefit society and because organisations involved in commercial endeavours also pay taxes that the research is funded by.

## 8.2

## Why should I allow another party to make money out of my publications, which is my intellectual property?

The term 'commercial use' refers to the fact that an organisation intends to obtain a commercial advantage and possibly aims for financial remuneration. It is tempting to immediately think about large multinationals like Shell, Google, Amazon, but actually a non commercial licence prevents all revenue-generating organisations from reusing your work. This can even include cultural or educational institutions like schools, museums or universities. Even those nowadays cannot rely exclusively on public funding and have to rely in

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# Thank you!

# Questions?

**Contact:** iryna.kuchma@eifl.net

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