The purpose of this editorial is to cover as succinctly as possible the basics of copyright and licensing that open access publishers need to know, and to provide some guidance in making decisions in this area.

In every country that has signed the Berne Convention (World Intellectual Property Organization, 1995[1]) author copyright is automatic, extends 50 years after the life of the author, and involves a bundle of rights, including both moral and economic rights. Under Berne, moral rights are not transferred even when authors transfer all economic rights. Berne covers some user rights (for e.g. the right to translate, the right to transform the work through adaptations or arrangements, the right of public performance, the right to recite in public, the right to communicate the performance of works to the public, the right to broadcast, the right to reproduce and the right to use the work as a basis for an audiovisual work), but leaves much to the discretion of each country. For this reason, user rights are variable from one country to another, so it is important for open access publishers to clarify user rights.

Although copyright is vested in the author, an author can grant all the rights that a publisher requires through licensing. Copyright transfer is not necessary. A license to publish can be implicit or explicit. An implicit license means even without a contract, when an author has submitted an article for publication and subsequently sent revised drafts after peer review, approved copyedited drafts, etc., the author has implicitly granted a right to publish. However, a simple explicit license clarifying how rights are shared between the author and the publisher is good practice to avoid potential confusion – and is necessary even with Creative Commons licensing.

The terms of an author - journal license should address the requirements of both parties. Following are some things that publishers and/or authors commonly look for in scholarly publishing and/or should think about, loosely based on the elements of the Creative Commons (2015) licenses[2].

Attribution: it is common for both the journal and the author to want to be appropriately acknowledged and cited for their work. This can be confusing in the case of Creative Commons licenses, which were originally designed for individual creators. It is good practice to clarify this in the author - journal agreement. An example of wording would be: “both parties agree to the attribution of this article as follows: journal x agrees to acknowledge the author(s) [insert how authors would like to be cited] and the author agrees to acknowledge journal x as the site of original publication of the article [insert details of how the journal would like articles to be cited].” Note that it is common for third party works to be included in other scholarly works; these works require separate attribution. This should be noted in the work, for example indicating the copyright and attribution of the third party along with explanatory notes about rights, e.g. “copied with permission of [x]. All rights reserved.” Information about the license of an article should be in close proximity to a caveat that the article’s own license does not include third party works.

Commercial / noncommercial: there is no clear legal definition of what constitutes commercial use. We argue that with respect to copyrighted works this traditionally has a very limited meaning, either selling the work or making use of the work itself for advertising purposes (to be distinguished from search engine using their search services for advertising purposes). Many open access journals use the most open license available, CC-BY.

Retaining commercial rights using the Noncommercial (NC) element:

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References

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