

**An open peer review of “Few open access journals are Plan S compliant”:** third and final round by Dr. Heather Morrison, Associate Professor, University of Ottawa School of Information Studies, and Principal Investigator, Sustaining the Knowledge Commons, a SSHRC Insight Project. © Dr. Heather Morrison, All Rights Reserved (explanation below).

This article presents important research and merits publication; conclusions are basically sound and recommendations appear timely and sensible.

One major substantive point of potential confusion remains. This confusion is evident in PlanS implementation guidance per se which states: “cOAlition S acknowledges that some publishers have established mirror journals with one part being subscription based and the other part being Open Access. Such journals are not compliant with Plan S unless they are a part of a transformative agreement since they *de facto* lead to charging for both access and publishing in the same way as a hybrid journal does. Funding for publishing in such journals will only be supported under a transformative agreement”. From: <https://www.coalition-s.org/implementation/>

It is not clear what PlanS is referring to here. The most common arrangement that seems to fit what is described here in my experience is journals that publish both in print (generally on a subscriptions basis) and online (on a fully open access basis, required for inclusion in DOAJ). A journal that is partially open access and partially subscription-based in its online form is a hybrid journal, contrary to PlanS advice.

This confusion is reflected in this article (Table 1 row G and results lines 461-467). Since this reflects the original, this should not be a barrier to publication.

Conflict of interest: although I am an open access advocate and my research focuses on transforming the underlying economics of scholarly publishing in order to sustain open access, I strongly disagree with the PlanS policy approach. In my expert opinion, all open access policy should require exclusively open access archiving. This is the best means to ensure preservation and ongoing open access, particularly in the region for which funders have responsibility. Market-oriented policy is likely to continue or exacerbate a problematic market that for decades has been described as inelastic at best.

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The default license for MDPI’s *Publications* is CC-BY. From the perspective of many open access advocates, open licensing is an inherent part of open access. As discussed by the authors, this assumption forms part of the Plan S compliance criteria; compliance requires CC-BY, CC-BY-SA, or CC-0 licensing, with recognition that funded researchers cannot impose open licensing on third party copyright owners whose works are included in Plan S funded researchers’ works. I argue that conflating open access and open licensing is a major strategic error for the open access movement, and that it is important for open access advocates to understand that arguments opposing open licensing requirements can reflect a strong position in favour of open access. It is a mistake to think that because traditional subscription-based publishers oppose open licensing for business reasons that this is the only reason for this opposition. Oxford University Press is currently imposing differential fees for authors requiring CC-BY, according to my research team that is gathering information on APCs. I oppose CC-BY requirements, but not for the same reason as Oxford.

In brief, my reasons for opposing conflation of open access and open licensing is that open licenses are not sufficient, necessary, or always desirable for open access.

Not sufficient: there are two reasons why open licenses are not sufficient. One is that there is nothing in CC licenses that obligates any copyright holder or downstream re-user to continue to make a work available at all, never mind free of charge. For example, an obvious beneficiary of works made available for commercial downstream re-use is Elsevier through their toll access search service Scopus. If we consider “free of charge” to be an essential element of open access (I do), CC licenses allowing downstream commercial use are not enough. The second reason is that scholars will always need to study and draw from works that are beyond the scope of research, and for this reason we need strong fair use / fair dealing provisions in copyright. For example, while PLOS is a model for open licensing with respect to articles published, as a scholar in the area of open access economics, I need to be able to quote language from the PLOS website in this area, and the PLOS website per se is All Rights Reserved; my work requires fair dealing rights. PLOS is not unusual in this; differential licensing is common for “CC-BY by default” publishers.

Not necessary: works that are online, free to read and free of most technological restrictions on re-use are in effect sufficient for most of the intended purposes of open licensing. Consider what Google is able to do with internet-based works without having to restrict searching to works that are openly licensing. A work in HTML or XML with no technological protection measures (TPM) and no copyright statement (automatic All Rights Reserved copyright in any Berne country) can be used for text mining and portions of the work can be copied, with attribution, under fair dealing. In contrast, a work with an open license that is produced in a format that includes TPMs is less available for the purposes intended by open licensing than many works that are openly licensed. It is important to understand that TPMs are used not only to protect copyright, but also to protect the integrity of works, for example to look and feel of graphics as well as their position with respect to text.

Not necessarily desirable: open licensing, I argue, is not always desirable. For example, researchers who work with human subjects (very common in the social sciences) have a primary ethical duty to protect their subjects from harm. There is a wide range of sensitivity of information shared with researchers, ranging from quasi-public to extremely sensitive. Material such as stories and images shared with researchers for the purposes of advancing knowledge should not be made available on a blanket basis for re-use including commercial purposes. In developing policy attention should be paid to common commercial uses of this kind of material, particularly in the area of social media. Decisions about open licensing are in effect decisions about balancing the benefits of open licensing and our ethical duty to protect human subjects. I argue that our ethical duty to protect human subjects requires a conservative approach, in individual research projects, research support services, and policy-making.