

OPEN ACCESS & COPYRIGHT: LET'S OPEN THE CONVERSATION

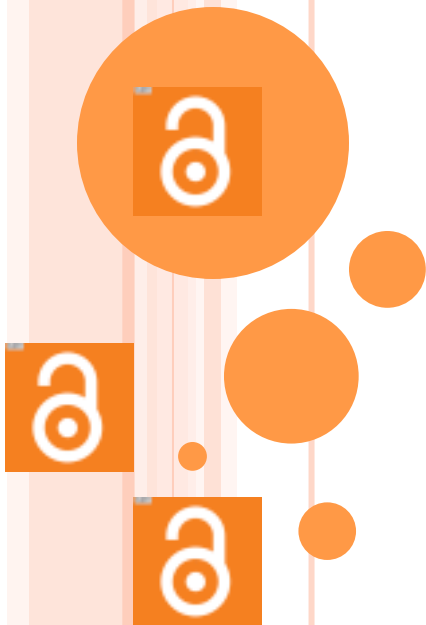
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<http://arts.uottawa.ca/sis/people/morrison-heather>

Sustaining the Knowledge Commons
A SSHRC Insight Development Project
sustainingknowledgecommons.org

Allen Press. Emerging Trends in Publishing Seminar 2015,
Washington, DC



OVERVIEW

- Many OA advocates equate OA with CC-BY
- I argue this is not a good idea
- Blanket downstream commercial rights
- Blanket remix & tweak rights
- Alternatives



KNOWLEDGE COMMONS

•Public
interest
•Collective
knowledge of
humankind



- Everyone can freely draw from our collective knowledge (open access)
- Everyone qualified to welcome to contribute

“Open-access (OA) literature is digital, online, free of charge, and free of most copyright and licensing restrictions” (Suber, 2004).



WHAT DOES CREATIVE COMMONS DO?

- “Our free, easy-to-use copyright licenses provide a simple, standardized way to give the public permission to share and use your creative work — on conditions of your choice.” (Creative Commons, *About*).

CC License elements:

- Attribution
- Sharealike
- Noncommercial
- No derivatives (NoDeriv)



CREATIVE COMMONS – ATTRIBUTION (CC-BY)

*This license lets others **distribute, remix, tweak, and build upon your work, even commercially, as long as they credit you for the original creation.** This is the most accommodating of licenses offered. Recommended for maximum dissemination and use of licensed materials.*

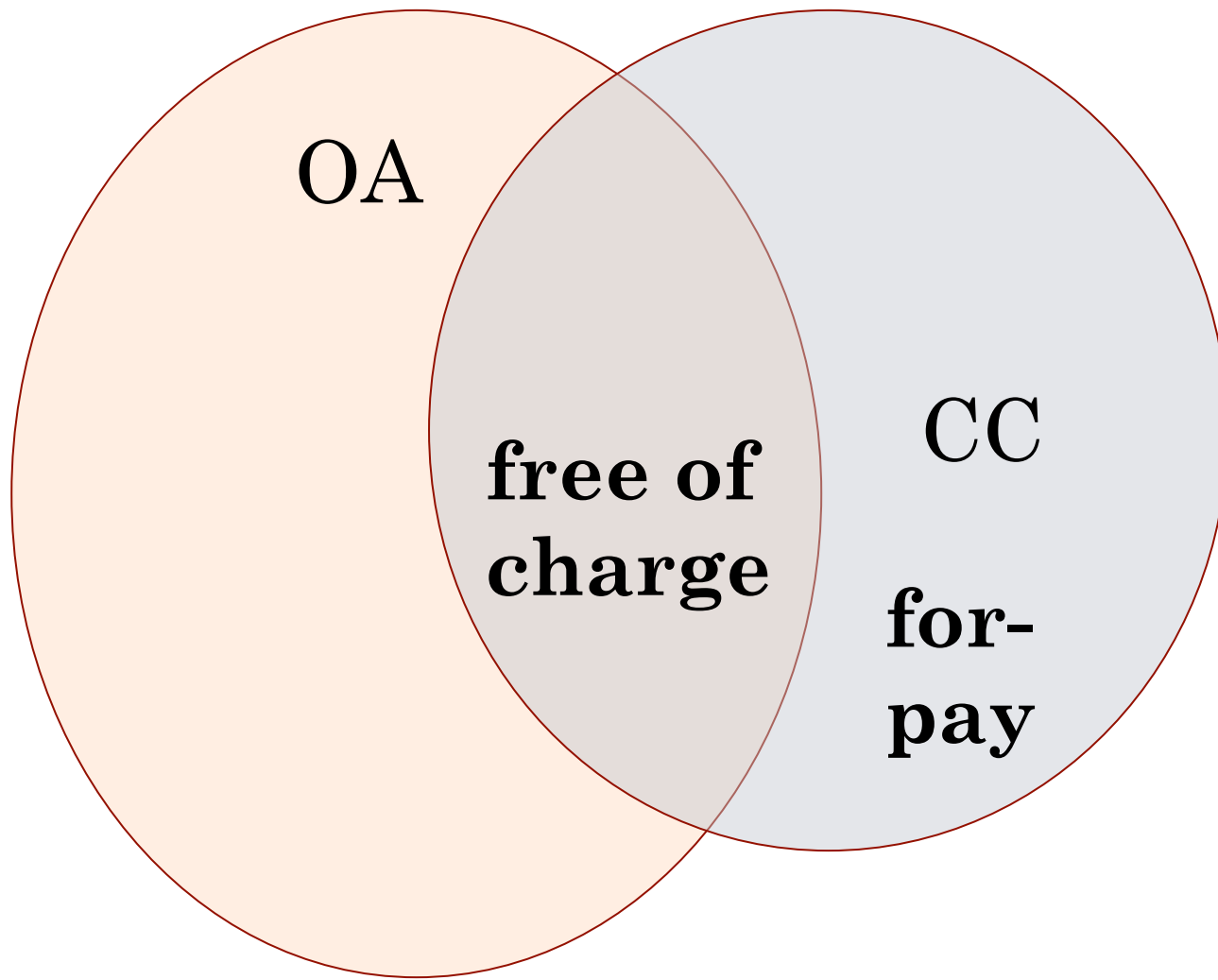
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even

commercially...





WHY THIS MATTERS

- Works released under CC licenses (excluding noncommercial) can be sold downstream
- Technological protection measures cannot be added to the work itself but...
- Paywall can be set up before you get to the work
- No getting around this (paywalls to get to the internet)
- Licensor cannot revoke the license (except for moral rights) – the catch: you have to have a copy of the work under the license



CC-BY DEFAULT = MAJOR STRATEGIC ERROR FOR OA MOVEMENT (MORRISON)

- Permits downstream toll access
- Licensors not obligated to maintain access, free access or CC-BY
- Temptation for profit through IP enclosure
- = if CC-BY default for OA prevails there is a danger of massive re-enclosure
- Danger with critical mass, e.g. all articles in all DOAJ journals under CC-BY



THE REMEDY?

- **Abandon CC-BY as default**
- Copy works in open access archives, preferably multiple different archives, under fair use terms (this also protects OA journals and publishers by making it harder to effectively enclose downstream)
- Use noncommercial CC licenses
- Embrace diversity in licenses



OK, BUT CC SHAREALIKE (SA) WILL FIX THAT, RIGHT?

WRONG.

SA means you have to use the same license – not “I got this for free, so I have to share my derivative for free”.



WHAT ARE THE IMPLICATIONS OF DOWNSTREAM BLANKET COMMERCIAL RIGHTS FOR JOURNALS AND PUBLISHERS?

- Allowing blanket commercial rights means ANYONE can compete with you for revenue using the works you helped create (advertising, value-added versions, offprints / reprints)
- This could threaten the revenue stream of journals using this license
- Some authors will not like this!
- REMEDY: use CC-noncommercial licenses



BLANKET DOWNSTREAM COMMERCIAL RIGHTS:
PRINCIPLED OBJECTIONS (RCUK OA POLICY
REVIEW 2014) [HTTP://WWW.RCUK.AC.UK/
RESEARCH/OPENACCESS/2014REVIEW/](http://www.rcuk.ac.uk/research/openaccess/2014review/)

- Third party content copyright (e.g. images)
- Workarounds but:
 - Third parties may not agree
 - Errors likely
- Academic freedom if authors cannot use third party works



BLANKET DOWNSTREAM COMMERCIAL RIGHTS: PRINCIPLED OBJECTIONS (RCUK OA POLICY REVIEW 2014)

- Sensitive or confidential data (British Sociological Association)
- Silly fear or serious concern?



TEXAS FAMILY SUES VIRGIN MOBILE AND CREATIVE COMMONS

- Lessig:
<http://www.lessig.org/2007/09/on-the-texas-suit-against-virg/>
- Photographer takes picture of minor girl, posts to flickr with CC-BY license
- Virgin Mobile uses in ad campaign, with attribution to photographer (fulfilling license)
- Lessig: “The Noncommercial license tries to match these expectations. It tries to authorize sharing and reuse — not within a commercial economy, but within a sharing economy.”



BLANKET DOWNSTREAM COMMERCIAL RIGHTS: PRINCIPLED OBJECTIONS (RCUK OA POLICY REVIEW 2014) [HTTP://WWW.RCUK.AC.UK/RESEARCH/OPENACCESS/2014REVIEW/](http://www.rcuk.ac.uk/research/openaccess/2014review/)

- Sensitive or confidential data (British Sociological Association)
- ~~Silly fear~~ or **serious concern**?
- It is *generally* not wise or ethical to release the images and/or stories of human participants in research for blanket downstream commercial use
Potential legal issues for journals and policy-makers requiring or encouraging CC-BY licenses.



RESEARCH & THE PUBLIC INTEREST

- CC-BY is in fundamental conflict with researchers who strongly believe in independent universities and researchers conducting research in the public interest
- sharing commons – knowledge commons – not the commercial commons



remix, tweak and
build upon your
work...



CREATIVE COMMONS – ATTRIBUTION ONLY

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REUSE AND REMIX



Glowing flowers. Photo
by Robby Ryke. CC-
BY-NC

<https://www.flickr.com/photos/80901381@N04/7568630428/in/photolist-5Tqag7-orgiNX-nKGZ3U-fXuQZt-cwPd95-9CWsu4-99n6xw-6M4Ha9-JJveR-fgyZv9-eP5BLq-4YJTrH-gcmeC8-9m5jGB-rn1jce-x795d-cmUuQ5-dUV4gp-9CUyWn-dQKfQ4-rAyZEi-2M7T58-34fGdv-dWPZMi-pYwtZr-rzpgs6-F2GrD-dLdLwL-gkynWR-rT8t3-fgMjQk-4RH3fb-4EMfTr-d6RwiU-5qhzvv-nnL5Y9-abNJ72-qo8QSA-5rXysv-6qcWuP-ejbyf3-oQ4WMn-38tj2z-n1ziRk-7zbHer-eYRCax-dd5qKa-qK7nw-adHfK8-01jFkR/>



REUSE AND REMIX



Glowing flowers. Photo by Robby Ryke, OA logo and “Hurray for Open Access!” added by Heather Morrison. CC-BY-NC

Original: <https://www.flickr.com/photos/80901381@N04/7568630428/in/photolist-5Tqag7-orgiNX-nKGZ3U-fXuQZt-cwPd95-9CWsu4-99n6xw-6M4Ha9-JJveR-fgyZv9-eP5BLq-4YJTrH-gcmeC8-9m5jGB-rn1jce-x795d-cmUuQ5-dUV4gp-9CUyWn-dQKfQ4-rAyZEi-2M7T58-34fGdv-dWPZMi-pYwtZr-rzpgs6-F2GrD-dLdLwL-gkynWR-rT8t3-fgMjQk-4RH3fb-4EMfTr-d6RwiU-5qhzvv-nnL5Y9-abNJ72-qo8QSA-5rXysv-6qcWuP-ejbyf3-oQ4WMn-38tj2z-n1ziRk-7zbHer-eYRCax-dd5qKa-qK7nw-adHfK8-o1jFkR/>



REUSE AND REMIX AND MORAL RIGHTS

What if Roddy doesn't like
OA? Or orange?



Glowing flowers. Photo by
Robby Ryke, OA logo
and “Hurray for Open
Access!” added by
Heather Morrison. CC-
BY-NC

Original: <https://www.flickr.com/photos/80901381@N04/7568630428/in/photolist-5Tqag7-orgiNX-nKGZ3U-fXuQZt-cwPd95-9CWsu4-99n6xw-6M4Ha9-JJveR-fgyZv9-eP5BLq-4YJTrH-gcmeC8-9m5jGB-rn1jce-x795d-cmUuQ5-dUV4gp-9CUyWn-dQKfQ4-rAyZEi-2M7T58-34fGdv-dWPZMi-pYwtZr-rzpgs6-F2GrD-dLdLwL-gkynWR-rT8t3-fgMjQk-4RH3fb-4EMfTr-d6RwiU-5qhzvv-nnL5Y9-abNJ72-qo8QSA-5rXysv-6qcWuP-ejbyf3-oQ4WMn-38tj2z-n1ziRk-7zbHer-eYRCax-dd5qKa-qK7nw-adHfK8-oljFkR/>



Scholarly
derivatives through
remix & tweaking?



REMIX, TWEAKING AND DERIVATIVES: EXAMPLES (CREATIVE WORKS)

- Movie derived from a book
- Novelized movie
- Collage
- Music through sound mixing



REMIX, TWEAKING AND DERIVATIVES: SCHOLARLY NIGHTMARE

- **The downstream co-authored article**
- MORRISON, Heather. Economics of scholarly communication in transition. **First Monday**, [S.l.], may. 2013. ISSN 13960466. Available at: <
<http://firstmonday.org/ojs/index.php/fm/article/view/4370/3685>>. Date accessed: 14 Apr. 2015. doi:10.5210/fm.v18i6.4370.
- to: SELF-SELECTED CO-AUTHOR and Morrison, H. Economics of scholarly communication in transition, updated and corrected by SELF-SELECTED CO-AUTHOR. **Questionable Journal No One Ever Heard Of**, May 2015. Available at:...



RCUK...ROYAL HISTORICAL SOCIETY

- “humanities scholars have particular objections to certain kinds of ‘derivative use’ that amount to the encouragement of plagiarism...This represents a violation of the specific moral right of the author to the integrity of the work“



USE & RE-USE: SPECIFIC CASES



REFORMATTING FOR ACCESSIBILITY

- Ethical & increasingly legal obligation
- Wish list: format electronic works to include “print to audio, print to daisy, print to braille” as a default



PRIVATE COPYING & NOTE-TAKING

- Formats, DRM and licenses that prevent normal use (reading and processing) of scholarly works are counter-productive to advancing knowledge
- Remedy: don't use limiting formats, DRM or licenses that restrict normal reading



DATA AND TEXT MINING

- Royal Historical Society: “humanities scholars support text-mining as a valuable discovery and analytical tool which does not violate moral rights in the way that true derivatives do”
- CC licenses neither *necessary* nor *sufficient*
- Data and text mining → new knowledge, new works not derivatives
- Formats and DRM-free works to facilitate massive private copying for analytical purposes is critical



EXCERPTS

- Authors want to be able to re-use their own works in whole or in part
- Re-use of excerpts as is (e.g. figures and charts) – is this the same as derivatives?
- Sometimes fair use / fair dealing
- Benefits to facilitating rights-clearance for excerpts (CC licensing or Copyright Clearance Centre)



TRANSLATIONS (RCUK OA POLICY REVIEW 2014)

- University of Aberdeen: authors want to control who can translate your work



RESEARCH REMIX, ATTRIBUTION & SCHOLARLY TRADITIONS

- It's just what we do!
- Technology can make it better: hyperlinks between texts, text and data



Alternatives



TRUE COPYLEFT?

“The content of this book may be reproduced without the authors’ permission in part or in its entirety provided it is distributed and made available to the reader for free, without service charges or any other fee. The authors further stipulate that the editors, individual writers, and visual artists all be credited for their work” (van der Zon)



CC “MORE PERMISSIONS URL”

- Example: CC-BY-NC-ND plus a webpage explaining reuses you’re okay with. How about?
- Use of excerpts (figures and charts) is free for not-for-profits as long as the author(s) and journal are attributed and our CC-BY-NC-ND license applies. Commercial users please see Rightslink.
- Free for members and partners (list).



OTHER IDEAS...

- Sharing commons not commercial commons – embrace noncommercial licenses
- Experiment! First Monday – author copyright, author chooses license (any license)



FREE WEB ACCESS + BALANCED COPYRIGHT + PUBLIC OA ARCHIVES

- Global fair copyright including fair use / fair dealing
- If it's free on the web with no clear obvious restrictions you can...(read, crawl, copy, redistribute for noncommercial purposes with attribution)
- Preservation + ongoing access: PubMedCentral, institutional repositories, Internet Archive – national libraries & archives?



RESEARCH IS NEEDED! EXAMPLES

- Analysis of specific actual and potential re-use possibilities and technical and legal requirements
- Example: text mining in the humanities – talk with scholars about what they do or want to do, find out what the barriers are
- Are the extra moral rights of CC licenses in the best interests of scholarship?
- Facilitating translation: consult with language, subject and licensing / copyright experts to explore options for different disciplines



QUESTIONS? CONTACT:

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sustainingknowledgecommons.org

poeticeconomics.blogspot.com

<http://poeticeconomics.blogspot.ca/2012/10/critique-of-cc-by-series.html>

Join the discussion! Global Open Access List
(GOAL) [http://mailman.ecs.soton.ac.uk/mailman/
listinfo/goal](http://mailman.ecs.soton.ac.uk/mailman/listinfo/goal)



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- van der Zon (2015). Excerpt from the copyright page from Langlois, Sakolsky, & van der Zon (2010) *Islands of Resistance* (Vancouver: New Star Books, 51 – 70), as cited in Elliott & Hepting (eds.), *Free Knowledge: confronting the commodification of human discovery*: University of Regina Press, 2015. <http://www.uofrpress.ca/publications/Free-Knowledge>

