

# The suitability of the CC-BY licence for research publications in the humanities and social sciences (HSS)

## Note of a workshop held on 24 April 2013

### Overview

On the 24<sup>th</sup> April 2013 the Wellcome Trust, in collaboration with Professor Peter Mandler, President of the Royal Historical Society, organised a workshop to discuss the Creative Commons Attribution licence (CC-BY) and its suitability for published research papers in the humanities and social sciences (HSS).

A total of 17 delegates attended the meeting including representatives from RCUK, HEFCE, the Political Studies Association, Association of Art Historians, OUP and Wiley. A list of delegates is at **Annex A**.

In advance of the meeting all delegates were invited to prepare a short (300 words) position statement, setting out the key issues (from their perspective) that arise when the CC-BY licence is applied to research papers in HSS. These statements are at **Annex B**, whilst the workshop Agenda forms **Annex C**.

This note of the meeting seeks to identify the key issues which emerged, and, where possible, next steps which could be taken to address those concerns.

It is recognised that the views of participants at the meeting will not necessarily reflect the broad range of perspectives that may exist across humanities and social science research communities on these issues. This meeting was therefore intended to identify potential concerns and challenges as a starting point for wider discussion and debate.

### Workshop objectives

RCUK's open access (OA) policy requires the use of the Creative Commons, Attribution licence (CC-BY) when its block grant is used to meet the costs of an Article Processing Charge (APC) for a research paper. Even when research articles are made available via repositories (the so called "green" model) RCUK's expressed preference is for such papers "*to be made available using the most liberal and enabling licences, ideally CC BY*"<sup>1</sup>; but it will accept the use of any licence that does not restrict re-use for non-commercial purposes.

In response, a number of HSS scholars, as well as learned societies, have expressed strong concerns that the CC-BY licence may not be appropriate for published works in their field. The editors of a number of history journals<sup>2</sup>, for example, have suggested that the CC-BY licence facilitates and promotes commercial re-use and uses akin to plagiarism; that the licence therefore amounts to an infringement of authors' moral and intellectual property rights; and that it is likely to damage the quality of education.

The aim of this workshop was to explore, and better understand, the arguments that have been articulated against the use of the CC-BY licence, and to identify what might be done to help mitigate those concerns. Any change in RCUK policy, following the planned review in 2014, could only be considered on the basis that all reasonable efforts had been made to address these concerns.

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<sup>1</sup> <http://www.rcuk.ac.uk/documents/documents/RCUKOpenAccessPolicy.pdf> Section 3.7 (section vi)

<sup>2</sup> See:

<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmbis/writev/openaccess/m44.htm> and

<http://www.history.ac.uk/news/2012-12-10/statement-position-relation-open-access>

## Scope

The focus of the workshop was the applicability of the CC-BY licence to HSS research outputs. Discussions around the merits (or otherwise) of open access, embargoes, repositories, and open access publishers, were ruled as out of scope for this workshop, as were the issues relating to open access monographs.

## Issues and Actions

Following the initial presentations and comments from the other delegates, the Chair identified the following issues for discussion.

### Issue 1: Including 3<sup>rd</sup> party content in CC-BY-licensed research papers

<p>Overview of the issue</p>	<p>It was noted that it is already becoming increasingly difficult to gain consent to publish 3<sup>rd</sup> party content in online publications in HSS. By way of illustration, a <a href="#">recent article</a> in <i>Past and Present</i>) contained “placeholder text” where images provided by Cambridge University Library and the British Library could not be licensed for online publication.</p> <p>The concern was expressed that this problem would become even more acute if articles had to be made available under a CC-BY licence – with some rights-holders likely to prohibit use of their material in academic works.</p>
<p>Discussion</p>	<ul style="list-style-type: none"><li>• Although most of the discussion focused on the difficulty of licensing images for online publications, delegates also said that in some cases it was already difficult to get permission to use quotations (the works of T S Eliot and James Joyce were notorious examples).</li><li>• For quotations, it was suggested that the Hargreaves Review had recommended an expansion of the copyright exception for quotation and news reporting.</li><li>• Although the CC-BY licence already provides the ability to demarcate third party content, there was some doubt as to whether the guidance provided by CC was adequate; and whether such demarcation was being, or could be made, unambiguously clear to users of the material, most of whom were unlikely to be clearly that they needed to look for it.</li><li>• While it was acknowledged that STM publishers had been publishing articles (including third party content) under a CC-BY licence for many years without encountering any problems, the experience of HSS scholars in dealing with rights-holders suggests that the type of third party content used in HSS papers is far more likely to be problematic, and resistance from rights-holders much stronger.</li><li>• Although authors are typically responsible for identifying and securing permissions for all third-party content they wish to include in their articles, there was a concern from publishers that they (publishers) would be liable for any licence violations by users; and there were signs of increasing moves to litigation in the US.</li></ul>
<p><b><u>Actions</u></b></p>	<ul style="list-style-type: none"><li>• It was agreed that it would be useful if AHRC/RCUK were to engage with image libraries – including those run by national libraries and museums – to better understand their policy around licensing content for scholarly purposes. <b><u>Lead: AHRC/RCUK and Association of Art Historians</u></b></li><li>• Publishers could work with CC and major rights-holders to consider how non-CC-BY content might be unambiguously signalled in online publications. <b><u>Lead: OUP/Wiley/</u></b></li></ul>

	<ul style="list-style-type: none"> <li>RCUK might underscore the message to universities and researchers that it was aware of the issues that had been raised, and would consider any relevant evidence in the review of its policies in 2014. <b>Lead: AHRC/RCUK</b></li> </ul>
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## Issue 2: Derivative works and loss of control

Overview of the issue	<p>Some position statements stressed the importance for many HSS scholars of the precise forms in which they expressed their arguments, and the risks of compromising the integrity of the original work, or modifying it in ways that the author would find unacceptable.</p> <p>Concerns were also expressed that the attribution requirements of the CC-BY licence were not sufficiently rigorous and were at odds with academic norms.</p> <p>By way of example, if a CC-BY-licensed work is modified (perhaps mashed-up with other content), the only requirement on the party that had made the adaptation is to take <i>'reasonable steps to clearly label, demarcate or otherwise identify that changes were made'</i>; with the suggestion that this might be done by stating that <i>"the work has been modified"</i>. [see CC-BY licence, version 3, Section 3b).</p> <p>Good academic practice, however, and due regard to the moral rights of authors and the integrity of original works, would suggest a user should specify precisely which elements have been taken from another author's work, and which elements are their own.</p>
Discussion	<ul style="list-style-type: none"> <li>The strongest version of the objection to CC-BY was that it required authors to cede any control over the re-use of their work, and that this was in itself unacceptable. The only way to meet this objection would be by the use of some other licence, such as CC BY ND, which precluded the creation of derivatives.</li> <li>Other delegates stressed the lack of a requirement under the terms of the licence to indicate in a derivative work <i>exactly how</i> the original work had been modified (i.e. 'what comes from the original and what's been changed or added'). The insertion of such a requirement in the licence would mitigate some of the risks of unacceptable re-use.</li> <li>Delegates also stressed the importance of being able to ascertain and record when a derivative work had been created, not least in the context of assessing the impact of their work. Intelligence about the creation of derivative works would be more difficult under the terms of a CC BY licence.</li> <li>There was also concern that work licensed under CC-BY may be poorly translated, with no possibility of checking by authors or someone on their behalf; and some delegates suggested that translation rights should be reserved.</li> </ul>
<b>Actions</b>	<ul style="list-style-type: none"> <li>To work with Creative Commons to consider whether a clearer requirement to indicate how a work has been modified might be included in the 4.0 version of the CC-BY licence (currently under development). <b>Lead: Wellcome</b></li> </ul>

	<ul style="list-style-type: none"> <li>To work with Creative Commons to consider the possibility of devising an alternative licence that specifically reserves rights of translation. <b>Lead: <u>RHS/AcSS</u></b></li> <li></li> </ul>
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### Issue 3: Ethical issues

Overview of the issue	<p>The key issue here was that by allowing mash-ups, adaptations etc., the CC-BY licence is encouraging activities such as dual publication, which is at odds with some academic practices, e.g. the COPE Guidelines encourage reviewers to comment on “the originality of submissions and to be alert to redundant publication and plagiarism” (See: <a href="http://publicationethics.org/files/Code_of_conduct_for_journal_editors_Mar11.pdf">http://publicationethics.org/files/Code of conduct for journal editors Mar11.pdf</a> Section 4.</p> <p>Related to this, there’s a concern that the CC BY licence allows re-use of original works in ways that students are told is incompatible with good academic practice.</p>
Discussion	<ul style="list-style-type: none"> <li>In addition to the points above, concern was expressed that it may in some circumstances be difficult to recruit interviewees or participants for survey work, if the outputs were to be made available under a CC-BY licence. Informed consent was a well-established principle; and procedures might now have to include securing consent to the wider uses implied by the CC-BY licence.</li> <li>Some publishers expressed concern that the CC-BY licence implied that authors waived their moral rights, and that in order to be effective, the licence from the author to the publisher would have to include such a waiver.</li> <li>It was agreed that no licence could <i>prevent</i> bad practice. But the HSS representatives argued strongly that the CC-BY licence actively promoted and facilitated kinds of re-use – designed for environments such as digital arts – that are illegitimate in scholarly discourse.</li> <li>Hence any requirement to use the CC-BY licence underscored the need to educate students and researchers in the importance of the tenets of good academic practice when making use of CC-BY-licensed material.</li> <li>It was noted that it should in principle be possible to gather evidence on whether CC-BY publication was acting as a disincentive to interviewees and survey participants.</li> </ul>
<b><u>Actions</u></b>	<ul style="list-style-type: none"> <li>It was agreed that it would be useful to consider with relevant bodies concerned with social science research whether, and if so how, current arrangements for informed consent might need to be modified; and to investigate with researchers whether CC-BY publication would act as a disincentive to interviewees and survey participants. <b>Lead: <u>PSA</u></b></li> </ul>

#### Issue 4: Commercial issues

Overview of the issue	Under the CC-BY licence anyone (not just the rights-holders) can seek to commercially exploit the content. As a consequence, the ability for authors (and others) to generate secondary income (reprints, photocopying royalties etc.) may be compromised.
Discussion	<ul style="list-style-type: none"> <li>• Concern was expressed by some delegates that STEM authors are able to protect their IP via patents, whereas HSS researchers – whose IP consists in their written outputs – have their IP ‘expropriated’ (via the CC-BY licence). There was thus an asymmetry in the protection of IP.</li> <li>• RCUK and Wellcome pointed out that the CC-BY requirement applies to all researchers – STEM and HSS alike; and that RCUK accepted that reasonable delay in publication might be necessary in order to allow researchers and their institutions to pursue opportunities for commercialisation.</li> <li>• In terms of limiting commercial exploitation of the published content, it was recognised that the “NC” clause was the only practicable way to achieve this within the CC suite of licences.</li> </ul>
<b><u>Actions</u></b>	<ul style="list-style-type: none"> <li>• It was agreed that it would be useful to survey HSS authors to determine the extent to which they receive income from secondary uses (reprints, royalties, copying etc) of journal articles; the average yearly income; their attitudes to the potential loss of this income; and the legal position relating to that potential loss. <b><u>Lead: AcSS/RHS /PSA</u></b></li> </ul>

#### Issue 5: Costs

Overview of the issue	<p>Some learned societies expressed the fear that if they were unable to generate income from licensing secondary uses (e.g. translations, adaptations, photocopying etc.), some of their publishing activities might not be commercially viable. As a consequence, some journals (and learned societies) might close.</p> <p>In an attempt to mitigate this, learned societies may have to increase subscription prices and article processing charges (APCs).</p>
Discussion	<ul style="list-style-type: none"> <li>• Comment was made that some publishers (e.g. Nature Publishing Group,) were charging a higher APC if an article was licenced under CC-BY, than they would if the article was licenced under CC-BY-NC or CC-BY-NC-ND. See: <a href="http://www.nature.com/press_releases/cc-licenses.html">http://www.nature.com/press_releases/cc-licenses.html</a></li> <li>• In response, it was also pointed out that few publishers had followed this course so far (though of course that may change over time.)</li> </ul>
<b><u>Actions</u></b>	<ul style="list-style-type: none"> <li>• It was agreed that it would be useful to collect and analyse data on the levels of income HSS journals and learned societies receive though licensing secondary uses. <b><u>Lead: OUP/Wiley</u></b></li> </ul>

## Issue 6: International dimension

Overview of the issue	<p>If UK funded research published under a after payment of an APC has to make use of a CC-BY licence, there is a risk that some non-UK publishers may simply refuse (or be unable) to accept submissions from UK authors.</p> <p>This situation potentially puts UK researchers at the risk of being unable to publish in important journals in their field.</p>
Discussion	<ul style="list-style-type: none"> <li>• The <a href="#">RCUK OA policy</a> states that “when assessing proposals for research funding RCUK considers that it is the quality of the research proposed, and not where an author has or is intending to publish, that is of paramount importance”. HSS representatives were concerned that this statement was in tension with the overall policy requirement to publish in compliant journals, although it was recognised that the requirement for a CC-BY licence applied only when an APC was paid.</li> <li>• Delegates from the Wellcome stressed the need to engage with overseas publishers to make them aware of UK policies and how they could offer RCUK-compliant publishing options.</li> </ul>
<b><u>Actions</u></b>	<ul style="list-style-type: none"> <li>• RCUK to consider developing an advocacy strategy to inform non-UK publishers how they can develop RCUK-compliant publishing options; and to clarify the meaning of the policy statement noted above. <b><u>Lead: AHRC/RCUK.</u></b></li> <li>• RCUK to work with learned societies and Academies to analyse data on the numbers and types of journals/publishers which do not offer an RCUK-compliant publishing option. <b><u>Lead: AHRC/RCUK/ AcSS/RHS/PSA</u></b></li> </ul>

## Issue 7: Text-mining and re-use

Overview of the issue	<p>Delegates saw the strong potential of text-mining, but there was debate about whether CC-BY was needed in order to facilitate this.</p>
Discussion	<ul style="list-style-type: none"> <li>• It was noted that the HSS community in general were open to their works being made open for text mining, and for re-use in educational contexts., Indeed, disciplines like corpus linguistics rely on text-mining. The community was thus open to a licence which enabled use in such contexts, so long as there were appropriate protections on derivative uses.</li> </ul>
<b><u>Actions</u></b>	<ul style="list-style-type: none"> <li>• To seek to clarify whether text-mining is permissible in the UK under more restrictive licences such as CC-BY-NC and CC-BY-NC-ND.</li> </ul> <p>This piece of work should also clarify whether any groups (e.g. commercial entities) would be excluded from text-mining if a more restrictive licence was applied. <b><u>Lead: Wellcome</u></b></p>

## Issue 8: Freedom of choice

Overview of the issue	<p>A number of recent surveys – such as those conducted by NPG and Taylor and Francis – have indicated that authors, when given a choice of licences, favour the NC-ND variants over the CC-BY licence.</p> <p>Consequently, the decision by RCUK and Wellcome to require authors who publish research under an APC model to adopt the CC-BY licence is seen by some as an infringement of academic choice.</p>
Discussion	<ul style="list-style-type: none"><li>• Although the rights of authors are important, the rights of funders and the wider public should not be discounted. HSS representatives, however, made a categorical distinction between discretionary funders such as the Research Councils and Wellcome on the one hand, and the Funding Councils that provide block grants to universities (and thus contribute to the salaries of most academics) on the other. For in the latter case, academic staff had no choice but to comply with any requirements of the Funding Councils.</li><li>• Although RCUK and Wellcome are pushing for CC-BY, it was noted that other HSS-funders – such as Rowntree, Nuffield and Leverhulme – have not come out in favour of CC-BY. HEFCE will shortly be consulting on their open access policy, and have yet to express a firm view on licensing.</li><li>• A sense that more dialogue was needed between funders and authors to understand more clearly their respective positions.</li></ul>
<b><u>Actions</u></b>	<ul style="list-style-type: none"><li>• To seek to clarify the reasons why other HSS funders are not currently requiring authors to publish under a CC-BY licence. <b><u>Lead: AHRC/RCUK</u></b></li></ul>

### Next steps

1. Actions to be agreed and taken forward.
2. Progress updates to be circulated by email.

## Annex A: Workshop delegates

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Samuel Bibby	<a href="mailto:assted-arthistory@aah.org.uk">assted-arthistory@aah.org.uk</a>	Association of Art Historians
Chris Bird	<a href="mailto:c.bird@wellcome.ac.uk">c.bird@wellcome.ac.uk</a>	Wellcome Trust
Dave Carr	<a href="mailto:d.carr@wellcome.ac.uk">d.carr@wellcome.ac.uk</a>	Wellcome Trust
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Rhodri Jackson	<a href="mailto:Rhodri.Jackson@oup.com">Rhodri.Jackson@oup.com</a>	OUP Yes
Sue Joshua	<a href="mailto:Sue.joshua@wiley.com">Sue.joshua@wiley.com</a>	Wiley
Michael Jubb (Chair)	<a href="mailto:michael.jubb@researchinfonet.org">michael.jubb@researchinfonet.org</a>	Research Information Network
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## **Annex B: CC-BY: delegate position statements**

## Position Statement on CC-BY Licence: Robert Dingwall, Academy of Social Sciences

This is not an official position on behalf of AcSS but reflects numerous conversations with members, colleagues and representatives of learned societies. From these, it would seem that there are two principal grounds for rejecting CC-BY, which different people would value differently but which, together, are quite conclusive.

In articulating these, it is important to recognize that HSS scholars tend to see themselves as content creators, like literary authors, journalists, and producers of creative works of film, music or art. It is also important to recognize that, in most HE environments, they do not consider that they enjoy comparable relative levels of financial support, or absolute levels of salary, to their colleagues in the natural sciences.

1. In the sciences, the IPR in published papers has no real value - it is the knowledge itself that is patentable and generates value for authors. This is partly why data mining is such a big issue because it finds IPR that authors did not recognize and could not protect. In HSS, the papers are the IPR. As such, they can have a commercial value, particularly in crossover fields like history and politics. Moreover, the only public contribution to funding is often the salary costs of the author, with research expenses covered from the author's own discretionary expenditure - if I choose to visit an archive rather than buy a new car, can HEFCE tell me what to do with my product. Increasingly, academic authors or content creators are also becoming aware of and joining ALCS in order to benefit from payments under copyright licensing arrangements that are undercut by CC-BY. PLR is less important in this context, although it would become relevant if OA were extended to monographs. In effect, CC-BY expropriates creators' rights to benefit financially from their work. It can be seen as an attempt to legalize internet piracy.
2. CC-BY provides no protection against mash-ups that compromise the integrity of the original work. In some fields, like popular music, the mash-up is accepted as some kind of tribute to the original. In academic work, however, even if authorship is acknowledged, it does not prevent work being rewritten or repurposed in ways that the creator finds unacceptable. I think this is also an important reason why *Nature* found scientists choosing the most restrictive options available when they looked at this recently. A lot of effort goes into creating content that reflects the creator's views in every detail and it is simply not acceptable to allow this to be hacked about without the original creator having sufficient control of the work to ensure that any other version does not appear in a form or context that is unacceptable. I think the issue of third party material is a non-trivial one and quite closely related - I may agree a context with the author of a visual or literary work who does not levy a fee because of the scholarly purpose of the work but this does not create a free opportunity for anyone else to take that work into another context, particularly if that context is commercial.
3. On the specific issue of data mining, I do not think the HSS community has any big problem. Corpus linguistics has been going for a long time and is recognized as having an interesting, if minor, symbiotic role in relation to other works.

## Position Statement on CC-BY Licence: Lucie Guibault, University of Amsterdam, and Legal Project Leader of Creative Commons, Netherlands

- **Control of work:** CC BY can't prevent the bad things from happening that would have also happened to articles under all rights reserved. These problems (misuse of research, plagiarism) are outside of copyright. But, CC BY can encourage good things to happen (broad redistribution with attribution, enables content mining where such activity is prohibited by copyright).
- **Third party content:** CC BY does not attempt to license or sublicense in any respect any content that the author doesn't own or control. We can promote best practices in marking so that users of a work are on notice that different license terms apply to different parts of that work.

However, even with the most strongly worded marking for third party content, like photographs, it may be unworkable for some third party providers because they'll just assume that users will disregard the notice of differently-licensed content if the overarching article is CC BY. So, this could be a problem.

Third party licensors probably want to ensure (to the extent they're able to) that only the individual who's paying for the photo license can use the photo, and they're probably unlikely to allow for their content to be incorporated into an article licensed CC BY, if only because there's the danger they'll lose control of the image. Iris is looking at some existing OA publishers for real examples of this and to see if there is any commonly used text that we could suggest.

- **Marking adaptations:** if the publishers wish to comment on the attribution requirement for CC 4.0--specifically the piece that explains how adaptations must be marked--the consultation period is open and we look forward to hearing from them.

The current language reads, "*indicate if You have modified the Licensed Material and if so supply a URI or hyperlink to the Licensed Material in unmodified form if reasonably practicable*" and the attribution may be satisfied "*in any reasonable manner based on the medium, means and context...*".

The license terms, including the attribution requirement, do not purport to be a substitute for the specific types of citation required by good practices in the various disciplines.

Creative Commons is genuinely interested in attempting to address people's concerns insofar as they really do hinge on the operation of the CC BY license

## Position Statement on CC-BY Licence: HEFCE

1. This statement outlines the developmental view of the Higher Education Funding Council for England (HEFCE) on the key issues for applying a CC-BY licence. Our view continues to be informed through dialogue with the sector; the below issues therefore reflect only our understanding at this current time.

### Key issues

2. Our criteria are for a licence that offers unrestricted access and re-use, subject to proper attribution. CC-BY offers this but we are perfectly prepared to work with licences that confer similar benefits and welcome this debate.

3. We are aware that there are a number of concerns within the sector regarding this licence, including:

a. Concern that CC-BY only requires attribution. This is a view expressed most frequently by the humanities and social sciences, given the perceived differences in publication in these disciplines, compared with STEM. We understand that there is a particular concern that CC-BY does not require an indication of how work has been adapted and that this may lead to misuse of published research. CC-BY-ND/NC-ND have been identified by some as suitable alternative licences, that would overcome some of these issues and we look forward to further dialogue on this.

b. Issues with third party material. We are aware that there is concern, and possibly confusion, about copyright issues relating to third party material, for example reproducing original works of art. However, we also note that there is some optimism expressed in the sector that issues around third party copyright are resolvable. Clarity and guidance for the sector on this issue will be crucial and we welcome this opportunity to tease out the key copyright issues.

c. Academic freedom of choice. We recognise that some view a requirement for a particular licence as contrary to the freedom of researchers to choose the most appropriate method of dissemination. We look forward to exploring the issues in relation to academic freedom, taking account of the types of publication that attract significant revenues for the author.

d. We note a concern expressed by the social sciences around ethical issues associated with the commercial re-use of research involving human participants.

e. We understand that there are issues to be considered with regard to licences for outputs published via the green route. We note concern about a possible effect on subscription journals of CC-BY licences for 'green' material, but consider that further evidence is needed on appropriate licences for 'green' outputs to inform discussion.

f. We note concern that CC-BY licences may attract a higher article processing charge.

4. We look forward to working with interested parties to identify a practical and widely supported approach to licensing open access research publications. We recognise that it may take time to reach this position, and that it will be important for all involved to be flexible in working together to achieve a reasonable and appropriate outcome.

## Position Statement on CC-BY Licence: Oxford University Press

Oxford University Press (OUP) is mission-driven to facilitate the widest possible dissemination of high-quality research. We embrace both green and gold open access to support this mission.

As of today, OUP has over 150 journals offering a CC-BY licence, with more to come. These journals represent a mix of both full OA and hybrid, and amongst these journals some only offer CC-BY, while some offer a choice of various CC licences. Some of our editors/societies are very keen and in some areas (e.g. bioinformatics) CC-BY has already become the preferred choice industry-wide. We have no major concerns with offering the CC-BY licence where it's desired and where it is acceptable to all of the rights holders whose content and permissions are required during the course of the dissemination of scholarly research.

An example of a sector where there is positive evidence that the [CC-BY licence](#) may not be acceptable as a licensing conduit for the dissemination of scholarly materials is HSS. Here we have the following major concerns:

### 1) Third-party re-use

In our view the CC-BY licence will make it very hard to obtain permissions to publish third party material in journal articles. The key point here is that a publisher cannot grant rights to its users which are wider than the rights granted to it by the author or the third party rights holder. Rights holders will not grant permission for extraction and re-use, much less sale.

The RCUK and Creative Commons have suggested this problem can be resolved easily through clear demarcation of third party content. CC clearly have a vested interest here and RCUK are yet to demonstrate how this will work in practice, although they have committed to do so by the end of 2013. The CC-BY legal code makes no mention of separately demarcated material, and there is no responsibility on the party re-using the material to look closely for such detail. For clarity, CC-BY offers:

**3. License Grant.** Subject to the terms and conditions of this License, Licensor hereby grants You a worldwide, royalty-free, non-exclusive, perpetual (for the duration of the applicable copyright) license to exercise the rights in the Work as stated below:

- a. to Reproduce the Work, to incorporate the Work into one or more Collections, and to Reproduce the Work as incorporated in the Collections;

In the event that a third party finds material being re-used in a way beyond their original agreement with an author/publisher, the third party would look to sue the publisher/author, were it to take legal action. The funding body would not suffer – would the funder be prepared to indemnify publishers against costs arising from claims received from rights owners? Or pay the extra cost of images licences that permit the CCBY distribution?

### 2) Moral Rights

The Licence envisages (4c) that it might be possible to *"distort, mutilate, modify or take other derogatory action in relation to the Work which would be prejudicial to the Original Author's work"*

provided permission is obtained from "Licensor". There are a number of problems here, one of which concerns moral rights.

A moral rights waiver is made by the author, not the publisher. If this clause (4c) is to be effective the Author Licence (i.e. from author to Publisher) will have to contain a waiver of moral rights. Publishers will be reluctant to ask for that and authors will be understandably reluctant to waive their rights.

### 3) Efficacy

Authors and societies in the humanities have shown much less aversion to CC-BY-NC-ND. We haven't seen any evidence yet of any prospect of economic benefit to be derived from the use of CC-BY in the HSS world, and would consider that CC-BY-NC-ND achieves the goals of the government and the RCUK (open access). We find it odd that authors are compelled to choose just one type of licence, fairly alien to their field, and are not sure why CC-BY alone is so desirable for HSS journals.

### 4) Behaviour, user assumptions, and breach of license terms

As well as the concern around the legal position with regard to CC-BY and its protection of rights, there is a broader issue which relates to the degree to which rights restrictions under CC-BY are *presumed* to exist by users of the content. This is significant because a key part of the responsibilities of licensees, and the expectations of the licensor, is that appropriate steps are taken to ensure that users are adequately informed about the terms of any licence. Informed awareness is a necessary first step to preventing potential breaches of any licence. Further, it is also significant because there are clearly issues with regard to prevailing user perceptions of CC-BY which need correcting in order for even the existing terms of the licence to be respected. The fact that this discussion is taking place suggests that there are varying degrees of understanding of CC-BY even amongst informed stakeholders in the wider discussions regarding open access.

## Position Statement on CC-BY Licence: *Past and Present*

We have a number of concerns about this most permissive of the creative commons licenses. The CC-BY license was developed with STEM subject articles most clearly in mind, and is designed to facilitate the easy re-use of data and research findings. In the Humanities and Social Sciences (HSS), articles do not provide and publicise 'data': the factual information they contain is mobilized through argument, interpretation and forms of writing, and these are intellectual property.

- The license is ambiguous about what constitutes 're-use' and can be interpreted as allowing for the manipulation of material (including rewriting, integration with new material, adaptation etc.) *without clear indication of the ways in which the original has been manipulated*. Neither is it clear how authors should be acknowledged by those re-using their work under the terms of the CC-BY license (simply that they should be 'credited'). As the Royal Historical Society has pointed out, HSS authors want the 'integrity of [their] prose' to be protected and this kind of license cannot guarantee that. The manipulations permitted by CC-BY re-use may furthermore allow historians' research and arguments to be misrepresented, a source of particular concern where sensitive topics are involved.
- Many HSS subject articles include the reproduction of material covered by copyright and other restrictions. One key area is illustrations, for which permissions are required. CC-BY licences (even NC-ND) cannot be used because they would infringe these copyrights. Authors obliged to make their articles available under a CC-BY license would be prohibited from including such material.
- The CC-BY licence allows forms of practice that we do not permit in our students, and for which they would find themselves under disciplinary sanction. There seems to be a fundamental disjuncture between government policy on research publication and accepted educational values.
- *Past and Present* offers authors the option of paying an APC of £1,750 to publish their work freely online immediately on publication. This form of open access publication is offered under a range of licences (CC-BY, CC-BY NC, and CC-BY NC ND) and we alert authors to the fact that some types of research funding may stipulate the kind of licence under which they must publish their work.
- Our current APC covers about a quarter of the cost of publishing the article. It seems to us unfair to oblige authors to permit the commercial re-use of material which has been developed with the input of a considerable amount of free labour (peer review, editorial contributions) and for which the APC covers nothing like the real costs of publishing.

Steve Smith  
Editor, *Past and Present*  
16 April 2013

## Position Statement on CC-BY Licence: Political Studies Association

1. CC-BY licences are inappropriate in the social sciences and humanities. As RCUK's recent Policy on Open Access and Supporting Guidance acknowledges, many concerns have been raised by the research community, particularly in HSS subjects. Most work in HSS is based on a quite different methodology and creative dynamic to STEM and requires a licence that reflects this.
2. The PSA is concerned by the fact that these licences allow unrestricted reuse and modification of articles, meaning authors effectively lose control of their work. Article content can be edited or abridged to such an extent that the integrity of the sources can be compromised. Similarly, under CC-BY, there is no protection against poor translation. Academics can find themselves in a position where their work is quoted out of context or reprinted in anthologies where the context might be offensive to the authors and yet, as long as the work has been attributed, they will have no legal recourse to prevent it.
3. Intellectual property rights are particularly important for academics in HSS because, unlike STEM scholars, their work rarely can be protected by other means such as patents.
4. Under CC-BY content intermediaries and publishers can translate and republish content for commercial gain with none of the profits being returned to the country in which the work originated. At the same time, poor translation can lead to the ideas and concepts in an article being presented inaccurately.
5. Overseas authors, deterred by the lack of control over their intellectual property, are likely to bypass UK journals that comply with RCUK policy, compromising the international standing of UK journals.
6. The viability of data mining HSS articles is extremely modest. In any case, as argued by Dr Heather Morrison in her submission to the BIS select committee inquiry into Open Access, "CC-BY is not necessary, sufficient, or even desirable for text and data mining".
7. The requirement for CC-BY could potentially put upward pressure on APCs as publishers will lose secondary income from commercial re-use, which they will seek to recover through higher APCs.
8. We note that non-UK-based publishers have indicated serious concerns about CC-BY licences and are unlikely to wish to publish UK-based authors' work if a condition is that it is published under a CC-BY licence.
9. We do not understand why the UK Government has been so quick to give so much credibility to the creative commons movement. Creative Commons is simply a non-profit organisation that is driven by a simple ideology. It has no special claims to credibility. Legal advice needs to be taken on the claims being made by Creative Commons about CC-BY before the Government and the research councils mandate this form of licence.
10. We note that of the 14,500 authors who responded to a Routledge survey on open access only 4% chose CC-BY as their 'most preferred licence' (by far the least popular of six alternatives), while a majority of 52% chose CC-BY as their least preferred licence.
11. The CC-BY licence requirement should be replaced with a licence which prevents use of the work for commercial purposes and any alteration or transformation of the work.

12. There is lack of clarity on the exact legal implications of CC-BY licences and, therefore, many concerns about its implications. The PSA believes that until all these concerns have been fully investigated and **legal opinion is clear** that CC-BY licences pose no dangers to the integrity of the intellectual property rights of authors, research funders should not insist that work is published under these licences.

## Position Statement on CC-BY Licence: RCUK

Where Research Council funds are used to pay the APC for an Open Access paper, we require that the publisher makes the paper freely available under a Creative Commons Attribution (CC BY) licence. This is the standard licence used by open access journals, and supports the maximum dissemination and re-use of published papers, whilst protecting the moral rights of authors.

As bodies charged with investing public money in research, the Research Councils take very seriously their responsibilities in making the outputs from this research publicly available – not just to other researchers, but also to potential users in business, charitable and public sectors, and to the general tax-paying public. It is important that the outputs of publically funded research are made available in a flexible way for the widest possible readership, re-use and potential impact. Free and open access to the outputs of publicly-funded research offers significant social and economic benefits, as well as aiding the development of new research.

The CC BY licence allows others to distribute, remix, manipulate, and build upon a paper, including commercially, as long as they credit the authors for the original paper and do not infringe any copyrights to third-party material included in the paper. We reject entirely the argument that this form of licence 'licenses' plagiarism. Plagiarism, along with other types of research misconduct, clearly violates standards of good academic practice, and RCUK expects all researchers, as well as their employers to uphold these standard. RCUK is a signatory of the *UUK Concordat to support research integrity*, and the *RCUK Policy and Guidelines on Governance of Good Research Conduct* (February 2013) is available here: <http://www.rcuk.ac.uk/Publications/researchers/Pages/grc.aspx>

The CC BY licence removes any doubt or ambiguity as to what may be done with papers, and allows re-use without having to go back to the publisher to check conditions or ask for specific permissions. We are aware, however, of the reports of the unwillingness of some third-parties to allow their material to be reproduced (with further rights reserved) in research papers that are licensed using CC BY, and this is something that we will be monitoring closely.

RCUK Policy on Open Access is available here:  
<http://www.rcuk.ac.uk/research/Pages/outputs.aspx>

## **Position Statement on CC-BY Licence: Royal Historical Society**

The application of CC licenses to arts and humanities scholarship, and their embedding in a mandatory system imposed on all academics by a single monopoly funder, as would be the case if specific licenses are required for the REF in the UK, requires a fresh look to see whether the existing licenses are fit-for-purpose for these new conditions.

From our point of view the most important issues that need to be addressed are:

### **1) 'Derivative use'.**

The most controversial aspect of CCBY is that it enables what we tell our students is 'plagiarism' - that is, incorporating an original work into a 'derivative' work without making clear what comes from the original and what has been added. This objection could be partially met by introducing a 'marking requirement', which would make clear in any derivative work exactly what has been taken from the original work.

### **2) 'Commercial use'.**

In allowing use of CCBY NC for Green OA publications, RCUK seems to recognize that they do not necessarily own all academics' intellectual property rights. If there is going to be a wholesale expropriation of academics' IP rights, which would be the effect of a mandate to apply CCBY, shouldn't there be a proper discussion and consultation about this? Wouldn't that happen if, for example, it was proposed to expropriate similarly all academic scientists' patent rights?

### **3) Third-party rights.**

Whereas scientists mostly generate their own data, humanities academics often use other people's data - archives, images, literary, artistic and musical works - which we do not own. Often we can't incorporate this third-party material into open-access publications, and in those cases our work might be rendered useless or incomprehensible; what then?

Peter Mandler  
President, Royal Historical Society

## **CC-BY: position of the Wellcome Trust**

### **OA Policy**

As of 1 April 2013, the Open Access policy of the Wellcome Trust states that where our funding is used to pay an open access, Article Processing Charge (APC) associated with a Trust-funded research paper, such works must be published under the Creative Commons, Attribution licence (CC-BY).

This policy applies to all peer-reviewed journal articles published as a result of Wellcome Trust research grants. This includes academic research in the biomedical sciences and medical humanities.

### **Open access and CC-BY**

As a research charity dedicated to achieving extraordinary improvements in human and animal health, the Wellcome Trust is committed to ensuring that the published outputs of the research we fund can be accessed and used in manner that maximises the resulting health and societal benefit.

We believe that supporting the dissemination of the outputs of research is an intrinsic part of research funding and that publishers play an important role in this process. We therefore support 'gold' open access, in which journal articles are made freely available at point of publication, in return for an APC paid from the research grant or associated institutional support fund.

Moreover, we believe that if the full intellectual and economic benefits of open access are to be realised, the barriers to the further dissemination and re-use of published research should be minimised. We believe that a Creative Commons, Attribution (CC-BY) licence best achieves this end.

CC-BY has now emerged as the standard licence for open access (OA) publishing by commercial and non-commercial publishers, who recoup their costs from publication fees and other revenue streams rather than from subscriptions.

### **Benefits of the CC-BY licence**

The value of the CC-BY licence is that it minimises the barriers to dissemination and re-use of published research, while ensuring attribution. Examples of uses which are permitted under a CC-BY licence, but (in the UK and some other jurisdictions) prohibited under more restrictive licences, are:

- Text and data-mining and the development of new search and discovery tools;
- Re-formatting, redistribution or the re-use of journal articles in whole or in part on other platforms to ensure that the work is accessible to communities who can derive benefit from them;
- Re-use of content on other commercial sites, such as Wikipedia or Flickr.

Some of these uses may be more relevant to science research than to the humanities. Nevertheless, our belief is that all Trust-funded research should be treated equally, and we believe – on the evidence available to date – that applying a CC-BY licence to humanities research articles will have a positive effect.

## Position Statement on CC-BY Licence: Wiley

John Wiley & Sons (Wiley) publishes numerous journals in the social sciences and humanities, including both society owned and proprietary titles. Many of these participate in Wiley's Online Open programme which allows authors or their funders to pay an article publication charge to make their article fully open access under a Creative Commons license. Authors can select from the following licenses:

CC BY

CC BY NC

CC BY NC ND

We consider that it is a major step for most authors to transition from an 'all rights reserved' position where material re-use rights are licensed and monitored to a position in which very few rights may be retained for the author or publisher and, in the case of the CC BY, the work may be adapted freely and used for commercial purposes by unknown third parties. This is particularly true for the social sciences and humanities (SSH) where research is often highly individual and original, there is typically greater longevity than in STM, and authors tend to cite from many different sources.

Wiley believes in informed author choice in relation to CC licenses. We respect the fact that the Creative Commons is a voluntary licensing scheme and we support authors who wish to use the CC BY license. However, we have concerns about funder *mandates* to use the CC BY including the following:

- Authors are best placed to talk about the effect of the mandate on reputation and scholarly integrity. However, the CC BY poses a number of challenges to the principles of publication ethics and maintenance of the version of record, permitting multiple publication in different free floating versions. The liberal 'mash-up' culture permitted by the CC BY is in many ways inimical to the strict publication ethics principles espoused by organisations like COPE (Committee of Publication Ethics) and adhered to by publishers and societies.
- The CC BY is currently the least popular CC license according to author surveys eg Taylor & Francis March 2013, with concern about both commercial use and adaptation. The mandate has the effect of depriving scholarly authors of the rights and protections granted to other creators under copyright law.
- Although the CC BY includes a legal license, it is not designed for scholarly publishing, and its broad re-use rights make enforcement difficult and uncertain.
- Risk. Authors are required to obtain permission to use third party material and licenses often impose restrictions, including that the material is only used in situ and may be subject to print run, language or other restrictions. Although third party copyright material can be demarcated, authors and publishers are at risk of damages for breach of license terms (US statutory damages are awarded by jury and run from \$750-\$30,000 per infringement and up

to \$150,000 for wilful infringement.) There has been a marked rise in claims in recent years – most major publishers are currently defending against high value claims in the US.

- It is likely that permission for third party material will be more difficult to obtain and more expensive. Scholarship would be impoverished by the inability to include relevant third party material.
- Non-subscription revenues – including permissions, translations, document delivery and licensing fees - are essential for some SSH journals and their societies. There is no compelling, public interest argument for unrestricted, commercial use of this material by third parties – it is likely that larger commercial organisations will benefit at the expense of societies and smaller publishers.
- The CC BY is not suitable for green OA as it would deprive publishers and societies of a legitimate return on their investment.

## Annex C: Workshop Agenda

<b>12.00 -12.30 Lunch</b>		
	<b>Time</b>	<b>Agenda</b>
1.	12.30 – 12.45	<p>Welcome from Chair</p> <ul style="list-style-type: none"> <li>• Introductions</li> <li>• Workshop objectives</li> </ul>
<b>Presentations</b>		
2.	12.45 – 13.00	<p>CC-BY: why this the preferred licence for RCUK-funded research</p> <p><i>Ian Lyne, AHRC (on behalf of RCUK)</i></p>
3.	13.00 – 13.15	<p>What are the concerns from the HSS community with the CC-BY licence?</p> <p><i>Peter Mandler, Royal Historical Society</i></p>
<b>Additional points for discussion: each delegate given 5 mins to raise additional points or provide evidence to supports issues already raised</b>		
5.	13.15 – 14.00.	<p>View from learned society in the social sciences <i>Helena Djurkovic, Political Studies Association</i></p> <p>View from Art Historians <i>Samuel Bibby, Association of Art Historians</i></p> <p>View from university publisher <i>Rhodri Jackson, OUP</i></p> <p>View from commercial publisher <i>Sue Joshua, Wiley</i></p> <p>View from Creative Commons <i>Lucie Guibault, Legal partner in Creative Commons Netherlands</i></p> <p>Comments from other delegates (not listed above)</p>
<b>Tea break – 14.00 – 14.10</b>		
<b>Discussion</b>		
7.	14.10 – 16.00	Open discussion
8.	16.00 – 16.15	Outcomes and next steps [Chair]