Swiss National Science Foundation

Open Access, copyright, right of publication and licences

Any work that researchers publish is protected by copyright. However, the researchers are often unaware of the extent of this protection and of the options available for exercising their copyright. A lot of questions frequently arise in connection with Open Access – in other words the free availability of scientific literature. How does Open Access impact copyright and right of publication? What are the options for reusing accessible scientific work?

It should be noted at the outset that there is no conflict between Open Access and copyright. Under the SNSF's Open Access policy, researchers **do not assign rights to publishers, but issue licences instead.** This provides clear rules that apply worldwide on how the work can be used. Find out more about copyright, right of publication, licences and the correct way to assign them below.

1 Copyright

Scientific work enjoys protection under the Federal Copyright Act (CopA) from the moment of its creation, provided it demonstrates individual character and is the result of intellectual activity. The Act protects the form of expression of the idea, opinion or discovery, but not the actual scientific discovery.

Copyright rests with the authors of a scientific work (non-transferable right of authorship). Who can lay claim to authorship? According to the Swiss Academies of Arts and Sciences, an individual can claim authorship as long as they have made a material contribution to the planning, performance, evaluation or checking of the research work or to the editing of the text. Furthermore:

- The right to exploit work is transferable and can be inherited (economic aspect of copyright).
- Published works can be quoted, provided the quotation is subordinate to the context in which it is used, identified as such and the source is indicated.
- Copyright expires 70 years after the author's death. The copyright holders can assert their rights at any time until this period expires.

2 Right of publication

The traditional system of publication recognises two different types of contract with publishing houses:

- Authors **transfer the economic rights of exploitation in full to the publishing houses.** As a result, publishing houses have the right to take legal action against copyright infringements, including infringements by the authors.

- Under a **licence agreement**, the authors give the publishing houses the right to exploit their work. The authors retain the economic rights to their work.

The SNSF recommends that researchers read publication contracts carefully and ensure that publishing houses are not granted more rights than are necessary for performing their service. This is important not least to make use of the green route to Open Access, under which researchers archive their scientific publications in an institutional or discipline-specific repository. Furthermore, it is important to note that the reassignment of non-transferable rights (e.g. the right to be recognised as author) is not compatible with Swiss law.

3 Open Access and Creative Commons licences

It is standard practice to assign licences for Open Access publications. Nowadays, this is generally done using **Creative Commons (CC) licences**. The SNSF prescribes CC BY licences for articles and may accept CC BY-ND licences on request. The minimum licence requirement for monographs and anthologies published via the gold OA route (publications available free of charge on the Internet without any restrictions) using SNSF publication funding is CC BY-NC-ND. Here again, we recommend using the less restrictive CC BY licence.

What does Creative Commons do? Founded in 2001, this non-profit organisation provides **free standard licences** intended for **Internet use**. They comprise:

- a machine-readable **code** (e.g. for search engines)
- easy-to-understand **icons** and abbreviations for users
- a detailed legal **licence** available in over 60 languages (as a basis for legal interpretation in the event of disputes)

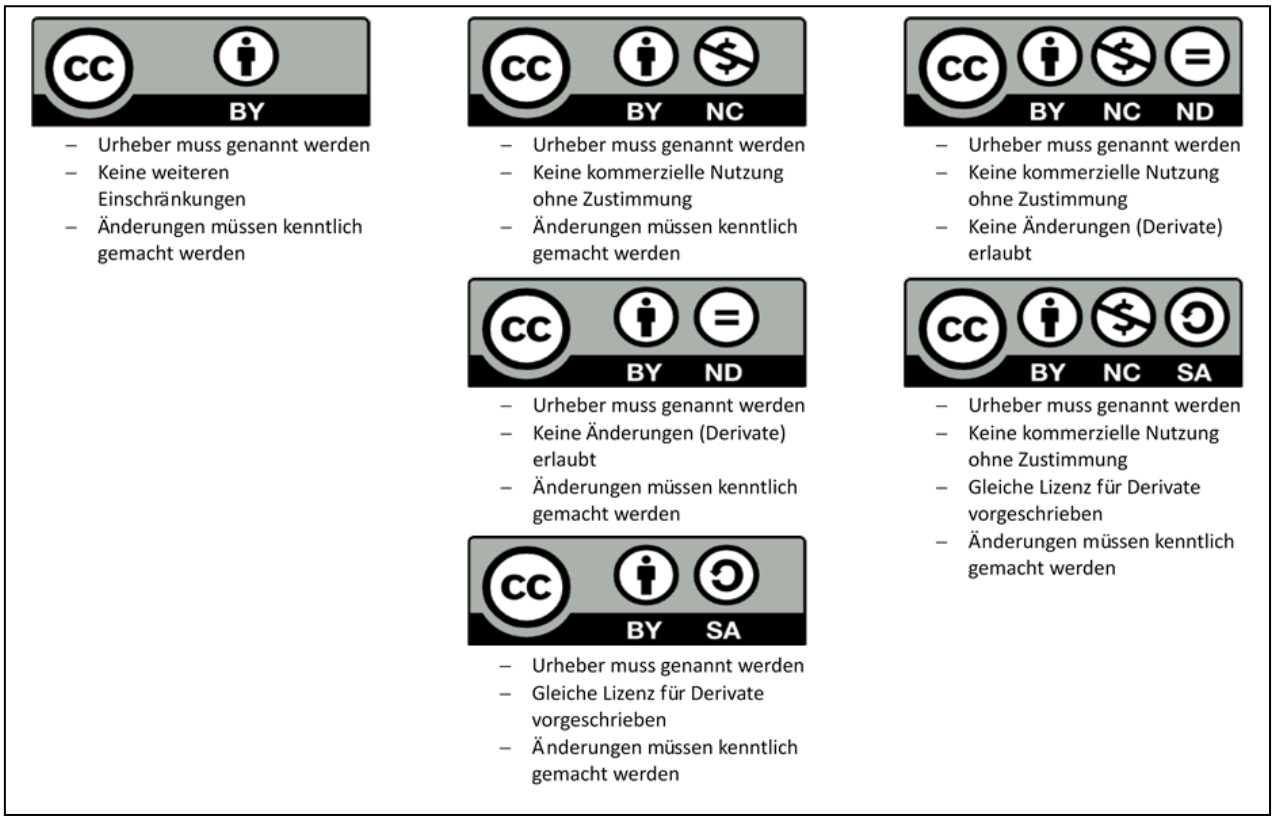
One thing all CC licences have in common is that they are **non-exclusive and irrevocable**. In addition, all contain a **mandatory requirement to cite** the authors. This is represented by the **BY** icon. Although this requirement is legally prescribed in Switzerland, this is not the case in other countries, such as the USA.

Reuse can be restricted by **additional clauses** that can be added to licences individually or in combination.

- **NC (non-commercial**): This clause (represented by the struck-through dollar symbol) prohibits reuse for commercial purposes without the explicit consent of the holders of the rights.
- **ND (no derivative works**): This clause (represented by the equals symbol) permits reuse only in verbatim form.
- **SA (share-alike):** This clause (represented by the recycling symbol) indicates that derivative works may only be distributed under an identical licence.

Unless the licence prohibits modification of the original (ND), any changes must be marked.

The result is the six standard licences shown below:



(Source: http://www.creativecommons.ch/wie-funktionierts/).