Publishers exploiting CC BY-NC and CC BY-NC-ND: (principle) issues and (pragmatic) solutions

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Even when the author is copyright owner of the article
The process (example)
Awareness authors

Short survey under 30 Dutch authors that used a CC BY-NC / NC-ND license in a Wiley or Elsevier journal in 2023

1. Majority is not aware that the publisher takes over control of the license

2. Only one author was aware of the implications (exploitation, limiting own right to re-use)

3. All authors responded negatively to this publisher practice
### NC / NC-ND: How publishers operate

<table>
<thead>
<tr>
<th>Publisher</th>
<th>Author obligated to sign over exclusive license</th>
<th>Publisher exploits license</th>
<th>Author consulted</th>
<th>Author can re-use own work</th>
<th>Workflow configuration Dutch R&amp;P deal</th>
<th>% CC BY NC / NC-ND in 2023</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elsevier</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>On request</td>
<td>CC BY default, NC / NC-ND optional</td>
<td>11%</td>
</tr>
<tr>
<td>S/N</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>On request</td>
<td>CC BY-NC 2% journals rest CC BY</td>
<td>4%</td>
</tr>
<tr>
<td>Wiley</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>CC BY, NC, NC-ND all optional</td>
<td>58%</td>
</tr>
<tr>
<td>T&amp;F</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>All optional, end 2023: change to CC BY default</td>
<td>69%. Goal 2024: 10%</td>
</tr>
<tr>
<td>CUP</td>
<td>No (new policy: non-exclusive) Impact new policy unclear</td>
<td>Non-exclusive</td>
<td>Yes</td>
<td>CC BY default, other optional</td>
<td>8%</td>
<td></td>
</tr>
</tbody>
</table>
Workflow versus Author choice

The author isn’t controlling the workflow, the workflow is controlling the author. Case: ACS
The author isn’t controlling the workflow, the workflow is controlling the author. Case: Elsevier
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Publishers exploiting licenses: (principle) issues

• Author choice (no option: NC/ND + keeping control)

• Academic autonomy (re-use is profit driven, author becomes user)

• Hidden revenue model

• It’s a service to 3rd parties (e.g. Pharma), not to the author

• By owning the license and defining commercial re-use (for example: MOOCs) publishers increase their influence on academia
Solutions: on system level

If there is a valid reason for an author to prefer a restrictive CC license, the publisher can offer to manage the license as an optional service, while the author remains owner of the license:

• Not profit driven, authors are consulted before giving reuse permission

• Can also be done by a 3rd party, consortium or the university (reversed plagiarism tool)

• Consortia and publisher / 3rd party can negotiate about the added value of such a service and the costs
If no solution on system level (1)

• Negotiate CC BY only or CC BY default (NC / ND optional including additional info in OA workflow)

• OA deals only covering articles when copyright and license is owned by authors (could result in: if author chooses NC/ND, APC not covered by deal)

• Negotiate improvement of CC BY-NC/ND license (strategy ULC with Wiley & CUP)
If no solution on system level (2)

• Add topic to negotiation mandates, model licenses, contract evaluation

• Advise institutions to take (even) more effort in sharing OA articles in the repository (breaking direct link to commercial marketplaces)

• Check copyright law (is it legal to exploit an article / license without compensating the copyright owner?)
If no solution on system level (3)

- Communicate to authors about good and bad practices to influence journal and license choice

- Advise authors who want to protect an object in an article (graphic, image) to publish the article **CC BY** but deposit the object with a **CC BY-NC** license prior to publication in a repository and embed the object with restrictive license in the article.

=> The article has a CC BY license, so the author remains owner of both article license & object license.
If no solution on system level: summery

• Make it a strategic topic in negotiations
• Rase awareness amongst authors
• Take steps to decrease the volume of NC / NC-ND
• Complicate the exploitation process
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Questions, discussion

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