

# PUBLISHERS USE “LICENSE TO PUBLISH” AGREEMENTS TO TRY TO SEIZE ALL RIGHTS HELD BY AUTHORS, WHICH CONTRAVENES THE SPIRIT AND GOALS OF OPEN ACCESS

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## OVERVIEW AND STATEMENT OF PROBLEM

Authors choose open access (OA) publishing to accomplish two equally important goals. First, in direct opposition to the subscription system that keeps scholarly works locked behind a paywall, authors choose to make their scholarly works freely available to all.<sup>1</sup> Second, authors want to regain control over their rights as creators of scholarly works—rights they have been routinely required to give away under the subscription system such that publishers can maintain exclusive control over the re-use, distribution, translation, and monetization of those works.

In 2019 at the University of California (UC), eight committees of the faculty-led Systemwide Academic Senate, as well as the Systemwide Academic Council, Council of University Librarians (CoUL), and Systemwide Library and Scholarly Information Advisory Committee (SLASIAC) all unanimously endorsed a *Declaration of Rights and Principles to Transform Scholarly Communication*, which was created by the faculty of the University Committee on Library and Scholarly Communication (UCOLASC).<sup>2</sup> When endorsing the UCOLASC *Declaration of Rights and Principles*, these governing bodies understood that the very first principle (and the 5<sup>th</sup> and 7<sup>th</sup>) explicitly expressed the faculty’s deeply held desire to control their own rights as authors.

Despite the clear intentions of UC faculty, contrary to the spirit of the Creative Commons licensing system that the UC and almost all others around the world have adopted, and plainly contradicting claims by publishers to support OA and the rights of authors, most publishers are requiring authors to sign license to publish (LTP) agreements that attempt to grant all rights associated with copyright exclusively to the publisher. Some of these LTP agreements also state explicitly that such license grants apply to any earlier version of the work held in public repositories and/or pre-print servers, and thus they try to limit the ability of downstream entities to re-use the work or mine text and data. This now-common practice is unacceptable and authors become livid once they begin to understand what is happening with these LTP agreements.

For these reasons, the UCOLASC has issued a unanimous statement on author rights and LTP agreements, and has urged the UC team that is negotiating transformative open access agreements with publishers to prioritize the issue of author rights.<sup>3</sup>

**We encourage everyone to prioritize the issue of author rights in negotiations...**

## Authors Choose Different Creative Commons (CC) Licenses Based On Their Own Disciplinary Needs

- In 2021, up to 35% of UC authors selected CC BY-NC or CC BY-NC-ND licenses when publishing OA in gold and hybrid journals, which represents over 2300 articles (data from Unpaywall).

## The Structure And Language Of License To Publish Agreements Confuse And Mislead Authors Who Often Do Not Realize They Are “Giving Away” Their Rights

### Example 1

Authors retain copyright but in name only, since LTP agreements aim to transfer all rights held in copyright exclusively to the publisher.

Authors believe that CC licenses enable them to retain their rights.

LTP agreements often ask authors to sign before the fine print appears.

### Example 2

## Authors Retaining Copyright And All Rights Therein Is A Key Motivator For Open Access Publishing

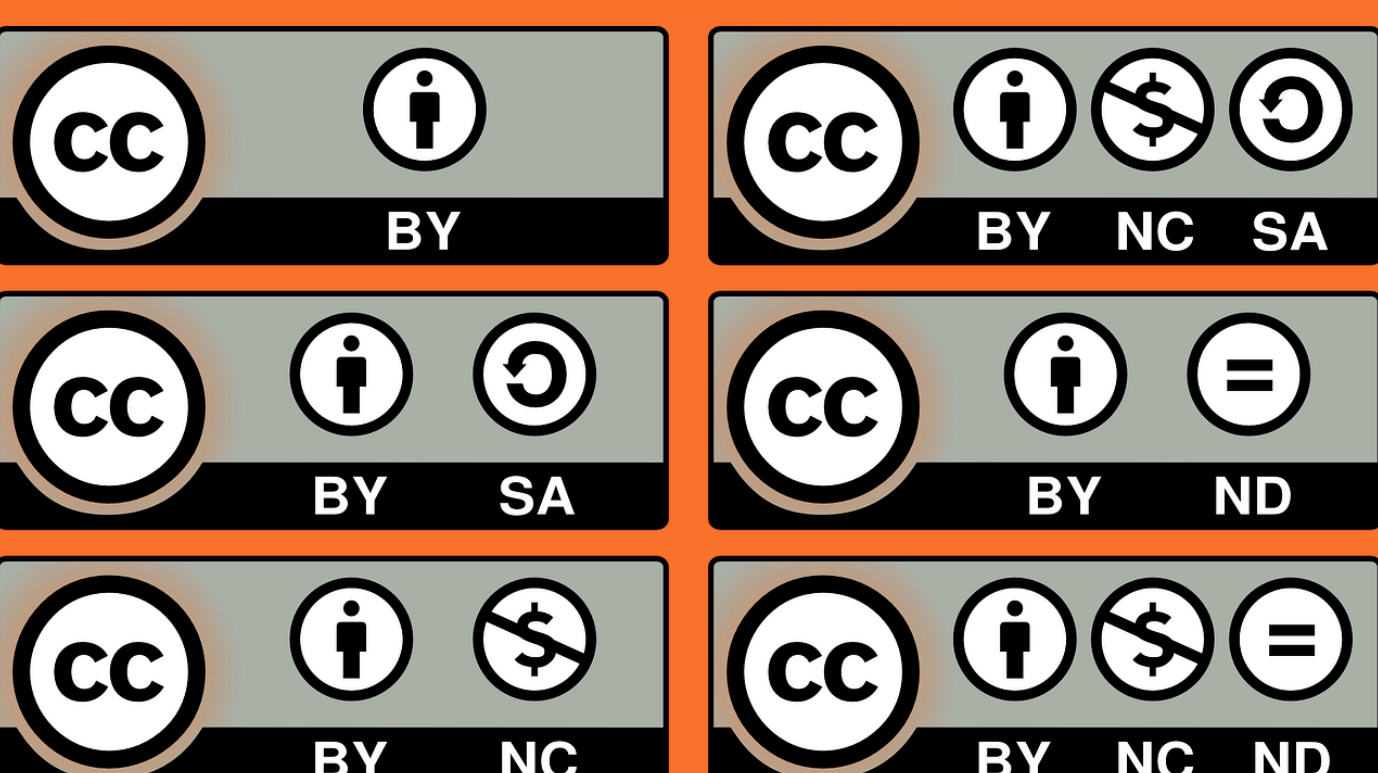
UNIVERSITY OF CALIFORNIA  
BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO  
UNIVERSITY COMMITTEE ON LIBRARY AND SCHOLARLY COMMUNICATION  
Assembly of the Academic Senate, University of California

13 April 2018  
**DECLARATION OF RIGHTS AND PRINCIPLES TO TRANSFORM SCHOLARLY COMMUNICATION**  
To align our institutional policies and practices toward the goal of replacing subscription-based publishing with open access (OA), we propose that the University of California assert the following rights and principles when negotiating with publishers during journal license renewals:

- 1. No copyright transfers.** Our authors shall be allowed to retain copyright in their work and grant a Creative Commons Attribution license of their choosing.
- 5. No limitations on author reuse.** Our authors shall have the right to reuse figures, tables, data, and text from their published work without permission or payment.
- 7. No curtailment of copyright exceptions.** Licenses shall not restrict, and should instead expressly protect, the rights of authors, institutions, and the public to reuse excerpts of published work consistent with legal exceptions and limitations on copyright such as fair use.

3 out of 18 principles in the UCOLASC Declaration focus on copyrights for authors

## The OA Movement Has Promoted Creative Commons (CC) Licenses So Authors Can Retain Copyrights And Control How Their Work Gets Used



- CC licenses only restrict what end-users may do under the license and not what the licensor (rights holder) can do.<sup>4</sup>
- Licensors are always free to do whatever they want with their own works.
- One of the most liberal licenses is CC BY, which allows anyone to distribute, remix, adapt, and build upon the material in any medium or format, so long as proper attribution is given to the author.
- For discipline-specific reasons, some authors place “non-commercial” (NC) and/or “no derivatives” (ND) restrictions on what end-users can do with their work.

CC Denotes that the license is Creative Commons.  
BY Means “by”. End users must attribute and say who made the work.  
NC Non-commercial. The work cannot be used for profit.  
SA Share-alike. All derivatives/reuse must apply same CC license.  
ND No derivatives. No changes or alterations can be made to the work.

## Publishers Only Need A “Limited” Or “Non-Exclusive” License To Publish<sup>5</sup> And Authors Retain All Rights

### Example 3

Most native OA publishers and some society publishers use an appropriate “non-exclusive” LTP agreement

## RECOMMENDATIONS AND ACTION ITEMS

- Institutions and publishers should support the retention of copyright and all rights therein by authors.
- Licenses to publish should only restrict what end-users may do under the license and not what the licensor (rights holder) can do.
- Transformative open access agreements should stipulate that authors only grant “limited” or “non-exclusive” licenses to publishers.
- Liberal Creative Commons (CC) licenses (e.g., CC BY) should be applied as the default choice in transformative agreements, but if authors choose licenses that restrict commercial and/or derivative uses of the work (e.g., CC BY-NC, CC BY-ND, CC BY-NC-ND) then those licenses should function as originally intended with authors always free to do whatever they want with their own work.

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### LINKS AND REFERENCES

- [1 https://osc.universityofcalifornia.edu/scholarly-publishing/uc-open-access-policies-background/systemwide-senate/](https://osc.universityofcalifornia.edu/scholarly-publishing/uc-open-access-policies-background/systemwide-senate/)
- [2 https://senate.universityofcalifornia.edu/files/reports/rm-jn-transform-scholarly-communication-declaration-2019.pdf](https://senate.universityofcalifornia.edu/files/reports/rm-jn-transform-scholarly-communication-declaration-2019.pdf)
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