Understanding Open Access

Rubow, Lexi, Shen, Rachael, Schofield, Brianna L.

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CHAPTER 4: HOW "OPEN" DO YOU WANT TO MAKE YOUR WORK?
UNDER CURRENT U.S. COPYRIGHT LAW, COPYRIGHT ATTACHES TO AN ORIGINAL WORK OF AUTHORSHIP AUTOMATICALLY FROM THE MOMENT THE WORK IS FIRST CREATED. THIS MEANS THAT AUTHORS HAVE THE EXCLUSIVE RIGHT TO MAKE COPIES OF THEIR WORKS; SELL OR OTHERWISE DISTRIBUTE THEIR WORKS; PREPARE ADAPTATIONS (E.G., AUDIO EDITIONS, MOVIE ADAPTATIONS, AND TRANSLATIONS); AND PERFORM OR DISPLAY THEIR WORKS PUBLICLY. THOUGH THESE RIGHTS ARE SUBJECT TO A NUMBER OF LIMITATIONS, AN AUTHOR GENERALLY HAS THE CHOICE WHETHER TO LICENSE OR TRANSFER ANY, OR ALL, OF THESE RIGHTS AND, IF SO, TO WHOM AND TO WHAT EXTENT.

IF YOU WISH TO GRANT THE PUBLIC THE RIGHTS TO REUSE YOUR WORK, YOU NEED TO AFFIRMATIVELY INDICATE WHICH OF THESE RIGHTS YOU ARE GRANTING. YOU ALSO NEED TO INDICATE WHAT CONDITIONS OR RESTRICTIONS, IF ANY, YOU ARE PLACING ON THE PUBLIC’S REUSE OF YOUR WORK. TO DO SO, MANY
authors use a pre-drafted open access license. Creative Commons licenses are the de facto global standard for open access licenses. Creative Commons allows authors to choose from among a menu of pre-drafted licenses depending on the rights they want to grant and the conditions they want to place on use of their works.\textsuperscript{34} Other well-known open access licensing models are available, particularly for computer programs.\textsuperscript{35}

In addition to selecting open licensing terms for their works, authors should also consider other factors that affect readers’ ability to access their works. For example, authors should consider enhancing the machine-readability of their works and, when possible, limiting the conditions on which version of their work can be made openly available and when.

**THIS CHAPTER:**
- Describes the rights authors can license to the public to allow others to share and adapt their works
- Outlines some conditions and restrictions authors might place on the use of their works
- Explains how to signal to the public that a work is openly accessible
• Describes other factors that contribute to a work’s accessibility

WHAT RIGHTS DO YOU WANT TO LICENSE TO THE PUBLIC?

While you can help readers access your works by removing price barriers alone, readers will usually still need to ask for your permission to reuse, share, or adapt your work unless you affirmatively license these rights to them (or unless their use falls within a copyright limitation or exception). When you consider how you would like to allow others to access and use your work, consider the following two questions.

Do you want to allow others to share your work?
When you allow others to share your work, readers can distribute, copy, or perform your work without first having to get your permission or rely on a copyright exception (such as fair use).

Do you want others to be able to adapt your work?
When you allow others to adapt your work, readers can build upon or create new works based on your work
without first needing to get your permission or rely on a copyright exception. This is sometimes referred to as allowing others the right to prepare “derivative works.” A movie adaptation is an example of a derivative work of the novel on which the movie is based.

Enhancing High School Education

Don Herzog is a professor at the University of Michigan and a founding member of Authors Alliance. Professor Herzog made his book Household Politics, published with Yale University Press, available in the University of Michigan’s “Deep Blue” repository under an open access license. He later learned that a high school social studies teacher uses a chapter of Household Politics to teach his honors class. The teacher reached out to Professor Herzog to express his appreciation for the book being openly accessible. Professor Herzog remarked that there is “no way that something like this would happen had the book been available only through a traditional university press” because the book would have been prohibitively expensive.
Authors do not give up their own right to share or adapt their work just because they also allow the public to do so. In this sense, making a work openly accessible greatly differs from many traditional publication contracts, in which authors transfer their copyright or grant an exclusive license to their publishers without reserving any rights for themselves.

**DO YOU WANT TO PUT CONDITIONS ON THE USE OF YOUR WORK?**

Once you consider what rights you would like to share with the public, you can select an open access license for your work. Creative Commons licenses allow you to fine-tune your work’s degree of “openness” by putting conditions on readers’ reuse and derivative work rights. Some of the common conditions are:

- **Attribution:** Those who reuse a work or create a derivative work must give credit to the author

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**HOW DO YOU INDICATE THAT YOU ARE MAKING YOUR WORK OPENLY ACCESSIBLE?**

To apply an open access license to your work, you need to mark your work with the appropriate license. For some open access repositories or journals, the marking process is integrated into the distribution platform. Thus, if you are making works available through an open access repository or journal, you should check with your specific open access platform for more details on how to mark your work with a public license. If the marking process is not already integrated, you should
visit the website of the organization that drafted your desired license for instructions on how to mark your work with a particular license. Creative Commons has a wiki page dedicated to providing information on how to mark your work with one of its licenses.\textsuperscript{36}

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OTHER WAYS TO MAKE YOUR WORK MORE ACCESSIBLE

As described above, removing legal restrictions on use is a key component of making your work openly accessible. However, authors may also want to consider additional factors that shape how available their works are for readers to fully access, share, and reuse.37

Open Data

Copyright does not apply to the facts underlying research findings. But it can apply to creatively arranged datasets. Apart from copyright, underlying data are often just not made available to readers of the books and articles based on them. Open data, by contrast, are data that are made freely available for anyone to reuse and redistribute. In addition to making your research findings openly accessible, you may want to consider making the data that drive your research findings openly available online. Open data allow others to perform their own analyses or apply it to different uses without having to first get permission or duplicate the same research, leading to a more efficient use of research funds and accelerating the pace of discovery. In light of these benefits, some research funders and
publishers require or strongly encourage that research publications be accompanied by open data.³⁸

**Tip:** Some authors publish their works under an open license and the underlying data under CC0, a Creative Commons tool that allows authors to waive copyright altogether and place their work directly into the public domain with “no rights reserved.”

**Technical Openness**

Making a work available in a machine-readable format can increase readers’ ability to access and use your work and maximize its reuse.³⁹ Machine-readable formats enable search engines to index the entire text of a work, in turn making it easier for readers to search for and find works. Making metadata about your work available in standardized formats also enhances your work’s machine-readability and helps readers find it. Metadata includes information such as the author’s name, institutional affiliation, the title of the work, an abstract, and open access license terms. Open access repositories commonly include this metadata when an article is uploaded to the repository.

Similarly, if open data are machine-readable, users can more easily reuse the data in their own research or apply it to different uses, thereby maxi-
mizing its benefits to society. To make a chart machine readable, for example, an author needs to make sure users have access to the source of the chart and the underlying data rather than just a fixed image of the chart.

The Human Side of Machine Readability

Cory Doctorow is a fiction writer, activist, blogger, and journalist and a member of Authors Alliance. After making his novel Little Brother openly accessible, Mr. Doctorow received a braille copy of the book from Patricia Smith, a Detroit public school teacher of visually impaired students. Although braille versions may be permissible under one or more copyright exceptions, creating a braille version often first requires painstakingly entering text into a digital format. This obstacle prevents many works from being translated into braille. However, because the text of Little Brother is openly available without technical limitations to prevent its copying, printing, and sharing, Ms. Smith was able to directly run the book’s digital file through a braille embosser and make the book available to her visually impaired students.
Ms. Smith also included a note, which stated: “What I could not enclose is the gratitude from my braille reading students. For various reasons, most books in braille are aimed at younger children. My students are all between the ages of 12 and 15 and have no real interest in reading a Kindergarten level book. I was finally able to give them something interesting, compelling, and, most importantly at their grade level.”

**Version Openness**

Which version of your work is openly accessible affects readers’ ability to fully access and use your work. Conventional publishers sometimes request that authors only make the author’s submitted version of a work—prior to peer review and publisher formatting—openly accessible. If you are working with a conventional publisher that follows this practice, you might try negotiating with the publisher to allow you to make the final, peer-reviewed version of your work openly accessible to optimize your work’s accessibility to readers. (For information on working with conventional publishers, please see Chapter 6.)
**Temporal Openness**

Whether your work is openly accessible immediately upon publication or after a conventional publisher’s period of exclusivity (known as an embargo period) also affects readers’ ability to access your work. Works that are published through an open access publisher or that are immediately deposited in an open access repository are more accessible than those subject to a delay because readers can access and use them sooner. If you are working with a conventional publisher, you might try negotiating to reduce or eliminate the length of any proposed embargo period in order to make your work more accessible. (For information on working with conventional publishers, please see Chapter 6.)