

Copyright and Open Access

Promoting innovation in the life science sector and supporting pro-competitive collaborations: The role of intellectual property

U.S. Department of Justice and U.S. Patent and Trademark Office
September 23, 2020

Michael W. Carroll
Professor of Law

American University Washington College of Law



Open Access

- Internet distribution of research creates new potential to increase research impact
- Copyright law controls distribution rights.
- The law gives copyrights to researchers
- Under the traditional subscription model, researchers transfer publishing rights to publishers.

Scholarly Communication



Photo by: Mike Licht at <http://www.flickr.com/photos/notionscapital/>

Open Access

- The Open Access movement seeks to realign the free speech values that underlie academic freedom and the pursuit of knowledge . . .
- With the economics of Internet publication

Budapest Open Access Initiative

In response to the growing demand to make research free and available to anyone with a computer and an internet connection, a diverse coalition has issued [new guidelines](#) that could usher in huge advances in the sciences, medicine, and health.

The recommendations were developed by [leaders of the Open Access movement](#), which has worked for the past decade to provide the public with unrestricted, free access to scholarly research—much of which is publicly funded. Making the research publicly available to everyone—free of charge and without most copyright and licensing restrictions—will accelerate scientific research efforts and allow authors to reach a larger number of readers.

The recommendations are the result of a meeting organized by the Open Society Foundations to mark the [tenth anniversary](#) of [Budapest Open Access Initiative](#), which first defined Open Access. The recommendations include the development of Open Access policies in institutions of higher education and in funding agencies, the open licensing of scholarly works, the development of infrastructure such as Open Access repositories and creating standards of professional conduct for Open Access publishing. The recommendations also establish a new goal of achieving Open Access as the default method for distributing new peer-reviewed research in every field and in every country within ten years' time.

[Translations of the recommendations](#) have already been made in several languages, with more to follow.

For more on the recommendations, please see the [press release](#) as well as a [blog post](#) by Peter Suber which provides additional background on the Open Access movement.

Open Access

- The term “open” has two aspects
 - Terms of Access = Free on the Internet
 - Terms of Use =
 - Free-to-Reuse in any manner as long as attribution is given to the source.
 - In some case reuse is limited to non-commercial use.

Scholarly Communication

Five Audiences that Open Access serves

- Serendipitous readers
- Under-resourced readers
- Interdisciplinary readers
- International readers
- Machine readers

Scholarly Communication

Making research freely available over the Internet has seen two lines of development.

Public policy requiring delayed access to publicly-publicly funded research

Open access publishing

- New business model – research grants or institutions fund publishing costs upfront

ostp_public_access_memo_2013.pdf - Adobe Reader

File Edit View Window Help

1 / 6 128%

Tools Sign Comment

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF SCIENCE AND TECHNOLOGY POLICY
WASHINGTON, D.C. 20502

February 22, 2013

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: John P. Holdren *JPH*
Director

SUBJECT: Increasing Access to the Results of Federally Funded Scientific Research

1. Policy Principles

The Administration is committed to ensuring that, to the greatest extent and with the fewest constraints possible and consistent with law and the objectives set out below, the direct results of federally funded scientific research are made available to and useful for the public, industry, and the scientific community. Such results include peer-reviewed publications and digital data.

Slide 10 of 57 "1_Office Theme" 53%

start 20 Microso... 6 Firefox 4 OpenOff... 2 Adobe R... 2 Microsoft... Search Desktop 1:33 PM

The OSTP Directive

Agency Public Access Plan

- “The Office of Science and Technology Policy (OSTP) hereby directs each Federal agency with over \$100 million in annual conduct of research and development expenditures to develop a plan to support increased public access to the results of research funded by the Federal Government.”

3. Objectives for Public Access to Scientific Publications

. . . “Further, each agency plan shall:

a) Ensure that the public can read, download, and analyze in digital form final peer reviewed manuscripts or final published documents within a time frame that is appropriate for each type of research conducted or sponsored by the agency.

. . .

b) Facilitate easy public search, analysis of, and access to peer-reviewed scholarly publications directly arising from research funded by the Federal Government”

Scholarly Communication

- ❑ Policy change is only one source of dynamism in scholarly publishing
- ❑ Changes in the marketplace as well.

Scholarly Communication

Two changes in the marketplace

- New financing model for journals leads to immediate open access with broad reuse rights granted to the public
- Relation between pre-publication peer review and time-to-publication being reconsidered.

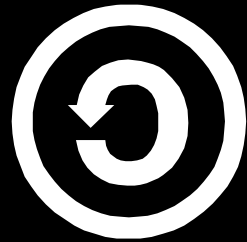
Scholarly Communication

In the open access publishing model, copyright generally is licensed to the public by the author under a Creative Commons license.

Step 1: Choose Conditions



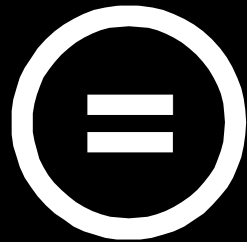
Attribution



ShareAlike



NonCommercial



NoDerivatives

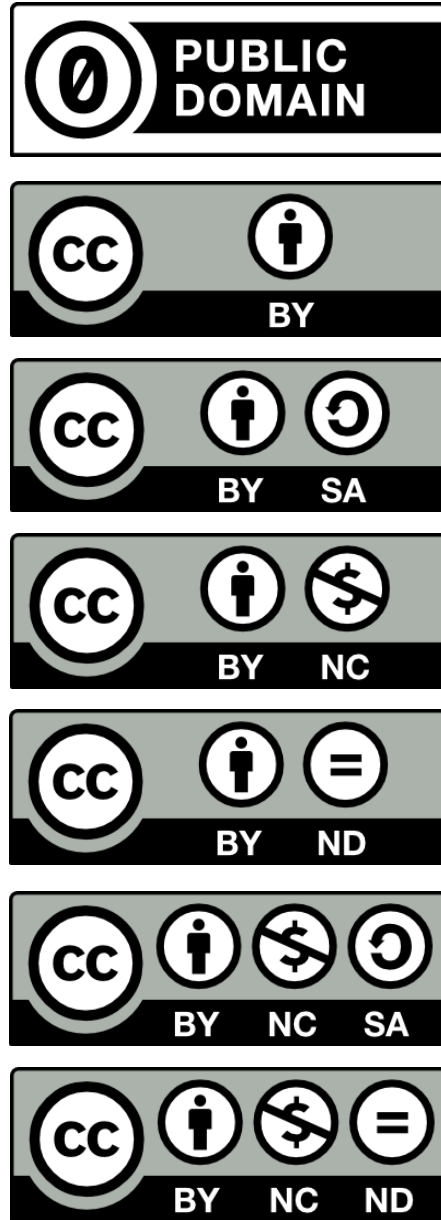


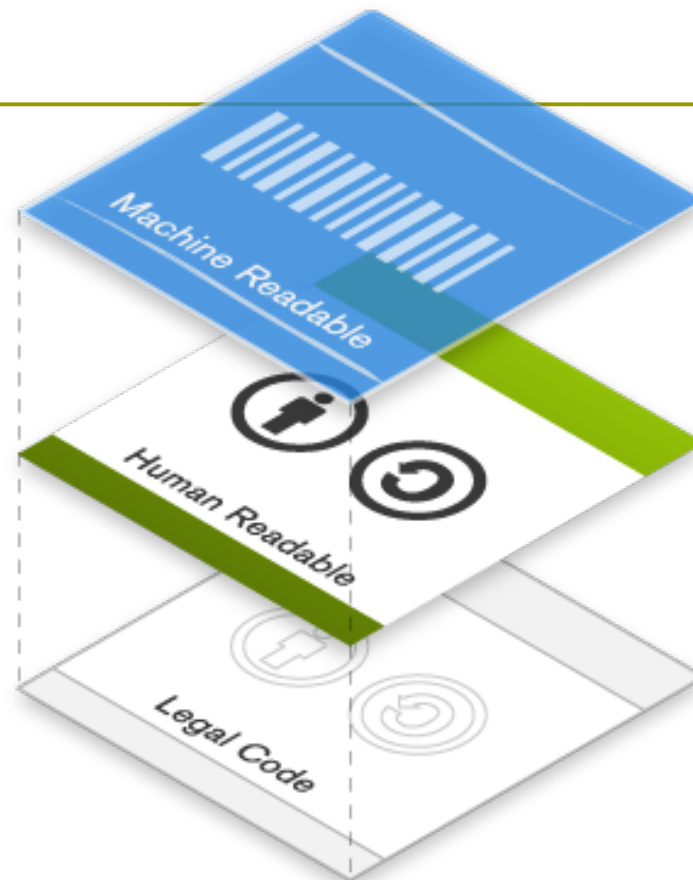


most free



least free







Attribution 4.0 International (CC BY 4.0)

This is a human-readable summary of (and not a substitute for) the [license](#).

[Disclaimer](#)



You are free to:

Share — copy and redistribute the material in any medium or format

Adapt — remix, transform, and build upon the material

for any purpose, even commercially.

The licensor cannot revoke these freedoms as long as you follow the license terms.

Under the following terms:



Attribution — You must give **appropriate credit**, provide a link to the license, and **indicate if changes were made**. You may do so in any reasonable manner, but not in any way that suggests the licensor endorses you or your use.

No additional restrictions — You may not apply legal terms or **technological measures** that legally restrict others from doing anything the license permits.



Attribution 4.0 International

Official translations of this license are available [in other languages](#).



Creative Commons Corporation ("Creative Commons") is not a law firm and does not provide legal services or legal advice. Distribution of Creative Commons public licenses does not create a lawyer-client or other relationship. Creative Commons makes its licenses and related information available on an "as-is" basis. Creative Commons gives no warranties regarding its licenses, any material licensed under their terms and conditions, or any related information. Creative Commons disclaims all liability for damages resulting from their use to the fullest extent possible.

Using Creative Commons Public Licenses

Creative Commons public licenses provide a standard set of terms and conditions that creators and other rights holders may use to share original works of authorship and other material subject to copyright and certain other rights specified in the public license below. The following considerations are for informational purposes only, are not exhaustive, and do not form part of our licenses.

Considerations for licensors: Our public licenses are intended for use by those authorized to give the public permission to use material in ways otherwise restricted by copyright and certain other rights. Our licenses are irrevocable. Licensors should read and understand the terms and conditions of the license they choose before applying it. Licensors should also secure all rights necessary before applying our licenses so that the public can reuse the material as expected. Licensors should clearly mark any material not subject to the license. This includes other CC-licensed material, or material used under an exception or limitation to copyright. [More considerations for licensors.](#)

Considerations for the public: By using one of our public licenses, a licensor grants the public permission to use the licensed material under specified terms and conditions. If the licensor's permission is not necessary for any reason—for example, because of any applicable exception or limitation to copyright—then that use is not regulated by the license. Our licenses grant only permissions under copyright and certain other rights that a licensor has authority to grant. Use of the licensed material may still be restricted for other reasons, including because others have copyright or other rights

Thank you