

Twelve Points to Make Open Access Licensing Work

May 2013

STM has no view on what licensing terms are used by publishers to inform the users of what permitted uses may be made of copyright-protected works. Likewise it maintains that it is important that there be licensing terms that are easy to find, easy to read and easy to interpret.

For this reason, STM has produced twelve key points publishers should consider when devising Open Access licensing terms and conditions. In STM's view, these twelve points are useful to make Open Access licensing terms work in such a way that they:

- provide ease of use of high quality and trusted content which authors, researchers and other users require;
- support the economic model pursued by the publisher's business strategy and thereby contribute to the sustainable and continued flow of published research.

One Licensing terms for users must be easy to find and clear

Licensing terms and conditions should be easy to find, easy to read and easy to interpret. Less obviously but equally crucially, an avenue must exist to clarify terms of use and their interpretation in case of doubt. As an example how a publisher may craft licensing rules and interpretation aids, STM has drafted some **easy-read language** for two frequently encountered uses: [translations](#) and [Text and Data Mining](#) and some other use patterns (see also specific points on text and data mining and translation below).

Two Open Access licensing terms need to be in keeping with author-publisher agreements

No person can transfer more rights than they have themselves acquired. Thus, in practice this means that Open Access licensing terms cannot be broader than the rights the publisher acquired from the author(s). The author-publisher agreement needs to contain at least the rights the publisher intends to convey to users under the publisher's Open Access terms and conditions.

Three Clear labelling will empower users to get answers to basic and additional permissions, quickly

Users should be empowered to find out with ease what they can do with the licensed content. They should be able to find out the source and authenticity/originality of the content, to whom when and how to give credit, and how to determine terms and conditions of use of new content that incorporates the licensed content. Finally, the user should be guided to obtain permissions for additional uses not covered in the pre-authorised terms and conditions. If all the above is done as

inter-active or actionable metadata then that will make all the difference between 20th century licensing and 21st century “smart” licensing.

Four The publisher should make provision not only for long-term access to the version of record but also to the user rights attached to it

In STM’s view **it is the publisher** who is primarily responsible for the version of record and its long-term usability. Similarly, STM posits that the publisher should enable the widest possible use of that version by attaching the user rights pertaining to it – such as rights meta-data enabled versions of record.

Five Embargo periods should be stated clearly as should the scope of concomitant access and user rights

Terms of use should clearly specify the **commencement date** from which rights apply (usually from the moment the content is lawfully posted to the public in a repository), and what rights are specifically stated, e.g. display-only rights, copy-user rights or reuse rights.

Six Commercial user rights are not all the same and, not all uses should necessarily be disallowed (or allowed) as either “commercial” or “non-commercial”

Many publishers successfully use the Creative Commons “NC” or “non-commercial” licence version 3.0, some chose to use the Creative Commons Attribution “BY” licence, and others employ different options. STM has no view on these or any other choices as far as the licensing infrastructure goes , but posits that “commercial” vs “non-commercial” is not truly an “either-or” choice. Indeed, the importance of the distinction between “non-commercial” and “commercial” rights is sometimes over-emphasised. In practical terms it is often more relevant for publishers to understand that *“commercial rights” are not equal to “all commercial rights”*: *i.e. it is possible to grant some commercial rights but not others*. **STM would therefore state that rather than a “binary” commercial/non-commercial dichotomy, a need exists to think about differentiating further between some automatically granted uses (commercial and non-commercial) and some more selectively allowed uses.**

Seven Reservation of adaptation rights and allowing the creation of derivative works should be dealt with transparently

Many publishers use the Creative Commons “ND” or “no derivative work allowed” licence version 3.0. while others choose to use the Creative Commons Attribution “BY” licence which does allow the creation of derivative works. Other open access licenses allow the omission of passages from a published work or changes (e.g. rights to summarise, abstract abridge, produce treatments, translations, or to undertake other transformative uses) or changing of the surrounding context. STM believes that what matters is that the licensing infrastructure suits and supports sustainable scholarly communication. While some publishers offer their authors a choice of how their works are licensed downstream, other publishers have a preference for stream-lining and simplicity. Whichever way publishers structure their affairs, **the principle of informed consent should apply.**

Eight Obligations regarding moral rights, credits and attribution and a duty to link to version of record (if any) should be clarified

Apart from author preferences that may exist, in extreme cases, e.g. repurposing and changing or omitting central passages, such uses could also amount to a violation of an author's moral right – a class of rights that are non-monetary rights subsisting in a work of authorship that are non-transferable and in some jurisdictions not capable of being waived. We refer in this regard to our discussion above on *the option to pre-authorising some, but not all commercial uses*. It is also important to establish whether publishing ethics issues may arise if a scientific article is published outside the context of the original journal, for example, if it is used to endorse a particular product or service.

The terms and conditions should specify whether an acknowledgment should always include a persistent link to the version of record, metadata information (allowing correct referencing and citation usually available from the publisher), or under what circumstances a credit (“attribution”) of the author can be dispensed with. For example in case of substantial rewording of the scientific article based on any right to abridge, shorten the abstract or to make changes in the context of permitted text and data mining for legitimate purposes.

Nine Text and data mining user rights and obligations should be clarified

In STM's view Text and Data Mining deserves to be addressed more clearly and more attention should be paid to its value proposition in the field of STM and also SSH open access licensing. STM has developed an [illustration of plain language licensing text](#) and it is suggested that publishers consider using these as a starting point if they wish to allow these types of uses expressly as part of their open access offerings. It is noteworthy that the success of text and data mining for scientific and other purposes is not something publishers object to, but see as another use of their content that makes it more valued and relevant. Similar to the mining for minerals in the real world, text and data mining relies on high quality, high value and trusted content as the “quarry”. Publishers are well placed to participate in the normalisation of content and to work with vendors to enable optimal mining through appropriately formatted content and API protocols that allow trusted parties to high grade authentic content.

Ten Broad-based access may be made wider if translation rights and access for the visually impaired (“read-aloud” etc) are provided

STM is supportive of the widest possible access of STM and SSH materials based on sustainable business models and likewise based on faithful reproductions. STM offers an easy read sample clause attached to this document for illustration.

Eleven Where a publisher requires reciprocal rights from any downstream user to be shared, this must be made clear

Some Open Source and Open Access use licences mandate that the user who integrates content into products or proprietary resources, likewise, commits the resources to the same terms and

conditions as the resources originally embodied. This is a powerful tool that has been described as a “viral” element of open licensing. Some authors and publishers favour the expansive nature of share-alike clauses and their spirit of “*what goes round, comes round*”, while others feel that the creation of a licensing pool of resources to which these conditions apply is counter-productive to a completely free environment where third parties are encouraged to develop commercial business models layered on top of content made freely available. **STM is business model neutral on this point. However, it encourages its members to make informed decisions and to select licensing conditions that suit the particular business policies and economic models identified as worth pursuing.**

Twelve Empower your authors and your users to stay relevant in a fast changing environment

As with all innovative fields, science publishing is at the cutting edge of industry and new products and services are constantly devised. Think about the future, i.e. what’s next for scholarly communication, and empower your authors and your users to stay relevant in a rapidly changing environment!

CSL, 3 April 2013

ANNEX to Twelve Points that Make Open Access Licensing Work:

Sample Plain Language Licensing Clauses

A. Simple **Scientist End-User Licence**

This Work is made available by the Publisher to you, the Licensee, permitting various uses under the specified terms and conditions:

- **Private use:** download, copy, share with research colleagues (or family members & friends), post in work spaces, transfer copies to different personal devices or computers
- **Public posting:** Post a copy on a public site or repository (with links to the “version of record”)
- **Derivative use:** create a translation, abstract, or summary; engage in text or data mining of downloaded content, use other automated or software tools to index downloaded content

Provided that:

- the metadata and identifying information included in the Work (author, publication, citation information) is not deleted or modified;
- the meaning, interpretation, context and conclusions reached in the work is not misrepresented; and
- the Work is not sold, licensed for a fee, provided as part of a commercial product or service, or associated with commercial advertising, sponsoring or commercial promotion.

B. **Translation Licence** for Some Commercial Uses

Agreeing to the Publisher’s licence enables the Licensee to:

Translate the Work faithfully for purposes other than reserved commercial purposes, as long as Licensee translates the Work into any language faithfully rendering its meaning context and significance and the translation must be accompanied by a notice stating that it is an unofficial and unauthorised translation, provided further Licensee agrees to notify the Publisher in writing and to grant a non-exclusive Licence back to the Publisher for any and all uses of the translation.

Reservation of Rights for Some Commercial Purposes

Commercial User Rights are granted upfront as part of this licence by the Publisher to you, the Licensee, unless they are “**Reserved Commercial Rights**” (**RCR**). RCR are defined below and are specifically excluded from this Licence and not granted to the Licensee upfront, but may be available on request from the Publisher, case by case, by way of a separate written agreement.

RCR are uses of the Work for the purposes or in the way described below:

- the sale of reprints or copies in any manner or form.
- The provision of reprints or copies in the course of selling educational or information services of the user.
- the distribution of reprints for advertising or marketing of the user’s products or services or corporate identity

- the provision of sponsored access to licensed materials to customers or end-users of the products or services offered by the user.
- The sale or distribution of any translation of the Work for money or money's worth or for advertising, marketing or promotion of company products or services

C. **Text and Data Mining Licence** for Some Commercial Uses

Agreeing to the Publisher's licence enables the user to:

Text and Data Mine (TDM) the Work for purposes other than reserved commercial purposes (as defined) and to engage in certain re-use rights with the outcomes of any TDM process in the following ways:

TDM by loading and technically formatting the Work on the Licensee's server for purposes of classification or recognition of relations and associations by the Licensee using automated programs or devices to download, index extract semantic entities, derive patterns and for the Licensee to evaluate and interpret any TDM output for access and use by Licensee, but without creating a derivative work or a product or service that competes with the Work.

With the understanding that:

Waiver— Any of the above conditions can be waived if you get prior written permission from the copyright holder.

Public Domain— Where the work or any of its elements is in the public domain under applicable law, that status is in no way affected by this user licence

Reservation of Rights for Some Commercial Purposes

Commercial User Rights are granted upfront as part of this licence by the Publisher to you the Licensee, unless they are "**Reserved Commercial Rights**" (RCR). RCR are defined below and are specifically excluded from this Licence and not granted to the Licensee upfront, but may be available on request from the Publisher, case by case, by way of a separate written agreement.

RCR are uses of the Work for the purposes or in the way described below:

- the sale of reprints or copies in any manner or form.
- The provision of reprints or copies in the course of selling educational or information services of the user.
- the distribution of reprints for advertising or marketing of the user's products or services or corporate identity
- the provision of sponsored access to licensed materials to customers or end-users of the products or services offered by the user.
- Any derivative Works used as part of a commercial product or service.
- Use of Results of Text and Data Mining other than as part of strictly in-house Research and Development.
