What Societies Need to Know About Creative Commons and OA Licenses

With

- Sue Joshua, Legal Director, Global Research, Wiley
- Roy Kaufman, Managing Director, New Ventures, CCC
- Diane Peters, General Counsel, Creative Commons

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KENNEALLY: My name is Chris Kenneally at Copyright Clearance Center. And we look forward to the next 45 minutes or so to discuss what societies need to know about Creative Commons and open access licenses.

We’ve had a terrific response to this invitation, and joining us today is an audience from across North America, Europe and Asia – from Mexico, from Singapore, from Pakistan, from Finland, from the U.S. and the U.K. So you are all very welcome indeed.

Do you know your CC BY from your CC BY-NCD – NC-ND, I should say. As funders roll out mandates globally for open access archiving of public research, societies have a responsibility to understand what each of the open access licensing options mean. No two licenses are the same. The one you choose should respect your author’s wishes and protect your journal’s future.

For scholarly and scientific publishers, open access – OA – is growing ever brighter, like an approaching comet in the night sky. Simba Information estimates that total revenues collected from open access journal publications will reach $299.4 million by the end of this year, 2014, representing a 23.6% increase over last year. Those same revenues are pegged to rise to $440 million U.S. by 2017.

While scientists have shared access to networked archives since the 1970s, open access, as we understand it today, has become a force remaking scholarly publishing only recently. In brief, OA advocates call for scholarly published material to be available online and without charge and for the material to be free to share with others.

For publishers, the OA movement is a direct challenge to longstanding business models of paid subscriptions. So-called article processing charges, however, have emerged as one leading way for publishers to recover the costs of publishing. Society publishers, particularly, have watched all these developments keenly. In the new environment, there are many questions related to copyright and licensing.
What are the pros and cons of different OA licenses? What options should you give your authors? Our panel today will discuss the implications and nuances of the licensing options, and they’ll take your questions.

And indeed, if you do have questions for our panel, we ask you to please use the chat box in the lower right corner of the screen. You can ask a question directly of any particular panelist. Let us know who it’s for. If you have a clarification question, please make that point as well. And we’ll do our best to address as many of those. We’ll hold direct questions until the very end of the presentation.

We’re going to quickly run through a session that will take you from a very high level down to the ground, where Creative Commons exists, and we’re going to learn about that directly from someone who’s written the Creative Commons licenses. So it’s very exciting.

We’ll start with – about why licenses matter. We’ll get, as I say, a sort of Creative Commons 101 class from Diane Peters. And we’ll learn from Sue Joshua what societies need to know about Creative Commons as well.

And we’re going to start the program with my colleague Roy Kaufman from Copyright Clearance Center. And Roy, welcome to our program today.

KAUFMAN: Thank you very much, Chris. Happy to be here.

KENNEALLY: Well, we’re glad to have you. And we’ll tell people that, prior to joining Copyright Clearance Center in 2012, Roy Kaufman served as lead counsel for the scientific, technical, medical and scholarly publishing business of John Wiley & Sons. He’s the author of two books on publishing law and the editor-in-chief of the Art Law Handbook.

And for those who may not be entirely familiar about Copyright Clearance Center, you should check us out online at copyright.com. We are a leading global rights licensing technology organization that provides solutions that simplify compliance for content users, promote the use of creators and support the principles of copyright.

And Roy Kaufman, licensing is what we do here at Copyright Clearance Center. And so I suppose a good place to start for everybody on the call, and we have several hundred people joining us today, Roy, is to look at the very high-level notion of why licenses matter. And when we speak about licenses, we have to speak about copyright.

KAUFMAN: Exactly. So we begin with copyright. So a license is essentially a legal document that allows reuse of something that is owned by someone else. So you could have a patents license of a copyright license, sort of an analog to a lease or a rental agreement.
Someone owns a physical property. You enter into an agreement, allows you to (overlapping conversation; inaudible),

KENNEALLY: Roy, I’m having just a slight problem hearing you. If you can raise your voice just a bit, and maybe start at the beginning, you were talking about licenses and copyright and the intimate relationship they share.

KAUFMAN: Sorry. Can you hear me better now, Chris?

KENNEALLY: That is actually better. Thank you.

KAUFMAN: OK. Apologies. And apologies to those who heard me before. I’m going to repeat myself. So a license is a legal document that allows reuse of a piece of intellectual property that belongs to someone else. So in real property, we enter into lease agreements or rental agreements to use someone else’s property. In intellectual property, we enter into licenses.

And so to understand what a license is, you first have to understand a little bit what copyright is and essentially that, with copyright, the rights of the creator, or the author in a typical science journal, the rights of the author begin when the author creates a work. Now, if a work is posted online and there’s no express license along with that article, and for open access, we’re always talking about articles posted online, copyright will apply.

The challenge is the author might want certain uses to be made or not want certain uses to be made. And if you only have a copyright notice and only have your rights under copyright law, then the law, as opposed to the author or the publisher, direct what rights there are.

So by way of example, if you post an article on the Internet and it’s got a copyright notice, the only reuse rights are whatever reuse rights the law might give you, such as fair use in the U.S. or fair dealing in the United States and maybe an implied license. If there’s a button from the publisher that says e-mail this, obviously there’s an implication that you’re allowed to e-mail it without infringing.

So a license is a piece of – it’s language, legal language, typically, although it could be written very informally, that gives the reader an understanding of what the creator allows and doesn’t allow to be done with that content.

KENNEALLY: And so what are the things that publishers and others should be thinking about when they make choices about licenses, Roy?

KAUFMAN: So I think about, as I say, impact beyond impact factors. So when you’re deciding what licenses to use, and people later on will talk more directly about the Creative Commons licenses, but I’m certainly going to talk about them now. A license can be
anything. It could be something that—what I call a bespoke license that a publisher writes. It could be—there are model licenses from the STM trade association, and then of course Creative Commons, which are the ones that seem to be used the most right now.

So a license can sort of say anything. But within Creative Commons, there’s pretty well known, defined license types. For different people, they might have different desires. So I’ll give you two examples. Funding agencies, people like the Wellcome Trust, organizations like Wellcome Trust, who fund the basic research that often turns into an article, they want licenses attached to their open access content that are very broad, because they believe that the greatest impact will come from the greatest amount of reuse, whereas, on the other side of the spectrum, there are some authors who are concerned about reuse that’s outside of their control, so they might prefer more restrictive licenses, which require their express consent before reuse can be made of an article.

For learned societies trying to figure out what license to use, I think you have to look at this in terms of your mission. If you’re very membership focused, maybe your authors want something different, if you’re more funder focused, maybe the funders want something different, and you have to think of what your own mission is for society.

Then, in addition to the what I call the impact-beyond-impact factor, there’s also, and I know Sue will talk about this further, licenses and downstream monetization issues. So for example, if you use a fairly liberal reuse license that allows corporate users to reuse your content without paying an extra fee, well, that’ll have an implication, whereas you can use a more narrow license, so like a Creative Commons NonCommercial version, which enables you then to license to corporations but not to, let’s say, academic institutions.

So as you’re looking at the license, you want to look at reputation, you want to look at how you want your articles to impact the world at large, and you also want to look at your monetization issues and your business models.

KENNEALLY: Right. And what’s interesting about all of that, Roy, is that, when we speak about licenses and particularly open access licenses, the decisions that authors and publishers make regarding which ones to use are business decisions. They are legal decisions.

And finally, and I’m sure this is the most important thing to both societies and to the researchers themselves, these are decisions that affect the fields that they are so concerned about. So really it’s essential thinking that has to be done around the kind of licenses that are chosen.

And when we speak about open access licenses, it’s really a question of what type of open access licenses, and we’re going to focus particularly on Creative Commons, but there are a variety of open access licenses that are available for use, right?
KAUFMAN: Yeah, there are. And then there’s also not using a license at all, as I mentioned, just having a copyright notice. And this all sort of depends on what type of open access you’re talking about to some degree, and what your business model is to some degree.

So let me just divert into something which is a little bit confusing, and I’m going to encourage people who are listening, if they want more information, there’s so much on the Web, and it’s not the focus of this podcast, but there’s open access. People talk generally about two types: one is green road and one is gold road.

In the green road of open access, that’s generally accepted articles, typically from subscription journals, so it’s not the final version, being posted in repositories. These are funded by subscriptions and permissions and traditional revenue sources. There’s no additional payments, typically, to publishers for that, so the license terms, if any license terms are attached to those articles, tend to be more restrictive. Often the material is put up there with just a copyright notice. Again, the publisher’s thinking, not getting paid extra, I don’t want to undermine the economic model that actually enables me to be able to post these articles in the first place. So the choice of license could even be at the article level. So you could have a green road article out there, where copyright is retained or it uses a CC license or one of these other bespoke or STM licenses, what have you.

Then there’s what’s generally known as the gold road model, which is the author-paid model. But even there, that oversimplifies it. So you might have a business model or a society might just make all of their final articles available for free after a certain period of time. They’re not collecting charges from the authors. They’re just making the articles available. In that case, again, they’re more likely to use a more restrictive license model. Then you can have the author pays. In the author pays, you have what’s called hybrid, which is a subscription journal where an author might pay a fee to publish an article, and there you might have a liberal license, a more restrictive license, or sometimes the author gets to choose which license and pay a different price, or just choose the license, depending on the publisher. There’s all of these different varieties. Then the fully gold, which are the journals that were often born open access, but not only, and they tend to be more liberal on their reuse rights. They use, again, we’ll hear more about the different licenses, tend more to use a CC BY license.

And then we have journals that are fully funded, but say by a funding agency or by a professor or an academic department. Those almost always use the most broad Creative Commons license, the broad reuse rights, because, again, funders tend to think of impact in a certain way, and they’re trying to reach that goal.

KENNEALLY: Well, indeed. And what’s interesting, too, about the open access world, Roy, is that this is an arena where, as we say at Copyright Clearance Center, authors rule. And authors are making choices about the kinds of licenses, where they have the freedom to. I should say, parenthetically, as you say, that some funders do make requirements around
types of licenses. But where authors have choices about licenses, they are voting to take
certain licenses over others. Do we have any information about that?

KAUFMAN: We do. But I actually think Sue is going to talk a little bit about author surveys
later, so I don’t want to take the wind our of her sails.

KENNEALLY: Well, fair enough, then. But what we do know is that, this is again just to
underscore the point you’ve been making, Roy, that the business model that a particular
journal, if it’s a fully open access journal, has will often determine the type of licenses that
will be offered and indeed the choice of a road, either green or gold. And I appreciate that
background there, Roy Kaufman, my colleague here at Copyright Clearance Center.

But now we want to turn to someone who knows Creative Commons licenses very well
indeed because she wrote the licenses. And so it’s a real pleasure to be able to welcome
Diane Peters, general counsel of Creative Commons, to the program. Diane, welcome.
Diane Peters, welcome to our program.

PETERS: Thank you. Can you hear me?

KENNEALLY: Indeed, we can. So that sounds great, you sound terrific. And we’ll tell people
briefly about your background. As general counsel and corporate secretary for Creative
Commons for the last six years, Diane Peters leads the development of CC’s licenses and
public domain tools, and she drives the organization’s legal strategy and affairs.

Diane Peters spearheaded the development and drafting of the Creative Commons version
4.0 license suite, published late last year, 2013. And before that, she developed CC0 and
the CC Public Domain Mark. Prior to joining Creative Commons, Diane was responsible
for legal and IP initiatives at Open Source Development Labs, now the Linux Foundation,
and she served as counsel to Mozilla. And we should also say that Diane Peters serves on
the board of the Software Freedom Law Center.

And of course Creative Commons is a globally focused nonprofit that is dedicated to
making it easier for people to share and build upon the works of others, consistent with the
rules of copyright. Creative Commons provides free licenses and other legal tools to give
everyone from individual creators to large companies and institutions a simple,
standardized way to grant copyright permissions and get credit for their work.

And so Diane, welcome again. And let’s talk a little bit about the background for Creative
Commons. What’s interesting to me is an organization here founded in 2001 offered its
first licenses in 2002, coincidentally but perhaps not so much that 2002 was also the year
of the Budapest Open Access Initiative. So really what we’re seeing here is very much the
way that the rise of the Internet has affected licensing. Tell us more about that.
PETERS: Sure. So CC was formed to address the complexities that were just explained previously. This is untold opportunity for creativity, scholarship, information, and to remix. And it’s no coincidence that CC grew up around the Budapest Open Access Initiative. I think what’s important to remember about that is that that recognized many degrees and kinds of wider access to content.

So what we do is we provide tools that work within existing copyright and its complexities to allow others to use their works legally in the digital era. As mentioned, we provide six basic licenses, and I’ll talk about those in a bit, but we also do support some public domain tools, which is a big part of our future at CC. I’m happy to talk about how our licenses evolve and more history, if that’s interesting. We’ve gone through four versions of our licenses. Most recently, as you just mentioned, we published 4.0 in 2013, following an unprecedented public process.

Sorry, I’m hearing a little echo, so forgive me for talking in some spurts. In any event, our stewardship is our most important thing that we do at CC, and so I’m happy to talk more about the licenses and provide details about our versioning.

KENNEALLY: Well, let’s do that. And Diane, you sound terrific here on this end, so hopefully that’s the case for everybody on the line.

The 4.0 license suite was offered just the end of last year, which you helped to write, and also managed a process that incorporated feedback and thoughts from around the world. We won’t go into all the details, but what fascinated me was really the global scope of all of this. One of the particular aspects of 4.0 over 3.0 is that it’s done its best to eliminate the need for porting. Really, I guess, what that comes down to is that these are applicable worldwide immediately.

PETERS: That’s right. I think this is our greatest accomplishment with 4.0. So before 4.0, all of our licenses were fairly U.S. (break in audio), which is to say that people in other countries wanted to translate them into their language and then also adapt them for particular use with their laws. What we did with 4.0 is we talked with 70 different jurisdictions in order to understand the laws that applied to them. What we did is we used, then, new standardized terminology in our 4.0 license, and we also accounted for the various ways that copyright law, which is not fully harmonized, works in those different jurisdictions. So what we have with 4.0 is an internationally robust license that will be translated into as many languages as we can get people to help us do so.

KENNEALLY: Right. Well, I suppose what we’ve got to do, Diane Peters, is turn to our next slide, which takes a look at the various types of Creative Commons licenses. As you said before, there are six of these. And they range from most open to least open. And as you get less and less open, the names get longer and longer, and the abbreviations likewise. So that’s the Attribution-NonCommercial, non-derivative, the so-called CC BY-NC-ND that I
could barely get out before at the bottom of that list, and then of course just simple attribution at the top. Talk us through the various types of Creative Commons licenses.

PETERS: So don’t let the six be discouraging, because that really comes down to four elements, one of which is consistent across all six licenses. And I think, for this audience, attribution is one of the most important features of our licenses.

So starting with attribution, this is the requirement that a credit get, an author get credit for providing the work. And that can also extend to publishers and others that the author wants to credit with providing access to the article.

The other three elements are ShareAlike, non-derivative, and NonCommercial. Share alike means simply that you have to share back in the same way that the original author provided the work to you, notably, the BY-SA license is one that’s used by Wikipedia, and there are several examples of how scholarly articles, which are published under BY or BY or (break in audio) are uploaded to Wikimedia Commons or Wikipedia, which is a great way to effect distribution worldwide.

No derivatives is just what it says. You can only reuse the article in the original form that has been provided. Notably, no derivatives precludes people from being able to translate your article. And so, if you are using a no-derivatives license, you cannot expect that your publication will be translated into French or Spanish or otherwise localized.

NonCommercial means that you can’t use it to make money off the article. So at the top of this call, we talked a little bit about business models. NonCommercial is certainly a model that some publishers used in order to recoup costs, etc, and so that tends to be a fairly popular license.

So when you take those four elements and you mix them together, you come up with six different licenses, which are demonstrated on the spectrum on the slide.

KENNEALLY: Well, indeed. And those particular symbols and bumper stickers that we see on the screen there, they’re becoming more commonly found around the Web. I think of them as kind of road signs on what we used to call the information superhighway, Diane, right? It really tells us how fast and in what direction we can proceed.

PETERS: I think that’s right. And I think this is one of the beauties of Creative Commons licenses. While there was a lot of other licenses out there and STM has just published some custom licenses as well, I think the beauty of CC licenses is that they’re well understood, they’re easy to identify and people understand what the terms are that apply to their reuse. And they are interoperable and well understood around the world.

KENNEALLY: Well, indeed. And we will get to questions from our audience at the end of this program. If you do have a question for any of our panelists and you’ve got on the line here
the person that wrote the latest suite of Creative Commons license, so your chance to really ask the author of these licenses, Diane Peters, you can use the chat box in the lower right-hand corner of the screen there. Let us know what’s on your mind if you’ve got a question or a clarification.

There is one question, sort of more of a request for clarification, and it’s an interesting one, if I can, Diane, that CC 4.0 licenses require a waiver of so-called moral rights, which I suppose we should define very briefly. But really what it asks is about trying to get around this. And I guess the point is, is can you modify Creative Commons licenses or are they, you have to accept the version that exists in full?

PETERS: You cannot modify our licenses and say that it’s a CC license. That’s the way that we support interoperability and understandability around the world. So our brand can only be associated with our licenses in unmodified form.

In terms of moral rights, I think this is an important misunderstanding that I should clarify here on this call. So yes, our licenses do state that moral rights are waived to the greatest extent possible under applicable law. Now, that doesn’t always mean that those rights are waived, because, in most countries in the world, those rights can’t be waived. But what I think a lot of the criticizers of our license believe is that that somehow takes away the authorial rights of an author. And that’s simply not the case. There are often and frequent more – sorry, I’m hearing a bad echo, Roy. I really apologize for that. It’s very hard to talk over yourself.

But in any event there are some normative guidelines that come into play. So anybody in the humanities or anybody in the scientific arenas, they always look to proper citation and normative rules in order to guide how they attribute and cite authors (break in audio). So those often come into play. And I don’t think that authors need to be as worried about that provision as they might otherwise.

KENNEALLY: Well, thank you for that. And Diane, you sound terrific on this end, so we appreciate your perseverance. And we will return to you in just a few moments. So Diane Peters from Creative Commons, thank you.

And we’re going to turn right now to our final of our three guests today on this Webinar on open access licensing and Creative Commons. And we have with us from the U.K. Sue Joshua, legal director of global research for Wiley. And Sue, welcome to our program.

JOSHUA: Thank you very much.

KENNEALLY: I’m reminded by that slide there that, if you are tweeting the program, we hope you will do that, there is a hashtag we use, #ccopenaccess. You can follow Copyright Clearance center online at copyrightclear.
And Sue Joshua is legal director of global research at John Wiley & Sons, with responsibility for providing legal support to Wiley’s global scientific, technical, medical and scholarly publishing operations as well as its operations in Europe, the Middle East and Africa. She’s a member of the copyright committees of the Association of Learned and Professional Society Publishers, ALPSP, and I’m sure a number of ALPSP members are joining us today. Sue is also a member of the International Association of Scientific, Technical and Medical Publishers, we know it as STM, and a board member of the Intellectual Property Rights Office. And John Wiley, a name known very well indeed to many of us here on the call today, is a provider of content-enabled solutions to improve outcomes in research, education and professional practice.

You’ve got some more numbers to share with us, Sue, but I understand that Wiley probably partners with over 800 prestigious societies around the world, representing two million members. So, Sue Joshua, I guess really we want to get into what, from Wiley’s perspective and Wiley’s experience, societies need to know about Creative Commons. It’s really been an important transition that Wiley has made over the last several years, as a publisher, to begin to become increasingly an open access publisher.

JOSHUA: Yes, that’s right, Chris. In fact we partner with over 950 societies, and rising all the time. And in many ways, this transition to open access publishing from pure subscription publishing has happened at breakneck speed. And it is obviously galvanized in large part by the Research Councils U.K., Wellcome Trust mandates, which both had a hard stop of 1st of April of last year. So we had to work very quickly.

For a company like Wiley, which has this enormous range and depth of society partners and publishes in all the disciplines, from architecture or art history to zoology, that’s a very complex proposition in many ways. And we publish over 1,600 journals, both proprietary and society. So we’ve been working really hard with stakeholders, including society partners, to make that happen. And as a result, we’re now able to offer an open access option coupled with a Creative Commons licensing solution in over 80% of our journals. And that’s the newish species called the hybrid journal. We’re also working with societies on fully open access journals, both flipped and born open access.

But to me, I think the real change has been the rapid growth of the hybrid, and that’s what’s really changing the scholarly publishing landscape. And there are many practical and policy issues, some of which we’ve heard today, which are still being worked out.

KENNEALLY: Well, indeed. And we should say too that, as a part of this transition towards open access models, Wiley has begun to introduce Creative Commons 4.0 licenses to its publishing partners. I understand that, from your perspective, the differences in the licenses really amount to useful clarifications and additions. I know that, for Diane Peters and the people at Creative Commons, the real effort there was to make this as easily understood and as easily digestible as it could be, for authors and, indeed, for the editors and those working with them.
JOSHUA: Yes. Absolutely. I’m a fan of the 4.0 suite of licenses. I do think they are more user friendly. And I’m particularly pleased with some of the clarifications that have been introduced, for example, that they don’t affect patent and trademark rights, which was a concern to some societies. In general, I think they are well drafted. Thanks very much, Diane.

KENNEALLY: (laughter) Well indeed, thank you, Diane, for that. And thank you, Sue, for telling us about Wiley’s perspective on this issue. It’s really an important player in all this, and it’s good to hear from you about it. This transition to open access has real practical implications. We heard Roy Kaufman talk about the business decisions that drive the choice of licenses. Tell us more about that from the perspective at Wiley.

JOSHUA: Yeah. In licensing terms, the transition from an all rights reserved position copyright, well understood, to a some rights reserved position is a pretty significant one, and not least because it introduces an element of choice and different licensing and access options within the same journal. I think, a few years ago, we would have thought that that was something we would not want to happen or that was very unlikely to happen. But it’s really interesting how quickly that has happened.

There are some common misunderstandings about Creative Commons licenses, and Diane picked on a couple of those. One that I see constantly, and makes me laugh, really, is that people think that you sign a Creative Commons license, and so I’m constantly asked to send a Creative Commons license that somebody can sign. In fact that’s not the way it works. For scholarly publishing, it’s generally a two-way process. We ask authors to sign a nonexclusive license in to the publisher or the society, whoever owns the journal. As part of that process, they select the Creative Commons license that they want to be affixed to their work. The appropriate license is then attached to the work, and that tells users clearly in human, lawyer, and machine-readable form how that work can be used. So that process in itself can create some practical issues for societies and publishers.

But to me, one of the very best side products of this transition is that it’s been a real drive for licensing solutions, both by individual publishers and by organizations such as the CCC. For example, at Wiley, it’s galvanized us to create an online licensing solution for authors, which tracks the funding and diverts them to the right license for them to use or the options clearly set out for them. And that makes it a kind of three-minute online process, very easily, very trackable funder information rather the kind of systems that we were using before.

KENNEALLY: Right. And I believe that’s what you call the, well, by the acronym WALS, W-A-L-S, the Wiley Author Licensing System, or Service, rather.

JOSHUA: Not the greatest acronym, but that’s what it’s called.
KENNEALLY: Well, we haven’t got too many great acronyms here at CCC. But it certainly helps, because many of these things are a mouthful. Of course they do sort of come down to legal terms. I think you made a good point about Creative Commons licenses, that they aren’t something you sign. That’s why I stress to our audience here that those bumper stickers, as I call them, that we saw before are a way to begin to recognize where Creative Commons licenses have been applied.

So let’s look at author choice and funder mandates. You are there in the U.K., Sue, and Copyright Clearance Center has done a number of programs looking at open access and the mandates that funders have promulgated over the last year or more. In particular, we’ve had guests on our programs from the Wellcome Trust and from RCUK, the Research Council of the United Kingdom, which have been both driving this very hard indeed. Speak to that point, if you would, about the preference that funders have shown for a certain type of Creative Commons license.

JOSHUA: Well, of course not all funders do mandate Creative Commons. But those that do, do tend to prefer the most open, the least restrictive version, which to them is the CC BY. And I think they do prefer that, as Diane said, because it potentially gives them the best return on their investment in the research. But there are, of course, many other options available.

We know from talking to societies and authors that there are often concerns about the CC BY in particular, some of which can be assuaged, others of which are quite strongly held, and that we do feel, and from talking to editors, particularly, of social science and humanities journals, that when it’s possible to have a choice, there should be a choice. These are scholarly works, very important to their authors, and there’s no reason really why there shouldn’t be a choice, because Creative Commons, itself, is about author choice and understanding of how their work might be used.

KENNEALLY: Well, indeed, and –

JOSHUA: So we offer, sorry.

KENNEALLY: I’m sorry, Sue. Go right ahead. I’m sorry.

JOSHUA: No, you go ahead. Sorry.

KENNEALLY: Well, what I was going to say was, you know, with that point about authors’ choice, you have done some surveying, and Roy deferred a question to you I brought up earlier about the way that authors are voting and the types of licenses they are using. What do you know about that right now?

JOSHUA: About author surveys particularly, do you mean?
KENNEALLY: Indeed. And just the kinds of preferences that they have for one licensing option over another.

JOSHUA: Right. It’s actually incredibly inconclusive so far. So there have been some early author surveys, and much of this depends on the way in which questions are asked, as of course you know, as a journalist. But some of the surveys, two last year by the Nature Publishing Group and Taylor & Francis indicated that, when authors had a choice, they would generally prefer to use the more restrictive versions. The non-derivative version came out quite highly. However, a Wiley survey, around the same time, seemed to indicate that, given a choice, authors would choose the BY and the NonCommercial licenses over the non-derivative.

So I think it’s very close to call. And our survey also indicated that age and career status and other demographics might play an important part in this. So, for example, students preferred the ShareAlike licenses, whereas those researchers established in their careers over 50, most of them would prefer not to use a Creative Commons license at all.

So I don’t think that the data is really conclusive yet. And it’s changing quite rapidly. But it’s something that we should continue to engage in, I think. It’s very important to know what authors really feel about this. And as these licenses become entrenched, some of the implications will become clearer. But what seems to be clear to me from the data so far is that authors appreciate a choice.

KENNEALLY: Well, indeed. And we have on the line, as you know, Sue, many representatives of various society publishers. And they’re most concerned about the implications for them, for their societies and for their members. You’ve enumerated three different types of points that they want to look at closely, so tell us about that.

JOSHUA: Yes, I think the use of Creative Commons licenses surfaces important issues for all of us, for societies and for publishers and for researchers, because these are global licenses. They’re irrevocable. And they really need to be well understood. We’ve actually found societies to be incredibly knowledgeable about the OA landscape and very aware of the potential for these kinds of licenses in the dissemination of knowledge.

So open access, coupled with Creative Commons licensing obviously has great potential, but it does present some challenges to societies and their executives. And I think, if I was a society executive, these are the kinds of issues, based on my experience, that I would be monitoring carefully and thinking about. The first, I think, is the commercial impact of an unrestricted license like the BY, which is likely to cut across established revenue streams such as reprints licensing permissions, aggregator licenses. At present, open access only represents a very small minority of the articles published in a hybrid journal. On average, on a pure sort of mathematical average, it’s about four a year, although in some journals this can be up to 25%. But that is likely to grow, I think, particularly as the mandates...
increase, and needs to be monitored to ensure that there is the correct selection of Creative Commons license for that journal.

For medical journals, in particular, those reliant on some secondary income, that loss of revenue over time could be really damaging to the viability of the journal, and also, of course, to the other kinds of activities that are funded by journal income for the society and its mission.

And I think the definition of non-commercial in the NonCommercial license remains a problem. It’s somewhat fuzzy. It’s not quite clear, you know, is it the commercial use, is it the commercial user, how is that defined? So there are, I think, some very important implications for societies which are dependent on secondary income for their other activities.

KENNEALLY: (overlapping conversation; inaudible) –

JOSHUA: Secondly, I think, sorry.

KENNEALLY: No. go right ahead again, please.

JOSHUA: The second issue I was going to touch on is just the pure scope of what can be done under a CC BY license, bearing in mind, as I mentioned before, that the work of authors is very important and personal to them, and often the result of years of research. The CC BY, in particular, permits a kind of liberal mash-up culture, which is in some ways at odds with scholarly publishing, which has quite established norms about publication ethics, reuse, how materials should be cited and so on.

So we’ve heard some real concerns about that. I think, if I was a society executive, particularly in a humanities and social science society, I would be very interested in what the independent review that’s being carried out at the moment by the Research Council of UK is going to say about that. They’re looking at that issue in particular. They’ve heard a lot back on this issue over the past year. And they’re going to report on it in early 2015. I think my feeling there is that there could be more flexibility, even from those funders who’ve decided what they want to do, to reflect the concerns of the academic community and perhaps give authors a little more choice in that respect.

And then thirdly, I think the other big issue is use of third-party material in works under a Creative Commons license, and we know there’s been some flare-ups about this recently. There are already difficulties in obtaining permissions for illustrations, images, photographs for use in journals at times. There is concern, and I think it’s justified, that that will become much more difficult when you have a Creative Commons license, because the licensor is going to be concerned that, in some way, their valuable content is going to hit the public domain and that they can’t control it. At the same time, of course, we’ve seen the rise of statutory damages claims by photographers in the U.S. when there’s been a
breach of their license terms. That can lead to awards of large amounts of damages. That’s an unwelcome additional layer of risk.

What we say there to societies and to others, and to authors who are concerned about this, is actually Creative Commons is flexible in this respect, and it provides some really good guidance. I don’t know how many people have seen this, but it provides some great guidance on how to mark content in an article that isn’t under the Creative Common license which the article itself is under.

Creative Commons sees works as a bundle of rights, and that a license can be attached to each of those different rights in a work. So, for example, an author can make one chapter of a book Creative Commons BY but use different Creative Commons licenses for the rest. When you’re using third-party material, it can be attributed as copyright or rights reserved, published by permission but clearly more permission needed to use again, or under a Creative Commons license.

So I think that there’s a lot of work to be done within the industry, and I know that (inaudible) is looking at this as well, on marking the different kinds of license, even within one article, that you can have and also, when a license is used that allows derivative, to clearly mark what has been changed and what hasn’t, to help authors feel that they’re maintaining some control of that material. So I think the tools are there. We just really need to learn how to use them.

Those are my top three. (laughter)

KENNEALLY: Yeah. Well, those are your top three, and you could probably go on for more than that. And I think it was a great and clear explanation. I know that, for Creative Commons, really an important part of the release 4.0 in their licenses is to achieve greater clarity. And I think we’re doing pretty well with that on this program today, talking about open access licenses and the implications for scholarly societies.

But I’m reminded, as I always am, and I have to say this just once more, that, when it comes to copyright, if you’re confused, you’re beginning to understand the problem. Indeed we do have just a few questions from our audience that we’re going to try to get to right now. So we’ll bring all of our panelists back into the discussion. We’ve been hearing from Roy Kaufman, who is managing director for new ventures at Copyright Clearance Center, from Diane Peters, the general counsel and corporate secretary for Creative Commons and from Sue Joshua at Wiley.

And now we want to hear from you, our audience today from around the world, several hundred people joining us on our Webinar. If you’re blogging, you can use the hashtag #cccopenaccess and follow us at copyrightclear.
And Diane Peters, I wonder if we could start with you, because there was a question or two regarding clarifying, and always important to do, the difference in Creative Commons licenses between the so-called ShareAlike license and the no-derivatives license. Can you pinpoint the difference there between those two?

PETERS: (inaudible; distorted audio) the original ShareAlike (overlapping conversation; inaudible)

KENNEALLY: I’m sorry. Diane, I’m sorry, you’re breaking up just a little bit, so maybe ask you to start that answer again on the difference between the so-called ShareAlike and the no-derivative license.

PETERS: (inaudible; distorted audio) a ShareAlike license (inaudible; distorted audio) but when you do so, you need to license it under the same terms as the original. Essentially you’re feeding back your contribution to the person and the public as a result of having used the work.

KENNEALLY: OK. And I notice too, and this was something that I picked up when I was reviewing the 4.0 suite and the changes that it made over 3.0, we did have a question about what happens if a license is used inappropriately? And I believe there’s a kind of, can I call it a grace period, if somebody does so and is notified of it? Do I have that right?

PETERS: There is not a grace period. But there is a way for you to get your rights back automatically if you fix the problem within 30 days of having discovered it.

KENNEALLY: OK. Well, I hope that answered that question. And of course all the information about Creative Commons licenses 4.0 and so forth are available at creativecommons.org.

Try to get to a couple of more questions here, so Sue Joshua, you had mentioned the way that there can be a range of licenses offered within a single work, if I can call it that way – chapters in a book or sections of a research paper. And someone is asking about the Wiley author licensing services and whether that allows authors to designate different licenses within a work. Does it?

JOSHUA: Well, no. The system allows you to choose one Creative Commons license for the work. But within that work, if you’ve used third-party material, then you can mark it as copyright or rights reserved or whatever the licensor of that material wants you to mark it as. So you choose one license for the whole work in terms of articles, but there is a demarcation process, which is being worked out at the moment within the industry, within that work.

KENNEALLY: OK. Well, thank you for that, Sue Joshua. And Roy Kaufman, a question that I think you may have a perspective on from Doug here, which was about the issue of
companies that use CC BY, CC BY materials, as part of advertising and marketing
campaigns. And I know there’s been some concern that this may be happening with
respect to pharmaceutical advertisement.

KAUFMAN: So I’m not aware of the specifics, but that would be my understanding of
allowed under CC BY. So the CC BY, and thankfully we have the expert, Diane, to keep
me honest if I mess this up, the CC BY allows commercial reuse of the work. There are
some restrictions if you edit or adapt a work that you have to notice it – provide proper
notice and proper credit. But as long as you’re providing credit, if it’s CC BY material,
commercial reuse is in fact allowed. So advertising and marketing would be allowed.

KENNEALLY: Well, Diane Peters, what about that, because there certainly is a Creative
Commons license that is the NC license, so called, and that’s the non-commercial use,
expressly prohibiting commercial reuse. Is that the failsafe there for people
inappropriately reusing material in marketing mate
ril material? Do we have Diane Peters? Diane
Peters from Creative Commons, well, we hope you’ll be able to rejoin us in just a second,
Diane Peters.

And perhaps we can look for one more question here for Sue Joshua. We’ll just go
through these. If you have a final question, please use the chat box in the lower right-hand
corner of the screen. And we’ll have a look here at some of these questions. We appreciate
everybody and the input that they have given us here.

Do you have any information, so I don’t know if you do have such an answer, but do you
know about – let’s see, the most common – I’m looking for a question, for the most
common Creative Commons licenses that societies are using? It’s the CC BY, is that
correct?

JOSHUA: Well, societies can choose which ones – well, the ones that we offer for Wiley are the
BY, the NC and the NC-ND. So all of us have a right to choose from that list generally,
unless there’s a mandate in place. And societies generally have agreed with us on that.
There are a few exceptions with some medical journals, where the choice is slightly more
restricted, and we’ve agreed that with societies. So it does depend on discipline, to some
degree. Medical journals tend to be the ones that are most reliant on reprints and other
income, and they may choose to limit that choice slightly for those reasons.

KENNEALLY: Well, thank you, Sue Joshua. And we are coming to the end of our hour. And
we appreciate everybody staying with us throughout our call and want to thank especially
our panelists today, Sue Joshua, Legal Director of Global Research for Wiley, based in the
U.K., my colleague Roy Kaufman, Managing Director of New Ventures, thank you indeed,
Roy, Diane Peters, general counsel of Creative Commons.

My name is Chris Kenneally here at Copyright Clearance Center. And we do want to draw
your attention to two important points. One, there is an online free resource center on open
access, openaccessresources.org, that is a partnership of the Association of Learned and Professional Society Publishers and Copyright Clearance Center. You can check out daily updates on open access news and reports. And we have it broken down by region, so if you are, as I guess some of the people on the line are, from Asia, you can check out open access news from your part of the world. So do check out openaccessresources.org.

And if you will be joining us for our next Webinar on open access, we hope you will do so, it will take place October 21st. It’s another partnership with Wiley that we are undertaking. And we’ll be looking at the way that case studies yield insights for societies when it comes to open access. That will be on October 21st at 11:00 AM Eastern time and 16:00 or 4:00 PM in the U.K. You can find all the information you need about that at copyright.com/oawebinar.

And finally, I’m suspecting there’ll be a number of people on the line who will be at the Frankfurt Book Fair coming up next week. And you are very warmly welcome to join us for a special Frankfurt Book Fair town meeting, Open Access: Who Holds the Power? And that will be taking place in hall 4.2, not far away from Copyright Clearance Center’s stand at E-23. You can find John Wiley at Frankfurt at hall 8.0, and the stand there is N-46.

Our open access town meeting will feature a number of panelists looking at their perspectives from the worlds of research, publishing and academia and offering important action-oriented insights for survival in this open access world. Among the guests, we have Fred Fenter from Frontiers, recent winner of the ALPSP Innovations Award. We have Ralf Schimmer from the Max Planck Digital Library in Germany. We’ll hear from Dr. Niels Peter Thomas at Springer, Natasha White from John Wiley and many others.

So we do hope you will join us for that. It’s free, and you’re welcome to drop by. But if you register, it’ll be great to let us know you’ll be coming. You can do that and get more information on all of the Creative Com, oh, sorry, I keep doing that, I don’t know why, CC and CCC get me confused today. But you can hear all, or you can learn all about Copyright Clearance Center’s programs at Frankfurt on our Website, copyright.com/Frankfurt.

So once again, for all of us at Copyright Clearance Center, for my colleague here, Casey Bassett, my name is Chris Kenneally. Thanks so much for joining us.