

Intellectual property and publishing agreements for authors of mathematics papers (need a better title)

April 10, 2021

1 Question ideas for FAQ list

To do by April 11: please contribute to this list of potential FAQ questions for authors (and readers) of mathematics papers. Feel free to brainstorm all you want: it's fine to list questions you feel unsure about including (to make sure we think about them), questions whose phrasing needs work, questions that overlap in some ways with other questions, etc. We're not yet creating a polished and curated list, but rather mapping out the scope of what we might cover. We'll eventually want to group the questions by topic, but how best to do this may become clearer as we progress.

- Can I always upload a preprint to arXiv (or other preprint servers)?
- Can I negotiate critical aspects of a standardised publishing contract?
- Which consequences do standardised publishing contracts have in the long run for me?
- I have heard of and appreciate fair open access publishing, but due to career-grooming I am limited to certain journals. What can I do?
- Whom can I ask about this stuff?
- What is copyright?
- Is copyright national law? And if so, what does that mean in an international research environment?
- Who owns a mathematics paper? How can the owner grant rights to others?
- What are people allowed to do with a mathematics paper? E.g., can you repost it elsewhere on the web? Translate it? How does copyright transcend to the published ideas in the paper?

- What does open access mean?
- What is a Creative Commons license?
- Why are there many different licenses? How should one choose a license?
- Are there reasons I would not want to release a preprint under a Creative Commons license?
- What's the difference between green, gold, and diamond open access? What are the advantages or disadvantages for authors or for the scholarly community?
- What does a publishing agreement do? What's in it for authors, and for the publisher?
- Does it matter what you agree to in a publishing agreement?
- What if the publisher and I can't come to an agreement?
- What if my coauthors and I disagree on how to handle these issues?
- What is customary to include in a publishing agreement?
- Are there red flags I should watch out for?
- How can I make data or supplementary information available? What sort of licensing is appropriate for it? What about code?
- Where exactly do I encounter copyright issues in the publication process?
- Why do funding agencies demand open access?
- Is all this the same for copyright of (research) data?
- Is a copyright contract always concluded in writing? Can I somehow miss it being concluded?

I've included Marie's answers to Mila's questions to the next section. We'll do more commentary and answering later, but if you'd like to get started you can add this material below.

2 Mila's questions and Marie's answers

Mila's contribution begins

For the draft, here are some FAQs which we might use as an inspiration; I would be happy to draft an answer if we decide to take that turn. Do we want to address one or more of these questions?

- **Q: Can I always upload a preprint to arXiv (or other preprint servers)?**

Mila's contribution ends

Marie's contribution begins

Yes, if you have access to Internet and are registered on arXiv (or on the preprint server you have chosen).

Here is how I proceed :

- Before submitting an article to a journal, I deposit the author's version on an open access repository (I choose arXiv),
- I add a CC-BY license, in order the author's version is already in open access,
- I never give my copyright and those of my coauthors to a publisher.

Any document that you make available on the web (or elsewhere) is not 'open access', unless you add a license that explicitly authorises it. By default, any document you create belongs exclusively to you until you die, and then belongs to your beneficiaries until seventy years after your death. If you have assigned your copyrights to a publisher, the publisher has exclusive ownership of your article until seventy years after your death, before your article belongs to the public domain. If you have co-authors, exclusive ownership of copyright by the publisher is for seventy years after the last co-author dies. Therefore, about a century of research results published in scholarly journals are the exclusive property of the publishers, and not of the researchers or their institutions.

By adding a CC-BY license to your article, you and your co-authors retain your copyright on it and authorise anyone to copy, cite, distribute, display, remix, translate, adapt, and develop your article in any medium. For more details, check out <https://creativecommons.org/> and

https://en.wikipedia.org/wiki/Creative_Commons_license

The funding agencies that are members of the consortium *Coalition S* (see <https://www.coalition-s.org/>) require that all researchers who benefit from their grants do not assign their copyright to the publisher, but rather replace this transfer of rights with a CC-BY license, thus allowing the journal to publish their article but the publisher no more has the exclusive ownership of it.

Comments for the CEIC members only :

In 2018, I had a bad experience with CUP (Cambridge University Press) regarding one of their 'hybrid' journals. I refused to give them my copyrights and those of my co-authors. So I agreed to publish our article

in ‘open access’ (whereas I had already registered our author version on arXiv in CC-BY) and to pay CUP 2 200 euros of APCs (Article Processing Charges), whereas this journal is sold by subscription (which corresponds to the ‘hybrid’ model). CUP lawyers then informed me that, in accordance with their ‘open access policy’, they require authors to give their copyrights to CUP, which we obviously refused. When our article was published, we were unpleasantly surprised to discover that its copyright belonged to CUP and not to us. I complained and threatened to sue them if our copyrights were not returned to us. They then offered to publish an erratum, which I accepted under the condition that its title be ‘Copyright attribution erratum’. Unfortunately, they did not respect it and it was published with the title ‘Erratum’. In addition, and quite perversely, they gave us the copyright of their apology! As a result, our readers think that the first version of our article contains scientific errors, that we had to correct by publishing this erratum. Since it has a new doi (digital object identifier, see https://en.wikipedia.org/wiki/Digital_object_identifier), it is a new publication for us...

[Marie’s contribution ends](#)

[Mila’s contribution begins](#)

- **Q: Can I negotiate critical aspects of a standardised publishing contract?**

[Mila’s contribution ends](#)

[Marie’s contribution begins](#)

Yes, but good luck if you are not helped by better lawyers than the publisher’s. If you are willing to try, check out my website

http://openscience.ens.fr/COPYRIGHTS_AND_LICENSES

As far as legal issues are concerned, you should be aware that most universities and research institutions are not in a position to help their employees since, in most cases, the legal responsibility remains with the author and not with his or her institution. The lawyers at most institutions employing researchers are experts in intellectual property law for patents but not for copyrights or author rights. There is an exception for researchers who are civil servants of a country using copyrights: they cannot sign the ‘copyright transfer form’ because the ‘copyrights’ of their articles are the property of the ‘Crown of England’ for Commonwealth countries and the ‘Library of Congress’ for the United States.

The ‘copyright law’ (applied in the Commonwealth countries and the United States) is different from the ‘author right law’ (applied in continental Europe, Latin America, Japan, Korea, Turkey, and a majority of countries in Africa and the Middle East). ‘Copyright law’ protects

publishers, while ‘author right law’ protects authors. Several other countries (*e.g.*, Russia, China, India) traditionally do not respect ‘copyright’ or ‘author right’, although this is evolving and should be checked. There is as yet no international law to deal with issues related to publishing, apart from the Berne Convention of 1886 (amended in 1979) controlled by WIPO (World Intellectual Property Organisation). It is therefore important to verify which law is applied and which court is used in the event of a dispute between a publisher and an author. This information must be mentioned in the journal or on its website as the publisher is required to provide it for each journal it owns.

If you want to negotiate with one of the dominant publishers in the market, you need the help of a lawyer specialised in ‘copyright law’; indeed, the majority of scientific journal publishers use ‘copyright’ because it is what suits them best. If the legal system in your country, or in the country of your employer, is not subject to ‘copyright law’, you should seek the assistance of two other lawyers: one expert in the legal system of your country and another expert in the jurisprudence of international intellectual property practices and expert in bilateral treaties (*e.g.*, TTIP).

Comments for the CEIC members only :

As an example, I will give you my case. I am a French citizen and, as a DR (Director of Research) of the CNRS (Centre National de la Recherche Scientifique), I am a civil servant of France. My country is governed by ‘author right law’ and not by ‘copyright law’. In short, ‘author right’ protects authors while ‘copyright’ protects publishers, and there are interesting historical reasons for such a division. Since my articles are written under the French ‘author right law’ and the ‘copyright transfer forms’ I have signed have no legal value under French law. For more details on this subject, I refer you to the recommendation I wrote in 2011 for the Ethics Committee of the CNRS (http://openscience.ens.fr/MARIE_FARGE/ARTICLES). Therefore, if publishers sue me for having deposited in open access articles that I published in their journals, I can no longer travel to countries using the ‘copyright law’. I will defend myself in France with the help of a lawyer who is an expert in ‘author right law’ and we will sue the publisher under French law counterfeit because I am the exclusive owner of my author right. I will also need the help of a lawyer specialised in international intellectual property case law to check if there is a bilateral treaty stipulating that in case of conflict between an author and a publisher, the publisher’s legal system would prevail over the author’s legal system. As you see, all this is complex and publishers are very active to maintain researchers ignorant of their rights.

Marie’s contribution ends

Mila’s contribution begins

- **Q: Which consequences do standardised publishing contracts have in the long run for me?**

Mila's contribution ends

Marie's contribution begins

Here is the current standard practice of the majority of scientific journals. Beware, the scientific publishing system is evolving very rapidly and the major publishers are doing their best to keep control of it and preserve their exorbitant profits (up to 40% profit margin, or even more). As a result, its evolution is impossible to predict because the current practices could change abruptly.

Once your article has been accepted by the editorial board, you and your co-authors are asked to assign your copyrights to the publisher free of charge, therefore it becomes the exclusive owner of your article. As a result, you, your co-authors and your beneficiaries lose the right to distribute, deposit in open access, translate, and reuse your article (*i.e.*, its text, figures, and any additional material you have uploaded to the journal's website).

To obtain your copyrights and those of your co-authors, the publisher asks you to sign a 'copyright transfer form', or asks you to click on the journal's website. Beware, before accepting to do so you must consult the conditions of copyright transfer, or ask for them if you do not find them. You must absolutely read these conditions *in extenso* before signing or clicking. By reading them carefully you will learn a lot about the current system of scientific publishing. Most likely you will be as angry as I am and become more careful before accepting the publisher's conditions.

Marie's contribution ends

Mila's contribution begins

- **Q: I have heard of and appreciate fair open access publishing, but due to career-grooming I am limited to certain journals. What can I do?**

Mila's contribution ends

Marie's contribution begins

Choose to submit your article a journal whose chief-editor and associate editors are the best experts in the field on the topics you study. This is essential, and when you choose a journal you must verify that its editors are recognised researchers who are still publishing. You should be aware that many journals employ 'editors in residence' who are not active researchers, but employees of the publisher. The quality of the peer review

process is critical, as a good referee must be able to detect errors, correct them, and improve the article under review. Indeed, it is the duty of referees to check in detail the article they are evaluating and to suggest ways to improve its content, especially if they reject it, because they must justify their decision as precisely as possible.

Before submitting your article to the journal you have chosen, you must deposit it in an open access repository that ensures it is FAIR (*i.e.*, whose content is Findable, Accessible, Interoperable and Reusable). If your paper concerns mathematics, computer science or physics, I advise you to deposit it on arXiv with a CC-BY license.

Marie's contribution ends

Mila's contribution begins

- **Q: Whom can I ask about this stuff?**

Mila's contribution ends

Marie's contribution begins

You can contact lawyers who specialize in copyright issues. Your institution might provide you with lawyers but, as I explained earlier, they are more specialized in patent law than in copyright law. There may be non-profit organizations where you can get legal advice, *e.g.*, *Open Law* (see <http://openlaw.fr/en>) or the *Free Access to Law Movement* (see <http://www.fatlm.org/>).

Comments for the CEIC members only :

The Free Access to Law Movement invited me in 2018 to their conference *Law via Internet* and asked me to contribute to the book *Knowledge of the Law in the Big Data Age* published by IOS Press. You can read the article *Open Science, Open Doctrine, How to Share Knowledge?* I wrote with a lawyer, Jean Gasnault. You can download it from my website

http://openscience.ens.fr/MARIE_FARGE/ARTICLES/

[2019_ARTICLE_FOR_THE_BOOK_LVI/](http://openscience.ens.fr/MARIE_FARGE/ARTICLES/2019_ARTICLE_FOR_THE_BOOK_LVI/)

[2019_05_30_Article_on_Open_Science_and_Open_Doctrine_Published.pdf](http://openscience.ens.fr/MARIE_FARGE/ARTICLES/2019_05_30_Article_on_Open_Science_and_Open_Doctrine_Published.pdf)

Marie's contribution ends

Rajeeva Karandikar' contribution begins

I have a Naive question. Can we list out a few points that we can suggest to authors to add to any contract ? For example,

1. The author(s) retain the right to the contents of the article and have only given permission to the publisher to include your contribution in the journal.

2. The author(s) retain the right to publish excerpts from the article elsewhere.

This might help authors, who may not want to go to a lawyer and thus might just sign on dotted line.

Rajeeva Karandikar' contribution ends