

How is academic freedom affected by institutional standards?

This document is an attempt to clarify some issues which got mangled and confused by Twitter's 140 character limit when discussing an [article by Rick Anderson](#). I (Björn Brembs) tried to contend that our freedom is already infringed by requiring us where to publish (journals, books, online, print, etc. depending on field) and that CC-BY mandates are no different and, in fact, in some cases the lesser evil, when compared to, e.g., the requirement to publish in a certain range of journals as in, e.g. many/most STEM fields.

Brembs1:

In principle, I seriously dislike mandates in general, as they show that something is wrong: why would a scientist do something to the detriment of science if the system wasn't set up the wrong way?

Anderson1:

But it's not always obvious what is and isn't in the best interest of science. Reasonable people of good faith disagree on these things, and policies need to take into account the ambiguities of real life. Just asserting that "X is in the best interest of science and the public interest" doesn't magically make it so.

Brembs2:

No, not magically, here is some evidence that current practice is not in the best interest of neither science nor the public (at least with regard to some STEM fields):

Berghmans et al. (2002) doi: 10.1093/annonc/mdg203

Fang et al. (2012) doi: 10.1073/pnas.1212247109

Tressoldi et al. (2013) doi:10.1371/journal.pone.0056180

Brembs et al. (2013) doi:10.3389/fnhum.2013.00291

Fraley & Vazire (2014) doi:10.1371/journal.pone.0109019

Macleod et al. (2015) doi:10.1371/journal.pbio.1002273

This evidence shows that the journals which garner most attention publish the least reliable science and some of these papers also discuss what some of the reasons and consequences are.

Anderson2:

You've certainly garnered evidence of the flaws in the current system. I don't dispute that the prevailing system has serious problems (I don't think anyone does). But the issue I'm addressing in my essay is the proper balance between respecting the rights of an author and limiting those rights with the intention of benefiting society. I don't think the evidence gathered in these articles is sufficient to justify requiring an author to give up all of her copyright prerogatives.

I'd hope that it is sufficient to only refer to Wakefield and MMR (as *pars pro toto* for the many other frauds and errors there) to allude to the societal damage this system afflicts?

Anderson2:

I don't think there's any system of scholarly communication that would forestall the possibility of a Wakefield-type fiasco -- not as long as the system is being run by humans. Bohannon used an OA journal to promote -- with great success -- the idea that you can lose weight by eating chocolate. Does that prove that OA is dangerous to the public health? Of course not. But it does suggest that validation systems run by people will always function imperfectly, regardless of the access model involved.

If you have any contradicting evidence, I'd like to see it. Otherwise, accept the evidence that current practice does very specific harm to science and society.

Anderson2:

Of course it does. At no point in my essay did I defend the current practice. But I would go further and say that every system of practice will create a blend of benefit and harm, including mandatory OA/CC-BY. My position is always that we need to weigh both the costs and the benefits of every system and proposal -- rather than simply adopting the one we like best and discouraging discussion of its costs and downsides.

Conversely, claiming that blocking scientists from re-use of their own (i.e., personally and that of their peers) work as in, e.g., content mining, would constitute a benefit to society or science is an extraordinary claim that requires extraordinary evidence: where is such evidence that something that on the surface looks like a boon to *science* (i.e., accessibility and re-usability of all text, data and code), should not be beneficial? (and by evidence I mean actual data or at least some forecast or computer model of a realistic scenario)

Anderson2:

More to the point, where have I claimed otherwise? (Or are you talking past me at someone else?)

I'd grant you that *societal* benefit of CC-BY mandates may be less obvious (I'm not a sociologist or economist), but also there I would tentatively claim that the onus of evidence lies on you, as, e.g., allowing companies to re-use scientific discoveries is precisely one of the reasons we have public funding of science. Hence, public re-use appears, on the surface at least, be equally obviously beneficial to society as it is to science. Actually, isn't one of the intentions behind public funding of science that its discoveries are fodder for the economy? How would blocking the use of such discoveries benefit society? What is the evidence that would indicate that this logic is wrong and we hence ought to re-think, e.g. the economic argument behind public funding of science?

Anderson2:

Again, you're spinning out elaborate inferences that are not justified by the actual claims I made in my essay. My essay draws attention to the impact on academic freedom of requiring authors to assign their copyright prerogatives to the world, and calls for a more rigorous and open assessment of the costs and benefits of such requirements. It doesn't call for reconsideration of the public funding of science.

Thus, in conclusion, current evidence and economic/political logic seems to indicate that current practice harms science and society, while it seems indeed obvious that OA mandates are at least designed to improve on both fronts.

Unless you can provide any opposing evidence, I'd see that question as settled, based on evidence, then?

Anderson2:

Well, yes, you've provided enough evidence to settle the question formulated in this paragraph. But that question is highly tendentious, and begs other questions that are equally important, such as:

- Does current practice provide benefits as well as harm? If so, how do the benefits compare to the harm, on balance?
- OA mandates may be "designed to improve" on those harms, but what are the costs of imposing them? How do those costs compare to the benefits? And do OA mandates actually do *only* what they're designed to do?
- How do we appropriately balance the rights of individuals with individuals' obligations to society as a whole?

Brembs1:

I'm trying to say that we already have a mandate (to publish in high-ranking journals), where the evidence is suggesting that it hurts science and society. Let's call it the "TA mandate" for short.

Anderson1:

But it matters very much what the word "mandate" means in this case. Does it mean that your employer has a policy saying "you must publish in Cell or you'll lose your job"? Or does it mean that the colleagues who vote on your tenure bid consider publication in Cell the sine qua non of tenurability? If "mandate" means both of those things, then the word is too elastic to be meaningful in this context.

Brembs2:

Ok, agreed, good point. 'Mandate' serves a better purpose when it denotes a specific policy. Too broad nomenclature is often counterproductive. So let's just call them the *TA Infringement on Academic Freedom* and the *OA Infringement of Academic Freedom*, ok? So, for instance, the TAinAF and the OAinAF? That should capture the essence of both *de facto* practices without any connotations as to their explicit or implicit nature as policies.

Anderson2:

But it assumes that there's an equivalence of infringement in the two situations, and I don't buy that. If your definition of academic freedom includes the "right to full freedom in publication," then saying "You must perform at a certain level in order to keep your job, and one important way we measure performance is by publishing in high-impact journals" (where most of those journals happen to be either all or partly TA), doesn't pose the same issues for academic freedom as saying "In order to get funding for your research you have to assign all of your copyright prerogatives to the general public." If you can't see the difference between those propositions, in terms of academic freedom, then we're doomed to talk past each other on this issue.

It sounds to me like what you're arguing, in fact, is that an individual's academic freedom is less important than the societal benefit that can be derived from infringing on it in this particular way. Is that a fair summary of your position?

Brembs1:

In the light of such a mandate, another mandate, one to share all science for maximal societal benefit is the lesser of two evils, in particular if it helps to get rid of the first mandate. Let's call this one the 'OA mandate' for short.

Anderson1:

I don't buy the "lesser of two evils" argument here, because if what you're calling a "mandate" is really just a professional standard applied by colleagues who are assessing the quality of your work, that's not the same kind of academic-freedom issue as an institutional policy that says "you must publish in Journal X."

(side comment: at least in biomed, the evidence cited above is quite clear that "assessing the quality of your work" by using publication venue only serves to hire/promote/reward the scientists which publish the lowest quality science!)

Brembs1:

Both mandates exist de facto. Both are formulated more or less explicitly and are more or less enforced.

Anderson1:

My essay is about mandates that are both de facto and de jure, on the assumption that they are enforced. (But even if they aren't, they pose problems because they *can* be enforced.)

Brembs2:

I'm no legal scholar, so I may be wrong, but that argument looks to me like you're trying to have it both ways: the AAUP document you quote can't be used de jure, as de facto 'full freedom' in this document doesn't mean "full". This would indicate to me that de facto practice matters more

to you than the actual wording of policies etc. With regard to OAinFAF, all of a sudden, the wording is more important than practice? This is where the argument looks rather inconsequential to me.

Anderson2:

So is it your position that since no author's freedom is ever literally "full," therefore you're not breaching anyone's freedom meaningfully by restricting it further? Do you really see "freedom" as a purely binary proposition?

Let me see if I understand you correctly then ("OAprofstand"):

If institutions were (instead of explicit current OA mandates) to write as their professional standard rather unspecifically:

"We expect our grant recipients/employees to maximize accessibility and re-use of any resulting discoveries in the way they see fit"

and then failed to renew grants, reject promotion, or fire any recipients/employees if they didn't publish according to some vague, minimal set of criteria (e.g. some would go by OA journal with at least a CC-BY license, others value blogs with CC0, or again others reward a monograph with some other, analogous license, or publication in a green repository with a CC0 or BY license, etc.), then this would not constitute an official, written down policy and that would be fine with you, even though it would curtail academic freedom even more than the few current, largely unenforced mandates?

Anderson2:

No, that wouldn't be fine with me. I'm not sure what I could have said that would have suggested it would.

Brembs1:

It seems disingenuous to me to criticize the OA mandate which is demonstrably better for science, but not the TA mandate on the grounds of academic freedom. On the grounds of academic freedom, one can only criticize both mandates.

Anderson1:

Only if you insist on an unrealistically elastic definition of "mandate." I don't agree that professional standards applied by colleagues charged with assessing the quality of your work are meaningfully the same as institutional or funder policies. (Nor do I agree that it's a simple and settled fact that "OA mandates (are) demonstrably better for science.")

Brembs2:

Well, that statements seems to indicate that you find nothing wrong with the OAprofstand scenario above, at which point I really wonder if this is what you intended with your article: should funders make their policies less specific and assess the quality of the work of their grant recipients by more vague and less specific criteria?

Anderson2:

Despite the label you gave it, the scenario you constructed above has nothing to do with professional standards. It has entirely to do with adhering to a set of (as you put it) “vague, minimal... criteria” around republication practices. What I intend with my article is clearly stated in the article: “a more rigorous examination of (the) costs and benefits” of requiring authors to adopt CC BY, particularly (though not entirely) as they apply to academic freedom.

Brembs1:

It also seems disingenuous to me to first say that ‘full freedom’ doesn’t really mean ‘full freedom’ and then turn around and say that the TA mandate doesn’t exist, because only some institutions have it written down explicitly.

Anderson1:

Does any institution have a written (de jure) policy that says “you must publish in toll-access journals”? Does any institution penalize its authors (de facto) if they publish in OA journals? I’m not aware of any examples of either case. If you are, please share.

Brembs2:

Oh, my pleasure. There is this really weird blog out on the innerwebs. It usually has only kind of weird, fantasy-world posts in it, but I found [one post](#) that actually demonstrates that in some countries, you stand to get penalized by your institution to the order of ~US\$30k in personal income (see ‘economic security’, in the AAUP document) if you choose to publish your work in, say, PLoS One as opposed to Science or Nature.

Anderson2:

If by “some countries” you mean “China,” then I agree with you: China’s reward system for academic publishing is uniquely perverse in this way. I will freely and happily stipulate that the arguments formulated in my essay don’t apply the same way in the context of the Chinese system as they do in the US, UK, and European systems.

But one doesn’t have to go so far as Asia. Just go to Berlin where I have worked for almost ten years. The most famous university hospital in Germany there requires applicants for professorships to supply their ‘impact points’ with every application. Or the Alexander von Humboldt Foundation requiring many publications in “top journals” (source: [slides 58-61](#)). In many countries, publications below a certain cut-off are not considered for evaluations, etc. pp. Obviously, the most top journals are CNS (TA journals), so if you chose not to publish there, you are automatically penalized compared to those who chose to publish there, even all else being equal: if we work on the same topic, find out the same thing and you publish your findings in CNS and I in PLoS1, I am penalized and you’re not - simply on the basis of my free choice of venue.

Anderson2:

But that's not true. You're being penalized for publishing in a lower-impact journal. The fact that the high-impact journals are all TA is incidental. If the impact ratings of the OA journals rise and those of the TA journals fall, then the professors at that hospital will be required by their current system to publish in OA journals. The access model is irrelevant to this system, which is of course as it should be. (I suspect that you and I agree that the system is flawed in other ways, though.)

(what makes this infringement on academic freedom even worse for society is that in biomed at least, CNS have a track record of publishing worse science)

Finally, if there weren't such policies, written or not, why would DORA exist? You seem to think DORA is a Quixotesque initiative against non-existent giants?

Anderson2:

Sorry, I don't know what DORA is (so I don't know how I could harbor such an opinion).

I wonder why you need to even ask for examples, I thought this was all common knowledge yb now?

Thus, I have now provided you not only with evidence that TAinfAF exists (even explicitly in some cases), but also with evidence of the scientific and societal harm that OAinfAF does. I believe this puts me in a position where I am justified in ignoring any argument that isn't equally based in evidence.

Anderson2:

I'm afraid that I'm not clear on what argument of mine you feel you are now entitled to ignore. Can you clarify?

However, I'm really surprised that for you in this case what is written down and the actual words with which it is written are so important. I thought, after you agreed (on Twitter) that "full freedom" doesn't really mean "full freedom", that words aren't really what matters, but actual practice?

Anderson2:

If what's written down doesn't matter, then why have CC BY mandates? Let's just all agree that CC BY rocks, that it's always the best choice, and then let people act accordingly. Get rid of all the written mandates. It sounds like you would agree with this approach, right?

So which is it now, what is more important, words or practice?(Q2) You can't have the answer 'practice' in the case of "full freedom" and 'words' in the case of OAinfAF vs. TAinfAF. You'll have to make a decision, I'm afraid.

Anderson2:

Honestly, I'm no longer sure what it is you're trying to get me to say here.

Brembs1:

What counts is practice, not what's written down. Many OA mandates are not enforced, so what does it matter that it is written down?

Anderson1:

Written policies matter very much, because their enforcement is at the discretion of those in power. The fact that the mandate isn't enforced today doesn't mean that it won't be tomorrow.

Brembs2:

Ok, so this statement seems to confirm my suspicion above that the word to you really is more important than practice (and, by extension, that what you said on Twitter didn't really come across correctly, no surprise). That's at least consequential and an answer to my question above (Q2), thank you very much. It also wasn't clear to me until now.

Anderson2:

No, that's not what I said at all. Disagreeing that policy doesn't matter isn't the same thing as asserting it's the only thing that matters, or even that it's more important than practice. Obviously, both of them matter.

I think now you have cleared this up, not only by insisting on written policies evincing the existence of TAinfAF (which I have provided, BTW), but also by your various other statements here, that what really matters is what is explicitly written down and codified: *Potential enforcement* of specific policies (i.e., OAinfAF) is more important (and hence warrants your scrutiny) than *actual enforcement* of less specific policies (i.e., TAinfAF). I think that is perfectly fine.

Anderson2:

Again, I never said that potential enforcement of specific policies is "what really matters" and is more important than "actual enforcement of less specific policies." I believe both practice and policy are important. What I rejected is your proposition that "what counts is practice, not what's written down." Both matter, as anyone who has ever worked in an organization of any kind knows.

After all, understanding the consequences of *unspecific but enforced* policies requires insight and experience, while sticking just to the words of some *specific but unenforced* policies doesn't. So at this point I think your argument is starting to make sense: without knowledge of and experience with unspecific policies and their enforcement, it's more difficult to criticise them (which, of course, is precisely why you are asking for such specific policies above).

=====

Anderson2:

Bjorn, you have a very bad habit of creating elaborate, highly inferential, and ultimately inaccurate summaries of my positions, then spinning off scenarios that you believe are logically implied by those summaries, and then proceeding to respond to those summaries and scenarios as if you were responding to my positions.

Brembs3:

Yes, it's exactly what I do to try to understand you. To me, what you write in this article makes no sense at all. It appears illogical in parts and completely detached from my reality as a STEM scientist. However, since our main funding agency also refers to "academic freedom", maybe it's just the way you write it (or English being only my third language), why it makes no sense to me (and our agency never elaborated anyway).

Therefore, I try to paraphrase what you write in the way I would write it. If that is a distortion of what you intended to write, then either you don't understand what I'm writing, either, or I never correctly understood you in the first place.

Everything that you've written below is an example of this tendency. I can't meaningfully respond to any of it because none of it is apposite to any arguments I've actually made -- it all refers to your own elaborations on (and distortions of) what I've said. I'm not saying these distortions are intentional (I suspect they're not), but they are distortions.

If you were to ask me to summarize my own position, I would do it this way:

1. Authors have rights in their original work, granted to them by law.

Brembs3:

Side remark: Which in Germany, for instance, are unalienable. Even if I voluntarily sign over all my "copyright" to some other entity. As soon as anything in the copyright agreement affects my German 'author rights', my German rights supercede that agreement (as far as I've been told by a German copyright lawyer here at our university).

2. Authors also have a reasonable expectation of academic freedom as defined by the AAUP statement. According to this definition, as I read it, academic freedom includes the right to decide *where and where not* to publish one's work.

Brembs3:

Which is a right that only exists in theory and not in reality: if you exercise it, you will not get a job.

And by 'exercising' I actually mean it in the "speak truth to power" spirit of censorship: if I want to make a statement by not behaving according to the dogma of the powerful, I will suffer a penalty. The form of that penalty ranges from negligible in my personal special case (I have tenure at a university with enough support so I only need grants for very special projects - I

really can publish when, how and where I want or not at all), to severe personal and financial penalties in the case of early career researchers or less fortunate colleagues at other institutions/fields/countries.

This policy is “imposed on authors by those who have power over their careers,” and it “denied funding or excluded from important publishing venues based not on the quality or significance of their work but rather on their willingness to comply”. The current STEM practice thus fits your usage of “a problem of academic freedom” to the word! It may purport to be based on merit/quality, but the evidence shows that this is clearly not the case, making it a completely unjustified violation of my civil rights.

Consequently, it is entirely irrelevant by what mechanism I’m forced into publishing at certain times, in certain venues, to certain conditions. It doesn’t matter if those venues are TA or OA, journals or monographs, CC-BY or ©. It doesn’t matter if the reasons why I’m forced to give up my academic freedom are written down or not. It doesn’t matter what you call the process by which that civil right is violated. What matters is that I am being coerced and whether such coercion can be justified. This coercion, this infringement on the freedom exists in reality, I gave you plenty of evidence for that. Merely asserting the opposite, as I understood you did several times in this document, won’t make it magically go away. Our “full freedom to publish” is violated, whether you accept that or not. What we ought to discuss is whether the violation is justified.

3. Although this freedom is not perfect (because no one’s freedom is ever perfect), some policies and practices infringe on it more meaningfully than others.

Brembs3:

Ah, this gets to the heart of the matter: can you justify the TAinFAF? You say it’s a professional standard for quality assurance. I’ve provided evidence that it doesn’t assure quality. In fact, it does the opposite. Hence, the reason used to justify the infringement on academic freedom is null and void.

4. Policies and practices that require authors to publish in high-impact journals (many of which require an assignment of copyright to the publisher), although undoubtedly flawed in many other ways, infringe less seriously *on academic freedom* than those that require authors to grant all of their copyright prerogatives to the general public.

Brembs3:

Even if that were correct (which I’ll try to dispute below!), the perceived *magnitude* or *seriousness* of the infringement is of course as irrelevant in the case of academic freedom as it would be in the case of, e.g., freedom of speech: if I would compare, say, an infringement on freedom of speech that wouldn’t allow me to maliciously ridicule one person only, e.g., the president or king with a competing rule that prevents me from doing this to a whole group of people, let’s say a minority. Obviously, the number of people you are barred from maliciously ridiculing is completely irrelevant to whether or not this infringement is justified. Likewise, how

seriously academic freedom is infringed upon is irrelevant to whether or not the infringement is justified. At least for biomed, the evidence is clear: the infringement on our academic freedom to choose where we publish is not justified. Asserting that in your opinion this infringement isn't serious doesn't make it one iota more justified. In fact, it's an insult to all my colleagues who would like to be more open with their work but can't.

WRT authors' rights / copyright I've already alluded to the differing rules in different countries. From what I've learned over the last ten years that I've been internationally involved in this is two things: 1) Copyright really only appears to affect some particularly unfortunate colleagues in particularly precarious situations in some sections of the humanities. We absolutely need to take care of these colleagues and have to make sure the general rules don't leave them stranded. So for these very few, exceptional cases in largely the humanities in some limited areas of the globe, your concern may be very well-placed and we really ought to make sure the majority supports the scholars in such tragic situations by any means necessary.

2) For all others, people have been [arguing](#) for years, I think very convincingly, that work at public institutions should be considered [work for hire](#). This argument is not only convincing in and of itself, it is also supported by the fact that the overwhelming majority of scholars for the longest time saw no problem whatsoever in signing over their copyright to a corporation to make money off the scholars' work. Moreover, when made the default license, 96% of authors did not care about the license, either, according to a reference in your article. Hence, I'd need some very solid evidence to convince me that scholars would not feel signing over some lesser rights to the public wouldn't be even more justified.

Thus, the seriousness of the infringement is irrelevant. Even if it weren't, you still have the seriousness backwards.

5. [No set of policies and practices presents only costs or only benefits. All present a mixture.](#)

Brembs3:

Of course: the whole point is to discuss the benefits of policies and if these benefits justify infringing on academic freedom. Even though it is a sad state of affairs, I'd begrudgingly admit that quality assurance may be one justification for infringing academic freedom, even though I'd classify it as kowtowing to neoliberal dogma. However, if that indeed were the case, there needs to be evidence that the quality assurance actually worked as advertised. In the absence of such evidence (provided enough time for collecting it), this infringement needs to go.

Via that line of arguments, at least in biomed, the TAINfAF has to go, if academic freedom were indeed to be followed.

As such, it is of course easy to define "quality" as including maximum usefulness for the scientific community and the society that funded the research. Clearly, a scientist who maximizes the utility and replicability of their work to other colleagues and society is a better scientist than one who does not do so, all else being equal?

Hence, the OApr of stand scenario I described above, that you found so objectionable serves two purposes: 1) It's **exactly** the way we hire/promote/reward professors in STEM once you replace openness by CNS. 2) It shows that a practice you didn't find infringing on academic freedom (enough?) when it contained CNS instead of CC-BY, all of a sudden becomes objectionable when it is about openness, as opposed to CNS.

6. We need more open and rigorous discussion of the costs and benefits posed by policies requiring authors to adopt CC BY. (The costs and benefits of the current system are also worthy of discussion, of course -- but they get a lot of discussion already. No essay can be about everything, and my essay is specifically about the need for more open and rigorous discussion of the costs and benefits of mandatory CC BY.)

Brembs3:

Does this mean it is your refusal/inability to see the equivalence in OAinfAF and TAinfAF that makes you pick one over the other? You not only see TAinfOA as less serious, when comparing the two (as you mentioned here), you don't even see it as serious enough to be worth mentioning in your article?

As pointed out above, I don't think perceived seriousness can be a relevant argument when discussing the justification of infringements on civil rights. However, I can understand how such considerations can drive an author's decision of whether to write about one infringement or the other.

Hence, if the above is supposed to tell us that your choice of analyzing CC-BY mandates' effects on academic freedom vs. current practices' effects on academic freedom was tilted by your assessment of the seriousness (or potential detrimental cost/benefit ratio) of the infringement, I hope I've provided you with enough evidence that both the perceived seriousness and the scientific cost/benefit ratio are both much worse in TAinfAF than in OAinfAF. Hence, if this had been a major driver in your decision which aspect to cover, the evidence-based choice would have been to cover the TAinfAF.

Besides all the evidence I have provided above about the serious infringement on the academic freedom as well as the harm to society, I can also tell you that from my own personal experience, the infringement on my academic freedom by the requirement to publish in CNS is much more massive and serious than any license requirement could ever be: our most recent work is already published:

<http://biorxiv.org/content/early/2015/08/03/023846>

However, because my postdoc needs the journals, he's been sending it from one journal to the next for the last 6 months, instead of doing the next experiments. If anyone needs to judge the quality of his or my work, they can look at the paper and see that we have provided all methods, data and code for full replicability and reusability under a CC-BY license, which is a higher professional quality standard than is required by any CNS journal. The license under which that work is published is actually completely irrelevant, compared to the time wasted constantly resubmitting and reformatting the manuscript. Hence, this policy is forcing me "into a publishing

relationship not of [my] choosing -- as well, [...] [a] commercial reappropriation of [my] work in principle". The irony of the biomed system is, that the *better* he is in marketing our work to the ex-scientists than run the CNS journals, in the *worse* company his paper will be. Hence, at least for biomedicine, the worst infringement on our academic freedom has the least justification. Now that is much more serious and urgent, than any debate about some arcane licenses which 96% of all working scientists have likely never even heard about.

=====

The OA mandates constitute specific policies, which require neither experience nor insight, nor actual enforcement (just understanding the words), so they are much easier to put up for criticism. I think I understand that angle now, from which you are coming.

However, such rigid formalism may be the easy, seemingly consistent way, but it comes with a cost. One such cost is that, e.g., making the OAinFAF less specific and more enforced (i.e., OAprofstand), would immunize it from your criticism, while at the same time do what current OA mandates (which you nevertheless criticize for their potential!) fail to do: force scientists to publish in certain venues. IOW: if what you call 'professional standards' infringe on academic freedom, then it's fine with you, if it's an 'official policy' it's not. So, ironically, had OA mandates been designed as a 'professional standard' (as described above in OAprofstand), rather than 'official policy', they would be immune against your criticism, despite the fact that the actual infringement of OAprofstand on academic freedom is vastly greater than the toothless 'official policy' you actually criticise. If this cost of such rigid formalism is a price worth paying, is, of course, entirely up to you. Personally, I find an infringement on my academic freedom is an infringement on my academic freedom, whether you call it a 'professional standard' or 'official policy':

I'm **forced** (if I want to keep/get a job) to publish in one specific range of venues rather than others either way you call it.

Another such cost is that you are forced into this formalism, because without it you would have to actually follow the words of the AAUP document: "full freedom". With your formalism, you simply declare that 'professional standards' cannot infringe on academic freedom, no matter how much they actually do (i.e., enforcement), while "official policies" can and that potential is sufficient. Hence, without such formalism, you would have to admit that our freedom is already infringed upon, which then wouldn't allow you to criticise OAinFAF without also criticising TAinFAF on this basis.

A final such cost is of course that focusing on the seemingly 'easy' targets would not only provide incentives to make policies less specific (which I would deem less desirable than specific ones), it also means that you may be chasing down enemies that only exist on paper, while the real enemies, who have hidden themselves by disguising them as 'professional standards' keep acting against even your interests without needing to fear your scrutiny.

Clearly, retreating to such rigid formalism is an option, but I see it as a cop out and I'm not sure how many people will be convinced by it. I, for one, don't find it particularly convincing, in fact, for the above reasons, I find such rigid formalism counterproductive - in this case they support unspecified policies with plenty of evidence to support the notion that they are *actually* harming science and society, while threatening policies *designed* to promote both scientific and public interest.

tl;dr: While probably neither unethical nor nonsensical, I still don't find focusing on potential harm rather than actual harm convincing. In fact, I find it rather counter-productive.