

Creative Commons Licences – are they right for you?

(Version2)

This article also appears in the Arts Libraries Journal vol.37 No.2 2012

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Date: 21/12/11

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Abstract

This article provides an introduction to the use of the Creative Commons licence system and sets it in a historical, economic and political context. It is written from the perspective of involvement in open educational projects in an Arts university that has used the licences. A description of the fundamental features of the licences and their uses is given together with an outline of how the Creative Commons organisation works and its strategic aims. An assessment of the usefulness of the licences is provided together with a description of the challenges faced in dealing with low levels of legal awareness amongst academics. Practical advice and sources of further information and guidance are offered to help readers implement the licences locally.

Introduction

This short report provides an analysis and overview of the [Creative Commons](#) (<http://creativecommons.org/>) licensing system in use at the University of the Art London, which is involved in open education resource projects funded by [JISC](#). For more information about the projects please visit this website <http://blogs.arts.ac.uk/alto/about/>. It is a funding condition of these projects that the outputs are issued under a Creative Commons licence or a licence that is similar. This is part of a growing trend where funders of education and research are demanding that the products of that funding are made openly available for the good of society as a whole. The [Wellcome](#) medical research trust is another

example of a funding organisation that expects outputs to be made openly available.

The Open Education Movement – a brief overview

The best known UK example of open education in the UK is the Open University (OU), set up in the 1960's to make university education more accessible and open to students without the formal qualifications normally required by traditional universities or the ability to attend full time education. In addition the OU aimed to deliver its programmes of study using distance learning techniques to offer study opportunities that were flexible in terms of the place and time of study, so that students could fit learning around their personal and working lives. The OU was (and is) an example of 'official' and certificated education delivered via innovative means to overcome the barriers of time, place, work and family commitments and the lack of formal qualifications.

More recently, interest has grown in taking this model a step further by providing open access to the course study materials of universities on the web so that 'independent learners' can use them. The acknowledged pioneer in this area has been MIT in the USA who, with the help of large charitable grants, has made all its undergraduate course materials openly available under the terms of a Creative Commons licence. Since then, other institutions and government agencies around the world have followed this example. The University of the Arts London has been involved in one such initiative involving the open release of learning resources and has used Creative Commons licences to do so. A very useful overview of OERs has been produced by JISC (2008), entitled *Open Educational Resources – Opportunities and Challenges for Higher Education*. This provides the following definition of what might constitute an OER:

"The term Open Educational Resources (OER) was first introduced at a conference hosted by UNESCO in 2000 and was promoted in the context of providing free access to educational resources on a global scale. There is no authoritatively accredited definition for the term OER at present; the most often used definition of OER is, "digitised materials offered freely and openly for educators, students and self-learners to use and reuse for teaching, learning and research" (OECD, 2007). With regard to this working definition, it is important to note that "resources" are not limited to content but comprise three areas, these are (OECD, 2007):

- Learning content: Full courses, courseware, content modules, learning objects, collections and journals.
- Tools: Software to support the development, use, reuse and delivery of learning content, including searching and organisation of content, content and learning management systems, content development tools, and online learning communities.
- Implementation resources: Intellectual property licenses to promote open publishing of materials, design principles of best practice and localise

content.”

(OECD, 2007)

From this particular definition it can be seen that the use of Creative Commons licences is not essential for publishing of OERs on the web, another type of license could feasibly be used. However the practical usefulness of the Creative Commons licence scheme is so strong that it has become the de facto legal standard for the OER community. We shall examine why these licences are so popular later in this article.

The Commons – past and present

The notion of ‘The Commons’ as a shared space where resources are held for the common good is an enduring one in human history. After agitation and social conflict in the 13th century in England, the monarchy was forced to cede control of large parts of land for common use by the population under the *Carta de Foresta* (Charter of the Forest). This is the lesser-known companion to the more famous Magna Carta that is widely regarded as a milestone in the evolution of the legal protection of human rights. More recently, during the current global economic crisis various protest movements such as ‘Occupy Wall Street’ have been articulating the need for common ownership of resources for the benefit of society as a whole, including the banking system.

Intellectual Property Rights (IPR) in Higher Education – the current situation

Current institutional IPR policy picture is confused and represents pre-digital and traditional working methods where publishing technology was well beyond the means of many institutions. It has been the norm for academics to assign (give away) the copyright in their research publications to the commercial academic journals that they publish their work in. The costs of subscribing to these journals has risen steeply over the last 30 years, at a rate well ahead of inflation, to such an extent that some university libraries can no longer afford to buy the journals that contain their own academic research publications to provide to their students. The inequality of this situation has been compounded by the fact that the journals rely on the freely provided labour of academics to undertake peer review of each others work to decide what gets published in the journals. Similarly, academics routinely give over the ownership of textbooks they write (in return for a fee) to publishers who then charge institutions and students for the right to buy back that knowledge. In both cases knowledge that has been created largely through public funding is effectively privatised. Current institutional policy in the UK in relation to digital learning resources is often non-existent, unfair, contradictory and legally dubious (such as claiming to own all student work). Given this cultural background any discussion of licensing of learning resources in a university, especially for open distribution, is likely to be a sensitive issue.

A Digital Commons for Education?

The debate about common ownership and/or access to resources has been recently been revitalised in the digital realm by developments to promote open access to research and open educational resources (OERs). Questions and issues raised include:

- What are the implications of The Commons for students, teachers, institutions and society? If The Commons are characterised by an economy of 'plenty' and open access, what is the future for an educational economy and cultural model based on scarcity and restricted access?
- How might the growth of The Commons change the roles of teachers, librarians, archivists, educational developers and technical staff?
- What kind of digital literacies are needed to navigate the Commons for individuals and institutions
- Engagement with The Commons can act as a 'lightening rod' to raise debate about a broad range of issues such as; ownership, control, power and identity – how do we deal with this in our private and institutional roles?

These questions are given added urgency by the inability of the traditional education system to meet existing needs in both the developed and the developing worlds. The scale of this problem is illustrated by this observation:

“To meet the staggering global demand for advanced education, a major university needs to be created every week”

Daniels (2007)

This is from Sir John Daniels The Chief Executive Officer the British [Commonwealth of Learning](http://www.col.org) (<http://www.col.org>), an organisation that promotes open and distance learning, resources and technologies for the 1.7 billion people who constitute the Commonwealth.

Creative Commons Licences – an overview

The background to the development of the Creative Commons Licence system is well described on their website. In essence the founders were dissatisfied with the effects of application of traditional restrictive copyright law being applied in the digital realm on the World Wide Web. The underlying vision at work here was the realisation that the traditional economy of 'pay per copy or view' of older media such as books and films that had created current copyright law was not going to suit everyone who publishes their work on the web. While big business has sought to take advantage of the web as a new distribution medium it has also tended to try and enforce the old model of restricted access and lobbied for tougher legislation to protect their IPR. At the other end of the economic spectrum individuals and small companies, especially those in the creative industries, cannot not easily afford to hire lawyers to handcraft licenses to stipulate how their IPR may be used.

The Creative Commons licence system was developed to meet the needs of people who wanted to publish their content the World Wide Web freely and yet retain some legal control and protection for their work. Whereas traditional copyright reserves all rights to the owner, the Creative Commons licence system uses existing law to adopt a 'some rights reserved' approach to support open publishing to the web. It is also important to understand that Creative Commons licence system is actually based on existing copyright and contract law. There was, and is, a social and political agenda attached to this – the broad aim is to lower the legal barriers to sharing and reuse. The Creative Commons licensing system was envisaged as a means to provide a shared common space on the web where people could publish their works under simple, easily understood licence terms in a way that helps them take advantage of the networking properties of web technologies. This vision is simply summed up by this statement from the organisation's website:

"Our vision is nothing less than realising the full potential of the Internet — universal access to research and education, full participation in culture — to drive a new era of development, growth, and productivity."

Creative Commons Licences – in practice

The essence of the Creative Commons licence system is that they are intended to be simple to use. Each licence is composed of 3 components:

1. A 'machine readable' version in software code that search engines and other web technologies can easily find and understand. This allows the licences to make use of the network properties of the web to support search and discovery of the work. Examples of this include the advanced search option in Google that allows search results to be filtered by Creative Commons licences terms. The popular online picture sharing site Flickr also makes use of the Creative Commons licences in a similar way for searching and users have the ability to choose a licence when they upload their images
2. A 'lawyer readable' version of the licence that complies with contract and copyright law. The licences are available in a generic form as 'unported' and also 'ported' i.e. worded in ways that conform to different countries legal jurisdictions. For, instance there is a set of licences for Scotland, which use language that fits with Scottish law. In addition, the licences are also available translated into different languages.
3. A 'human readable' version of the licence this is perhaps the most important innovation of the Creative Commons licence system. This acts as a clear summary of the licence terms that states what a user is free to do with the work and the conditions they must obey if they do make use of the work.

A very useful feature of the Creative Commons website is an online 'licence picker' that walks a user through the steps in choosing a licence according to the answers they provide to some simple questions. The licences themselves range from being very liberal in what the creator or owner of the work is prepared for

users to be able to do with the work to being quite restrictive. At the liberal end of the spectrum lies the 'Attribution Only' licence that only requires a user to attribute the creators; otherwise they are free to use the work as they please. At the more restrictive end of the spectrum is the 'Attribution, Non-Commercial, No Derivatives' licence that in additions to attributing the creators forbids any commercial use or alteration of the original work.

The Creative Commons licence system also provides a set of easily recognised visual logos that represent the different licences, which can be embedded in web pages together with the machine-readable version of the licence. These logos together with a short licence statement can also be used in printed materials. In addition, the website contains lots of very useful guidance and awareness raising materials.

There are two extension to the Creative Commons licence system:

1. A set of tools that allow users to waive all their rights in a work and place it in the public domain – this is called the 'Zero' licence - where no rights are retained by the creator. In addition, the Creative Commons public domain 'mark' is provided that helps indicate that a work is no longer subject to copyright. As Creative Commons explains: "This is intended for use with old works that are free of copyright restrictions around the world, or works that have been affirmatively placed in the worldwide public domain prior to the expiration of copyright by the rights' holder." This is potentially useful for museums and archives and other organisations that hold content that is out of copyright and want to make it available for public use.
2. CCPlus – this is not another licence but simply the addition of a commercial licence to an existing Creative Commons licence – a kind of legal 'bolt-on'. CCPlus offer a set of protocols for how to do this. This is potentially very useful by signaling that a creator is 'open for business' and can be approached to negotiate a commercial use for their work.

An important, and often overlooked, part of the Creative Commons organisation is that it is composed of a world-wide community with local national 'chapters' composed of legal experts who develop localised versions of the licences and act as advocates for the 'digital commons' in the social, legal and political sphere. Finally, it is important to note that all these licences are only intended for use on the open web (in keeping with the philosophy of the 'commons') and that their use is prohibited for releasing content that lies behind any security measures. This means that you are not allowed to use the licenses if the work is only published in a closed VLE or repository. But as long as a copy of the work exists on the open web you are allowed to use it within closed information systems

Assessing Creative Commons Licences – are they right for You?

The short, and rather trite, answer to this question is 'yes if you know what you want and you know what you are doing'. This obviously needs to be unpacked to

become a useful answer. If you want to take advantage of the world-wide web to publish your work so that people can freely and widely make use of it while at the same time retaining some control over that use, then the answer is yes. If you want to take advantage of a widely known and understood set of off-the-shelf licences that are integrated into the fabric of the web, the answer is yes. If you want to avail yourself of a set of high quality tools and guidance materials to help you make best use of these licences, then the answer is yes.

But, if you are not sure of what you want to do with your work, or if it has some high potential commercial value and you know very little about copyright and licence law – then you should stop and think and learn. In UK academia there are currently very low levels of legal awareness amongst academics and plenty of potentially dangerous misconceptions – such as ‘we can do what we like because we are in education’. Part of this problem, as already observed, lies in academic publishing culture being still dominated by pre digital attitudes and values. The other part of the problem is the traditional autonomy that many academics enjoy and the sometimes introverted nature of the working cultures of our institutions. Using other people’s work without attribution or payment is fairly common in lectures and VLEs (Virtual Learning Environments) inside an institution. When this combination of ignorance and delusion is transferred to the open web we risk the legal liability of infringing other peoples legal rights. Dealing with this without encouraging a highly risk averse culture is probably the biggest challenge when using Creative Commons licences in a university.

A simple approach to dealing with this problem is to establish some basic guidelines and ‘house rules’ for using Creative Commons licences, ideally incorporated into a policy review. Below is a very simple checklist for academics and support staff to begin engaging with the issues of dealing with these third party rights in their work in relation to learning resources.

- If you are putting your work on the Web in legal terms this is publishing – meaning that you have the protection of the law and that you are obliged to respect the legal rights of others
- Is there any material included in your work that has not been created by you?
- If the answer is yes then you need to create a list of attributions to identify the creators of the third party work you have used. If you cannot identify the creators you should enter unknown. This is the first and essential step in any credible risk management strategy for individuals and institutions. This as a basic element of basic academic integrity and is not an optional extra
- The next step is to assess if you have the rights to use this third party work (for instance if it is the work of fellow employees) or if it is going to be worth the effort of getting rights clearance
- For the work that you do not get clearance to use you have to decide if you can use it under existing copyright and other applicable laws, such as under the ‘fair use’ exceptions in UK Copyright law.

- If you do not have the rights to use this work you have two choices, create or source something to replace it or to go ahead and risk using it (which should be only be pursued after seeking some legal advice)

The JISC funded Web2Rights project provides a very useful set of tools and guidelines to help people engaged in these kinds of activity including a comprehensive and clear checklist and flow chart to help people step through the relevant questions, this is highly recommended and is available at this website: <http://www.web2rights.org.uk/>.

Summary and Conclusions

Creative Commons licences are used by many organisations around the world including leading universities like MIT and the OU. Since their inception in 2001 they have become part of the mainstream web, legal and social environment that we all now inhabit. Attitudes to the licences can be negative in parts of the legal profession as some lawyers may perceive them as undermining their professional identity and even reducing their potential income derived from drafting licences for clients. Similarly, some media pundits have accused Creative Commons of weakening traditional copyright law, which is demonstrably not the case as they are based directly on existing copyright law. It is worth remembering in this connection that the debate about rights in the digital domain is a political one and at times quite intensely so. At the moment awareness of the existence of the Creative Commons licences, from our experience, seems fairly low amongst UK art and design academics. Encouraging the wider use of these licences needs to be accompanied by some basic legal awareness raising and, ideally, institutional policy reviews.

Sources of Legal Guidance

Copyright and other legal concerns are one of the greatest obstacles to engaging with OER creating and sharing. Fortunately there are a number of good sources of advice about this and how to overcome common problems. The UK government funded guidance service JISC Legal <http://www.jisclegal.ac.uk/> provides a range of support materials and has a section dedicated to e-learning at <http://www.jisclegal.ac.uk/Themes/eLearning.aspx>.

- A good place to start is with this very brief introduction to copyright: <http://www.jisclegal.ac.uk/ManageContent/ManageContent/tabid/243/ID/2028/Copyright-Law-Essentials-14042011.aspx>
- Next is this short leaflet Copyright Law for e-Learning Authors: <http://www.jisclegal.ac.uk/ManageContent/ManageContent/tabid/243/ID/129/Copyright-Law-for-e-Learning-Authors-01062005.aspx>
- There is also a longer but very user-friendly introduction to intellectual property rights (IPR) issues for e-learning content developers and managers called Intellectual Property Rights (IPR) in Networked E-Learning: a beginners guide: <http://www.jisclegal.ac.uk/ManageContent/ManageContent/tabid/243/ID/130/Intellectual-Property-Rights-IPR-in-Networked-E-Learning-28042006.aspx>

- As mentioned above the JISC funded Web2Rights project has produced a useful set of guidelines and tools to help people publish their work to the web with confidence: <http://www.web2rights.org.uk/>.
- There is also the a useful and clear Copyright Toolkit produced by the UK educational charity Eduserv: <http://copyrighttoolkit.com/index.html>

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