

# The Creative Commons

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*This should be considered a work in progress. It may be updated at any time until the book is printed.*

## 1 Introduction

Whenever a human being creates a "work", such as a text, a painting or a piece of music, copyright law automatically gives the creator some exclusive rights to that work. The creator of the work is the only one who is allowed to make copies of the work, or otherwise communicate it to the public at large. Although there are many arguments in favour of this construction the fact that *all* works, including dabbings on napkins, are *automatically* included in this system means that there is a need for an easy, standardised way to give other people permission to use the work. The default is simply "all rights reserved", meaning that, beyond "fair use", "personal use" and similar exceptions, the public is not allowed to use the work at all without permission.

In 2001, an organisation called *Creative Commons* was founded. Creative Commons (CC) aims to facilitate the sharing of information by providing standardised copyright licenses. CC is not an alternative to copyright. It is based on copyright, but it provides an easy way to tell the world that it is OK to share your works. The creator of a work can use a CC license to indicate the terms and conditions that apply to use of the work, thus minimising the transaction costs otherwise associated with obtaining permission. Unlike the movement that has grown around free software, CC does not have a normative mission. It merely provides options.

## 2 Background

The western copyright discourse is centered around notion of *the author*, the talented individual who creates a work of art. A "work" is actually a piece of *information*. As such, it is something intangible and, unlike physical objects, it is not subject to any natural scarcity. A book can only be (comfortably) read by one person at a time but once one person has read the book and made a "copy" of the information in his mind, it can be read by another. This property of information is even clearer with digital information. A file on a computer,

whether it is a text, an image or a sound file, can be instantly copied and sent to an infinite number of people at virtually no cost and with no damage to the original.

Obviously, this can have averse effects on the author's possibilities to sell copies of his works. Copyright law, therefore, prohibits most kinds of copying unless the author gives his permission.

In bright contrast to this vision, however, stands the folk process, where a tale is passed on through generations, slightly altered with each step. A relatively modern example could be blues music. Almost all blues songs follow the same 12 bar pattern. To a certain extent, that is what makes a song a blues song. The same goes for blues guitar solos, for instance. Listen closely to Stevie Ray Vaughan and you will hear Albert King, listen to any slide guitar player and you are likely to hear traces of Elmore James. Blues musicians base their work on the common blues tradition.

Muddy Waters described the origins of his song "Country Blues" (later known as "Feel Like Goin' Home") to folklorist Alan Lomax:

"I made that blue up in '38", Waters said. "I made it on about the eighth of October, '38. . . . I was fixin' a puncture on a car. I had been mistreated by a girl, it was just running in my mind to sing that song. . . . Well, I just felt blue, and the song fell into my mind and it come to me just like that and I started singing." Then Lomax, who knew of the Robert Johnson recording of a similar tune called "Walking Blues," asked Waters if there were any other blues songs that used the same tune. "There's been some blues played like that," Waters replied. "This song comes from the cotton field and a boy once put a record out - Robert Johnson. He put it out as named 'Walking Blues.' . . . I heard the tune before I heard it on the record. I learned it from Son House. That's a boy who could pick a guitar." (Vaidhyanathan, 2001, pp 120-121)

Muddy Waters, thus, offers no less than five different accounts of the origins of the song. (Vaidhyanathan, 2001, p 121) First he actively *wrote it*, then *"it come to me just like that"* then he acknowledges the *Robert Johnson song* and that *Son House taught him* the song (before he even heard Robert Johnson's version). However, he also declares that the song *"comes from the cotton field"*. At first, these accounts might seem incompatible but if we think of it as a folk process, rather than an individual act of authorship, it makes perfect sense. This is the Muddy Waters version of a common tune.

### 3 The Public Domain

Copyrights are not forever. 70 years after the death of the author, a copyright expires and the work becomes a part of the *public domain*. Works in the public

domain are free for anyone to republish or otherwise reuse in any way.<sup>1</sup> Reprints or remixes and other derivative works no longer require permission from, or payment to, a rights holder. Vast amounts of our cultural heritage are in the public domain. The ancient Greek tragedies, the works of Shakespeare, Mozart and Bach are all in the public domain. This, comparatively insignificant, chapter, however, cannot enter the public domain before 2076, probably much later.

## 4 Free Software

A few interesting alternatives to full copyright have been developed. The best example is probably the movement that has formed around *free software*. In 1984, Richard Stallman quit his job at MIT to found the GNU project<sup>2</sup> and the Free Software Foundation.<sup>3</sup> This was a direct reaction against what he saw as an unsound development within the computer science field. Traditionally, computer programs, including their source code, had been freely shared. However, this practice was beginning to change at this time as software license agreements and non-disclosure agreements increasingly prevented sharing.

The "free" in free software refers to freedom, not cost. You should think of "free" as in 'free speech', not as in 'free beer.'"(Stallman, 2002, p 41) *The Free Software Definition* lists the four freedoms essential to free software.

- Freedom 0: The freedom to run the program, for any purpose.
- Freedom 1: The freedom to study how the program works, and adapt it to your needs. (Access to the source code is a precondition for this.)
- Freedom 2: The freedom to redistribute copies so you can help your neighbor.
- Freedom 3: The freedom to improve the program, and release your improvements to the public, so that the whole community benefits. (Access to the source code is a precondition for this.)(Stallman, 2002, p 41)

### 4.1 Copyleft

To achieve these freedoms, software is licensed in ways that do not inhibit them. To protect them, it can be licensed with a *copyleft* requirement. A copyleft license allows redistribution of the work, even in modified form. It does, however, require that the license remains the same. If Alice publishes a piece of software under a copyleft license, such as the *GNU General Public License (GNU GPL)*, Bob is free to publish a modified version (a derivative work). Bob is, however, required to publish the modified version under the same license conditions, in this case the GNU GPL. In this way, a commons of copyleft licensed software is created.

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<sup>1</sup>In some countries, some *moral rights* remain even after this period. These may require that the original author is acknowledged or that the use is not disrespectful.

<sup>2</sup><http://www.gnu.org/>

<sup>3</sup><http://www.fsf.org/>

## 5 Stallman's Classes

Copyright protects all works of authorship, be they books, songs or computer programs, in the same way. However, Richard Stallman suggests that maybe we should have different rules for different types of works. "[T]he first thing we have to recognize is, there's no reason to make it totally uniform. There's no reason to insist on making the same deal for all kinds of work."(Stallman, 2002, p. 141)

He suggests three different classes of works:

1. Functional works
2. Works whose purpose is to say what certain people think
3. Aesthetic or entertaining works

The first class are works that "get a job done", like computer programs, recipes, manuals, textbooks and reference works. For all these works, Stallman argues, the issues are more or less the same as for software.

People should have the freedom even to publish a modified version because it's very useful to modify functional works. People's needs are not all the same. If I wrote this work to do the job I think needs doing, your idea as a job you want to do may be somewhat different. So you want to modify this work to do what's good for you.(Stallman, 2002, p. 141)

The second class, works that express what people think, is handled differently in Stallman's system.

The whole point of those works is that they tell you what somebody thinks or what somebody saw or what somebody believes. To modify them is to misrepresent the authors; so modifying these works is not a socially useful activity. And so verbatim copying is the only thing that people really need to be allowed to do.(Stallman, 2002, p. 142)

For this class, Stallman also distinguishes between commercial and non-commercial verbatim copying and suggests that perhaps copyright should control the commercial copying but not the non-commercial.

The third class, the aesthetic works, is again slightly different. On the one hand we have the integrity of the work, which may be harmed by derivative works. On the other hand, adaptations of aesthetic works can produce interesting new works. As for the second category, Stallman suggests that verbatim copying should perhaps be allowed for non-commercial purposes but restricted for commercial purposes. He also suggests voluntary micro payments as a future solution.

## 6 Creative Commons Licenses

Enter *Creative Commons*, an organisation that publishes a number of standard licenses to enable anyone to easily license their copyrighted material in liberal ways. There are currently a number of different possible licenses to choose from and the choice is made simply by ticking a few boxes on a web form. In addition to the licenses there are the *Public Domain Dedication* and the *Founder's Copyright* pledge.

The basic *Creative Commons License*, which was first published in 2002 and is now at version 2.5<sup>4</sup>, gives the licensee the right to, for example, copy and distribute the work, provided they give proper credit to the author and/or licensor. The licensor can, optionally, require that any use should be for non-commercial purposes only, he can choose whether to allow the creation of derivative works and whether to apply a copyleft clause (called "ShareAlike") that requires use of the same license for any such derivative works.

The Creative Commons Licenses (except the ones prohibiting derivative works) can, as the name implies, create a commons that future authors can build upon. The Creative Commons licenses can perform an important function in this context. Their wide acceptance means that they have become the standard licenses used by people who wish to share.<sup>5</sup> This standardisation provides for a larger commons. However, the multitude of choices available to the potential Creative Commons licensor can lead to fragmentation of the commons into separate "NonCommercial", "ShareAlike" and "NonCommercial-ShareAlike" fields. The ShareAlike requirement makes the license reciprocal and, like with reciprocal free software licenses such as the GNU GPL, the commons is divided by the choice of license. Works licensed under two different copyleft licenses, however similar, cannot be combined. The NonCommercial requirement makes a work unavailable for any activity that may not be non-commercial.

### 6.1 The Basics

When a potential licensor ("author") visits the Creative Commons web site he is presented with a simple form<sup>6</sup> where he answers two questions. The answers to the questions decide which license elements (see below) will be used and a license text is generated. The licenses come in three forms. There is the "lawyer readable" *Legal Code* which is the actual license text, a *Commons Deed*, which is meant to be a human readable summary of the Legal Code, and finally, a machine readable *Digital Code* (meta data). The Digital Code makes it possible to search for CC licensed material.<sup>7</sup>

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<sup>4</sup>The drafting of version 3.0 has begun and new versions are expected during 2006.

<sup>5</sup>According to *Yahoo!* there are currently 53 million web pages that link to a Creative Commons license. See <http://creativecommons.org/weblog/entry/5579>


<sup>6</sup><http://creativecommons.org/license>

<sup>7</sup>See for example <http://search.creativecommons.org/>


## 6.2 The Options

The options, or license elements, are *Attribution*, *NonCommercial*, *ShareAlike* and *NoDerivs*. These can be combined to form a total of six different licenses.


### 6.2.1 Attribution

 The Attribution element is present in all of the six combinations. It means that the licensees are required to give the original author credit.


### 6.2.2 ShareAlike

 The ShareAlike element adds a copyleft clause. The licensee is allowed to make derivative works from the work on the condition that they, in turn, are licensed under the same license.

### 6.2.3 NoDerivs

 The NoDerivs element prohibits derivative works. Licensees are allowed to copy and share the work but only in its original, unmodified, form.

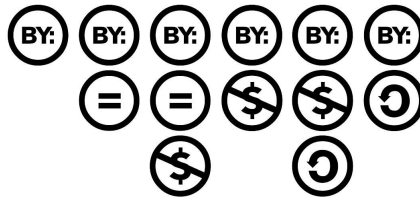
### 6.2.4 NonCommercial

 The NonCommercial element means that the rights granted in the license apply only to non-commercial uses. Any use that is "primarily intended for or directed toward commercial advantage or private monetary compensation" falls outside the scope of the license.

## 6.3 The Licenses

These elements can be combined to form six different licenses:

- Attribution
- Attribution-NoDerivs
- Attribution-NonCommercial-NoDerivs
- Attribution-NonCommercial
- Attribution-NonCommercial-ShareAlike
- Attribution-ShareAlike



The ShareAlike and NoDerivs elements are incompatible and cannot be used together.

## 6.4 Examples

Let us look at a few examples to illustrate this.

### 6.4.1 Commercial sample

Anders is a young talented musician. He has recorded a CD but he is not very well known so he uses the *Creative Commons Attribution-NonCommercial-NoDerivs* license (also known as the *Creative Commons Music Sharing License*) to encourage people to copy and share the record. This means that more people get to hear his music. Some of these people are likely to want to buy a CD of the music. Since Anders has retained commercial rights, he is the only one who is allowed to sell these CDs.

### 6.4.2 Collaboration

Creative Commons licenses, together with information and communication technologies, enable new forms of collaboration. It is now easy to find someone on the other side of the world to collaborate with on creative projects. Currently the best example is probably the distributed development model of free software.<sup>8</sup> If people from different parts of the world share a need for software that performs some essential task they can collaborate, over the internet, and write one program together, instead of individually writing separate such programs all by themselves.

In much the same way, people can collaborate to create music or write novels. They do not even have to actually collaborate. They can independently modify each other's work. For example, someone who likes to play the guitar in his spare time but does not have enough spare time to actually play with a band can use a search engine that reads CC meta data to find CC licensed works. He can then, in his own time, record new guitar parts for the songs and upload them again. Other people can later find them and add even more parts. This is impersonal collaboration is very similar to the next example, remixes.

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<sup>8</sup>See e.g. Eric S. Raymond, *The Cathedral and the Bazaar* for more on this model. Available online at: <http://www.catb.org/~esr/writings/cathedral-bazaar/>

### 6.4.3 "Remixes"

Remixes of music is a form of art that has been profoundly influenced by the changes in technology. Using a personal computer, it is now possible to not only sample parts of a song but to cut it up into pieces, reassemble them, perhaps in a completely different order or combined with pieces from several other songs, apply effects, shift time and pitch etc. Such a remix, or mash-up, will, however, be considered a derivative work under copyright law and a license, such as a Creative Commons license, would be required to enable redistribution of the new works.

A good, recent, example would be the Swedish synth band Auto-Auto.<sup>9</sup> When they released their EP "Totem" they chose to not only make it available as a finished product but to release it under a Creative Commons Sweden license<sup>10</sup>, complete with remix kits<sup>11</sup> for all songs on the EP. Artists from all over the world are now participating in a competition for the best remix of "Totem".

## 7 Other CC licenses

### 7.1 Sampling Licenses

The *Creative Commons Sampling Licenses* give a licensee explicit permission to use *samples* from the licensed work in the creation of new works. This enables artists to sample sounds from the recordings of other artists and use those samples in their own songs. In the same way, a piece of a photograph can be included in a collage or a clip from one film can be used in another film. The *Sampling Plus* license additionally allows non-commercial distribution, such as file-sharing, of the entire work. Finally, the *Noncommercial Sampling Plus* license allows sampling, and redistribution in full, but requires that it is done only for non-commercial purposes.

### 7.2 Music Sharing License

The *Creative Commons Music Sharing License* gives the licensee permission to download, copy, file-share, trade, distribute, and publicly perform (e.g. webcast) the work for non-commercial purposes as long as the author is acknowledged and no derivative works are made. Unlike most of the other Creative Commons licenses, this license does not really create a *creative commons*. It can, perhaps, establish a "commons" of music that can be freely file-shared but there is no commons in the sense otherwise used in this chapter. Works under this license cannot be used as building blocks for new works.

The Music Sharing License is actually just another name for the Attribution-NonCommercial-NoDerivs 2.0 license.

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<sup>9</sup><http://www.auto-auto.se/>

<sup>10</sup>Creative Commons Attribution-NonCommercial-ShareAlike 2.5 Sweden, <http://creativecommons.org/licenses/by-nc-sa/2.5/se/>

<sup>11</sup>Available at <http://totem.auto-auto.se/>

### 7.3 Developing Nations

The *Creative Commons Developing Nations License* is a relatively new addition to the family of Creative Commons licenses. The idea is to license the work under a Creative Commons Attribution license in developing nations, regardless of what license the work is under in other jurisdictions. A developing nation is defined as any nation that is not classified as a "high-income economy" by the World Bank.

In many cases, there would be no market for the work in the developing nation. By using the Developing Nations License, a licensor can let people in developing nations use the work, and make derivative works from it, for free whilst retaining all rights in the rest of the world. Since information is non-scarce, the copyright holder does not lose anything by giving these people a license to the work at no cost.

### 7.4 Founders' Copyright

The early US copyright system protected a work for 14 years, renewable once to a maximum of 28 years. Creative Commons has launched the *Founders' Copyright* initiative to let copyright holders, voluntarily, use this shorter copyright term instead of the default copyright term, life of the author plus 70 years. To recreate the functionality of a 14- or 28-year copyright, the contributor will sell the copyright to Creative Commons for \$1.00, at which point Creative Commons will give the contributor an exclusive license to the work for 14 (or 28) years.

For the vast majority of works, even this should be well over the commercial life time. This initiative has, however, not been very successful. Hardly any works have been released under the Founders' Copyright.

It is an interesting idea, however. Many technology oriented books, for example, will probably not have any significant commercial value 14 years after publication. By limiting the copyright term in this way, those books can become a part of the commons and relevant parts of them can be reused and updated by anyone. Without this limitation of copyright, the works would likely go out of print while the copyright would prevent third parties from republishing them (e.g. online) for another 100 years or so, at which point they are unlikely to be of value to anyone but a historian.

### 7.5 Public Domain Dedication

Finally, there is the *Creative Commons Public Domain Dedication*. Using this, a copyright holder can waive his rights to a work and dedicate it to the *public domain*. The intended result of this is that the work becomes free of copyright, comparable to a work whose copyright has expired. Since copyrights are automatic, this kind of dedication to the public domain is necessary. An explicit license or public domain dedication is the only practical way to let people know in advance that they will not be sued for using something.

## 8 Conclusions

By using the Creative Commons licenses an author can, as we have seen, remove some of the restrictions that copyright law, by default, places on a work. This has always been possible but Creative Commons provides a simple and standardised way to do it. The simplicity and the wide adoption of CC licenses also means that potential licensees can easily determine whether a certain work is available for their intended use. They just have to look for the CC icons.

Creative Commons licenses can also be used in the way outlined by Stallman. A functional work would use an Attribution or Attribution-ShareAlike license. Aesthetic works or works expressing an opinion could use Attribution-NonCommercial-NoDerivs to permit only verbatim copying for non-commercial purposes. Alternatively the NoDerivs element could be removed or replaced by the ShareAlike element to encourage the remix culture enabled by modern technology.

However, this would apply only for works where the author has chosen to apply a CC license. As stated in the introduction, Creative Commons, unlike Stallman, is not on a normative mission. CC lets authors "set their works free" but does not require this of authors.

## References

- Stallman, R. M. (2002). *Free Software, Free Society: Selected Essays of Richard M. Stallman*. GNU Press, Boston.
- Vaidhyathan, S. (2001). *Copyrights and Copywrongs The Rise of Intellectual Property and How It Threatens Creativity*. New York University Press, New York.