

Creative Commons License: A Step Further Towards Open Access

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1. Introduction

Intellectual Property (IP) is primarily recognized in the intangible forms of human cognitive discourses and is popularly expressed as well as identified in different concepts such as Copyright, Trademarks, Patents etc. The social construction of reality is always sensed through the different perceptions of human senses and as sociologists argue, the entire creation of human knowledge is getting produced every time through the senses. Now, if human mind is performing plethora of intellectual activities every moment, these activities should be protected from any misuse or unfair usage, moreover the creators of such production should be given due credit and financial security which in turn would come up to an inspiration for the concerned person to produce further works. For the sake of our discussion, we would be only confined to the Copyright and its fair usage in which the term 'fair' means the use and utilization someone's works commercially and non-commercially without infringing the impositions of Copyright. Here comes "Creative Commons", a non-profit organization in America to the rescue. Actually, it's the License of Creative Commons (CC) that creates the path of using one's copyrighted work in a customized as well as standardized manner. In this present society of technological revolution, media viz. Print, digital, electronic, audio, video, etc. are randomly being produced in different means such as Smart Phones, laptops etc. Now, if such huge bytes are getting produced in each and every second in the world, there must have been some controlling mechanism so far as their usage is concerned. Suppose A creates an Audio-Video file of their video shoot and uploaded the same on YouTube. B, on the other hand, without seeking permission from A is using the same video for his own purposes because he has come to know that downloading videos from YouTube is not a matter of any legal hazards. In such circumstances, B, unknowingly, infringes the copyright of A's video and is responsible for any legal action against him. In our day-to-day life, we make use of such media files for a variety of purposes. No matter what your purposes are, whenever we are doing such activities, we commit the crime of copyright Infringement which is a punishable offence.

2. Copyright

Wikipedia defines that copyright is a legal right, existing globally in many countries, that basically grants the creator of an original work exclusive rights to determine and decide whether, and under what conditions, this original work may be used by others. This is usually only for a limited time. The exclusive rights are not absolute but limited by limitations and exceptions to copyright law, including fair use. A major limitation on copyright on ideas is that copyright protects only the original expression of ideas, and not the underlying ideas themselves. It is a form of intellectual property, applicable to certain forms of creative work. Some, but not all jurisdictions require "fixing" copyrighted works in a tangible form. It is often shared among multiple authors, each of whom holds a set of rights to use or license the work, and who are commonly referred to as rights holders. These rights frequently include reproduction, control over derivative works, distribution, public performance, and moral rights such as attribution. However, 'Copyright' has been defined as a form of

protection for “original works of authorship”, including literary, dramatic, musical, dramatic, artistic, that fixed in a tangible medium of expression.

2.1 Types of work under copyright

- Audiovisual works, such as TV shows, movies, and online videos
- Sound recordings and musical compositions
- Written works, such as lectures, articles, books, and musical compositions
- Visual works, such as paintings, posters, and advertisements
- Video games and computer software
- Dramatic works, such as plays and musicals

Ideas, facts, and processes are not subject to copyright. According to copyright law, in order to be eligible for copyright protection, a work must be *creative* and it must be *fixed* in a tangible medium. Names and titles are not, by themselves, subject to copyright.

3. Fair Use

Any work which is under Digital Millennium Copyright Act, 1998 has a provision of “Fair Use”. Fair use is a legal doctrine that says one can reuse copyright-protected material under certain circumstances without getting permission from the copyright owner. In the United States, fair use is determined by a judge, who analyzes a specific case based on a set of principles. Different countries have different rules about when it’s okay to use material without the copyright owner’s permission. For example, in the United States, works of commentary, criticism, research, teaching, or news reporting might be considered fair use. Some other countries have a similar idea called fair dealing that may work differently. One’s usage is not automatically fair use when one uses copyrighted material one doesn’t own, even if one gives credit to the copyright owner, post a disclaimer such as “no infringement intended,” or add some original content to someone else’s content. In particular, uses that do not comment on or criticize the content used (and that instead serve as a substitute for the original work) are unlikely to be considered fair uses.

3.1 The Constitution of Fair Use

3.1.1. The purpose and character, of the use, including whether such use is of commercial nature or is for nonprofit educational purposes

Courts typically focus on whether the use is “transformative.” That is, whether it adds new expression or meaning to the original, or whether it merely copies from the original. Commercial uses are less likely to be considered fair, though it’s possible to monetize a video and still have one’s usage be a fair use.

3.1.2 The nature of the copyright work

Using material from primarily factual works is more likely to be fair than using purely fictional works.

3.1.3 The amount and substantiality of the portion used in relation to the copyrighted work as a whole

Borrowing small bits of material from an original work is more likely to be considered fair use than borrowing large portions. However, even a small taking may weigh against fair use in some situations if it constitutes the “heart” of the work.

3.1.4 The effect of the use upon the potential market for, or value of, the copyrighted work

Uses that harm the copyright owner's ability to profit from his or her original work are less likely to be fair uses. Courts have sometimes made an exception under this factor in cases involving parodies.

4. Creative Commons License

The Creative Commons copyright licenses and tools forge a balance inside the traditional "all rights reserved" setting that copyright law creates. These tools give everyone from individual creators to large companies and institutions a simple, standardized way to grant copyright permissions to their creative work. The combination of the tools and the users is a vast and growing digital commons, a pool of content that can be copied, distributed, edited, remixed, and built upon, all within the boundaries of copyright law. All Creative Commons licenses have many important features in common. Every license helps creators (licensors) if they use the tools — retain copyright while allowing others to copy, distribute, and make some uses of their work — at least non-commercially. Every Creative Commons license also ensures licensors get the credit for their work they deserve. Every Creative Commons license works around the world and lasts as long as applicable copyright lasts (because they are built on copyright). These common features serve as the baseline, on top of which licensors can choose to grant additional permissions when deciding how they want their work to be used.

A Creative Commons licensor answers a few simple questions on the path to choosing a license — first, do I want to allow commercial use or not, and then second, do I want to allow derivative works or not? If a licensor decides to allow derivative works, he/she may also choose to require that anyone who uses the work — called them licensees — to make that new work available under the same license terms. This idea is called "ShareAlike" and it is one of the mechanisms that (if chosen) helps the digital commons grow over time. ShareAlike is inspired by the GNU General Public License, used by many free and open source software projects.

The licenses do not affect freedoms that the law grants to users of creative works otherwise protected by copyright, such as exceptions and limitations to copyright law like fair dealing. Creative Commons licenses require licensees to get permission to do any of the things with a work that the law reserves exclusively to a licensor and that the license does not expressly allow. Licensees must credit the licensor, keep copyright notices intact on all copies of the work, and link to the license from copies of the work. Licensees cannot use technological measures to restrict access to the work by others.

4.1 Layers of Licenses

The public copyright licenses of CC incorporate a unique and innovative "three-layer" design. Each license begins as a traditional legal tool, in the kind of language and text formats that most lawyers know and love. The CC calls this the Legal Code layer of each license.

But since most creators, educators, and scientists are not in fact lawyers, they also make the licenses available in a format that normal people can read — the Commons Deed (also known as the "human readable" version of the license). The Commons Deed is a handy reference for licensors and licensees, summarizing and expressing some of the most important terms and conditions. Think of the Commons Deed as a user-friendly interface to the Legal Code beneath, although the Deed itself is not a license, and its contents are not part of the Legal Code itself.

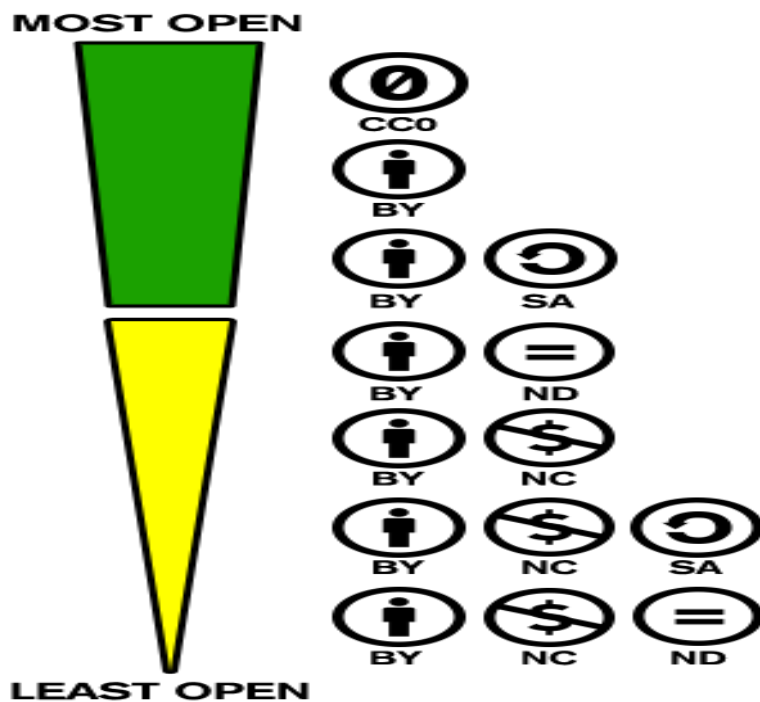
The final layer of the license design recognizes that software, from search engines to office productivity to music editing, plays an enormous role in the creation, copying, discovery, and distribution of works. In order to make it easy for the Web to know when a work is available under a Creative Commons license, they provide a “machine readable” version of the license — a summary of the key freedoms and obligations written into a format that software systems, search engines, and other kinds of technology can understand. They developed a standardized way to describe licenses that software can understand called CC Rights Expression Language (CC REL) to accomplish this.

Searching for open content is an important function enabled by their approach. One can use Google to search for Creative Commons content, look for pictures at Flickr, albums at Jamendo, and general media at spinxpress. The Wikimedia Commons, the multimedia repository of Wikipedia, is a core user of their licenses as well.

Taken together, these three layers of licenses ensure that the spectrum of rights isn’t just a legal concept. It’s something that the creators of works can understand, their users can understand, and even the Web itself can understand.

4.2 Types and Attribution of Licenses

Pic 1 Different licenses and the rights



4.2.1 Attribution CC BY

This license lets others distribute, remix, tweak, and build upon your work, even commercially, as long as they credit the creator for the original creation. This is the most accommodating of licenses offered. It is recommended for maximum dissemination and use of licensed materials.

4.2.2 Attribution-ShareAlike CC BY-SA

This license lets others remix, tweak, and build upon someone's work even for commercial purposes, as long as they credit the creator and license their new creations under the identical terms. This license is often compared to "copyleft" free and open source software licenses. All new works based on one's work will carry the same license, so any derivatives will also allow commercial use. This is the license used by Wikipedia, and is recommended for materials that would benefit from incorporating content from Wikipedia and similarly licensed projects.

4.2.3 Attribution-NoDerivatives CC BY-ND

This license allows for redistribution, commercial and non-commercial, as long as it is passed along unchanged and in whole, with credit to the creator.

4.2.4 Attribution-NonCommercial CC BY-NC

This license lets others remix, tweak, and build upon one's work non-commercially, and although the new works must also acknowledge the creator and be non-commercial, they don't have to license their derivative works on the same terms.

4.2.5 Attribution-NonCommercial-ShareAlike CC BY-NC-SA

This license lets others remix, tweak, and build upon one's work non-commercially, as long as they credit the creator and license their new creations under the identical terms.

4.2.6 Attribution-NonCommercial-NoDerivatives CC BY-NC-ND

This license is the most restrictive of the six main licenses, only allowing others to download one's works and share them with others as long as they credit the creator, but they can't change them in any way or use them commercially.

4.2.7 Public Domain Work CC0

CC0 enables scientists, educators, artists and other creators and owners of copyright- or database-protected content to waive those interests in their works and thereby place them as completely as possible in the public domain, so that others may freely build upon, enhance and reuse the works for any purposes without restriction under copyright or database law. In contrast to CC's licenses that allow copyright holders to choose from a range of permissions while retaining their copyright, CC0 empowers yet another choice altogether – the choice to opt out of copyright and database protection, and the exclusive rights automatically granted to creators – the "no rights reserved" alternative to the licenses.

Unlike the Public Domain Mark, CC0 should not be used to mark works already free of known copyright and database restrictions and in the public domain throughout the world. However, it can be used to waive copyright and database rights to the extent you may have these rights in your work under the laws of at least one jurisdiction, even if one's work is free of restrictions in others. Doing so clarifies the status of one's work unambiguously worldwide and facilitates reuse.

Europeana: Europe's digital library — releases its metadata into the public domain using CC0. This massive dataset consists of descriptive information from a huge trove of digitized cultural and artistic works. By removing all restrictions on the use of the metadata that describes these cultural works, Europeana creates opportunities for developers, designers, and other digital innovators to create applications, games for mobile devices, and websites that visualize and represent the diverse collection of artistic works in Europeana.

Open Goldberg Variations: Before the Open Goldberg Variations, public domain recordings of Bach's Goldberg Variations were hard to find, even though the scores themselves were in the public domain. Open Goldberg Variations wanted to change that, so it teamed up with professional musician Kimiko Ishizaka and started a Kickstarter project to create studio-quality recordings, promising to release them into the public domain using the CC0 public domain dedication tool. According to the project founders, "Musicians are usually not willing to withdraw their copyrights and their control over usage, but we feel that they thus miss opportunities to contribute to the greater good and benefit from wider distribution of their works. If this project succeeds, we hope that the recording will be available to everyone forevermore, and that it will be a truly widely known and enjoyed artistic work." Sure enough, the project was funded at nearly double its original funding goal, and as a result all 30 variations performed by Kimiko Ishizaka are now available for free download via CC0.

Metropolitan Museum of Art: All public domain images in its collection are shared under CC0, which expanded their digital collection by over 375,000 images as well as provided data on over 420,000 museum objects spanning more than 5,000 years. Through the power of the commons, billions of people are now able to enjoy the beauty of the Met's collections as well as participate in the continued growth of the commons, utilizing the infrastructure that makes greater collaboration possible.

5. Application of Creative Commons License

5.1 Online Resources

One needs to select the license that is appropriate for the material from the CC license chooser and then follow the instructions to include the HTML code. The code will automatically generate a license button and a statement that one's material is licensed under a CC license. If one is only licensing part of a work (for example, if one has created a video under a CC license but are using a song under a different license), be sure to clearly mark which parts are under the CC license and which parts are not. The HTML code will also include metadata, which allows the material to be discovered via Creative Commons-enabled search engines.

5.2 Offline resources

One needs to identify which license one wishes to apply to the work and either (a) mark the desired work with a statement such as, "This work is licensed under the Creative Commons [insert description] License. To view a copy of the license, visit [insert url]"; or (b) insert the applicable license buttons with the same statement and URL link.

5.3 Built in Platforms

Many media platforms like Flickr, YouTube, and SoundCloud have built-in Creative Commons capabilities, letting users mark their material with a CC license through their account settings. The benefit of using this functionality is that it allows other people to find one's content when searching on those platforms for CC-licensed material. If the platform where one is uploading the content does not support CC licensing, one can still identify one's content as CC-licensed in the text description of the content.

6. Violation of License

A CC license terminates automatically when its conditions are violated. For example, if a reuser of CC-licensed material does not provide the attribution required when sharing the work, then the user no longer has the right to continue using the material and may be liable for copyright infringement. The license is terminated for the user who violated the license. However, all other users still have a valid license, so long as they are in compliance. Under the 4.0 licenses, a licensee automatically gets these rights back if one fixes the violation within 30 days of discovering it. If one applies a Creative Commons license and a user violates the license conditions, one may opt to contact the person directly to ask them to rectify the situation or consult a lawyer to act on one's behalf. Creative Commons is not a law firm and cannot represent anyone or give someone legal advice, but there are lawyers who have identified themselves as interested in representing people in CC-related matters.

7. Creative Commons Associates in India

The Creative Commons group in Republic of India within the Asia Pacific region is made up of three organizations who deliver roadmap activities. They are Wikimedia India (with a focus on outreach), Acharya Narendra Dev College (with a focus on OER), and The Centre for Internet & Society (Legal Focus).

7.1 Wikimedia India

The Wikimedia India Chapter (Registered Name: Wikimedia Chapter) is an independent and not-for-profit organization that supports, promotes and educate the general Indian public about the availability and use of free and open educational content, which includes the ability to access, develop and contribute to encyclopedias, dictionaries, books, images, etc. The objective of the Chapter is to educate Indian public about availability and use of free and open educational content and build capacity to access and contribute to such resources in various Indian languages.

7.2 Acharya Narendra Dev College

Acharya Narendra Dev College is a constituent college of University of Delhi situated in Govindpuri (Kalkaji), Delhi. Established in 1991, the college has a unique distinction of being the only college in the University of Delhi that is primarily for science. Acharya operates under the aegis of, and is fully funded by, the government of Delhi. It is named after the great educationist and reformist of modern India, Acharya Narendra Dev.

7.3 The Centre for Internet and Society

The Centre for Internet and Society is a non-profit research organization that works on policy issues relating to freedom of expression, privacy, accessibility for persons with disabilities, access to knowledge and IPR reform, and openness (including open government data, free/open source software, open standards, open access to scholarly literature, open educational resources, and open video), and engages in academic research on digital natives and digital humanities.

8. Conclusion

Creative Commons License works completely as complement with general public licenses. The purpose of such license is to make fruitful use of one's work maintaining the rights and permission the licensor (author) makes provision for a particular work. Undoubtedly, CC licenses are copyright licenses, and depend on the existence of copyright to work. CC licenses are legal tools that creators and other rights holders can use to offer certain usage rights to the public, while reserving other rights. Those who want to make their work available to the public for limited kinds of uses while preserving their copyright may want to consider using CC licenses. Others who want to reserve all of their rights under copyright law should not use CC licenses.

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