

Copyright, licensing and indigenous rights in a digital world

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Question:

I've heard about the Creative Commons licences. How are they applied in an academic setting and what is their relationship to traditional copyright and indigenous rights?

Answer:

This is a very relevant question given that all academics both use and create copyrighted content. Trends in digital technologies are creating new ways for individuals and institutions to publish a multitude of content online, including research, educational materials, music, film, videos, photographs and illustrations. Tools like wikis, blogs and social networking services used are for teaching and learning, and allow users to collaborate and share information instantly. Free open educational courseware is becoming increasingly common, and authors routinely publish in online journals and institutional repositories.

Digital publishing is easier and more economically viable than ever before. To help facilitate the sharing and legal protection of digitally published content an international non profit organisation (including legal experts) developed the Creative Commons licences in 2001. The licences allow you to exercise your rights in flexible ways, not only as a user of copyrighted material, but also as a creator. You can:

- indicate whether or not your material may be shared, copied, distributed, or adapted; and under what conditions and for what purpose (without users having to seek permission)
- use content released under a Creative Commons licence in your lectures, presentations or publications, without seeking permission from the copyright owner or breaching copyright (providing you abide by the terms of the licence)
- easily search for free content in search engines and databases because the licences are in a 'machine readable' format.

Originally developed for a print environment, copyright law becomes more complicated when adapted to a digital environment. If you are intending to publish digitally or incorporate online material into your work it is important to gain a basic understanding of copyright law.

Copyright and fair dealing

While there are differences in legislation between countries, international conventions provide similar legal protection. At a basic level, copyright law seeks to balance the rights of copyright owners with public access to their work. Legally, copyright owners have the right to control the copying, use and dissemination of their work for a limited period of time, while fair dealing provisions permit certain uses

of the work by others, for example for educational, study and research purposes. Copyright licences on the other hand legally grant someone the right to copy, distribute or adapt a work beyond the provisions provided by law.

For example, in order to provide students with course materials many universities purchase a range of licences that allow staff to make multiple copies and distribute material beyond the provisions of fair dealing (as well as allowing allocation of licence fees to identified copyright owners). In New Zealand this allows copies to be made from hard copy originals only, as there is no licence which covers materials downloaded from the Internet or an electronic database. However, recent amendments to Section 48 of the 1994 New Zealand Copyright Act now allow staff to copy and communicate a work from the Internet (provided the material has been posted with permission of the copyright owner). A new section of the Educational Provisions Act (44A) also allows staff to temporarily store and post material from a website on to a learning management system. In addition, the University of Auckland also purchases licences to allow copying from radio and television broadcasts and library databases.

Accompanying the various licences and broad exceptions provided by copyright law are many strict terms which users must respect; for this reason many universities provide staff with copyright guidelines and employ a copyright advisor. While an awareness of traditional copyright and other licences is important, the Creative Commons licences are increasingly seen as a valid extension, particularly for those who want to share their work freely.

Application of Creative Commons licences in the academic sector

Similar to the open access movement, Creative Commons licences aim to facilitate sharing by providing categories of licences that allow creators to grant some rights to users, while also retaining some rights. This is known as “some rights reserved”. International conventions are similar enough that authors can apply the generic licences, or licences adapted for different countries (see links at the end of this article). There are four core licences: *Attribution*; *Noncommercial*; *No Derivative Works* and *Share Alike* which create six combinations of licences.

All licences require correct attribution to the author. As long as you attribute in the manner specified by the licence you are free to:

- **Attribution (BY)**: copy, distribute, transmit and adapt the work for commercial and noncommercial purposes
- **Attribution-Noncommercial (BY-NC)**: copy, distribute, transmit and adapt the work for noncommercial purposes only
- **Attribution-Noncommercial-No Derivative Works (BY-NC-ND)**: copy, distribute and transmit the work for noncommercial purposes only; as long as the work is not altered
- **Attribution-Noncommercial-ShareAlike (BY-NC-SA)**: copy, distribute, transmit and adapt the work for noncommercial purposes only; but any adapted work must be distributed under the same or similar licence.
- **Attribution-Share Alike (BY-SA)**: copy, distribute, transmit and adapt the work for commercial or noncommercial purposes; but any adapted work must be distributed under the same or similar licence
- **Attribution-No Derivative Works (BY-ND)**: copy, distribute and transmit the work for

commercial or noncommercial purposes; as long as the work is not altered.

The licences Attribution and Attribution-Noncommercial are the least restrictive and closely align to the values of open access and the dissemination of knowledge for the public good. In the academic setting copyright protection is applied in various ways, with the application of Creative Commons licences becoming more commonplace. There are numerous examples of Open Education Resources (resources for teaching, learning and research) that apply Creative Commons licences. These include a range of courseware like lectures, notes, lessons, textbooks or videos (see links to shareable courseware at the end of this article). Even academic publishers such as Bloomsbury Academic are beginning to incorporate Creative Commons licences into their business models:

<http://www.bloomsburyacademic.com/business.htm>.

The *PLoS: Public Library of Science* journals utilise the Creative Commons licence, Attribution (BY), for all published works; "...authors retain ownership of the copyright for their article, but authors allow anyone to download, reuse, reprint, modify, distribute, and/or copy articles in the PLoS journals, so long as the original authors and source are cited. **No permission is required from the authors or the publishers**" (<http://www.plosbiology.org/static/license.action>). The *BioMed Central* journals have an Open Access licence agreement which is identical to the Creative Commons Attribution licence (<http://www.biomedcentral.com/info/about/license>) allowing anyone to copy, distribute and adapt the work under certain conditions.

However, open access content is not always released under Creative Commons licences, for example the *Mai Review* journal has a policy where the authors reserve all rights under the New Zealand Copyright Act 1994, meaning permission is required for copying, distributing or adapting works beyond fair dealing provisions.

Author's rights

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Harvard University's arts and science faculty agreed to automatically publish all their academic papers in an open access institutional repository with the authors retaining all copyrights, unless they sign a waiver to opt out. Academics who publish in the University of Auckland's institutional repository are also protected by all rights reserved copyright, *unless otherwise indicated*. This means authors can also choose to place restrictions on their work (e.g. an embargo which may be appropriate for commercially or culturally sensitive works), or they can apply a Creative Commons licence as is the case with this PhD theses, which has the Attribution (BY) licence: <http://researchspace.auckland.ac.nz/handle/2292/4528>.

This is in line with trends towards republishing or self archiving articles in an open access institutional repository (the most permanent archive), or an author's own website (usually temporary). While an exclusive licence may prevent an author doing this, or submitting their article to another journal, there are now copyright addendums available online that may be attached to a journal publisher's copyright

agreement so you can retain certain rights (although the publisher may or may not agree).

Cultural and intellectual property rights of indigenous people

Copyright includes intellectual property rights which protect the expression of information, ideas or other intangibles associated with creative and artistic works, patents, trademarks, industrial design and trade secrets. However, while this protects the individual creator for a limited period of time, it does not protect the expression of cultural information, knowledge or ideas which may have originated outside the time period protected by copyright law. These may also be owned and used collectively, for example, prayer, dance, oral stories, images of ancestors, objects of material and traditional culture. Without copyright protection, the digitised forms of such information easily become vulnerable to misappropriation.

Article 29 of *The Declaration on the Rights of Indigenous Peoples* addresses Cultural and Intellectual Property, and states that:

Indigenous peoples have the right to own and control their cultural and intellectual property. They have the right to special measures to control and develop their sciences, technologies, seeds, medicines, knowledge of flora and fauna, oral traditions, designs, art and performances. (<http://www.iwgia.org/sw1592.asp>)

This declaration hasn't been sanctioned by the US, Canada, Australia or New Zealand. There is, however, information available from the Australian Copyright Council on indigenous culture and copyright, discussing moral obligations regarding the use of indigenous material that is vulnerable to misappropriation: <http://www.copyright.org.au/information/indigenous-culture/indigenous.htm>

Initiating discussion about an indigenous Creative Commons licence is listed as a high priority on the Creative Commons Aotearoa New Zealand website and may provide opportunities to explore mechanisms to allow indigenous peoples to be attributed as the owners of their cultural and intellectual property, as well as raising awareness around the issues of placing restricted and culturally sensitive information online.

Advantages of Creative Commons Licences

There are many advantages to publishing under a Creative Commons licence. Open dissemination of knowledge facilitates creativity and collaboration and enhances the pool of resources available to educators while attribution is important for academic reputations. However, there are some issues to keep in mind if applying a Creative Commons licence to your work, these include:

- licences are non-revocable (you can't change your mind)
- licences only apply if you are the sole rights owner or have the consent of co-owners (material you have incorporated from elsewhere is not covered)
- users do not have to inform you of how your work is being used
- there is no mechanism for generating income or royalties
- some combinations of licences are incompatible e.g. No Derivative Works cannot be combined with Share Alike (as this only applies to derivative works). Make sure you check the licence terms before applying them.

Applying for Creative Commons licences

You don't have to purchase Creative Commons licences and they are very easy to implement from these websites:

- Creative Commons - <http://creativecommons.org/>
- Information to read before licencing - http://wiki.creativecommons.org/Before_Licensing
- Licences for different countries: <http://creativecommons.org/international/>
- Latest versions of the NZ Licences (3.0 New Zealand):
http://www.creativecommons.org.nz/choose_and_apply_a_cc_licence
To apply for a licence, BY for example, click on "Choose BY Licence" and follow the simple instructions (note options for adding text to offline work and tracking your work).
- Public domain tools are also available if you want to waive all copyright interests and place a work in the public domain (although it may not be completely effective in every jurisdiction):
<http://creativecommons.org/publicdomain>
- Plugins for MS Office products:
<http://www.microsoft.com/downloads/details.aspx?familyid=d1ddbdc8-627f-415a-9b0a-97362bc9b480&displaylang=en#top>

Finding Creative Commons licensed material

Finding Creative Commons licensed material is easy. Because the licences are machine readable, many search engines allow you to search by usage rights, for example DigitalNZ is a major gateway to finding and sharing New Zealand digital content from government departments, publicly funded organisations, the private sector and community groups. When compared with Google, a simple comparison of search results for the keyword *maori* indicates that Google is useful for finding current news and opinions in blogs and wikis, while DigitalNZ yields far richer results for manuscripts, research papers and newspapers.

- Google Advanced Search: http://www.google.co.nz/advanced_search?hl=en
Click on "*Date, usage rights, numeric range, and more*" to filter results by usage rights.
- DigitalNZ: <http://www.digitalnz.org/>
First run a keyword search, then place a limit on your results. Click links on the right to limit to licence type e.g. *Some rights reserved*. Links on the left indicate resource type. Images from Flickr with a Creative Commons licence are also included. Some results may be licensed to a third party and will require permission from copyright owners (e.g. images from the Timeframes database), so check legal statements or terms and conditions. See this search example:
http://search.digitalnz.org/en/search?search_text=maori.

There are many other sites available for finding images, audio visual material and shareable courseware:

Audio

- <http://www.freesound.org/>
- <http://ccmixter.org/>

Images and visual material

- Google Advanced Image Search: http://images.google.co.nz/advanced_image_search?hl=en
The “Usage right” filter will return images which have a Creative Commons licence or are labelled as being in the public domain.
- Clip art: <http://www.openclipart.org/>
- Photos: <http://www.flickr.com/>
Do a keyword search > select *Advanced search* > select “Only search within Creative Commons-licensed content”
- PowerPoints: <http://www.slideshare.net/>
- Sketches: <http://sketchor.com/>
- Video: <http://blip.tv/>

Shareable courseware:

- Connexions: <http://cnx.org/>
- MIT: <http://ocw.mit.edu/>,
- Open Learning Initiative: <http://oli.web.cmu.edu/openlearning/>
- OTAGO Polytechnic: http://wikieducator.org/Otago_Polytechnic
- Textbooks: <http://www.flatworldknowledge.com/>

Creative Commons case studies

- Pacific Media Centre: http://wiki.creativecommons.org/Case_Studies/Pacific_Media_Centre
- New Zealand Electronic Text Centre:
http://wiki.creativecommons.org/Case_Studies/New_Zealand_Electronic_Text_Centre

New Zealand websites

- Creative Commons Aotearoa New Zealand: <http://www.creativecommons.org.nz/>
- Copyright Council of New Zealand: <http://www.copyright.org.nz/>
- IPONZ (Intellectual Property Office of New Zealand): <http://www.iponz.govt.nz/cms>
- Make it Digital: <http://makeit.digitalnz.org/>
DigitalNZ’s information about creating digital content in New Zealand includes useful guides to digital publishing, copyright and enabling use & reuse of digital content:
<http://makeit.digitalnz.org/guidelines/enabling-use-reuse/>
- University of Auckland Copyright for Staff (staff only):
https://www.staff.auckland.ac.nz/uoa/for/staff/teaching/copyright-for-staff/copyright-for-staff_home.cfm

Suggested Readings

Bailey, C. W. (2008). Author's rights, tout de suite. Retrieved November 19, 2009, from <http://www.digital-scholarship.org/ts/authorrights.pdf>

EDUCAUSE Learning Initiative. (2007). 7 things you should know about Creative Commons. Retrieved November 19, 2009, from <http://www.educause.edu/ELI/7ThingsYouShouldKnowAboutCreat/156826>

Centre for Educational Research and Innovation, & Organisation for Economic Co-operation and Development (2007). Giving knowledge for free: The emergence of open educational resources, Retrieved November 19, 2009, from http://www.oecd.org/document/41/0,3343,en_2649_35845581_38659497_1_1_1_1,00.html

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