

Creative Commons

Copyright law aims to balance the rights of creators to earn a living from their works against the need for public access to their work. It prevents users from exploiting a work without permission and provides an ongoing incentive for creation and innovation. It gives creators the “exclusive” right to exploit their works for commercial gain but ensures that users can use them for criticism or review, news reporting, research and private study or for limited educational purposes. These limitations or exceptions to the exclusive rights of creators are generally known as “fair dealing” or “fair use” provisions. They are a fundamental part of copyright law and provide for uses which are fair and reasonable and supposedly have no effect on the market or value of the work.

A Creative Commons licence is one way for authors, scientists, artists, educators and other digital content creators to grant broad rights in their copyright material to the public, without people having to contact them to get permission.

Not the only alternative to the “all rights reserved” scenario. Creative Commons licences are not the **only** way creators can make their work freely available to the public. A creator can place their own statement on their work clearing it for use by others and adding their own conditions. This gives creators more flexibility to deal with their work in the future.

Undermining copyright. By using Creative Commons Licences, creators effectively relinquish control over their work and the ability to earn a living from it.

There is concern that widespread use of CC licences will result in a culture which expects free copyright use. An expectation could arise that authors *should* give away their work for free. Eventually, universities, companies, governments and other organisations will be less willing to pay for copyright material. The value of creators and their work will be undermined.

There are six Creative Commons licences, which incorporate one or more of the following elements:

- **Attribution:** allowing third parties to copy, distribute, display and perform the licensed work and derivative works based upon it, provided there is acknowledgement of the creator. All Creative Commons licences require attribution.
- **Non-commercial:** allowing third parties to copy, distribute, display and perform the licensed work and derivative works based upon it, for what are described as “non-commercial” purposes.
- **No derivative works:** allowing third parties to copy, distribute, display and perform copies of the licensed work, but not to make what are described as “derivative works”.
- **Share alike:** allowing third parties to distribute derivative works but only under a licence identical to the licence applying to the licensed work.

The terms and conditions of the Creative Commons licences are set out in what Creative Commons refers to as the “Legal Code”. There are also short-hand descriptions of the licences referred to as “human readable”.

Creative Commons licences are non-exclusive. This means that creators can, in theory, offer their work under a CC licence and then enter into a separate and different non-exclusive paying licence with someone else.

Concerns with Creative Commons

Inherent inflexibility. Creative commons does not give creators the flexibility to tailor licences to their own requirements. The standardised terms can not be supplemented or altered. For example, creators:

- can not limit licences to certain groups, such as non-profit organisations;
- can not limit licences to certain uses, such as personal or educational use; and
- can not impose a time limit on the licence.

A Creative Commons licence lasts for the duration of the period of copyright protection and is irrevocable within that period. This means that once a work is covered by a CC licence, control over the work is out of the creator’s hands (and their family’s) for the creator’s life plus fifty years. The period of copyright protection is longer overseas.

No compensation can be paid under a Creative Commons licence. Attaching a CC licence to a work will reduce the prospect of a creator ever deriving value from their work. It is unlikely that a publisher or other

person would pay an author for their work, if the work is or has been available for free through Creative Commons.

Problems with wording. It is important that creators understand the detail of the Creative Commons licences because the “human readable” descriptions and statements made by Creative Commons are unhelpful. In particular, the definitions of the terms “non-commercial” and “non-derivative” in the licence Legal Code need to be carefully considered.

The “non-commercial” licences only prohibit uses “primarily intended for or directed towards commercial advantage or private monetary compensation”. This means that works licensed under a Creative Commons “non-commercial licence” may actually be used a multitude of ways in which commercial benefit can be derived.

The “non-derivative” licences only prohibit editing or adaptation of the work and synchronisation of music or sound with moving images. People may still incorporate the licensed material into their own work in any context they like.

Problems facing creators who incorporate Creative Commons material into works. A creator’s ability to commercially exploit their work will be severely hampered if they incorporate Creative Commons licensed material into their own work. Also, creators using this material take on more legal risk because Creative Commons licences do not come with any of the usual warranties and indemnities that apply when copyright material is licensed. In fact, the CC licences seek to expressly exclude licensor liability.

Relationship between Creative Commons and CLL licensing schemes

CLL is part of a global network of copyright collectives that provide centralised licensing services for the reproduction of extracts from published works.

Copyright owners give CLL mandates to represent their works in educational and other settings. CLL grants licences to schools, universities, training establishments and other organisations to copy from such works subject to certain conditions. CLL collects licensing revenue which is returned to rights holders after deduction of operating costs and a contribution to the CLL Writers’ Support Fund.

As CLL’s mandate agreements are non-exclusive, a copyright owner is not precluded from licensing works to the public under a CC licence. However, if a work is offered under a CC licence and is subsequently reproduced in a school, university or other setting covered by a CLL licence, then the copyright owner will not receive copyright licensing fees that would otherwise be payable to them.

Conclusion

In summary, there are no benefits for professional creators in using Creative Commons. On the contrary, the downside in using Creative Commons can be substantial. It is important that anyone using Creative Commons has a full understanding of the implications.