

Creative Commons Licences: New Ways of Granting and Utilising Access to Information

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Abstract

This paper is introducing Creative Commons Licences (CCL) as an innovative model of flexible open content licences. After integrating this concept in the conflicting priorities of „intellectual property“ and „digital commons“, different applications, benefits and drawbacks of the licenses are described and discussed. The aim of this paper is to raise awareness about copyright issues among the audience and advice them how to apply and successfully utilise CCL. This paper is based on my diploma thesis “Creative Commons Licences: Chances and Risks for the Management of Non-Governmental Organisations” and points out how the CCL contribute to abolishing technical, economical and legal barriers and to creating access to information for everybody.

Introduction

The “knowledge society” of the 21st century faces unforeseen challenges regarding new ways of publishing and using digital goods. Therefore authors and users of digital works have to identify new potentials and use them within a legal framework. “Creative Commons Licences” (CCL) can support these digital players by offering an effective and flexible copyright management.

“Intellectual Property” versus “Digital Commons”

Authors of creative works and intangible assets are protected by copyright laws in the Anglo-American world and by the so called “droit d'auteur” or “Urheberrecht” in continental Europe. These laws provide authors with the exclusive rights to publish, distribute, reproduce, display, and to perform their works in public, either free of cost or by charging money from their audience. The transfer of rights to a third party (collecting society, publisher, legal or natural person) requires an individual contract, mostly in the form of a licence agreement. However, since the exception of “Fair Use”¹ allows quotation, current-affairs reporting, parody, private use or use of copyrighted material in education and science, not every use needs to be licensed.

Under German and US law, every work is automatically protected from the date of its creation until 70 years after the author's death. The idea behind these regulations is to provide a balance between the rights of the author and the general public. On one hand, they should protect the interests of the creator according to his intellectual property and encourage him to stay creative and produce new works. On the other hand, their aim is to satisfy the public's interest in unlimited supply of information and knowledge which possibly even leads to a

¹ Fair Use § 107 US Copyright; Schranken des Urheberrechts §§ 44a - 63a Urheberrechtsgesetz (UrhG).

“digital commons”. This balance is at risk of being more and more destabilised and the tense debate between knowledge as a commodity and knowledge as a public good hits the peak in our digital society. Reference may be made to “Digital Rights Management” (DRM), the prolonging of copyright duration or public controversies about copyright and copyleft issues.

Legal complexities are getting even worse by the fact that many users are not aware which use of a work is permitted and which is forbidden. Before risking an “unconscious” copyright infringement or contacting and negotiating with the author, they rather abandon any use of the work at all. Uses that are generally advocated but not explicitly allowed by the author may also drop out. This leads to a point where, for reasons of caution or uncertainty, even free works remain unused and the potential of legal use is not fully utilised.

Creative Commons: “Some Rights Reserved”

The concept of the non-profit organisation “Creative Commons” (CC) applies where the legal rules of copyright reach their limits. CC was founded by Lawrence Lessig, James Boyle, Michael Carrol et al in the United States in 2001. Its mission is to maintain the balance between the divergent interests. The organisation would like to contribute to access of creative works and to save the internet as a multi-media platform for spreading and legal sharing of works.

To achieve their objectives and to counter the current restrictive copyright law, CC has created a set of flexible open content licences. The idea behind these Creative Commons licences is no longer “all rights reserved” but “some rights reserved”. They allow authors to manage their rights in a differentiated but non-bureaucratic manner. New potentials of digital publishing, use and dissemination of content are to be supported and simplified by these flexible right assignments. However, the licences are neither in competition nor an alternative to traditional copyright, in fact they are based on and extend its principles. Creative Commons states its mission as follows:

“Too often the debate over creative control tends to the extremes. At one pole is a vision of total control — a world in which every last use of a work is regulated and in which ‘all rights reserved’ (and then some) is the norm. At the other end is a vision of anarchy — a world in which creators enjoy a wide range of freedom but are left vulnerable to exploitation. Balance, compromise, and moderation — once the driving forces of a copyright system that valued innovation and protection equally — have become endangered species.

Creative Commons is working to revive them. We use private rights to create public goods: creative works set free for certain uses. Like the free software and open-source movements, our ends are cooperative and community-minded, but our means are voluntary and libertarian. We work to offer creators a best-of-both-worlds way to protect their works while encouraging certain uses of them — to declare ‘some rights reserved.’

Thus, a single goal unites Creative Commons’ current and future projects: to build a layer of reasonable, flexible copyright in the face of increasingly restrictive default rules.²

² <http://wiki.creativecommons.org/History>.

To ensure applicability, legal certainty and acceptance of the CCL at a global level, the licences are being translated to national languages and ported to national laws. This leads to an international consistency in using the licence symbols and supports global exchange. In Germany for example, the CCL were adapted in 2004. The licences are currently available in 40 countries and work is in progress in 23 additional countries. According to its own figures, there have been over 140 million web pages marked with a CC-label in 2006; in June 2007 there were already 40 million photos on Flickr licensed under CC.



Attribution (BY): allows the licensee to copy, distribute, display, and perform the copyrighted work — and derivative works based upon it — but only if they give credit the way it is requested by the author. In the digital world it is usually done by linking back to the work's source (“linktribution”).



Non-Commercial (NC): others are allowed to copy, distribute, display, and perform the work — and derivative works based upon it — but for non-commercial purposes only.



No Derivative Works (ND): others may copy, distribute, display, and perform only verbatim copies of the work, not derivative works based upon it (this also includes translation or montage).



Share Alike (SA): users are allowed to distribute derivative works only under a license identical to the license that governs the original work. By applying this condition, the author can ensure that derivatives of the original are distributed under the free license he chose. Share Alike is similar to the copyleft principle.

Combining these sets of conditions results in six standard-licences, which are arranged according to their level of strictness in an ascending order in Figure 1.

The license choice will be expressed in three ways: The “Commons Deed” is a plain-language and human-readable summary of the licence, completed with the relevant icons. The “Legal Code” is the lawyer-readable fine print that makes sure the licence will stand up in court. The “Digital Code” or metadata is the machine-readable translation of the licence that helps search engines and other applications identify the work by its terms of use.³

Creative Commons in Practice

The internet offers new opportunities and ways to create, publish and share digital content. Users are becoming more and more creative. They use technologies and applications such as RSS (Really Simple Syndication), wikis, blogs, video and photo platforms or peer-to-peer-communities and change from being passive consumers to active producers and vendors of information. Anyone can become a “prosumer” and contribute to the digital commons, even without having an established technical know-how. By now, the potential of the so called “Web 2.0” has not only been identified by private users but also by many companies and organisations. Their next task is to find solutions for meeting the challenges of rights management in this era and for satisfying their audience's needs.

Basically, the CCL work with all creative media and content like texts, photos, images, audio and video files, multimedia-content, websites and blogs as well as other promotional and informational materials. Because of its openness, the licences are adopted in various applications of science, education, politics, entertainment, music, journalism, or the

³ <http://creativecommons.org/about/license/>.

information economy in general. On one hand, the assignment of metadata allows web applications to search for CC-licensed content: Google and Yahoo already offer this feature in their advanced settings. On the other hand, it allows content platforms like Flickr, Revver or the Internet Archive to apply the CCL to their user generated content. Furthermore there are many suppliers of private and public websites, blogs or projects who have decided to use free licences for their own content and collaborative projects.

freedom by default			freedom & limit depending on licence				licence agreement (CC-Button)
copy	share	publish	attribution	modification	commercial use	share alike	
			freedom	obligation		limit	

Figure 1: Six standard CC-licences.

Benefits of CC-licensing

One of the licences' main intentions is to establish legal certainty among the involved parties. They offer an easy, non-bureaucratic way to communicate and individually arrange permission to the distribution of any content. The author grants freedom of usage to his audience and can simultaneously stress the desired limits. The advantage for the potential user of a CC-licensed work can be spotted in the clear and simple declaration of granted rights and limits. Uncertainties concerning the legal use of contents are eliminated by this differentiated articulation.

Consequently, this leads to a greater pool of works and contributors: different parties can participate and collaborate with each other, build upon existing works or collectively develop new materials. Furthermore, the effort of arranging the terms of copyright regulations or permitted uses of content is minimised by the explicit classification of rights and freedoms.

Another advantage of the CCL is that a parallel commercial utilisation through the author remains possible. That means that an essay can be made accessible and free of charge on the internet while the author can additionally sell it as a hard copy or in an enriched version.

Moreover, the non-exclusivity of the licences allows individual agreements: If a publishing company would like to release a derivative of a BY-ND-NC-licensed photo in a commercial illustrated book, both parties can agree upon an arrangement beyond the original licence. This shows that the licences are not only suitable for non-profit purposes, but will also generate innovations and new business models. A further incentive which may persuade authors of a CC licensing is the prospect of a widespread dissemination of their content. The content's scope will increase and users multiply its further distribution through the unrestricted accessibility. Thus, the artificial shortage of information goods is brought to a halt.

Drawbacks of the CCL

Every author who publishes creative material under a CC-licence is confronted with the risks of potential copyright infringement like unauthorised or abusive usage. Furthermore, sceptics take into consideration that competitors might gain monetary advantages from the reduction of their research or procurement costs if they take over and publish foreign contents. However, these concerns can be easily invalidated by two arguments: Firstly, it is nearly impossible to completely exclude third parties from the use of digital and publicly available works even if they are legally or technically protected. For this reason the entire internet is exposed to these problems which are coherent with the desirable spread of information or marketing materials. Secondly, each additional user increases the positive effects created through a larger target group and a higher degree of dissemination of the contents. Network effects and the non-rivalry of information are brought to bear and in case of a licence-conformal use competitors can even become multipliers.

CC-works are also faced with the problem of prejudice meaning that only paid and non-free content is considered as valuable content. In fact, the internet itself is confronted with this problem as this only clarifies that a certain degree of media skills of its users is required.

Conclusion

Innovations in the digital era require new ways of rights management and organisation. The CCL offer a tool for flexible but differentiated licensing of information goods. As a conclusion, the chances of free licensing can be judged as exceeding compared with their drawbacks if

- the involved parties have recognised the full potentials of the internet and integrated it into their everyday work,
- the mission statement or intention of the digital player includes a certain consistency regarding the intention of the licences,
- the spreading of the CCL continues to progress, and
- the awareness and acceptance through the public increases and the achievement of the critical mass strengthens the network effects.

If authors would like to apply CCL to their contents, they have to consider in advance whether they would like to obtain profits by selling their contents or whether these are more valuable being freely accessible and widely spread. The simple handling and effective digital labelling contribute to distribution and acceptance in public as well as among experts. In addition, authors profit from the fact that their works are made available to a larger target group. In times of increasing uncertainty through "Digital Rights Management" or anti-piracy campaigning, users of free content marked with the CC-button act on legally secured terrain.

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