University of Michigan Law School

University of Michigan Law School Scholarship Repository

Law Librarian Scholarship

Other Publication Series

2018

Creative Commons: An Explainer

Kincaid C. Brown
University of Michigan Law School, kcb@umich.edu

Available at: https://repository.law.umich.edu/librarian/25

Follow this and additional works at: https://repository.law.umich.edu/librarian

Part of the Contracts Commons, Intellectual Property Law Commons, Internet Law Commons, and the Scholarly Publishing Commons

Recommended Citation

Brown, Kincaid C. "Creative Commons: An Explainer." Mich. B. J. 97, no. 9 (2018): 52-3.

This Article is brought to you for free and open access by the Other Publication Series at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Law Librarian Scholarship by an authorized administrator of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

Libraries and Legal Research

Creative Commons: An Explainer

By Kincaid C. Brown

opyright protection attaches automatically to original works you create, whether a poem, photograph, painting, song, video, or essay. Copyright limits what others can do with your creative work and protects your original work from, for example, being compiled or reused and sold for profit. If you hold the copyright-and didn't, say, create the original work in an employment context where it may be subject to being a work for hire-you may want to allow others to use your work for particular purposes.1 You could individually negotiate a license granting rights to each person, which would undoubtedly take more and more time as licensing requests mount, or you could use a Creative Commons license to manage your intellectual property in an all-encompassing manner.²

Creative Commons and its licenses

Creative Commons is a nonprofit organization that has created a suite of six licenses, using four conditions, to allow for broader use of copyrighted material on the internet to further the creation of new works and learning. Creative Commons licenses are designed for any copyrightable material with the exception of computer software, and can be used to license a database's content and structure, to the extent they can be copyrighted. Creative Commons has also created two public domain tools.3 The first, CC0, allows copyright owners to opt out of copyright protection, essentially akin to letting a work go into the public domain so others can build upon or adapt the original.4 The second is the Public Domain Mark, which can be used to identify works that are no longer protected by copyright. Creative Commons licenses cannot be attached to works that are already in the public domain.5

Creative Commons licenses use four conditions: Attribution (abbreviated as BY), ShareAlike (SA), NonCommercial (NC), and NoDerivatives (ND). For BY-licensed works, attribution requires the user to give credit to the creator. ShareAlike requires the user of an SA-licensed work to distribute his or her new work under the same terms. Non-Commercial requires that a subsequent work using an NC-protected work not be for commercial purposes, such as for compensation. NoDerivatives means that modifications cannot be made to an ND-protected work. In all cases, users need permission from the copyright owners to disregard any of the conditions.6 The six Creative Commons licenses7 are:

- Attribution (CC BY), which allows licensees to reuse a work as long as they credit the originator
- Attribution ShareAlike (CC BY-SA), permitting users to reuse a work as long as they credit the originator and license their work under the CC BY-SA license
- Attribution-NoDerivs (CC BY-ND), allowing users to redistribute a work as long as it is unchanged and they credit the originator
- Attribution-NonCommercial (CC BY-NC), permitting users to reuse a work as long as they credit the copyright holder and

- the new work is not created for commercial purposes
- Attribution-NonCommercial-ShareAlike (CC BY-NC-SA), allowing uses in line with the CC BY-NC licenses as long as the new work is also licensed under the CC BY-NC-SA license
- Attribution-NonCommercial-NoDerivs (CC BY-NC-ND), permitting noncommercial use as long as the user credits the copyright holder and does not adapt the original work

About the licenses

The six Creative Commons licenses and the CC0 "no rights reserved" option have three layers: the legal code of the license, a license deed (a summary for nonlawyers), and machine-readable metadata.8 The metadata can be embedded in the work itself or in the code for the buttons (standardized icons created by Creative Commons summarizing the license terms for the work) that Creative Commons recommends licensors display with their work.9 The previous iterations of the licenses (3.0 and prior) had versions that corresponded to the law in particular countries, but the most recent licenses (version 4.0) were drafted to be enforceable internationally without the need for revision to adhere to specific provisions

Creative Commons is a nonprofit organization that has created a suite of six licenses, using four conditions, to allow for broader use of copyrighted material on the internet to further the creation of new works and learning.

Libraries and Legal Research

Creative Commons licenses have been enforced by courts in a number of jurisdictions, including the United States, Germany, and Israel.

of any country's copyright law. The improved international enforceability of 4.0 licenses furthers Creative Commons' aim to allow copyright holders to easily share their works globally—almost always via the internet—using standardized terms. Creative Commons licenses have been enforced by courts in a number of jurisdictions, including the United States, Germany, and Israel. The licenses do not apply to trademarks, although there is a possibility for confusion by users; Creative Commons recommends that licensors disclaim the application of the license to trademarks with the work.

A Creative Commons license can be used as a model license, but once the license is revised, the licensor can no longer indicate that it is a Creative Commons license or use a Creative Commons button or mark.12 Creative Commons licenses naturally expire with the copyright for a work since the work would then be part of the public domain.13 However, for some works, there may be multiple copyrightable parts, so the rights may expire at different times.14 For example, a movie may have music with a different copyright term from the visual images, meaning the music may still be in copyright and protected by the Creative Commons license after copyright expires for the visual portion.

If users of material protected by a Creative Commons license want to use the content in a way that does not adhere to the license, such as adding digital-rights management to ShareAlike-licensed content, they must first receive express permission from the licensor. Users' rights terminate when they violate the Creative Commons license; however, with version 4.0 licenses, users can automatically reinstate their rights if they correct the violation—for example, not attributing a use to the original copyright holder—within 30 days of discovering the violation. For violations of earlier licensed works or instances in which the

violation is not corrected within 30 days, the licensor has to expressly grant permission for the use; the user cannot download a new copy as a fresh restart.¹⁷ Creative Commons licenses cannot be revoked retroactively.¹⁸ Once a user has downloaded a work, he or she can continue to use that work under the original license terms; a user who downloads the item after the licensor ceased distributing under the Creative Commons license cannot.¹⁹

Using a Creative Commons license

A copyright holder who wants to apply a Creative Commons license to his or her work can do so at any time. A licensor would normally take two steps to release a work under a Creative Commons license, although performing only the second step is enough to adhere the license.²⁰ The first step is embedding the license information in the metadata for the work; many file formats (.jpg, .mp4, .pdf, etc.) allow for embedded metadata. The second step is displaying the license terms along with the work. Using the appropriate Creative Commons button or icon is recommended, but a text statement is also acceptable. In either case, the button or text should link back to the Creative Commons license deed. There is no requirement for a work to be registered with Creative Commons for a Creative Commons license to apply. ■



Kincaid C. Brown is the assistant director of the University of Michigan Law Library where he teaches Advanced Legal Research. He is a member of the SBM Michigan Bar Journal Committee

and a former member of the Committee on Libraries, Legal Research, and Legal Publications.

ENDNOTES

- US Copyright Office, Frequently Asked Questions About Copyright https://www.copyright.gov/help/faq/index.html>. All websites cited in this article were accessed August 2, 2018.
- 2. Creative Commons, Share your work https://creativecommons.org/share-your-work/>.
- Creative Commons, What we do https://creativecommons.org/about/>.
- Creative Commons, CCO https://creativecommons.org/share-your-work/public-domain/ccO/>.
- Creative Commons, Public Domain Mark 1.0 https://creativecommons.org/publicdomain/mark/1.0/.
- Creative Commons, Licensing Types https://creativecommons.org/share-your-work/licensing-types-examples/>.
- Creative Commons, *Licenses and Examples* https://creativecommons.org/share-your-work/licensing-types-examples/.
- 8. Creative Commons, *Licensing Considerations* https://creativecommons.org/share-your-work/licensing-considerations/>.
- Creative Commons, Downloads https://creativecommons.org/about/downloads.
- 10. Creative Commons, Case Law https://wiki.creativecommons.org/wiki/Case_Law.
- 11. Creative Commons, FAQ: Can I offer material under a CC license that has my trademark on it without also licensing or affecting rights in the trademark? /
- Creative Commons, Policies https://creativecommons.org/policies.
- Creative Commons, FAQ: When do Creative Commons licenses expire? https://creativecommons-licenses-expire.
- 4. Id
- 15. Creative Commons, FAQ: What happens if I want to use the material in a way that is not permitted by the license? https://creativecommons.org/faq/#what-happens-if-i-want-to-use-the-material-in-a-way-that-is-not-permitted-by-the-license.
- 16. Creative Commons, FAQ: How can I lose my rights under a Creative Commons license? If that happens, how do I get them back? how-do-i-get-them-back.
- 17. Id.
- 18. Creative Commons, FAQ: What happens if the author decides to revoke the CC license to material I am using? https://creativecommons.org/faq/#what-happens-if-the-author-decides-to-revoke-the-cc-license-to-material-i-am-using>.
- 19 Id
- Creative Commons, FAQ: How do I apply a Creative Commons license to my material? https://creative-commons-license-to-my-material.