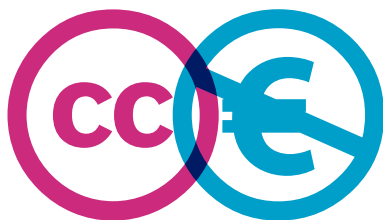


FREE KNOWLEDGE THANKS TO
CREATIVE COMMONS LICENSES



Paul Klimpel

Why a non-commercial clause often won't serve your needs

CC LICENSES



ATTRIBUTION (BY)

Apart from requiring references to the author(s), rights holder(s), source of the work and the license text itself, this CC variant puts no further restrictions on the user. She can use the work freely and edit it in any thinkable way. Therefore, using the work in remixes and mashups is allowed.



ATTRIBUTION – SHARE ALIKE (BY-SA)

Just like BY, this CC variant allows all kinds of re-use and editing, even for commercial purposes. However, all edited versions of the work (derivatives) must, if they are published or distributed, be available under this very same license.

ONLY THESE TWO LICENSE VARIANTS ARE CERTIFIED TO BE FREE LICENSES IN THE MEANING OF FREEDOMDEFINED.ORG AND ARE THUS SUITABLE TO MAKE SURE WORKS LICENSED UNDER STAY RE-USABLE.



ATTRIBUTION –
NO DERIVATIVES

This CC variant does not allow the work to be edited. Commercial uses are allowed.

All CC variants above can be combined with the NC module (for “non-commercial use only”; commercial use requires additional approval). This leads to six possible CC variants altogether, these being the additional three:



There's an additional legal tool called CC0 (CC-Zero) for setting a work free without any specific conditions. CC0 thus is a complete waiver of copyright and related rights. This is meant to help creatives to voluntarily place works in the “Public Domain”. According to Creative Commons, this tool is especially suitable for databases.

PREFACE

All around the world an increasing number of people uses the PUBLIC LICENSES offered by Creative Commons (CC) to free up the results of their creativity for re-use by others. Also projects, institutions and initiatives ever more often decide to subscribe to the CC motto: “Some rights reserved”. One of the most popular examples for this is the Wikimedia Foundation, who together with its worldwide community of activists in 2008 decided to license its universal encyclopedia Wikipedia under the CC license BY SA – ATTRIBUTION SHARE-ALIKE.

This license is only one of six licenses in CC’s suite of core licenses. The most widely used licenses from this set show the additional abbreviation NC for “NON-COMMERCIAL USE ONLY” in their names. Many licensors who intuitively choose such an NC license do so with the understandable intention to prevent their works from being unwantedly and uncontrollably exploited for business by others. The many other consequences of this choice, however, are usually unknown. This brochure by Wikimedia Deutschland, Creative Commons Germany and iRights.info is meant to address this lack of knowledge. We are looking forward to comments and suggestions regarding this endeavour and hope that it will yield many aha experiences.

Special thanks go to the Open Knowledge Foundation Germany who supported and facilitated the English translation of the original text.

John H. Weitzmann
CC DE LEGAL PROJECT LEAD

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INTRODUCTION

With the Creative Commons licenses, creatives are offered simple means to free up their works in a way that allows the public to use them. In a time where knowledge becomes ever more important for the individual's development and that of society, the creative commons and knowledge commons gain in importance. Part of the knowledge commons all works created by humanity that are freely accessible and re-usable. Only through commons is safeguarded that all humans obtain equal chances when it comes to accessing information, education and knowledge.

Many creatives want to take part in establishing modern knowledge societies. They do not want to keep "all rights reserved" – quite the contrary: They have an interest in seeing their works used by many. This is particularly due to the opportunities the Internet offers in distributing and exchanging knowledge and information in an unprecedented manner.

Creative Commons (CC) is the best known set of tools to release own content. However, not every CC license is alike. A strong point of CC is to give creatives the opportunity to frame the usage conditions that are most important to them. The user (the public) obtains only certain rights, while the remaining rights stay with the author or rights holder of the work. This is achieved by means of a set of different licensing modules.

Within the different modules of the Creative Commons licenses, especially the restriction NC – NONCOMMERCIAL USE ONLY – is very popular with the authors. A commercial usage is not allowed under this condition. However, deciding on a license that does not allow commercial use has extensive consequences: Many possibilities of use, like the inclusion in knowledge communities and archives, the Wikipedia, local newspapers, publications, compilations and mashups, are in fact excluded and thus require additional approval – and that despite the fact that these inclusions are often wanted by the authors.

This booklet will explain all consequences of choosing a CC license variant restricted to non-commercial use only (NC). Often enough, the intended effects which lead to selecting the NC module can just as well be achieved by other means. In some cases, the NC module is completely unsuited to achieve the effects intended by the author. On the other hand, its use has extensive, often unwanted consequences on the possibilities of content distribution. The decision to apply the NC module need therefore be carefully considered.

Imagine a world in which every single human being can freely share in the sum of all knowledge. That's our commitment.

WIKIMEDIA FOUNDATION

1

WHAT DO WE UNDERSTAND BY OPEN CONTENT?

CONTENT THAT CAN BE USED FREELY.

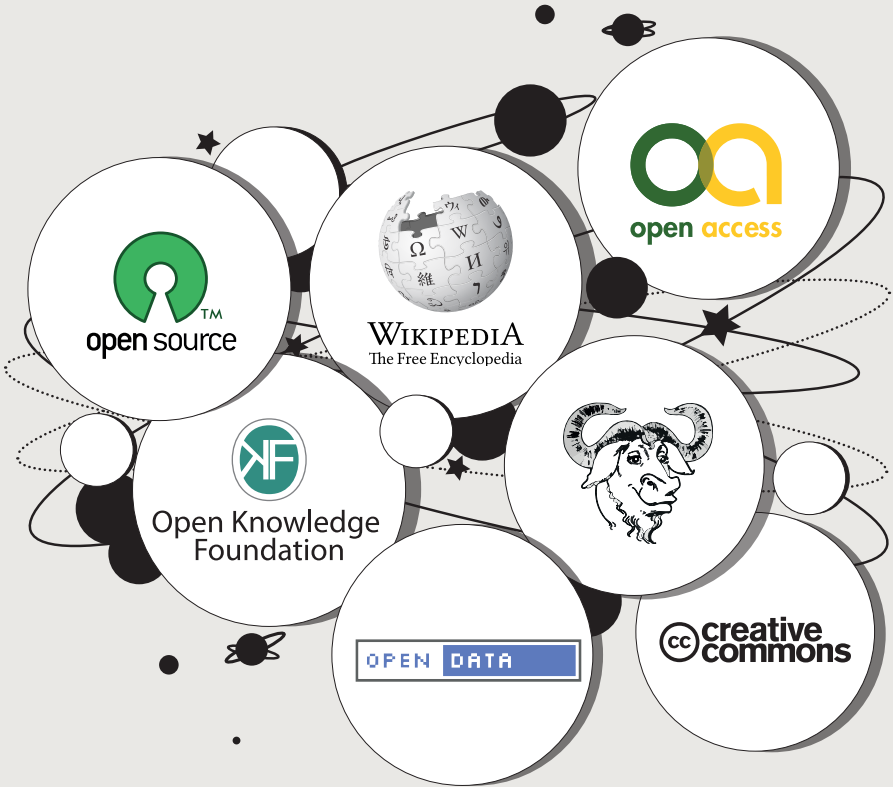
OPEN CONTENT is content that is open and freely accessible – by default, not only after the author gives individual permission. This is not a matter of course. Copyright law assumes that content may only be distributed and used when the owner of these rights explicitly allows it. However, to use this ground rule in the digital age is becoming more and more questionable. Human culture has always been shaped by the drive to enhance the existing. Everyone builds on that which others have created.

Digital content can be reproduced and used as easily as never before. Therefore, that which is technically possible should be rendered possible by law. The ideal of free knowledge, that everything should always be accessible to everybody, needs a legal basis which smoothly applies to the context of the Internet. Scientists in particular have highlighted the large potential of the Internet and the free exchange of knowledge. In 2003, German scientific organizations demanded free access to scientific works in the Declaration of Berlin:

“Our mission of disseminating knowledge is only half complete if the information is not made widely and readily available to society. New possibilities of knowledge dissemination not only through the classical form but also and increasingly through the open access paradigm via the Internet have to be supported. We define open access as a comprehensive source of human knowledge and cultural heritage that has been approved by the scientific community. In order to realize the vision of a global and accessible representation of knowledge, the future Web has to be sustainable, interactive, and transparent. Content and software tools must be openly accessible and compatible.”

In the context of software the Open Source principle was devised. Open Source means that the source code of software is freely accessible to everyone. Open Source was introduced, so that software developers do not have to begin all over again when they are writing new software, but can build on existing works. To ensure this principle the GNU General Public License (GPL) was defined. Software under this license can be used and extended by everyone.

THE FREE KNOWLEDGE UNIVERSE



There are now many projects that made it their mission to foster and spread free knowledge. This graphic shows only a few of them: The online encyclopedia Wikipedia is the place where its users can collect the knowledge of humanity; Open Access enables exchange of knowledge in academia; the Open Source Software Community collaborates to develop software based on openly available code; the Open Knowledge Foundation promotes the publication, use and re-use of open knowledge bases. All this is done by applying free licenses, of which the Creative Commons Public License (CCPL) and the GNU General Public License (GPL) are prominent examples.

The Open Source approach in software explicitly also allows commercial use. Its success is even largely dependent on this option.

Open Content is based on the same basic idea as Open Source software: It should also be allowed to use written works, movies and multimedia works freely. The by far best known option to license content as Open Content and hence allows free use, is the Creative Commons (CC) set of public licenses.

Creative Commons was developed in 2001 as an initiative of law professor Lawrence Lessig at Stanford University. It is meant to provide comprehensible licenses for the public release of content for everybody, and thus further the cultural commons, or even make them possible in the first place. Instead of the usual principle of copyright law, where all rights are reserved by the author, the use of these licenses only reserves certain rights. The content is made available for the public to use.

Creative Commons is not in conflict with existing copyright law, but is built on it. Without copyright law the public release would not work at all. Content protected by copyright, such as movies, music, texts and images, can be freely used by means of such a license.

2

WHY IS CONTENT PLACED UNDER A CC LICENSE?

TO MAKE IT MORE USABLE.

Many creatives want their texts, their music or movies to be used by as many people as possible (distribution of works is de jure also a type of usage). They have an interest in the free exchange of information. Especially educational content is created with the aim to reach as many students as possible. In this case, any legal restriction is counter-productive. **Here, the most severe restriction of all is to do nothing.** What sounds paradox reflects the legal default: “All rights reserved”. Whoever creates something new, but does not elaborate if and how his works can be used, is assumed to say “Nobody is allowed to use my content.” The CC licenses therefore provide a simple solution to express the desire to share and say “Everybody is allowed to use my content under the following terms and conditions: [...]”.

The straightforwardness and comprehensibility of the CC licenses has contributed greatly to their widespread use. They are also legally compliant and adapted internationally to the particularities of the different legal systems.

People who use CC licenses often do this with the intent to have their works used in social,

cultural and educational institutions. CC licenses that contain the NC module, which allows only a free, non-commercial use, are often considered as a counter model to a world where even charitable or not-for-profit institutions are charged for every single usage. An example for this are the license fee claims for copying and distributing singing sheets in kindergardens, which have caused public outrage. However, by existing law, the claims are justified. By applying a CC license, many authors want to dissociate themselves from these practices. The choice of the NC module is often also a statement against a style of profiteering deemed inappropriate.

However, not every type of commercial use is negative. Quite the contrary – it is neither amoral nor detrimental to the community when content is also distributed by those who have a financial interest. Often, the success of cultural and educational work depends highly on existing commercial usages.

3

WHY ARE THERE DIFFERENT CC LICENSES?

CC LICENSES REFLECT THE DIFFERENT INTERESTS OF THE AUTHORS.

Common to all CC license variants is the mindset that the usage of content shall be facilitated.

But creatives, authors, directors and musicians do not all have the same understanding of which usage of their works they want to allow. The six different variants of CC are answering to these demands. They offer a flexible tool to tie the usage to certain conditions. A good example is the question, if the authors want to allow editing and remixing of their works. For some, it is crucial that their work remains unchanged. These creators can ensure that by applying the No DERIVATIVES MODULE (ND for short), and still allow other usage.

Others are interested in having their work used in remixes, collages and mashups. They consider the creation of content merely a transitional stage in a process. Their own content is based on the old and shall be developed into newer works. Those who assign a CC license out of this mindset will not choose the No Derivatives restriction.

If you hold the Open Content principle very dear, you can express through the Share-Alike module (SA) that your content may be edited and distributed, but only under the same (license) terms. It thus remains freely accessible.

Some creatives may want to exclude the commercial usage of their content. To address this demand, each of the license types can be extended with the module “NON-COMMERCIAL USE ONLY” (NC). However, this is not advisable in every case, since it restricts many usage rights which may actually be in the interest of the creator or rights owner of the work.

4

HOW DOES THE NC MODULE AFFECT THE WAY CONTENT CAN BE DISTRIBUTED?

NC-LICENSED CONTENT CANNOT BE DISTRIBUTED AS WIDELY AND EASILY.

If you mark your content as NC, it cannot be included in free knowledge databases like Wikipedia, in some kind of open media archives and in Open Source projects. It is often a commercial use that helps not-for-profit initiatives to have their breakthrough. The Wikipedia DVD which was produced commercially by Directmedia has greatly increased the popularity of Wikipedia. The same goes for the inclusion into commercial repositories – both are legally commercial usages and would not be allowed if the NC module was included.

In the context of education and training, a great number of institutions depend on their own revenues, as they are not (to the full extent) publicly funded. The dependency on course fees leads to their classification as commercial. They are therefore not allowed to use content marked with a CC license that includes the NC module, at least not without asking for permission of the author. Even the usage in many blogs becomes illegal under the NC condition. Many bloggers

display advertisements to lower their hosting costs or have an additional income. Therefore, the usage in these blogs is no longer – or at least not unambiguously – non-commercial.

5

WHAT IS COMMERCIAL USE?

ANY USE, THAT IS PRIMARILY DIRECTED TOWARD COMMERCIAL ADVANTAGE OR PRIVATE MONETARY COMPENSATION.

When hearing about commercial use, you would often think of multinational companies like Microsoft or Shell, of stock trading, quick money or profiteering. **The term “COMMERCIAL USE” however contains no moral evaluation of the business conduct of the respective institutions or persons, but merely describes that they are obtaining a commercial advantage and possibly aim for a financial remuneration. And that is necessary for anyone who is not fully financed by public funds or private donations.**

It is evidently commercial usage if a company uses an image or a text on their company website. It is also commercial use if an image is printed in a book that is published by a publishing house, entirely independent of whether the author receives a remuneration or possibly even has to pay a printing fee

to make the publication possible. The publishing house acts with a commercial interest in either case.

A more difficult decision is whether private blogs act with commercial interest, if they (or their hosting service) display advertisements and achieve revenues. These revenues are often minimal and cover barely the hosting costs. There are good arguments against classifying these undertakings as predominantly aimed at a monetary recompensation, and therefore allow to call them non-commercial. The distinction is difficult, though, and many cases are disputed. To stay with the example of the private blog: At which point does a blog lose its non-commercial nature? Already if the advertisement revenue surpasses the operational costs? Or when the first penny is earned? Or only when an 'appreciable' income is generated?

Out of precaution, this difficult distinction will often lead the responsible party to not make use of CC licensed content, when the license contains the NC module. Even where the usage would actually be acceptable as non-commercial. Another approach to distinguish commercial from non-commercial use could be to evaluate not the specific usage, but the type of user. Then you would only have to assess whether the user or institution – as a whole – can be considered commercial. Public schools and museums could then be classified as non-commercial based on their not-for-profit mandate, and one would not have to inspect the individual use cases for their commercial nature. Unfortunately, the NC module does not make it this easy, since it explicitly mentions the acts that have to be non-commercial. Hence we have to assume a commercial act if, for example, content is sold

in a museum shop which is aimed at generating revenue, regardless of the legal status of the shop and the not-for-profit status of the museum.

Completely irrelevant for the distinction between commercial and non-commercial use is whether the user is even financially able to pay license fees or if they would pay for usage rights in comparable situations. A charitable fund, for example, that uses a picture within their not-for-profit mandate, is considered non-commercial under the NC license terms even if it disposes of considerable means and would pay photographers in a similar situation.

But there are very few not-for-profit institutions these days that have adequate funding and do not depend on additional revenues – which again places them into the gray area of our attempted distinction. To completely avoid the NC module and its restrictions would avoid these uncertainties.

6

CAN A CC LICENSE WITH THE NC MODULE PREVENT MY CONTENT FROM BEING USED BY RADICALS OR EXTREMISTS?

NO. EXTREMISTS WANT TO CHANGE SOCIETY, NOT MAKE PROFIT.

Radicals and extremists follow a political agenda. Their objectives are at the same time not necessarily commercial, not aimed at a business advantage or financial remuneration, but at political and social changes. Radical political and religious extremists are often organised in non-economic associations. Hence, a NC licensing can in a way even privilege the usage of content by extremists.

In other terms: A scientist who intends to publish a study of political extremism with a publishing house will not be allowed to use the content, if it is protected by the NC module against commercial use, because the publisher is acting with commercial interest. **An extremist group, however, which formally acts as an association is well allowed to use the same content under the NC terms.**

An equally effective yet often more efficient way to prevent content from being used with financial intentions is the SHARE ALIKE (SA) module. It allows the publication of adaptations only under the same or similar licenses.

Companies or private actors who want to appropriate creative content can usually achieve this goal relatively easily by editing the work and restricting the use of the edited version based on a separate new copyright it carries. The Share Alike module in the Creative Commons license set can prevent that. All appropriated versions, must be published under the same license as the original content. This means that under the restrictions set by CC, the new content remains as freely accessible as the original content. Furthermore, when the edit consists in enhancing own content with freed-up external CC-SA content, the CC-SA license works in a contagious or viral way: The newly created work (the edited version) as a whole can only be published under the same license. This alone prevents many companies from appropriating free content which is licensed under Share Alike. It would require them to release their own reproduction, advertisement materials (or whatever the end result might be used for) to the public under the same Share Alike license – and that is one thing most companies, especially larger ones, are not willing to do.

At the same time the Share Alike module – as opposed to the NC module – does not have the negative effect of hindering the distribution of content (in blogs for example) in general. Quite the opposite: With the Share Alike license all edits are under a CC license and the appropriated version can thus be used afterwards not only by the editor but by any third party.

7

I WANT TO KEEP MY CONTENT ACCESSIBLE THROUGH CC LICENSING. IS THE NC MODULE THE ONLY OPTION TO PREVENT THE APPROPRIATION OF MY CONTENT THROUGH COMMERCIAL ENTERPRISES?

NO. THERE ARE OTHER OPTIONS, SUCH AS THE SHARE ALIKE MODULE.

8

CAN NC-LICENSED CONTENT BE USED IN THE WIKIPEDIA PRO- JECT?

NO. WIKIPEDIA CONTENTS ARE BE-
ING USED COMMERCIALY.

One of the reasons for the widespread and intense usage of Wikipedia is that its contents may be used commercially. Otherwise it would be prohibited for major news sources or other commercial websites to use Wikipedia content verbatim without payment and without asking for permission.

Wikipedia benefits greatly from the commercial use of their content. They are integrated tightly with several search engines, which further the distribution of Wikipedia content, and hence the knowledge compiled by collaboration. The operation of a search engine is an undoubtedly commercial enterprise aimed at profits.

Another example for commercial usage which supports Wikipedia is the distribution of the DVD versions of Wikipedia, such as the German version produced by the Berlin-based company Directmedia. Within a period of short time this DVD became a bestseller – because of its low price tag and a software with extended search functions. A prerequisite for creating a

Wikipedia DVD was that Directmedia was able to use its contents simply because it is allowed by the license. Furthermore, the project encouraged to sort out incomplete articles, so that they would not end up in the DVD project. Finally, the Wikipedians helped to make the data indexable and sortable. In return, Directmedia donated one Euro per sold DVD to German Wikipedia and inflated the Wikimedia image archive with a content donation of 10,000 reproductions of public domain artworks.

The business concept of the Wikipedia DVD worked because the software added new features and made the content more attractive, but also because it used a different medium. Even if you often get to hear that the difference between online and offline is fading, the traditional lexicon and reference format of the DVD appealed to a different target group than the Internet encyclopedia was able to attain. By this process, new readers could be interested in Wikipedia. But all of this was a commercial act, which would not have been permitted if the license that is used by default in Wikipedia would contain the NC module.

9

CAN YOU RELEASE NC-LICENSED CONTENT SPECIFICALLY AND SEPARATELY FOR WIKIPEDIA DESPITE THE NC RESTRICTIONS?

NO. THE ACCESSIBILITY RULES OF WIKIPEDIA MUST NOT BECOME TOO COMPLEX.

Wikipedia rejects separate side agreements – just as all other initiatives and projects that work on the free content principles. Otherwise, that third parties which want to collaborate with Wikipedia could be hindered and harmed. These are, for example, local initiative, which want to use Wikipedia content in local newspapers, as well as search engines and press services wanting to integrate Wikipedia content. Each of these would have to pay close attention as to which content is freely accessible and which is subject to individual side agreements – an additional effort that would suffocate many cooperations.

In May 2005, Wikipedia's founder Jimmy Wales consequently announced that content which can only be used non-commercially or can only be used with separate approval, is not permitted in Wikipedia and has to be deleted.

10

DOES THE NC MODULE PREVENT COMMERCIAL USAGE?

YES, BUT OFTEN IN ALL THE WRONG PLACES.

The NC restriction in CC licenses does indeed prohibit commercial usage, but – as any clause in any legal contract – does not in itself guarantee that others abide by this prohibition. Just as in many other areas of copyright law, breaches of the restrictions imposed by CC licenses are common. The NC module is no exception.

You have to consider that many companies see breaches of copyright law as a mere financial risk, and may intentionally defy its restrictions. **Seen from this perspective, the NC module hinders exactly those companies and institutions that respect copyright law most. That includes public institutions which cooperate with commercial partners, but also knowledge databases like Wikipedia, open media archives or Open Source projects.** All these projects, initiatives and institutions which explicitly endorse free access to knowledge are subject to closer scrutiny to not breach the restrictive copyright regulations. In order not to endanger their work, they have to study license agreements with the utmost care. Since the possibility of commercial use cannot be ruled out altogether – and often

it should not be excluded since these initiatives are interested in spreading knowledge – content licensed with a NC condition will not be used by them.

This creates a paradox: The NC restriction is most minutely heeded where its consequences are least intended.

11

AM I READY TO ACT AGAINST THE COMMERCIAL USE OF MY CONTENT?

IF NOT, YOU SHOULD CONSIDER NOT TO USE THE NC MODULE IN THE FIRST PLACE.

To restrict a Creative Commons license by means of the NC module is only reasonable if the author is also willing to act against commercial use, for example in court.

That does not mean that you have to fight every single breach of copyright. Breaches of copyright law are common, and CC licensed content is no exception – and the decision for or against a legal dispute will always depend on many considerations. However, if you do not intend to act against commercial use anyway, the NC license variant will only discourage those who

observe the law meticulously, especially if they are not perfectly certain whether they are considered non-commercial. These are usually the users that you do not want to scare off.

12

CAN NC-LICENSED CONTENT BE PRINTED IN NEWSPAPERS?

NO. NEWSPAPERS ARE IN ANY CASE COMMERCIAL USERS.

Newspapers are operated to generate revenue; they aim at a commercial advantage and a financial recompensation. That is a fact irrespective of the fundamental right of free press and the great influence of newspapers on public opinion and debate. Furthermore, the classification of newspapers as commercial is valid even when they are – such as in the case of advertisement journals – distributed for free. These papers are financed by advertisement, and thus operate for a monetary advantage. Of course, a CC licensed content can be printed in newspapers, despite the NC module, if the author explicitly agrees. This equally applies to any other commercial use. The great advantage of the CC standard licenses is, however, that you do not have to negotiate an agreement in every single case. This effort-saving effect of standard licensing is lost if the NC module demands case-by-case negotiations.

13

CAN NC-LICENSED CONTENT BE USED IN SCHOOLS, TRAINING AND UNIVERSITIES?

NO, NOT EVERYWHERE.

Depending on the legal status of the provider, a school, trade school or university can be classified either as commercial or non-commercial. Today, a large number of schools, universities, training centres professional schools, scientific and cultural institutes are not exclusively publicly funded and are not exclusively financed by donations or endowment capital. These educational institutions depend on own revenues. By this orientation, to generate own revenue, their enterprise is aimed at monetary recompensation to a degree that can no longer be considered negligible.

The less public funding an institution gets, the higher is the necessity to acquire additional revenue by commercial means. This puts educational institutions, that already are in a difficult position as they do not have sufficient public funding, in further disadvantage, as they can not make use of CC licensed content containing the NC module.

14

HOW DO YOU CLASSIFY NC-LICENSED CONTENT THAT IS FIRST USED AT SCHOOL, BUT LATER OUTSIDE OF SCHOOL?

IF USED OUTSIDE OF SCHOOL, THE USE IS OFTEN TO BE CONSIDERED COMMERCIAL.

The use of CC licensed content with the NC module is usually not an issue if it happens strictly within public schools. These schools have an educational mandate and do not follow commercial goals. A different case is that of private schools which also generate revenue (see question 13).

Therefore, a wide spectrum of possible uses of NC-licensed content is opened within those schools that would otherwise classify as commercial. Students and professors may print texts, play songs; Students may – as long as the No Derivatives (ND) module is not applied and thus prevents it – create mashups and collages and edit the content. Even though the results are unproblematic in a school setting they become problematic outside of the school premises. If for example the local newspaper wants to report on the results of a student competition, they cannot just reprint the collage with

the CC licensed contents, if the NC module is included. This would require the permission of the original author.

Since the CC-NC license makes the school a location of free access to copyrighted content, many students gain a false sense of security if they use the same content outside of school. In this case, the threshold of commercial use is easily breached. If for example such content is uploaded to social networks on the Internet, the mere possibility of access by third parties (for example other people in the social network) would constitute a breach of the NC module in the license, since the hosters and operators of social networks usually act with commercial interest. Although the actual breach will, in these cases, be effected by the respective hoster or operator, these companies usually have clauses in their usage agreements that allow them to claim recompensation for incurred damages from their users.

This is one more reason why you should not use the NC restrictions on content for educational purposes. Especially students should not be put into the situation that their unproblematic conduct within school leads to a carelessness that puts them in conflict with the law outside of school. Now, as a creative professional you could take up the position that you will not pursue or hang a lantern on such unwanted breaches of your licenses. However, then you should ask yourself why you had to choose the NC module in the first place (see question 11).

15

HOW DOES NC AFFECT MASH-UPS?

NOT ALL CC LICENSES CAN BE COMBINED WITH EACH OTHER.

Works that are licensed under CC BY-SA (Attribution, Share-Alike) license can only be combined and used with works that bear the same license or the freer license type CC BY (Attribution). The combination of CC-licensed content with other combinations of the different modules, especially those without NC module, is not permitted.

Thus, severe problems are caused by the fact that licenses have to be compatible with each other if you want to combine contents. This applies especially to mashups, which originate from a culture of free manipulation of content, and consider CC licensing as supporting their cultural values. In fact, however, many license combinations are not compatible, especially NC licenses cannot be combined with other licenses that do not have this restriction.

Furthermore, mashups are often created without the intent of financial recompensation, which initially makes the use of NC-licensed content legitimate. Later, those mashups can become popular and are republished in blogs

and on other platforms. This puts their makers, who legitimately used NC-licensed content when making the mashup, in a legal gray area where the usage can be attributed a commercial character.

16

CAN COMMERCIAL USAGE BY A THIRD PARTY BENEFIT THE AUTHOR?

YES. IF YOU ARE INTERESTED IN DISTRIBUTING YOUR CONTENT WIDELY, YOU SHOULD ALLOW COMMERCIAL USES.

A commercial use is not by definition an abusive use. Wherever publicity and attention for the content are the primary goal, any use of the content usually benefits the author, as it increases their popularity. Especially content that is used in the context of public education initiatives should be permitted to be used in as many distribution channels as possible, as maximum outreach is the primary goal.

17

CAN A USER OF CC-LICENSED CONTENT CREATE THE OUTWARD IMPRESSION THAT THE AUTHOR ENDORSES AT PARTICULAR USAGE?

NO. A CC-LICENSE EXPLICITLY DOES NOT SUGGEST ENDORSEMENT.

CC does not affect the personality rights of the author. A user must not implicitly or explicitly assert or imply any connection with, sponsorship or endorsement by the CC licensor. This “no endorsement” clause, as it is called in the US, is a standard provision in many open content license models.

18

CAN THE NC MODULE STILL HAVE ANY ADVANTAGES?

YES, BUT LESS OFTEN THAN YOU WOULD THINK.

For private individuals, there is usually no good reason for a restriction to non-commercial use only. In many cases there is very little realistic chance that a commercial user is willing to pay money for using the content. A CC license has the main goal to make the content as widely spread as possible. For achieving that the NC module is often a hindrance.

In turn, anyone who has no intention of seeing the content widespread without strict control over it, can achieve this goal by excluding commercial uses. CC licenses with the NC module can make sense for publishers, whose business model is based on the traditional “all rights reserved”, who invest considerably in a publication and hold their own distribution channels. Such publishers have no particular interest in allowing competitors to gain profit from their investment. The benefits of commercial use by third parties, namely a better and faster dissemination, is less important for them because they maintain their own, often costly distribution operations.

However, despite focussing on a business model that is based on the kind of exclusivity offered by classic copyright law, these publishers can have an interest in their content being used in at least non-commercial areas of education and science, as this may boost sales via classical distribution.

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THE FINAL FRONTIER

One of mankind's greatest adventures has been the manned exploration of space, including the six lunar landings. The Apollo program's scientific output has contributed to radically alter the human perception of our planet. Some of the images taken by astronauts during their missions became part of the collective memory of the 20th century: "Earthrise", "Blue Marble" and Buzz Aldrin's footprint in the lunar dust.

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Unlike NASA, the German Space agency DLR used to give only restricted access to their material, therefore it was impossible to share or disseminate their content. In 2009, Wikimedia Deutschland contacted DLR to discuss their image archive's terms of usage. Up to that point, the conditions contained provisions against commercial usage and in a self-contradicting manner they permitted re-usage for media organizations only. After numerous conversations and an internal review, DLR announced a fundamental change of their licensing policy in 2012. Marco Trovatiello, Head of DLR's crossmedia section, describes the motivation behind the move:

“With the help of our legal department, we officially implemented CC for DLR's own media in March 2012 - and a reasonable storm of enthusiasm by worldwide users and the media alike broke loose. Since then, we did not only achieve the desired wider distribution of our media by Wikipedians, CC BY also helped us to animate our motto: knowledge for tomorrow.”

About the author:



Picture: Jürgen Keiper, CC BY
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Dr. Paul Klimpel, born 1970 in Minden, got involved with cultural organizations in the 1990s. He joined the Museum of Film and Television (Deutsche Kinemathek) in 2002. Between 2006 and 2011 he worked as its administrative director. He was also chief executive of the German Network of Multimedia Resource Centres. Since 2012 he has been working as a lawyer. Additionally, Paul coordinates several projects about cultural heritage at the Internet and Society Co:laboratory based in Berlin. He chairs the iRight. Lab culture. Paul studied law in Bonn and Munich as well as philosophy, psychology and social sciences at the Jesuit University of Philosophy in Munich. His doctoral thesis about legal paternalism was published in 2003.

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IMPRINT

FREE KNOWLEDGE THANKS TO CREATIVE COMMONS LICENSES - WHY A NON-COMMERCIAL CLAUSE OFTEN WON'T SERVE YOUR NEEDS

WRITTEN BY DR. PAUL KLIMPEL

Translated into English by the community via the Transifex.com platform; Translation revised and edited by John H. Weitzmann

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