

Licensing Agreements 101: The Creative Commons

DefCon 13 – June 29-31, 2005
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This Presentation is for educational purposes only.
It is not legal advice.
The speaker is not a lawyer.
If you require legal advice, retain a lawyer licensed to practice law in your jurisdiction.

Agenda

- Introduction
- Background on the Creative Commons License
- Walk through the license section-by-section
- How to maximize your protection
- Questions

Introduction

- Who are you?
- Why are you talking about the Creative Commons License?

Who uses the CC License?

- Writers, Bloggers, Musicians, Artists
- Moveable Type / TypePad
- Flickr
- Yahoo!
- LimeWire

What is the Creative Commons?

- Non-profit organization
- Creative Commons founded in 2001 by the Berkman Center for Internet & Society at Harvard Law School
- Currently run under at Stanford Law School Center for Internet Law and Society

Why was the CC License created?

- Belief that sharing content more freely fosters innovation and creation
- Non-coder counterpart to the GPL
- Perceived need in the online community

Which CC License are we talking about today?

- Attribution
- Non-Commercial
- Share Alike

- Version 2.5

- Commons Deed

What is a License?

- Giving some of your rights or privileges to another person who would not normally have them.

What is a Contract?

- An Agreement between (at least) two parties.
- Each party must provide something in exchange.
 - Exchange can be benefit or detriment, either immediately or at some point in the future.
- Parties must act as though they agree to the contract.
- Contracts are governed by state law.

Contract + License = Licensing Agreement

- Licenser agrees to allow Content User to make use of their work as long as they follow the terms of the contract.
 - Content User receives the benefit of using the protected work.
 - Licenser receives the “legal detriment” of giving up some copy-rights.

How does federal copyright law fit in to all this?

- In effect, the contract creates exception to general federal law.
 - Federal law creates the rights
 - State law handles how the contract is enforced
- CC License explicitly does not effect all of your copy-rights.

§1 Definitions

- §1(a) – Collective Works
 - Re-distributes a work unmodified
- §1(b) – Derivative Works
 - Builds upon, changes, or incorporates a work
- A work can be used collectively or derivatively, but not both at the same time.

§2 Fair Use Rights Retained

- Specifically limits this license agreement in order to protect
 - Fair use
 - First sale
 - Other copyright privileges

§3 The License Grant

Part 1 – How is it being granted?

- Worldwide
- Royalty-free
- Non-exclusive
- Perpetual

§3 The License Grant

Part 2 – What is being granted?

- The right to reproduce the work in a Collective Work
- The right to create Derivative works
- Public performance rights

§4(a,b) Share Alike

- Protections for Collective and Derivative:
 - Copy of the CC license must be included
 - or URI pointing to the license
 - License must be unaltered
 - “[Y]ou may not sublicense the Work”
 - Restriction on copy protection

§4(a,b) Share Alike

- Protections just for Collective:
 - Licensor can request attribution removal
- Protections just for Derivative:
 - Distributor can pick substantially similar license

§4(c) No Commercial Use

- Cannot use work *“in any manner that is primarily intended for or directed toward commercial advantage or private monetary compensation”*
- File-sharing and P2P exception

§4(d) Attribution

- Copyright notices
- Original Author
- Title of Work
- URI if supplied
- Derivative Work special credit

§4(e,f) Music Royalties

- Reserves right to collect royalties:
 - Public performance
 - Webcast
- Only if performance is commercial
- Contradictory?

§5 Warranty Disclaimer

- Section attempts to shield Original Author against:
 - Implied Warranty of Merchantability
 - Implied Warranty of Fitness
 - Non-Infringement
 - Etc.
- Effectiveness of this section changes state by state, check with a lawyer licensed to practice in your area if you are concerned.

§6 Limit on Liability

- Attempts to shield Licensor from legal damages due to the use of their work
- Similar to the previous Warranty section
- Once again, effectiveness will depend on your state's laws, check with a lawyer

§7(a) What happens when someone violates the license?

- Any breach of the conditions by the Content User will instantly terminate their right to use the license
- Sections 5 and 6 limiting Licensor's liability are not terminated

§7(b) What happens when you want to revoke the license?

- Short Version: You can't
 - Remember, the license is perpetual
- Long Version: You may cause a content fork.

§8(a,b) Continuous Grant

- Licensor re-news the license on the same terms each time work is distributed or performed by Content User

§8(c) Severability

- If one part of the contract is found to be void, the rest of the contract will still be valid.

§8(d) Waiver

- Waiver is knowingly giving up a right
- Waiver can be used to completely remove a part of the contract
- It must be in writing and signed by both parties

§8(e) Integration Clause

- Parties agree the written contract is the entire contract
- You cannot make changes or additions to the contract on a case-by-case basis
- Note: Enforcement will vary state-to-state and even judge-to-judge

Appendix – Don't Sue the Creative Commons, Please!

- Creative Commons is not a party to the License
- Creative Commons claims no responsibility for how you use the license or anything bad that might happen to you because you use the license

Maximize your protection

- Make sure Content Users are bound to the license
- Make sure Content Users know which content is covered by the license

Duty to Read

- What is required to bind a user to the CC license?
 - Not Required: actually reading the CC license
 - Required: fair opportunity to read the CC license

What part of your site is covered?

- Text?
- Pictures?
- Design?

- Are the (un)covered areas clearly labeled?

Summary

- Remember, 99% or more of all Creative Commons transactions will go smoothly
- Understand your rights under the contract so you can make an informed choice
- If you feel unsure, contact a lawyer and/or wait before choosing to license your work

Questions

- ???

To Learn More:

- Creative Commons
(<http://www.creativecommons.org>)
- EFF: Blogger's Law Guide
(<http://www.eff.org/bloggers/lg/>)
- North Carolina State U. Copyright Tutorial
(<http://www.lib.ncsu.edu/scc/tutorial/copyuse>)
- Taking the Case: is the GPL Enforceable?
Jason B. Wacha, Santa Clara Computer and
High Technology Law Journal, January, 2005
(21 SCCHITLJ 451)