

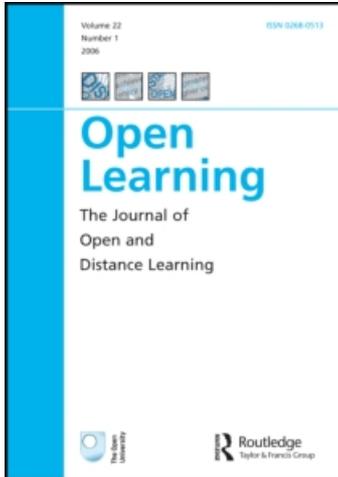
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Publisher *Routledge*

Informa Ltd Registered in England and Wales Registered Number: 1072954 Registered office: Mortimer House, 37-41 Mortimer Street, London W1T 3JH, UK



Open Learning: The Journal of Open, Distance and e-Learning

Publication details, including instructions for authors and subscription information:

<http://www.informaworld.com/smpp/title~content=t713440064>

Permission granted: open licensing for educational resources

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To cite this Article Bissell, Ahrash N.(2009) 'Permission granted: open licensing for educational resources', *Open Learning: The Journal of Open, Distance and e-Learning*, 24: 1, 97 – 106

To link to this Article: DOI: 10.1080/02680510802627886

URL: <http://dx.doi.org/10.1080/02680510802627886>

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KEY ISSUE

Permission granted: open licensing for educational resources

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Open licences are critical for defining Open Educational Resources. The goal of this article is to explain the logic of open licensing to teachers, funders, and educational policy-makers – to explain the relatively simple but vital considerations that are necessary to build this global educational commons of free learning material. In particular, we will stress the importance of ensuring that supposedly ‘free’ materials are not restricted by seemingly reasonable licensing decisions.

Keywords: open education; open licences; copyright freedom

Introduction

When ‘Research Methods in Computer Engineering’ was released to the public as part of the Massachusetts Institute of Technology OpenCourseWare initiative (ocw.mit.edu/OcwWeb/web/home/home/index.htm), academics in Thailand translated it for use in their own institutions. They did not ask to do this, for permission had already been given. Music modules on Connexions are extremely popular and have been arranged in new patterns and combinations to suit the particular needs of individual instructors and learners throughout the world. This material is free – in the sense of having no cost. But, more importantly, the material is free in the sense of being open to sharing, customisation, translation, and virtual collaboration with people who have never met before. How is this freedom achieved? By *open licensing*.

Open licences are critical for defining Open Educational Resources (OER), which are digitised materials offered freely and openly for educators, students, and self-learners to use and reuse for teaching, learning, and research. OER include learning content, software tools to develop, use and distribute content, and implementation resources (such as the open licences themselves) (Atkins, Brown, & Hammond, 2007). As demonstrated in the other articles in this issue, the rationale for and institutional support of OER is strong, and grows stronger and more widespread by the day. The open education movement has captured the interest of teachers, learners, administrators, advocates, and foundations, inspiring a global movement that believes that knowledge can and should be free and open, and that our educational systems can and should evolve to both utilise and support OER (OECD, 2007). Websites of several prominent organisations involved in open education are provided in Appendix 1.

Given that open licensing is a core infrastructural element of OER, it is not surprising that copyright and related intellectual property and licensing issues rank among the top concerns that people have about the open education movement (D’Antoni, 2008). It can be challenging for copyright holders to balance the desire

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for increased access, translation and customisation against the desire to prevent abuses and to control their work. However, a focus on licensing details may sometimes distract from the core values of the movement – namely, that licensing choices should be based primarily on their potential to improve the availability and quality of educational materials while empowering both educators and learners. The goal of this article is to explain the logic of open licensing to teachers, funders, and educational policy-makers – to explain the relatively simple but vital considerations that are necessary to build this global educational commons of free learning material. In particular, we will stress the importance of ensuring that supposedly ‘free’ materials are not instead locked up by a few unwise or uninformed decisions about their legal status.

The intent of OER and the role of copyright

The open education movement is motivated by several shared beliefs that unite the community. First, knowledge can and should be free. This holds true not just in the economic sense, but also in the sense that knowledge should be able to evolve and adapt as things change and in reflection of local needs and cultures. Second, most educators and others who engage with OER do so because they desire to improve educational systems and opportunities for learning. Teaching and learning should be creative acts, free of unnecessary legal constraint in our collective efforts to enable educational attainment worldwide. Third, following on the second point, the lines that traditionally divided content producers from content users are blurring. Basically, everyone is either a creator or a consumer some of the time. Teachers and students, in particular, engage in both the production and use of OER, gaining benefit from engaging pedagogies and new technologies that enable them to mutually pursue their teaching and learning goals (Brown, 2008). Fourth, OER should be amenable to adaptation and improvement, especially given the rapid pace of technological change and ongoing advances in our pedagogical knowledge. OER, by virtue of being open, provide the ideal basis for experimentation, localisation, and novel recombination with other resources (Bissell & Boyle, 2007).

Box 1. When you are making materials intended to be OER, are there any other rights to consider?

For many audiences – particularly those who are only making their own teaching materials in text form or using their own artwork, the answer is no. However, other rights may come into play if you are doing one or both of the following things:

- (1) incorporating materials taken from other sources, or
- (2) incorporating materials that contain photographs of private individuals who have not given you their consent.

In these cases, the answer is more complicated and varies from country to country. On the first point, short quotations from other works may be allowed under the national limitations to copyright, such as fair use or fair dealing. Works can also be used without permission if the copyright has expired or if they have been dedicated to the public domain or openly licensed under a compatible licence.

On the second point, because the laws in different countries vary substantially, it is impossible to give general advice about photographs of private individuals. Broadly speaking, creators of OER should get permission from the subjects of their photographs, particularly those involving children. Photographs taken in public spaces or of large groups of people are less likely to require permission.

Note that there may be other rights at play as well, but it is beyond the scope of this article to provide any specific guidance or in-depth consideration of these different legal issues. For further information, you can browse the resources on the ccLearn web site (learn.creativecommons.org). If you have specific legal questions for your jurisdiction, you will need to consult a lawyer.

Unfortunately, copyright is often incompatible with these core principles of sharing, creativity, and learner engagement. The Internet makes sharing trivially simple, and recent developments in social networking and web-based collaborative tools are bringing people with shared interests and aspirations together in ways that have never before been possible, transcending time, space, and differential access to resources. However, automatic copyright protections declare that such sharing is illegal without explicit permission, notwithstanding existing national limitations to copyright, such as fair use and fair dealing (see Box 1). Similarly, adapting existing works to new contexts or new purposes is expressly forbidden by default (all-rights-reserved) copyright, again unless permission has been granted. Indeed, essentially all of the *actions* that are possible for resources on the Internet are illegal, other than simply viewing resources online – and even viewing can be illegal if the resource is being broadcast to a large audience. Again, while these prohibitions are not absolute, copyright exceptions and limitations cannot be relied upon for opening up educational materials – because of the differences from jurisdiction to jurisdiction, ubiquitous distribution via the Internet makes it untenable to rely on any one jurisdiction’s fair use and fair dealing provisions.

Creative works are automatically endowed with all-rights-reserved copyright under the presumption that such protections serve the interests of the copyright owner. And indeed, this arrangement probably did suit the interests of most copyright holders historically. But as the Internet transforms the way knowledge is communicated, shared, and built upon, having *all* rights reserved is frequently no longer ideal, especially in the education context. As the length of the copyright term is extended again and again, the result is to limit the ability of teachers and learners to access and utilise available materials, as well as to limit the pool of shared content available as the basis for new creative works. Hence, many creators, including substantial numbers of educators, have embraced alternative copyright designs that have ‘some-rights-reserved’ and better represent their interests for their works.

In education, as with most endeavours, people do not have the time or interest to become experts in copyright law. However, it is important that educators become sufficiently aware of copyright laws to understand the value of alternative licensing models that could help them achieve their vision and objectives, such as Creative Commons (CC), especially since such licences must be applied pro-actively. While there are other alternative licensing choices available (notably, the GNU Free Documentation License (GFDL)), CC licences are best known, most widely applied, and are the licences ccLearn recommends for educational resources. The key is interoperability of the licences – compatibility is a necessity, and that is not achievable without an integrated

schema of licences that are intended to work together (ccLearn, 2008). Note, however, that different CC licences vary substantially in the permissions granted; thus, some CC licences are more appropriate and reflective of the core values of open education than others, as described below.

Creative Commons licences and OER

Creative Commons (CC) is a non-profit organisation founded on the premise that ‘many citizens of the Internet want to share their work – and the power to reuse, modify, and distribute their work – with others on generous terms’. CC licences allow creators to indicate that their works have ‘some rights reserved’, as opposed to the ‘all rights reserved’ copyright that would otherwise be automatically applied (see Box 2). Depending on the exact CC licence chosen, some or all of the methods of engagement with online materials are legal, as long as attribution is given to the copyright holder. When a CC licence is applied, permission has already been given, eliminating guesswork and uncertainty as to the expectations of the copyright holder. CC licences have easy-to-read deeds, making it possible for non-lawyers to interpret the permissions that have been granted. And CC licences are computer-readable, making it possible for people to find CC-licensed resources using ordinary search engines and other web-based protocols.

Box 2. Creative Commons

What is Creative Commons?

Creative Commons is a nonprofit organization that works to increase the amount of creativity (cultural, educational, and scientific content) in ‘the commons’ – the body of work that is available to the public for free and legal sharing, use, repurposing, and remixing.

How does Creative Commons work?

CC provides free, easy-to-use legal tools that give everyone from individual creators to major companies and institutions a simple, standardised way to pre-clear copyrights to their creative work. CC licences let people easily change their copyright terms from the default of ‘all rights reserved’ to ‘some rights reserved’. CC licences are not an alternative to copyright. They apply on top of copyright, so you can modify your copyright terms to best suit your needs. We have collaborated with intellectual property experts all around the world to ensure that our licences work globally.

How is Creative Commons used for educational materials?

Many educators already benefit from working with others to share, use, and build upon their works; in these cases, publishing under a CC licence makes such collaborative activities easier. The CC legal infrastructure gives flexibility to the creator and protects users as well (since they do not have to worry about copyright infringement, as long as they abide by the terms of use). For learners, CC-licensed materials provide access to a wealth of knowledge and opportunities to learn things in new ways. There are many millions of works – from songs and videos to scientific and academic content – that you can use under the terms of CC licences.

What are the licensing choices?

Attribution. You let people copy, distribute, display, perform, and remix your copyrighted work, as long as they give you credit in the way you request. All CC licences contain this property.

Non-Commercial. You let people copy, distribute, display, perform, and remix your work for non-commercial purposes only. If they want to use your work for commercial purposes, they must contact you for permission.

Share Alike. You let people create remixes and derivative works based on your creative work, as long as they only distribute them under the same CC licence that your original work was published under.

No Derivative Works. You let people copy, distribute, display, and perform only verbatim copies of your work – not make derivative works based on it. If they want to alter, transform, build upon, or remix your work, they must contact you for permission.

Based on these choices, you can get a licence that clearly indicates how other people may use your creative work.

	Attribution
	Attribution – Share Alike
	Attribution – No Derivatives
	Attribution – Non-Commercial
	Attribution – Non-Commercial – Share Alike
	Attribution – Non-Commercial – No Derivative

For many people, CC licences are simply a solution to a legal problem; namely, copyright laws the world over can be too inflexible given the opportunities inherent in the modern networked realities of the Internet. However, the real power of CC is not the legal code of the licences, but rather the ideas that spawned and sustain the ‘some rights reserved’ licensing approach. When a teacher applies a CC licence to his lesson plans, he is recognising that his works are more likely to realise their greatest value if he does *not* hold onto them tightly. He gets confirmation of this perspective when other teachers apply his lessons, when other students learn from his insights, and when he benefits, in turn, from improvements made to his lessons by people he has never met. When a professor applies a CC licence to her textbook, she is tapping into opportunities and communities that could not be reached by retaining all rights. She gets confirmation of her perspective when members of her professional community champion her work, it gets translated to reach new audiences, and print sales go up even as her textbook is distributed ever more widely for free on the Internet. And when an educational institution in India releases course curricula and materials as OER,

students and peer institutions the world over can appreciate the quality of those materials, learn from and adapt them for their own needs, and give the originating institution the recognition it deserves.

These and many other stories are reflective of the idea that openness is not a cost, but is rather a valuable characteristic that can inspire new ways of engaging in education and thinking about our resources. Especially if we agree that educational opportunity is a right, not a privilege, then it seems that the default state for educational resources ought to be 'open'. There are enormous costs associated with keeping resources *closed*, from limiting educational opportunities, to imposing financial burdens on those who can least afford it, to preventing pedagogies and communities of practice from freely evolving and improving. It is these types of ideas, not the specific legal and technical fixes to our copyright code, that have captured people's imaginations and catalysed the production of OER and the growth of the open education movement.

Creative Commons as a catalyst or constraint for OER creation and use

While there are open content licences other than CC, it was not until the launch of the suite of CC licences that the open education movement really expanded. The majority of OER are CC licensed, and the fact that the licences are recognised worldwide (and exported into 47 different countries and counting, as of September 2008) makes credible the fact that open education is a global movement. Thus, CC licences act as the infrastructural glue for the open education movement, uniting what might otherwise be disparate and disorganised OER under a common legal framework. However, not everyone who purports to be part of this movement is using CC licences, and the licences themselves have spawned some debates regarding their actual application and meaning. So the issue of copyright, and therefore the ways that people and projects consider the licences and the permissions being granted, is very much an area of active concern.

Arguments continue regarding the meaning of terms within the licences, the appropriateness of granting certain permissions in advance for different types of OER, and the problems that arise as users grapple with compliance with the licensing terms and producers try to enforce these protections. While these issues need the attention of experts in the community, they should not distract from the primary intent of creating OER in the first place. It is important to remember that openness allows works to evolve in ways that probably could not have been anticipated and are likely to expand access and add value to the OER, at least in certain contexts. It is the enhanced possibilities inherent in open licensing that should motivate our decisions, not concerns about potentially undesirable or unethical behaviour. Indeed, nothing on the Internet is completely safe from unauthorised or undesirable uses; moreover, at least with respect to educational materials, the extent of such inappropriate use is almost certainly very small. Far better to pursue the myriad positive outcomes that are enabled by opening up resources than to prevent all such activities for the sake of stopping a few bad actors from operating.

Too often, licensing choices are motivated by a desire to control user behaviour rather than by an intent to endow OER with the greatest potential to have a positive impact on learning and educational opportunities. For example, many people and organisations apply a NonCommercial (NC) restriction on public use of OER in order to impose some control over the ways in which the resources are used, particularly

under the presumption that commercial use would be a bad thing. Notwithstanding the differences in opinion on what constitutes ‘non-commercial’ itself, this licensing choice rarely makes sense for most creators of OER content. If making money is not the primary intent for the creator of some OER, and instead the motivations described above apply, then the ideal licence should be one that allows the OER to be accessed, used, and adapted by anyone, including commercial enterprises. Indeed, there are many legitimate and valuable ways in which commercial efforts will broaden the access to and impact of any OER. For example, for-profit publishers may be able to disseminate the OER into regions that lack network connectivity, or mobile phone companies may bundle the OER in communications packages that help them to sell phones, while also expanding the number of learners who can benefit from the resources. And here again it is worth remembering that content creators are also content consumers – the costs of restrictive licensing should include consideration of both of these roles.

The NC term has some legitimate applications for OER, such as when third-party rights-holders are more willing to allow their work to be disseminated as OER if the NC term is applied (e.g. photographs in textbooks may come from people who do not otherwise participate meaningfully in either the creation or use of OER). In these cases, the non-commercial restriction is a pragmatic way of expanding the total pool of OER, such as we have seen with the OpenLearn initiative at The Open University, UK. Nonetheless, the decision regarding licensing terms (which is also true of the other licensing choices) should ideally be driven by consideration of how to achieve the greatest value for any given OER, rather than concerns about controlling access and user behaviour.

Similar arguments can be made for other licensing considerations, including the ShareAlike (SA) and No Derivatives (ND) clauses. Furthermore, many purportedly open education sites have site-specific copyright policies (called *sui generis* licences) in order to maintain fine-tuned control of the permissions granted. Indeed, some of the better known licensing schemes (e.g. the BC Commons licence in British Columbia) were developed in part because the associated people and institutions wanted a greater degree of specificity in the allowed uses of their works. However, this emphasis on legal control of user behaviour is misplaced and undermines the value of the site’s OER. Such *sui generis* licensing policies are frequently hard to understand, thereby leaving users uncertain of their rights to the works. Also, these non-standardised licences lose the advantages of machine-readability and interoperability that standardised licences enjoy (ccLearn, 2008). Here again, if the licensing considerations were being driven by the hopes and intentions of creating the OER in the first place, rather than concerns about user behaviour, then it makes no sense to use a site-specific licence.

To the extent that CC licences are widely adopted and also easy to understand, apply, and use, the open education community has a chance to create a large and globally interoperable pool of OER. For the most part, CC licences seem to be succeeding in this regard, although the majority of CC-licensed OER retain restrictive terms. But changing people’s perceptions about the rationale of controlling copyrighted works is not easy. There are indeed a few situations where more restrictive licensing terms are justified, but in most cases I would argue that the most open licensing choices are the best options for both content creators and users alike. The key lies in helping OER creators (who are also users) to ask the right questions and embrace the positive potential that is best achieved with the most open and liberal licensing choices.

Key considerations in building a global education commons

First, it is crucial that we examine and understand the motivations of those who create and use open educational resources. We must recognise that everyone involved with OER is a producer some of the time and a consumer some of the time; thus, licensing priorities tend to shift depending on which hat is being worn at that moment. Our goal should be to identify licensing terms that give us the permissions we need regardless of whether we are creating or using educational content.

Second, we need to recognise the importance of interoperability and compatibility among different OER to achieve our educational goals. A ‘commons’ of OER that is, in fact, a collection of separate and mutually exclusive collections of materials is both less useful and potentially too confusing to navigate. Customisation, translation, and recombination of different materials are key to improving educational access and the depth of learning. We all lose if copyright confusion prevents our expert teachers and eager students from applying and benefiting from new pedagogies and technologies that leverage OER in creative and effective ways.

There are additional considerations as well, such as sustainability models for OER providers, new business arrangements with third-party rights-holders, and so on. But as we negotiate our way through this new technology-enabled legal landscape, we must be cautious to avoid solutions to one problem that fundamentally undermine the actual value of the OER. That value is best achieved through the least restrictive licensing, especially when you consider that the presumed dichotomy among producers and consumers is less and less tenable as the Internet continues to evolve. If nothing else, copyright holders of educational resources should start with the presumption that they will offer their materials to the world under the most generous terms – Attribution only (CC BY), presuming they do not want to dedicate their work to the public domain. From that starting point, it may be easier to thoughtfully consider (for both the copyright holder and presumptive users) both the costs of additional licensing restrictions along with the presumed benefits. More restrictive licensing may turn out to be necessary in some cases, but let us be more conscious of the ways in which those restrictions undermine the core value of OER.

Conclusions

People will always have concerns about protecting themselves from unethical or abusive behaviour, particularly when their own creations are somehow twisted to reflect badly on them. For these cases, CC licences provide the needed protections because they work with copyright; indeed, content creators retain all rights that they have not explicitly waived. In addition, CC licences do not affect moral, privacy, or model rights, so violations of those rights are still subject to the full force of the law (should it come to that) (see Box 1). In short, CC licences provide as much protection as standard all-rights-reserved copyright, with the obvious exception of those specific rights that the copyright owner chose to waive.

However, the open education movement will not succeed or fail on the basis of wrangling over specific terminology and protective mechanisms in any of the open content licences. Instead, the movement will thrive on the basis of encouraging people to rally around the core shared values and proceeding on the presumption that most uses of OER will be both ethical and appropriate. Obviously, there is still much legal work to do, including ongoing improvements to the open-content licences, improved legal interoperability of OER, and consideration of other legal barriers to sharing, such

as privacy rights and database protections. In addition, ongoing education about copyright will be necessary, particularly around the relationship between open licences and rights granted via educational exceptions and limitations. The licensing decision may also be subject to non-legal issues, such as sustainability models, distribution mechanisms, and other criteria. These issues are unquestionably important and are a topic of frequent discussion among members of the OER community. Nonetheless, sustainability models (and others) will probably have to change to match our globally networked infrastructure. There are no clear solutions as of yet, and the challenge is greater than any one project (or even perhaps the whole OER movement) can take on, but the technologies will continue to evolve whether or not they can be legally applied. In many ways, restrictive licensing just complicates and delays the choices that we must make in order to design new ways of creating, distributing, and sustaining content production.

ccLearn, in partnership with many other organisations, is leading in consideration and resolution of these challenges. As we work towards greater acceptance of standards and best practices in copyright for OER, we should remember the overarching goals we all share. Our collective investments of time, energy, and money will be best leveraged by adhering to these goals as our highest priorities and preventing other concerns from hijacking our best intentions with OER. Now that we have OER, let us see what they can do for educational access and opportunity *for everyone*.

Acknowledgements

The author would like to thank James Boyle, Diane Peters, Jane Park, and other colleagues associated with ccLearn and Creative Commons for their conversation on these topics and feedback on this paper. The author would also like to thank Susan D'Antoni and several anonymous reviewers for their comments on an earlier draft. Mostly, the author would like to thank everyone who finds the time to get engaged in these issues and helps to build the open education movement; we may not always agree on the details, but the vision we share is fast becoming reality.

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Appendix 1. Useful web sites

BCCampus project	www.bccampus.ca/page93.aspx
Capetown declaration.org	http://capetowndeclaration.org/read-the-declaration
Connexions	www.cnx.org
Creative Commons	wiki.creativecommons.org/ FAQ#What_is_Creative_Commons.3F
	wiki.creativecommons.org/ FAQ#What_problem_does_Creative_Commons_intend _to_solve.3F
	wiki.creativecommons.org/ODEPO
	en.wikipedia.org/wiki/Sui_generis
	wiki.creativecommons.org/ODEPO
	en.wikipedia.org/wiki/ GNU_Free_Documentation_License.
GFDL	www.sourceoecd.org/education/9789264031746
Giving Knowledge for Free: The Emergence of Open Educational Resources (OECD)	
Open Learn	www.open.ac.uk/openlearn/news/news-full.php?id =12492