

# **Open Content Licensing: Cultivating the Creative Commons**

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# A Short Overview of Creative Commons

PROFESSOR BRIAN FITZGERALD

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## What is Creative Commons?

Creative Commons (CC) is a world wide project that aims to make copyright material more accessible and negotiable in the digital environment. To achieve this Creative Commons asks content owners who wish to contribute to the commons to label their material with a CC badge representing the terms upon which the material may be reutilized: (see the website at [creativecommons.org](http://creativecommons.org)) This process of generically giving permission in advance – use my content so long as you attribute me, or engage in non commercial use, or make no derivative works or share your improvements with the broader community – allows users upon seeing content labelled with the CC symbol to know exactly, at that instant, what right they have to reproduce, communicate, cut, paste, and remix. The content owner reserves some rights of control but eschews the common commercial approach of all rights reserved.

## Who is behind it?

Creative Commons is a not for profit corporation having its origins at Stanford University now having its headquarters in San Francisco. The Creative Commons concept was given worldwide impetus through the release of Stanford Law Professor Lawrence Lessig's book *The Future of Ideas: The Fate of the Commons in a Connected World*<sup>1</sup> in 2001 and is further reinforced by his latest release *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity*.<sup>2</sup> The international development of the basic CC protocols or licences (iCommons) has grown to the point where over 60 countries throughout the world are participating. In Australia, QUT is the institutional affiliate for the Creative Commons and has been at the forefront of the development of the Australian version of the standard CC licences along with Ian Oi of Blakes Lawyers. The international licences or protocols are available online at [creativecommons.org](http://creativecommons.org).

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<sup>1</sup> (2001) Random House, New York.

<sup>2</sup> (2004) Penguin Books, New York.

## Is anyone using CC?

The CC project has garnered worldwide attention with the BBC announcing it will licence archived material under CC styled licences and popular US magazine Wired releasing a CC licensed CD including well known artists The Beastie Boys and Talking Heads front man David Byrne with their November 2004 issue. For an interesting example of how CC has facilitated remix and innovation listen to the Colin Mutchler song 'My Life' and the derivative works it has generated, many of which are available at <http://colinmutchler.com>. Worldwide it is estimated that, as of 1 June 2006, over 140 million link backs have been made to CC licences.

## Why contribute to the Creative Commons?

A common question is "why would people want to share digital content?" Some reasons are:

- Ideologically and financially this may be acceptable – the most compelling example in Australia is government where information is ultimately owned by and for the people
- Open contenting one version of your material e.g. a draft (E Print) or a chapter may in fact be a strategy for enhancing the commercialised version of your content
- A wish to share with others for creative and educational purposes – peer production
- Publicity – what the free and open software movement calls 'egoboo' or reputation within the open community which in some cases will be exploited commercially down the track
- Negotiability – through technologically implemented generic protocols that can be utilised with the click of a mouse
- 'What is junk to one may be gold to another' – the idea that the off cuts or digital junk of one person may be the building blocks of knowledge and creative genius for another
- 'Indirect appropriation' – money, design and use of end product, pleasure or social profile gained through involvement in peer production<sup>3</sup>

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<sup>3</sup> See Yochai Benkler 'Coase's Penguin, or Linux and the Nature of the Firm', (2002) 112 *Yale Law Journal* 369.

## **Does CC mean that Copyright Law is Redundant?**

Creative commons draws on the work of the free software movement. ‘Free software’ means free as in freedom (to access code) not price and has come to the fore in an environment of proprietary software distribution where source (human readable) software code is hidden from public view. The free software model is to distribute software with the source code open and accessible so that the recipient can easily and better understand the software. This in turn enhances further innovation, error detection and/or security testing. However the free software movement requires through its General Public License (GNU GPL) that if you use open code, innovate upon it and then distribute that code in a derivative work you must share all of the code of the derivative work with the person to whom you are distributing the software code (which in many cases will in effect mean disclosure to the whole community). As has been written elsewhere:

The powerful insight that Richard Stallman and his advisers at the Free Software Foundation discovered was that if you want to structure open access to knowledge you must leverage off or use as a platform your intellectual property rights. The genius of Stallman was in understanding and implementing the ethic that if you want to create a community of information or creative commons you need to be able to control the way the information is used once it leaves your hands. The regulation of this downstream activity was achieved by claiming an intellectual property right (copyright in the code) at the source and then structuring its downstream usage through a licence (GNU GPL). This was not a simple ‘giving away’ of information but rather a strategic mechanism for ensuring the information stayed ‘free’ as in speech. It is on this foundation that we now see initiatives like the Creative Commons expanding that idea from open source code to open digital content.<sup>4</sup>

The point being made is that models like Creative Commons rely on the power of copyright ownership and law to structure open access downstream. In this sense CC is not anti-copyright. Rather it uses copyright as the basis for structuring open access. However CC is designed to provide an alternative model for managing copyright in digital content.

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<sup>4</sup> A Fitzgerald and B Fitzgerald, *Intellectual Property in Principle* (2004) LBC/Thomson, Sydney.



## **CC as a Model for Making Copyright More Active**

There is great concern worldwide that too much copyright material is left inactive in archives (e.g. government, museums) because the process of negotiating the licence is too time consuming or expensive, even where the copyright owner does not want to make money. Now that we have a vast array of digital technology that can present much of this material to the world cheaply and rapidly more and more institutions are considering how they might allow greater access to their archives/knowledge (e.g. BBC). A facility for accessing archived material, especially publicly funded material, will increasingly be demanded as part of the landscape of information management and creative innovation. CC provides a effective and simple way in which sharing and collaborative effort can be facilitated in the realm of digital content and hopefully a way in which inactive copyright material can be given new life.

## **Conclusion: Copyright More Accessible and Negotiable**

In a world where the digital generation feed off a culture of cut and paste, remix and instant Internet access Creative Commons will provide a vitally important facility for sharing knowledge in the name of culture and innovation. While respecting the basic principle of copyright CC allows a broader understanding of information management in a way which builds on the existing system. There can be little doubt that CC will become an important option in any copyright management and distribution strategy from the most sophisticated to the very simple of cases.

- February 2007