Legal Information Management, 10 (2010), pp. 162–165
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doi:10.1017/S1472669610000642

Common Knowledge? The Rise of Creative Commons Licensing

Abstract: Tony Simmonds explains the six types of Open Access licences which are available to academic users to preserve rights in their publications.
Keywords: copyright; academic libraries

Introduction

Copyright law is a blunt instrument. In the UK, under the Copyright, Designs and Patents Act (CPDA) 1988, the owner of copyright in a work has automatic and exclusive rights to reproduce, publish and adapt the content they create. The exceptions made in the statute are narrow and sometimes ill-defined. Suffice to say, the copyright owner holds all the cards that matter.

Unsurprisingly content users, and the information professionals who support them, advocate degrees of flexibility and choice beyond the letter of the law. Two forces have strengthened their hand in recent years. One is the disruptive digital free-for-all (or perceived free-for-all) of the internet. The other is the remarkable growth of the Open Access movement across higher education ("Open access" online to, for example, learning materials or preprints of scholarly articles). Both of these trends have unlocked the sharing of knowledge and creativity and recast people's expectations of what they should and should not be able to do with content.

Creative Commons (CC) Licences attempt to reshuffle the pack altogether, with the aim of rebalancing the interests of copyright owners and users. They offer the creator of content a range of six standardised model licences. Each permits a different bundle of rights to be reserved. The aim is to open a middle road between the "all rights reserved" of traditional copyright legislation,and the "no rights reserved" copyright melee that many perceive to be the biggest threat posed by the web.

What licences are available?

Each CC Licence comprises one or more from a list of four conditions. Each condition is represented by a two-letter code and also by an icon, which permits straightforward visual markers to be attached to pieces of content. The conditions are[1]:



Attribution

by
You let others copy, distribute, display and perform your copyrighted work and derivative works based upon it, but only if they give credit the way you request.



Share Alike

sa
You allow others to distribute derivative works only under a licence identical to the licence that governs your work.



Non-Commercial

nc
You let others copy, distribute, display and perform your work and derivative works based upon it, but for non-commercial purposes only.



No Derivative Works

nd
You let others copy, distribute, display, and perform only verbatim copies of your work, not derivative works based upon it.

Combining these four building-blocks forms the six basic CC licences. In ascending order of restrictiveness, these are[2]:



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Attribution Non-Commercial No Derivatives

cc by-nc-nd
This licence is the most restrictive of our six main licences, allowing redistribution. This licence is often called the "free advertising" licence because it allows others to download your works and share them with others as long as they mention you and link back to you, but they cannot change them in any way or use them commercially.

The Jurisdictional gap

The CC licensing initiative is managed by a not-for-profit corporation based in the United States. Individual licences must comply with local copyright rules to be valid. This has important consequences for both copyright owners and the user's copyright content. Both must be aware that CC licence terms cannot override local copyright exceptions (for example, the "fair dealing" provisions of the UK CDPA 1988). In addition, owners must make sure that the version of any CC licence which they attach to their work is appropriate for their jurisdiction and users must be aware that the terms of CC licences linked with content may not exactly align with copyright rules in their country if the content was created overseas. This can be especially confusing with content discovered on the internet.

To ease this difficulty, teams of volunteers in different countries work to "port" the basic licences. This process makes them fit their jurisdiction by realigning the terms in order to iron out potential legal inconsistencies. To date, porting has been successfully carried out for England and Wales[3] and for Scotland[4]. The Republic of Ireland is due to be covered by Autumn 2010. There seems to be no projected date for Northern Ireland.

The UK Legal Commons

CC Licences are associated with a range of sources of direct interest to UK legal information professionals and their clients. For instance, in June 2009, Wikipedia adopted the CC "Attribution Share Alike" licence (CC BY-SA). In addition many banks of free-to-use images on the internet are offered under the terms of CC licences. An example is the photo sharing site Flickr, which has developed a Creative Commons portal that includes a search tool[5].

Many of the most interesting applications of CC licensing have emerged from the higher education sector in connection with the "Open Educational Resources" (OER) movement. Advocates of OER push for digital

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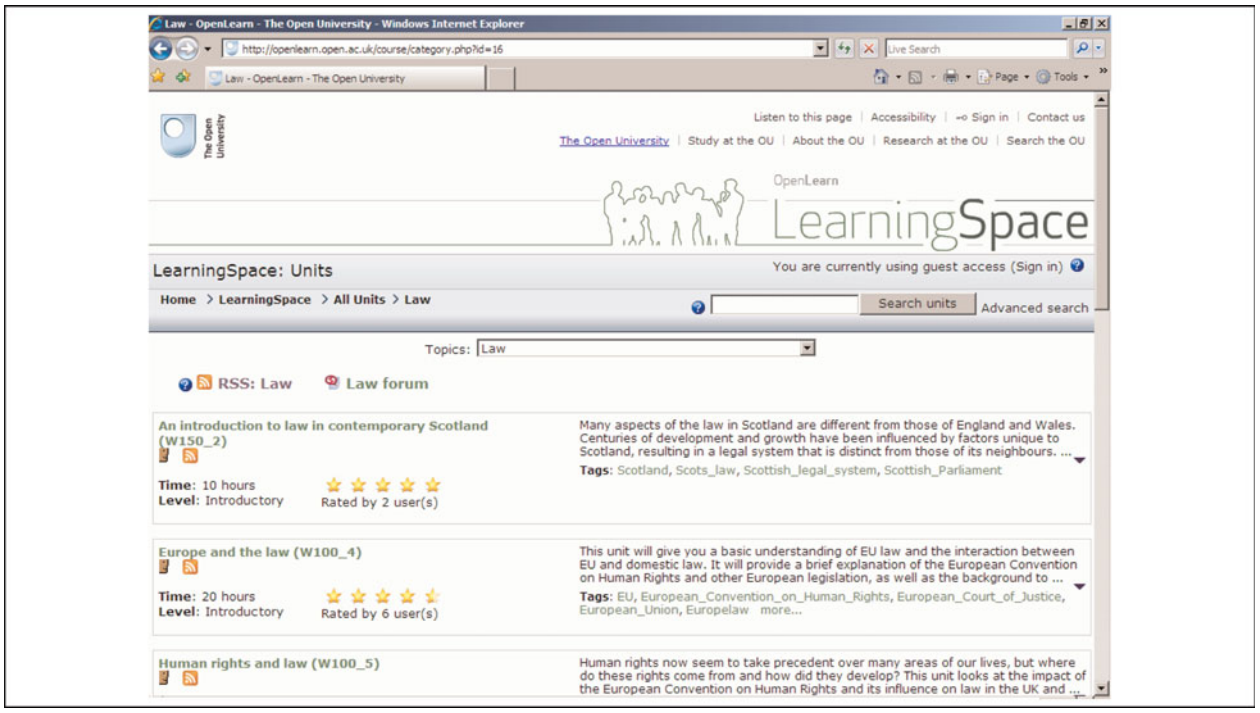


learning materials to be shared with other educators and students on a non-commercial basis. They welcome re-use, and sometimes also encourage adaptation and remixing. Open licence structures such as Creative Commons mesh well with this spirit of free access and repurposing. The potential benefit to learners, especially those in developing countries, is clearly enormous. There are pedagogical benefits too, in terms of opening a fast feedback loop and promoting cross-institutional innovation.

Two relevant examples of OER initiatives are:

i.) Simshare

Simshare[6] is a higher education project led by the UK Centre for Legal Education. It aims to capture and publish legal simulation resources in a web-based repository, for re-use by anyone, under CC licensing. Contributors have included universities across the UK, and the body of available material continues to grow. Resources include documents associated with role plays, such as scenarios and witness statements; information from websites which support or run simulations; and



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Web 2.0 applications, such as podcasts. This initiative is well worth monitoring by anyone with an interest in teaching law.

ii.) OpenLearn

The Open University's website "OpenLearn"[7] follows a trend among some US universities to make course materials freely available online[8]. Independent learners can study a range of modules taken from current Open University degree programmes, including a range of substantial law-related topics[9]. These include An Introduction to Law in Contemporary Scotland (suggested study time: 10 hours), Privacy Rights and the Law (20 hours) and Company Law in Context (10 hours). All content is covered by a CC "Attribution Non-Commercial Share Alike" licence.

It is reasonable to assume that there is some *pro bono* intent behind such initiatives and they additionally provide an excellent marketing opportunity. Where an institution is confident in the quality of their learning materials, providing open access to part or whole courses can raise reputation and generate viral advertising among potential students. As you might expect, whilst pockets of learning may be freely accessible, qualifications require enrolment.

Conclusion

The latest (2008) estimate by Creative Commons of the number of works licensed under their licences is no less than 130 million[10]. Amongst this vast pool of material are solutions to many of the copyright headaches faced by information professionals. In addition, a number of CC licensed resources are appearing that are of direct interest to the UK legal sector.

A key appeal of the CC approach is the way in which it facilitates different forms of adaptation and remixing of works, which dovetails with growing interest in content mash-ups. This potential has caught the attention of the UK government, which in January 2010 launched the online data warehouse *Data.gov.uk*[11]. This initiative offers raw data from a wide range of public bodies, including law-related statistics from Whitehall departments such as the Ministry of Justice and the Home Office. Users are actively encouraged to repurpose any of this information, including by combination with other content to create derivative products or applications. Content overall is covered by the terms of Crown Copyright, but significantly the copyright terms endorse CC licensing:

> *These terms have been aligned to be interoperable with any Creative Commons Attribution 3.0 Licence. This means that you may mix the information with Creative Commons licensed content to create a derivative work that can be distributed under any Creative Commons Attribution 3.0 Licence.*[12]

The information commons is thriving and expanding. It is loosening the shackles of copyright, opening new paths to accessing and repurposing content and boosting creativity. This is a development to keep under close watch.

Footnotes

[1]The list of conditions is copied from: http://creativecommons.org/about/licenses/ (accessed on 24 June 2010). This content itself is licensed by a "Creative Commons Attribution 3.0" licence.

[2]The list of standard licences is copied from: http://creativecommons.org/about/licenses/ (accessed on 24 June 2010). This content itself is licensed by a "Creative Commons Attribution 3.0" licence.

[3]See http://creativecommons.org/international/uk/ for more information (accessed on 24 June 2010)

[4]See http://creativecommons.org/international/scotland/ for more information (accessed on 24 June 2010)

[5]See http://www.flickr.com/creativecommons/ (accessed: 24 June 2010)

[6]See http://www.simshare.org.uk/ (accessed on 24 June 2010)

[7]See http://openlearn.open.ac.uk/course/category.php?id=16 (accessed 24 June 2010)

[8]For example, see the "MIT Open Courseware" offering at: http://ocw.mit.edu/index.htm (accessed on 24 June 2010)

[9]See http://openlearn.open.ac.uk/course/category.php?id=16 (accessed 24 June 2010)

[10]See http://creativecommons.org/about/history/ (accessed on 24 June 2010)

[11]The list of contributing public bodies can be accessed at: http://data.gov.uk/data/publicbody (accessed 24 June 2010)

[12]http://data.gov.uk/terms-and-conditions (accessed 24 June 2010)

Biography

Tony Simmonds has been working at the College of Law for many years, latterly as the Deputy Director of Knowledge Services, and he is a regular contributor to LIM.

https://doi.org/10.1017/S1472669610000642 Published online by Cambridge University Press