



Information Resources: Creative Commons: An Opportunity to Extend the Public Domain

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The public domain—those property rights that belong to society at large without the restrictions of copyright—has been diminished by copyright legislation and a recent Supreme Court decision. Copyright law is intended to protect the rights of creators for a period of time, after which works pass into the public domain where others can freely use them. However, recent extensions of the length of time a copyright is in effect and the fact that all works are now automatically awarded protection when created serve to curtail what actually moves into the public domain. The result is that the balance between protecting the rights of creators and publishers and the needs of society to insure progress in the sciences and arts has been lost. Believing that many individual creators would not elect to have all the copyright provisions the law automatically bestows, the Creative Commons was founded to provide a legal mechanism for individuals to select the rights they wish to maintain and those that they are willing to cede to others. The goal is to make more information available to the public within a "creative commons" in a way that complements copyright law.

What is the Creative Commons?

The Creative Commons was founded in 2001 as a "collaborative effort of practitioners and theorists of law and technology to help bridge the world of copyright and the public domain" ([Creative Commons, n.d.](#), Supporters section, para.1). It receives support from the Center for the Public Domain (www.centerpd.org) and the MacArthur Foundation (www.macfound.org) and is housed at the Stanford Law School. The premise of the Creative Commons is:

Creativity and innovation rely on a rich heritage of prior intellectual endeavor. We stand on the shoulders of giants by revisiting, reusing, and transforming the ideas and works of our peers and predecessors. Digital communications promise a new explosion of this kind of collaborative creative activity. But at the same time, expanding intellectual property protection leaves fewer and fewer creative works in the "public domain" — the body of creative material unfettered by law and, to quote Supreme Court Justice Louis Brandeis, "free as the air to common use." ([Creative Commons, n.d.](#), Legal Concepts section, para.2).

For an engaging, multimedia description of the Creative Commons and its mission go to the animation found at: <http://mirrors.creativecommons.org>.

Why was it created?

The Creative Commons seeks to provide a legal means for creators to bridge copyright law to overcome some of the recent changes to copyright law that limit free, public access to their works. These changes included increasing the period of copyright protection and the automatic granting of copyright.

Extension of Copyright Protection

The U.S. Constitution provides copyright protection for a limited time, after which the creative work passes into the public domain. In 1790, a copyright was good for 14 years and renewable for another 14 years. The period was extended in 1831 to 42 years and in 1909 to 56 years. Then in the last 40 years, Congress extended coverage 11 times. The most recent was the 1998 law, known as the Sonny Bono Copyright Term Extension Act, which gave the works of individuals protection for life plus 70 years after death and those of corporations for 95 years. Some refer to this as the "Mickey Mouse Law" because of the efforts by the Disney Corporation to secure its passage and prevent characters such as Mickey Mouse from entering the public domain. In fact, with this extension, no works will be added to the public domain until 2018. The irony of this position by Disney of course is the huge amount of success the corporation has had by creating projects built upon stories from the public domain--- Cinderella, Alice in Wonderland, Peter Pan, and Sleeping Beauty to name just a few.

Heins (2002) outlines repercussions of this extension, which have the effect of diminishing the public domain and the creativity it can engender. It is estimated that with this extension, 400,000 works were prevented from entering the public domain. Of these, only 2% are believed to be revenue generating over time. Lawrence Lessig, professor of law at Stanford Law School and founder of the Center for Internet and Society, argued for the plaintiffs in the case of *Eldred v. Ashcroft*, which challenged the Sonny Bono Extension. Fourteen friend-of-the-court briefs included those from the College Art Association, online archiving projects, various library associations, a group of economists, National Writers Union, and the Association of American Physicians & Surgeons. These provided numerous examples of the importance of a robust public domain to spur creativity and innovation. Nonetheless, in January 2003, the Supreme Court upheld the Sonny Bono Extension by a vote of 7-2.

Automatic Copyright Protection

Until 1989, an author or publisher had to register with the U.S. Copyright Office to obtain copyright. Since then copyright is automatic for any work fixed in a tangible medium. This includes material placed on the Internet regardless of whether or not a copyright statement or © symbol is present. The Creative Commons holds that many creators would not choose to have their work automatically receive full copyright protection. Rather, if possible, they would elect to have their work fully available to the public or to exercise only some of their legal rights.

How does it work?

The Creative Commons seeks to provide a mechanism for creators to provide this broader use by the public than copyright law allows, while still offering the creator a choice of which rights they wish to

continue to secure. This moves works into a "creative commons," allowing for others to use them without special permission, because permission has already been granted to all. It is designed to complement copyright law and enrich the public domain. To do this, the Creative Commons (<http://creativecommons.org>) created a set of legal licenses from which creators can select the rights they wish to retain and those that they are willing to give to the public. These allow the creator to communicate legally that they are willing for the public to be able to use their content beyond what copyright law allows. The creator can share to the extent he or she wishes, declaring "no rights reserved" or "some rights reserved." The potential user is able to determine the extent of what is permissible without having to make a direct request of the creator.

License Types

Creators can mix and match those conditions they wish to apply. The following is taken directly from the "Licenses Explained" page on the Creative Commons website (<http://creativecommons.org/learn/licenses/>), which also happens to be licensed under the Creative Commons Attribution license.

<p>Attribution. You let others copy, distribute, display, and perform your copyrighted work — and derivative works based upon it — but only if they give you credit.</p> <p>Example: Jane publishes her photograph with an Attribution license, because she wants the world to use her pictures provided they give her credit. Bob finds her photograph online and wants to display it on the front page of his website. Bob puts Jane's picture on his site, and clearly indicates Jane's authorship.</p>	
<p>Noncommercial. You let others copy, distribute, display, and perform your work — and derivative works based upon it — but for noncommercial purposes only.</p> <p>Examples: Gus publishes his photograph with a Noncommercial license. Camille incorporates a piece of Gus's image into a collage poster. Camille is not allowed to sell her collage poster without Gus's permission.</p>	
<p>No Derivative Works. You let others copy, distribute, display, and perform only verbatim copies of your work, not derivative works based upon it.</p> <p>Example: Sara licenses a recording of her song with a No Derivative Works license. Joe would like to cut Sara's track and mix it with his own to produce an entirely new song. Joe cannot do this without Sara's permission (unless his song amounts to fair use).</p>	
<p>Share Alike. You allow others to distribute derivative works only under a license identical to the license that governs your work.</p> <p><i>Note:</i> A license cannot feature both the Share Alike and No Derivative Works options. The Share Alike requirement applies only to derivative works.</p> <p>Example: Gus's online photo is licensed under the Noncommercial and Share Alike terms. Camille is an amateur collage artist, and she takes Gus's photo and puts it into one of her collages. This Share Alike language requires Camille to make her collage available on a Noncommercial plus Share Alike license. It makes her offer her work back to the world on the same terms Gus gave her.</p>	
<p>More examples are available on our examples page. Also note that every license carries with it a full set of other rights in addition to the allowances specifically made here.</p>	

Forms of the License

The license is issued in three forms:

- **Commons deed:** This is the plain language version with the corresponding icons. The commons deed for the above example is at: <http://creativecommons.org/licenses/by/1.0/>
- **Legal code:** Legal experts have written the text necessary to have the license provisions stand up in court. The legal code for the example used above is at: <http://creativecommons.org/licenses/by/1.0/legalcode>
- **Machine-readable code:** This coding is added to the hypertext markup language (HTML) for the Web page with the creative work. This makes the license information accessible to search engines and digital rights management systems.

Advantages

- The license makes it easier for people to identify content that creators are willing to share, thereby providing greater opportunity for collaboration and creative activity. At present, it can be extremely difficult to identify copyright holders and to obtain permission to use their works.
- Technology will allow license information to be embedded in Web pages and search engines to identify what license provisions are in effect.
- More works will be available for sharing in a peer-to-peer environment.

Other Initiatives of the Creative Commons

The Founders' Copyright initiative was launched in December 2002. This allows creators to choose to have their work pass into the public domain after a period of 14 years, following the term allowed by the First Congress in 1790. The publisher O'Reilly & Associates, a premier publisher of books in the field of information technology, has employed this provision and released some 200 in-print works into the public domain. O'Reilly will also release out-of-print books. Both in-print and out-of-print titles will be under the Attribution license.

The International Commons project aims to work with legal experts in other countries to develop Creative Commons licenses specific to local needs. The Creative Commons Conservancy is envisioned to serve as the Nature Conservancy does for land and to take donations of content and make them available to others under the provisions of the donation. Under exploration is the need to craft a license even more specific to the needs of the education community to encourage sharing of materials to support learning in formal or informal educational settings. Anyone wanting to read more about this discussion and to contribute to it should go to: <http://creativecommons.org/weblog/entry/3633>.

What can you do?

Consider using a Creative Commons License

You can review the licenses offered by the Creative Commons and consider applying them to your creative works. Examples of others who have taken this step:

- The Alan E. Lindsay ECG Learning Center in Cyberspace, University of Utah School of Medicine (<http://medlib.med.utah.edu/kw/ecg/>)
- Human Simulation and Patient Safety Center, Simulation Support, Duke University Medical Center (<http://simcenter.duhs.duke.edu/support.html>)
- Introduction to National Center for Biotechnology Information, Connexions Project, Rice University (<http://cnx.rice.edu/content/m10995/latest/>)
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Voice your concern: Sign the "Reclaim the Public Domain" petition

The health of the public domain impacts creativity and the free flow of information. You can voice your concern to the U.S. Congress and call upon its members to take action by signing a petition to "reclaim the public domain." The petition is at: www.petitiononline.com/eldred/petition.html. It asks Congress to consider legislation that, after 50 years, would require a copyright holder to pay a fee of \$1 to extend the copyright by whatever period Congress determines. It is believed the vast majority of copyright holders would not extend their copyright, thereby allowing their works to pass into the public domain. At the same time, it would allow media corporations, such as Disney, to protect their creative works for extended periods with little cost or effort.

The petition was launched on June 3 and received over 16,000 signatures in less than four weeks. On June 25, Representatives Lofgren (D-CA) and Doolittle (R-CA) introduced the proposed legislation in the House as HR2601. Your support can make a difference.

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