

OPEN EDUCATIONAL RESOURCES AND INTELLECTUAL PROPERTY RIGHTS

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OPEN EDUCATIONAL RESOURCES

Open Educational Resources (OER) are described in detail in the UNESCO brief on OER (Lane, 2010), but it is worth repeating the definition:

“OER are teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use or re-purposing by others. Open educational resources include full courses, course materials, modules, textbooks, streaming videos, tests, software, and any other tools, materials, or techniques used to support access to knowledge” (Atkins, Brown and Hammond, 2007, p. 4).

The key elements to note in the definition are the resources need to “reside in the public domain or have been released under an intellectual property license that permits their free use or re-purposing by others”. It is tempting to see the solution as to place everything in the public domain, however that option is ill-defined and does not allow different cases to be handled. Adoption of a suitable license gives a way forward for OER and permitting sharing and reuse. To do this needs some understanding of:

- What is meant by intellectual property
- What approach can be used for licensing and release
- How to give the permission you want?

INTELLECTUAL PROPERTY RIGHTS

Intellectual property refers to the concept that ideas and the way they then appear as objects, and other media somehow belong to those who shaped and produced them. Copyright in turn is then the way in which the rights associated with these can be protected. While these concepts are fairly simple in some ways, the law that protects them is quite complex. There are sometimes different levels of legislation (for example national, European, and worldwide agreements can all be applied and may contain contradictions), the ownership may not be obvious, and exceptions that work in some cases may not in others. When copyright is applied to printed material these complexities cause relatively few problems, not least because the object itself is very apparent. Now that material is available on the Internet and materials are digital, problems are exposed more and more. Fortunately there has also been work such as that supported by Creative Commons on sensible simplifications and establishing working practices that can apply for education.

OPEN LICENSING APPROACHES

Copyright has an image of being a way to assert ownership and **stop** people doing things. But what happens when the opposite is true and people want to make it clear that certain things are **allowed** or encouraged? In the case of software there has been a mixed approach of those who develop for the challenge of getting things working and those who develop for profit going back to when software first became established as a concept. Many programmers worked in education, others were students, yet more made just a small contribution and felt it more important to share their fix than to claim any rights. However it was unclear what was the intention and if someone later came along and incorporated such software into a product, they may be uncertain if that was allowed or if other uses may then be prohibited. The concept of “copyleft” was developed that asserted rights in order to encourage openness (Stallman, 2010). The approach that has become characterised as Open Source Software, aimed to set out clear codes of practice and licences that could accompany software. The licences stated what was permitted and extended permissions to make changes and improvements subject to particular ways to share the software typically as source code. Software had characteristics that helped it benefit from such licences: as it is digital it was completely transferable at minimal cost to the originator, it could be altered in small ways and improved, it need such alterations to work in new contexts, and many different solutions could be found for the same problems.

As media moves online - such as videos, music and text - so they take on some of the characteristics of software, becoming digital entities. Reproducing textbooks used to mean that it was often necessary to get hold of original materials with associated high cost, but in digital reproduction the perfect copy is easy to make and costs are low (Anderson, 2008). This has meant that copyright has been used as a way to assert the value in digital materials, but not necessarily very effectively. In education, and for others for whom producing content is part of being creative, the motivation is often not to sell the material but to establish reputation or to support other activities. Just as with open source software, open content needs to be shared with a clear message that it is available and that reuse, remixing and sharing is encouraged.

GIVING PERMISSION

For many users there is little distinction between available content, open content and free content. If something can be found on the web and used then it seems fair to use it! In education however such treatment both gives the wrong message to learners and can run unnecessary risks for the future if the copyright owner's attitude changes. The move towards open educational resources therefore helps to get the message across that material can be used and reused, as people would hope. Just as with open source software the practice to describe content as open can spread and lead to changes in how educational materials are developed. Identifying and communicating the rights is greatly helped by taking a consistent approach. The Creative Commons identifier is part of the communication of permissions and one of its strengths is that it is becoming part of everyday practice on sites that share individual content. On photo sharing sites and video sites describing rights is becoming more common and search engines are starting to help users find content that has been given open rights. Applying this to work that you control will help the practice grow for the benefit of all.

Letting other people use materials you have produced means that you need to have the rights to let people take your content. In other words are you in fact the "rights holder"? If you work for an organisation or have provided the material already to a publisher this may not be as clear as you might expect and can only be decided by considering your own situation. In practice though this is not often a major barrier; once you can find who to ask and agreeing that you have the right to share material that you are working on can help ways to work together as well as to help release it. Stating the right form of permission is itself getting easier. The idea of open content was expressed by Wiley (1998) in using an "open publication license" with the intention that such works "...may be reproduced and distributed in whole or in part..." This approach has been developed into the Creative Commons license and the options for how to apply that in practice are described below, together with an example of how it helped work on OpenLearn, the Open University's open content initiative.

WHAT DOES THE PERMISSION MEAN?

In working with OER people are assumed to want to give permission as stated in its definition to “use and repurpose”. In practice there are different ways to interpret this both in giving the permission and in using them. The conditions associated with Creative Commons (see “Practical Creative Commons”) illustrate this well. These were designed to be used for all sorts of content but what do they mean for open educational resources and how are they likely to be interpreted? From the provider point of view it can be tempting to take the smallest step and just allow free access to what you have produced but not let any changes be made. This can feel justified so that people do not change your meaning or miss the point in the teaching points that are being made. There is a licence that lets you do this by saying “no derivatives” but from the user point of view the benefits are limited. If they only want to use part of what has been provided, or translate it or reformat, none of these changes are automatically allowed. Using the non-derivative therefore discourages a range of uses: for example using photographs that carry such a label within a presentation means that you cannot be sure that you can resize and adjust the image as needed, even though it is very likely the copyright holder would be quite happy for such reuse to occur. There are cases where such restrictions may be appropriate, such as in sharing medical advice where changes need to be controlled, but the condition does not help sharing as much as other options.

At the other extreme there is the option of going into the public domain, or more precisely using CC0, however the licence is difficult to apply and should be seen mainly as a message that anything is allowed (including use without saying where material comes from) rather than actually giving up rights. The most useful options fall between these extremes. The attribution licence, where everything is allowed provided the source is attributed, and the non-commercial variation where this permission is limited to non-commercial use. There are arguments for and against both versions, under CC-BY it is possible for a commercial organisation to use your content to support activities that could harm your business or offer a poor experience. An example in practice is the release of low quality printed books gathered from openly released material. On the other hand with the non-commercial clause the restriction can deter use and raise potential problems in further sharing of content and additional advice is then needed as developed for OpenLearn. These tensions are made more difficult to address when “share alike” imposes the need to share content on the same basis as the original resulting in care needed when mixing and combining content (Wiley, 2008). In general the experience in OER has been to move to more permissive licences as they help share and many potential problems of openness have not happened in practice.

International issues

The licensing of material that will appear on the Internet also raises questions about the legislation that applies. National laws and practice can make it seem difficult to apply an overall approach. Again Creative Commons has addressed this issue. Across more than 100 countries they have produced “ported” versions of licences that are designed to work with particular local legislation. However they also offer international “unported” licences that can apply in all cases. The unported licences may not cover all aspects, for example regional data protection and personal rights can usefully be addressed in the local versions. However all licences promote the same general permissions and the same message. Even in the case of regions where local versions of a licence are available then the international version may be preferred to help transfer to other domains. This also means the lack of the transferred licence for a particular region is not a barrier to starting to use the licences.

PRACTICAL CREATIVE COMMONS

Creative Commons (<http://creativecommons.org>) is a non-profit organisation that offers an alternative to full copyright. A simple standardised way to grant copyright permissions to your creative work.

How do I properly attribute a Creative Commons licensed work?

(Adapted under CC-BY licence from [#How_do_I_properly_attribute_a_Creative_Commons_licensed_work.3F](http://wiki.creativecommons.org/FFAQ) viewed 12 Jan 2011; content on this site is licensed under a Creative Commons Attribution 3.0 License)

All current CC licenses require that you attribute the original author(s). If the copyright holder has not specified any particular way to attribute them, this does not mean that you do not have to give attribution. It simply means that you will have to give attribution to the best of your ability with the information you do have. Generally speaking, this implies five things:

- If the work itself contains any copyright notices placed there by the copyright holder, you must leave those notices intact, or reproduce them in a way that is reasonable to the medium in which you are re-publishing the work.
- Cite the author's name, screen name, user identification, etc. If you are publishing on the Internet, it is nice to link that name to the person's profile page, if such a page exists.
- Cite the work's title or name, if such a thing exists. If you are publishing on the Internet, it is nice to link the name or title directly to the original work.
- Cite the specific CC license the work is under. If you are publishing on the Internet, it is nice if the license citation links to the license on the CC website.
- If you are making a derivative work or adaptation, in addition to the above, you need to identify that your work is a derivative work i.e., "This is a Finnish translation of the [original work] by [author]." or "Screenplay based on [original work] by [author]."

In the case where a copyright holder does choose to specify the manner of attribution, in addition to the requirement of leaving intact existing copyright notices, they are only able to require certain things. Namely:

- They may require that you attribute the work to a certain name, pseudonym or even an organization of some sort.
- They may require you to associate/provide a certain URL (web address) for the work.

TYPES OF CREATIVE COMMONS LICENCES

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Copyright and other laws throughout the world automatically extend copyright protection. CC0 gives those who want to give up those rights a way to do so, to the fullest extent allowed by law. Once the creator or a subsequent owner of a work applies CC0 to a work, the work is no longer his or hers in any meaningful sense under copyright law.

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THE IMPACT OF OPENNESS: OPENLEARN CASE STUDY

OpenLearn is the Open University's 'open content' service, which was launched in 2006 and originally funded by the William and Flora Hewlett Foundation (see: <http://www.open.ac.uk/openlearn/about-openlearn/about-openlearn>). Richard McCracken, Head of Intellectual Property (IP) at the Open University at the inception of OpenLearn helped to choose the Creative Commons licence for the free online course content. He stated "Our own position is that we chose the Creative Commons licence as the licensing mechanism that best allows us to deliver the outcomes of the OpenLearn project: wide acceptance worldwide, easily understandable terms, and a degree of protection against unauthorised commercial exploitation of resources that we intend to deliver freely to the global educational communities." By choosing an already established licence, OpenLearn and The Open University was able to avoid the work involved in developing the licence. This was a budget item of £100,000 in the original proposed work so this was a significant saving.

OpenLearn in common with many of the established open content and OpenCourseWare sites adopted the "non-commercial" clause in Creative Commons. That means the content may be freely reused provided use is not commercial. This brought significant advantages for OpenLearn in working with commercial publishers to get their agreement to allow their material such as figures and images to be included while reassuring them that the intention was not to build a commercial rival offering such images for resale. However the lack of a formal definition for non-commercial has shown that it can be off-putting; for example it has been suggested that such content cannot be used if someone works for a company or even within courses where learners are paying for their education. For OpenLearn this was addressed with "Frequently Asked Questions" on the site (<http://www.open.ac.uk/openlearn/about-openlearn/frequently-asked-questions>) where it is explained that:

"The Open University considers 'non-commercial' to include educational institutions, commercial companies or individuals making use of OpenLearn content on a cost-recovery basis.

- You may use OpenLearn content in any format or medium, including photocopied or hard copy printouts, and make a small charge in order to recover the cost of printing.
- You may use content as part of a course for which you charge an admission fee.
- You may charge a fee for any value added services you add in producing or teaching based around the content providing that the content itself is not licensed to generate a separate, profitable income.
- Our intention is to make these materials as widely and as freely available as possible."

KEEPING IT SIMPLE: COPYRIGHT IN THE CHINESE NATIONAL EXCELLENCE COURSES

China, in 2003, introduced an interesting initiative for sharing course materials more freely and openly. Under this initiative, higher education institutions and chair lecturers could apply for their courses to become so-called “National Excellence Courses” or “Top Level Courses”. If selected, funding would be given by the Government to share the course materials. The aim was to free the material from some of the restrictions caused by copyright law. The following statement accompanied all Courses of Excellence:

“All higher education institutions and chair lecturers, when applying for the title of Course of Excellence, are considered to have agreed to grant a license to use the online contents for non-commercial purpose during the time the course benefits from the title of Course of Excellence. National Course of Excellence must be online as required and provide free access to all higher education institutions in China. Higher education institutions and lecturers must promise that the online content does not breach other’s Intellectual property rights.”

(Chinese Ministry of Education – source and translation: Jia Yimin, South China Normal University (SCNU))

By keeping it simple the Chinese approach both embraced the idea of recognising and rewarding the originator through the title and the aim to encourage sharing by adoption a common and understandable statement. The resulting courses were released so that they are available to all through an open website. Even so discussion of the practice encouraged by these courses identified that while such a statement encourages use, it is less clear on how the materials can be transferred to other servers and be changed into new forms for reuse. The terms do not forbid this, but also do not require it, and so mean that the approach is more like the CC-BY-NC-ND condition of Creative Commons. The courses have been criticised (as reported by Haklev, 2010) for not encouraging shared maintenance and reuse. In this area where there is a need to change practice and culture an explicit statement would help make things clear.

RECOMMENDATIONS AND CONCLUSIONS

This document has looked at the way moving to open educational resources needs consideration of the intellectual property rights and how to express them. Many people are trying to permit sharing through open educational resources and the Internet offers a great way for that sharing to happen. However there are often barriers, or friction (Duval, 2010), in the way and we need to remove as much of that friction as we can. There are two general recommendations to help be part of the removal of friction.

1. If you are involved in providing content then decide that taking part in a more open approach is what you want: and accept that this can have some risks and unforeseen consequences. But in practice these are rarely bad consequences.
2. If you are a user of content become a user of **open** content. Start looking at how content is made available and check if permissions are given and if they are clear. You should find this both helps you retrieve high quality content and can lead to steps towards working with others.

There is also a further recommendation based on the work of Creative Commons that has been described here. While it is not the only approach (others are described in (Liang, 2004)) the extra experience and work already invested means that many problems have already been addressed. So recommendation 3 is:

3. Look to Creative Commons as a model for how to think about release of rights and if possible adopt the licences to help promote a consistent approach. Start by thinking whether the international attribution licence could be the one for you.

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Open Educational Resources (OER) are starting to have impact in influencing those that are planning educational policy as governments look for ways to meet ambitious targets at lower costs and also altering the way institutions can collaborate by making it much easier to share content. OER also have the potential to support more informal ways to learn that might mean new opportunities in working with learners or the need for existing providers of education to change their approaches. A core element of OER is their openness which is expressed through the use of a licence that explicitly permits free use and reuse by those other than the rights holder (Bissell, 2010). Simply declaring permission can seem like a small step. However that small step can have a big impact and help address several underlying problems that emerge when education moves online. Making material open needs an understanding of the way rights works in education, and for OER in particular. The Creative Commons licence has greatly moved the sharing of resources forward. Even so licensing is only part of the answer, alongside there has to be change in culture and practice to accept some risk in order to achieve the benefits of sharing and openness.

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