

Creative Commons: A New Tool for Schools

by Howard Pitler

A few years ago, I was teaching a middle school class on movie making. One requirement of the course was an assignment that required students to design a movie including a soundtrack that suited the mood of the video. I had encouraged students to use a few online sites for copyright-free music, such as [Freeplay Music](#) or [GarageBand](#), to create their own music. One of my students showed me an early cut of his video, and I noticed that the music he had used for the soundtrack was a remix of songs by some of his favorite artists. We had discussed copyright guidelines in class, and the student thought that he was within "fair use" because he only used 10-second clips from a number of songs and sampled other sounds into the mix. Since the videos were going to be shown outside of our class and entered in a statewide technology contest and since he also had altered the original music, I advised the student to get permission to use those clips from the copyright owner. The story could have ended happily with the record company's agreeing to allow him to use and modify the music. Instead, my student received a very nice but pointed letter telling him in no uncertain terms that the record company would not allow him to use its music, even for the purpose he had described.

The technique this student used is called [remixing](#). Remixing is really nothing new. In fact, a typical college paper is a remix of sorts; students find the best research material in their field and use that material, with proper attribution, to create a new document that expresses their view on the topic. However, when we move to different media, a problem arises. Today's technology makes it very easy to take bits of music and sounds and remix those samples into a new work. For educators, the problem with remixing assignments is that students must contact the copyright holder of each piece and ask for permission to use those samples of other people's work. This is an arduous process, and copyright holders often deny permission to students to use even samples of copyrighted material. Copyright guidelines also apply to information that teachers and students post to the Internet. What if teachers or students post videos or soundtracks and want to allow others to use and even modify those works? What specific language do they need to include on their Web sites to allow for such use? How can an end user know the intentions of the creator of material that is widely available online?

In this article I briefly assess the current state of copyright law as it applies to instructors seeking to use, modify, or redistribute materials for educational purposes; I then offer an overview of [Creative Commons](#), an initiative that essentially overcomes some of the constraints and ambiguities that have characterized traditional copyright law, particularly with regard to materials available over the Internet. For those who seek to reuse or alter Internet content in educational settings, Creative Commons provides a legal framework that clarifies the intent of creators and thereby allows for future innovation.

Copyright Issues in Education

Copyright law, especially the fair use policy, has been a significant gray area for teachers and students. Teachers often believe they can use just about any material in their classrooms as long as they use that material for an educational purpose. Some educators think that pictures, music, and text on the Internet can be downloaded and used freely because the material does not have the copyright symbol attached. However, copyright is attached to a work as soon as it is saved to the computer or sent to the Web. According to the United States Copyright Office ([2000](#), "How to Secure a Copyright," ¶ 2):

Copyright is secured **automatically** when the work is created, and a work is "created" when it is fixed in a

copy or phonorecord for the first time. "Copies" are material objects from which a work can be read or visually perceived either directly or with the aid of a machine or device, such as books, manuscripts, sheet music, film, videotape, or microfilm.

In other words, if a work is found on the Internet, it has automatically been copyrighted.

In order to defend their use of copyrighted materials in the educational arena, educators and students often appeal to the principles of fair use. But what is fair use? Title 17, Chapter 1, Section 110 (2) of the Copyright Act ([2002](#))—commonly referred to as the Technology, Education, and Copyright Harmonization (TEACH) Act— provides some guidance for educators. For example, the TEACH act indicates that the work in question should only be presented "at the direction of, or under the actual supervision of, an instructor as an integral part of a class session offered as a regular part of the systematic mediated instructional activities of a governmental body or an accredited nonprofit educational institution" (§ A). The material must be "directly related and of material assistance to the teaching content of the transmission" (§ B). Distribution of the work must be limited to "students officially enrolled in the course for which the transmission is made" or "employees of governmental bodies as a part of their official duties or employment" (§ C i, ii). Translated into layman's terms, educators should consider four issues when determining if a work is allowed under the principles of fair use:

- the purpose and character of the use,
- the nature of the copyrighted work,
- the amount and substantiality of the portion to be used, and
- the effect of the use upon the potential market.

In assessing copyright infringement, judges use these four issues as guidelines; however, they are free to adapt these concerns on a case-by-case basis. Because the courts have a high degree of discretion, it is difficult to predict the outcome of any one particular case (Stanford University Libraries [2004](#)).

It is possible for educators or students to contact the copyright owner(s) of a given work in order to secure permission or a license to use that work in a very specific manner. However, this process is often extremely difficult. In some cases, the work's creator has died, but the copyright remains because copyright lasts for 95 years from a work's first publication or 120 years from its creation, whichever expires first. In other cases, it can be almost impossible to secure a license for something that is still within the copyright term but is no longer in print. Even when copyright owners can be located, getting a license to use their work is certainly not guaranteed, as my former student discovered.

Creative Commons

Enter [Creative Commons](#). Created in 2001, Creative Commons is a way for creators of intellectual content to declare their work as having "some rights reserved" rather than the "all rights reserved" designation that copyright usually entails. A Creative Commons license gives users specific rights as determined by a work's creator. For example, a musician might license her work so that others can use or modify it freely as long as they do not use the work for commercial purposes. Another musician might allow his work to be used commercially but might not allow any modification of that work. Still a third might allow his soundtrack to be used and modified but require that others use it only under a license identical to the one that governs the licensor's work.

How does this process work? Licensing a work under Creative Commons is really a matter of a few mouse clicks. Before posting something to the Internet, creators visit the Creative Commons Web site and click the "Publish" button. This action introduces [four options](#):

1. The first option asks creators to indicate, with response options of "yes" and "no," whether they wish to

- allow commercial uses of their work.
2. The second option asks creators to indicate, with response options of "yes," "yes, as long as others share alike," and "no," whether they wish to allow modifications to their work.
 3. The third option requires creators to select the jurisdiction of the license from a pull-down menu that lists numerous countries and a default value of "generic."
 4. The fourth option requires creators to indicate the format of the work from a pull-down menu that consists of the response options of "Audio," "Video," "Image," "Text," "Interactive," or "Other."

After responding to these options, creators click the "select a license" button, and the site provides HTML code for creators to attach to online works. For offline works, creators can select a license, include a statement indicating that the work is licensed under Creative Commons, and indicate where users can locate a copy of that license. The license clearly states the creator's intentions and lets users know what is allowed and what is prohibited.

Creative Commons and Copyright Law

Is all this legal? Fellows and students at the [Berkman Center](#) for Internet and Society at [Harvard Law School](#) helped get the Creative Commons project off the ground, and the current chair of the board for Creative Commons, Lawrence Lessig, is a professor of law at [Stanford Law School](#) and founder of the school's Center for Internet and Society (CIS). Other members of the board include James Boyle, a professor of law at [Duke University School of Law](#), Molly Shaffer Van Houweling, an assistant professor at the [University of Michigan Law School](#), and Michael Carroll, an assistant professor of law at the [Villanova University School of Law](#). Because legal professionals have had such an important role in creating the program, it is safe to assume that a number of lawyers have checked all Creative Commons documents to be sure they conform to legal requirements.

The structure of the Creative Commons license reflects the careful planning of the board members and their colleagues. Creative Commons licenses are expressed in three different formats: a [Commons Deed](#), which is a very easy-to-understand summary written in plain language that shows the key license terms; the [Legal Code](#), which—for non-lawyers—is a much less easy-to-understand document that includes all of the required legal language; and finally, in [metadata](#) that describes the license conditions that are attached to the work.

When asked about how well the Creative Commons license has held up in the courts, Mia Garlick, General Counsel for Creative Commons, replied:

To date, to the best of our knowledge, no court has considered a Creative Commons license. There have been disputes, but as far as we are aware, they have all been resolved without the need to bring the matter to the attention of a court. Copyright licenses are not a new area of law. Public licenses are a relatively new area of the law and in a case—*Netfilter v. Sitecom*—before a Munich court in 2004, one of the earliest types of public licenses—the General Public License—was held to be enforceable under German law. Consequently, it seems likely that a court will not view a public copyright license invalid simply because it is a public license. (personal communication, January 9, 2006)

The Creative Commons license process does provide a legal way for an author or content creator to indicate how their work can and can not be shared or remixed. It is reassuring to know that the concept of public copyright license does have legal precedence.

A Growing Trend

The Creative Commons idea is already catching on in mainstream education. In 2001, for example, Massachusetts Institute of Technology ([MIT](#)) began the [OpenCourseWare](#) initiative. As of August 2005, there

were 1,435 MIT courses available online, free and open to the public. The project goal is to have all of MIT's undergraduate and graduate courses available by 2007. Similarly, 110 courses and 2,647 modules are now available through the [Connexions](#) project at [Rice University](#). Students can also take music lessons and learn musicology from instructors at [Berklee College of Music](#) through the [Berklee Shares](#) project. All of these projects operate under the Creative Commons license.

Creative Commons licensed music is found on a number of Web sites, including [Opsound](#), the [Freesound Project](#) created by the Music Technology Group at [Universitat Pompeu Fabra](#) of Barcelona, Spain, and [ccMixer](#), a project of Creative Commons. On these and other sites, thousands of music tracks are currently available for using and remixing in student work, and more than 4.5 million images licensed by Creative Commons are currently available online at sites like [Flickr](#) and [Open Photo](#).

An example of remixing in action is a recent contest sponsored by Creative Commons, Warner Brothers Records, and Machine Shop Recordings. The recording group Fort Minor provided the separated audio elements of their hit song "Remember the Name" online under a Creative Commons [BY-NC license](#) so that producers all over the world could easily create remixes of the song. The contest rules required participants to use the vocal track of the original song and allowed them to create a totally new product by remixing other tracks, both from the original song, other songs, or tracks they personally created. All of the new songs also had to carry the Creative Commons BY-NC license.

Implications for Educators

Teachers and students should begin using this alternative to traditional copyright for a few reasons. One reason to include a Creative Commons license on work sent to the Internet is that it gives clear guidance to others of the creator's intent. As teachers and students are both consumers and creators of content on the Web, using and posting content with a Creative Commons license attached leaves no doubt regarding the intentions of the author. A second reason is that by talking about Creative Commons in both K-12 and college classrooms, teachers can engage students in a much-needed conversation about online ethics. As students become active creators rather than just consumers of information, how do they feel about their material being used? Do they want to attach a "some rights reserved" license to some of their creative products? How does this then translate to those using the intellectual property of others with or without explicit permission? In the elementary and middle school classroom, this conversation might focus on plagiarism and the difference between copying, citing, and remixing material students find on the Web. Students in high school and college might discuss the relative merits of sharing work using a Creative Commons license as opposed to posting material with a conventional copyright.

Most importantly, bringing Creative Commons to the classroom gives students and teachers a new tool for finding material that is both appropriate and legal to use and remix; Creative Commons allows an astonishing degree of access to interesting work. Through this initiative and others like it, teachers and students can begin creating and legally sharing projects, lessons, and even complete courses, and students throughout the world can benefit from collective knowledge. For example, *The Letters of W. B. Yeats* edited by Allan Wade and published by Hart-Davis (1954) is one of hundreds of works available under a Creative Commons license. The Creative Commons site also includes libraries of images, videos, lesson plans, and course packets. As students and teachers employ such materials for their own educational projects, they can also see themselves as active contributors to a wider community of learning.

Conclusion

As the rapid growth of the Internet has tended to outpace the legal frameworks that govern the exchange of intellectual and creative materials, those who seek to maximize the potential of online technology for educational purposes have had good reason to avoid the headaches of copyright law altogether. Yet with Creative Commons, students and teachers alike now have a powerful tool and resource for their educational activities as well as a means to situate the materials they create within a larger environment of collaborative

learning that extends far beyond their immediate context. As such, Creative Commons represents a vital step forward in realizing the full promise of online technology to promote new forms of teaching and learning.

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