

Open Education Rising Podcast (www.openeducationrising.net)

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Transcript of Episode 5: A brief Creative Commons primer

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Not every OER creator or user finds the topic of copyrights and licenses engaging, but I'm fascinated by it. Balancing different social interests in copyright law is a complicated and interesting policy question. But I've also gotten interested because I'm a musician. The whole topic of when and how I'm comfortable with others remixing my artistic work is one that I'm thinking through.

This episode covers origins and importance of Creative Commons licenses. I'm planning two future episodes, one about copyright law and a second one about the nuts and bolts of creative commons licenses themselves.

Why do we need Creative Commons licenses? If you've worked with OER for a long time, this might seem to be a silly question. It's the default licensing approach for OER. However, if you're speaking with someone who is new to open education, you may find yourself having to answer that question. This is how I answer it:

Picture the world without Creative Commons licenses or anything else that functions similarly to them. Let's imagine someone who has knowledge of something and is motivated by a sense of social justice to share it. They have created a textbook that they want to disseminate as broadly as possible, and they don't want any revenue from royalties. However, they wish to share their creation while retaining some rights to it, such as being cited as a creator and having some control over the way in which the work is used. They would like their creation to lie somewhere in the space between 'all rights reserved' and giving up all their rights. It's difficult to define that space. The protections of copyrights kick in the moment a work is created, automatically. Those rights are many and complicated, and vary by country. Most would-be creators of OER are not copyright lawyers. How would an author give up some rights in a way that correctly meets their intentions? For most potential OER creators, having to figure that out would be very difficult without professional help. The complexity and expense might even inhibit some of them from getting involved with sharing with the community at all.

There's clearly a knowledge problem here, the knowledge of copyright laws, but that may not even be the worst problem. In fact, let's imagine that everyone who wanted to write an open textbook *was* also as versed in copyright law as a copyright lawyer. If each person on their own had to invent a set of limited rights for their work, explaining how it can and can't be used in every situation and every country, thousands of permutations of agreements would likely result. That would make something like remixing difficult in practice, because we'd have to compare and reconcile several different sets of rights each time we tried to combine things. This practical problem of an uncoordinated licensing arrangement would inhibit sharing knowledge widely.

Creative Commons licenses were created as one approach to solve this problem. They represent a set of options that are now broadly understood and utilized. They represent a compromise between flexibility for creators and a workable solution to the coordination problem. There's more than one choice for creators, but the number of choices are not overwhelming. I think that if Creative Commons licenses, or something that looked a whole lot like them, didn't exist, we'd have had to create them to fulfill the promise of OER.

I'm not an intellectual property lawyer, so I can't comment how the Creative Commons solution to coordination problem is better or worse than other open licensing schemes that exist. You should learn more about those options so you can make an informed choice when you create something. There are currently 1.4 billion works with Creative Commons licenses, across 9 million websites. That's a lot of content that is much easier to share and remix, and that's pretty cool. By choosing a Creative Commons license for something you create, you're putting it into a global, voluntary community of people with shared values and understandings, one that has reached considerable scale and impact.

Okay, so where did these licenses come from? The origin story can be traced to the Sonny Bono Copyright Term Extension Act of 1998. Until that time, the United States Copyright law was written in such a way that the copyright protection for a work extended for 50 years beyond the creator's death. After the creator's death, the work would become part of the public domain. Under the Sonny Bono act, the copyright period was extended by 20 years, keeping works out of the public domain for a total of 70 years. Lawrence Lessig, a Stanford Law professor, challenged this law as unconstitutional. He represented a plaintiff, Eric Eldred. Eldred was a retired computer programmer who digitized works as they passed into the public domain and published them on the web. The case *Eldred vs. Ashcroft* went to the United States Supreme Court. For the purpose of this episode's focus, the most important thing to know is the way in which the case framed the copyright system's logic. The belief was that the creation of knowledge is cumulative, and progress depends upon being able to build upon what came before. The law balanced that need for progress with some protection for the creator of works. Lessig argued that the additional 20 years of protection was not needed to keep this balance, but unfortunately, he lost.

However, the case had other, more positive consequences because it raised some important questions. Why were the two options a 70 year waiting period for knowledge to belong to the public, or no protection at all for the creator? Was there a way for creators to opt to give up some rights without giving up all of them? After the case, Professor Lessig and others formed the non-profit organization called Creative Commons in 2002. The licenses they released, and have continued to maintain and update, were a solution to the coordination problem I described before. They allow creators to share their work, and potentially also allow it to be remixed, without having to totally give up all their rights. The Creative Commons Global Network continues to do work around the globe, advocating for integrating Creative Commons licenses into local policies, pushing for copyright reform, open education, and several other topics.

There's a lot more detail to get into about the practical differences between different Creative Commons licenses, which I'll cover in a future episode. Thanks for listening!

Thank you so much for joining me for this episode of Open Education Rising! If you found this podcast helpful, please let your friends and colleagues know about it. Subscribe to it in your podcast player to be notified of future episodes.

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Until next time, take care!