

November 19, 2010

The Department of Commerce
United States Patent and Trademark Office
National Telecommunications and Information Administration
Docket No. 100910448-0448-01

Inquiry on Copyright Policy, Creativity, and Innovation in the Internet Economy

COMMENTS OF CREATIVE COMMONS

Creative Commons (CC) is pleased to submit comments to the Department of Commerce’s (henceforth “Department”) “Inquiry on Copyright Policy, Creativity, and Innovation in the Internet Economy” (henceforth “Inquiry”). Creative Commons (<http://creativecommons.org>) is a 501(c)(3) nonprofit corporation dedicated to making it easier for people to share and build upon the work of others, consistent with the rules of copyright. CC develops legal and technical tools used by individuals, cultural, educational, and research institutions, governments, and companies worldwide to overcome legal and technical barriers to sharing and innovation.

The Inquiry “recogniz[es] the vital importance of the Internet to U.S. prosperity, education, and political and cultural life, [and] the Department has made it a top priority to ensure that the Internet remains open for innovation” (p. 2). The Department can ensure that the Internet remains open for innovation by adopting and promoting policies that enable and preserve the ability for users to lawfully share their creativity. Support for open licensing and public domain legal tools can help the “maintain robust information flows that facilitate innovation and growth of the Internet economy” (p. 2).

In addition, the Department's Task Force seeks to support the dual public policy imperative "to combat online copyright infringement more effectively and to sustain innovative uses of information and information technology" (p. 2). While copyright infringement may be an ongoing problem, and much of the discussions around digital copyright policy have been primarily focused on the need to eradicate copyright infringement, the Department should focus its time and resources on the latter portion of its policy imperative in order to adequately support and empower individuals, institutions, governments, and companies in building and sharing their creativity in legal ways.

Creativity and innovation on the Internet is enabled by open technologies, open networks, and open content. The innovative potential is increased when users can interact with and build upon the creativity and inventiveness of other creators. For this innovation to flourish, users must know the rights and permissions they are granted in the content others create. And creators who wish to share need to delineate clearly the rights and freedoms they wish their own work to carry. Creative Commons licenses and public domain tools are easy to understand and use, with 1) a human-readable deed that simplifies the terms of each license into a few universal icons and non-technical language, 2) lawyer-readable legal text, which has been vetted by a global team of legal experts, and 3) machine-readable code that enables search and discovery via search engines such as Google. The CC tools constitute a globally-recognized framework, developed in consultation with legal experts and CC affiliate institutions in over 70 jurisdictions. Over 350 million CC-licensed works have been published by their authors on the Internet.

The growing commons movement, characterized in part by the free software, open access, and open educational resources (OER) initiatives, offers a significant value for both creators and users worldwide. Open licenses and public domain tools empower a wide spectrum

of users and institutions. Governments around the world recognize the power of a distributed network to enable growth in scientific, educational, and creative content, resulting in healthy, thriving economies. David Bollier, author of *Viral Spiral*, writes, “Governments are coming to realize that they are one of the primary stewards of intellectual property, and that the wide dissemination of their work—statistics, research, reports, legislation, judicial decisions—can stimulate economic innovation, scientific progress, education, and cultural development.”¹ Seventeen national governments² employ Creative Commons tools for government data, official reports and other media, presidential websites, and educational resources.

Open content licensing is playing an increasing role in digital cultural heritage and the growth of the digital economy. Websites like Flickr³, Picasa, Vimeo, Blip.tv, SoundCloud, Jamendo, Wikipedia⁴ and Wikimedia Commons⁵ share millions of CC licensed free cultural works. Major museums, such as the Brooklyn Museum⁶ and Powerhouse Museum⁷, have adopted CC to increase public participation in the preservation of works. Emerging journalism models Propublica⁸, the Huffington Post Investigative Fund⁹, and Spot.us¹⁰, in addition to traditional channels Al Jazeera¹¹ and GOOD Magazine¹², use CC to increase readership, citizen

¹ Bollier, David. *Viral Spiral: How the Commoners Built a Digital Republic of Their Own*. The New Press, January 2009. p. 192. See <http://www.viralsspiral.cc/>.

² http://wiki.creativecommons.org/Government_use_of_Creative_Commons

³ <http://www.flickr.com/creativecommons/>

⁴ <http://en.wikipedia.org/wiki/Wikipedia:About>

⁵ <http://commons.wikimedia.org/wiki/Commons:Welcome>

⁶ <http://www.brooklynmuseum.org/copyright.php>

⁷ http://wiki.creativecommons.org/Case_Studies/Powerhouse_Museum_Sydney

⁸ <http://www.propublica.org/about/legal>

⁹ <http://huffpostfund.org/terms-and-conditions>

¹⁰ <http://spot.us/pages/terms>

¹¹ <http://cc.aljazeera.net/>

¹² <http://creativecommons.org/weblog/entry/10630>

participation, and viral dissemination. Major publishers like Bloomsbury¹³ and authors like Cory Doctorow¹⁴ use CC as part of mixed business models that encourage noncommercial reuse.

Educational institutions, organizations, and teachers and learners use CC tools to overcome the legal and technical restrictions that prevent educational resources from being accessible, adaptable, interoperable, and discoverable. Connexions, a repository for OER, offers over 17,000 reusable, customizable learning modules, made available online under the CC Attribution (CC BY) license.¹⁵ The Open CourseWare movement has taken off around the world, powered by CC licenses. Materials from 2,000 MIT courses are available for reuse, translation, and remix under the CC Attribution-Noncommercial-ShareAlike license (CC BY-NC-SA)¹⁶; and, nearly 800 MIT OCW courses have been translated into languages other than English. Commercial textbook publisher Flat World Knowledge incorporates CC licensing into the core of its business model, offering free online access and customizability to CC-licensed open textbooks and inexpensive on-demand printing.¹⁷

Scientists and research institutions seeking to overcome the legal and technical barriers to sharing and building on data and knowledge are using CC tools, maximizing potential on investments and accelerating scientific discovery and innovation. There are over 1,100 CC-licensed Open Access journals¹⁸, and studies across more than a dozen disciplines show that Open Access articles are cited 50-250% more often than non-Open Access articles published in the same issues of the same journals.¹⁹ The Public Library of Science (PLOS), one of the world's largest publishers of open access journals, publishes all content in its seven scientific journals

¹³ [http://www.bloomsburyacademic.com/page/About\\$0020/about](http://www.bloomsburyacademic.com/page/About$0020/about)

¹⁴ http://wiki.creativecommons.org/Case_Studies/Cory_Doctorow

¹⁵ <http://cnx.org/>

¹⁶ <http://ocw.mit.edu/>

¹⁷ <http://www.flatworldknowledge.com/>

¹⁸ <http://www.doaj.org/>

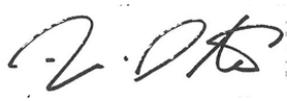
¹⁹ <http://opcit.eprints.org/oacitation-biblio.html>

under CC Attribution (CC BY), and PLoS has received submissions from over 60,000 authors and is on track to being the largest peer-reviewed journal in the world.²⁰ See Appendix A for a collection of stories by creators leveraging the cultural and economic benefits of sharing via open licensing tools. These stories demonstrate the importance of openness across a wide range of creative endeavors.

While recognizing the undesirable effects of copyright infringement, future policy recommendations should acknowledge the innovative potential of open licensing frameworks, and the Department should proactively address the considerations of those copyright holders who wish to share.

Thank you again for providing this opportunity to submit input on this Inquiry. CC appreciates the Department's leadership and diligence in exploring this complex topic. We would be happy to answer any follow up questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joi Ito', is positioned above the typed name.

Joi Ito, CEO
Creative Commons

²⁰ <http://www.plos.org/>

Appendix A

“*Down and Out in the Magic Kingdom* has been through more printings than I can keep track of, been translated into more languages than I know, and has been downloaded more than 750,000 times (as of 2007) from my site alone (I don’t know the total number of downloads, because, of course, anyone is free to redistribute it). Creative Commons licenses have allowed my work to spread far and wide, into corners of the world I never could have reached. My readers have made innumerable technical remixes, fan-fic installments, fan-art drawings, songs, translations and other fun and inspiring creative works from mine, each time humbling and inspiring me (and enriching me!). As Tim O’Reilly says, my problem is not piracy, it’s obscurity, and CC licenses turn my books into dandelion seeds, able to blow in the wind and find every crack in every sidewalk, sprouting up in unexpected places. Each seed is a possibility, an opportunity for someone out there to buy a physical copy of the book, to commission work from me, to bring me in for a speech. CC lets me be financially successful, but it also lets me attain artistic and ethical success. Ethical in the sense that CC licenses give my readers a legal framework to do what readers have always done in meatspace: pass the works they love back and forth, telling each other stories the way humans do. Artistic because we live in the era of copying, the era when restricting copying is a fool’s errand, and by CC gives me an artistic framework to embrace copying rather than damning it. Writers all over the world are adopting CC licenses, creating an artistic movement that treats copying as a feature, not a bug.” –**Cory Doctorow, author and blogger**²¹

“But is something so compelling about the Creative Commons license, the idea that you could attach it to a piece of art you had made and declare your intentions – please, share my music, put it in a remix, make it into a music video. I was thrilled and emboldened by the idea that I could give my songs legs, so that they could walk around the world and find their way into places I would never dream of sending them. I immediately started licensing my songs with CC, and a year later I quit my job to create music full time. My growing audience started to feed back to me things they had created based on my music: videos, artwork, remixes, card games, coloring books. I long ago lost track of this torrent of fan-made stuff, and of course I’ll never know how many people simply shared my music with friends, but there’s no question in my mind that Creative Commons is a big part of why I’m now able to make a living this way. With Creative Commons, the act of creation becomes not the end, but the beginning of a creative process that links complete strangers together in collaboration. To me it’s a deeply satisfying and beautiful vision of what art and culture can be.” –**Jonathan Coulton, Singer and songwriter**²²

“We have people working to build free knowledge around the world, collaborating mostly informally. Some see themselves as part of one or more movements and communities, others just want to share and collaborate. Creative Commons is about building infrastructure for a new kind of culture — one that is both a folk culture, and wildly more sophisticated than anything before it. How much better would the world be if we allow education, entertainment, government, science and more to be transformed by the web? If we do not support Creative Commons, the realization of these dreams about what the Internet can and should become are at risk.” –**Jimmy Wales, Founder of Wikipedia**²³

“A large part of embracing free culture is accepting the fact that you are forsaking control in exchange for something greater – the empowerment of the creative community. This means that you never quite know where things will lead. When launching our repository, we had thought that it would be a key resource for anyone producing content on the war and that it would primarily be used by other news organisations and documentary filmmakers. What we saw was both surprising and delightful. Soon after posting our first video, Wikipedia editors had extracted images to enhance the encyclopedia entries on the War on Gaza.

²¹ <http://creativecommons.org/weblog/entry/7774>

²² <http://creativecommons.org/weblog/entry/10753>

²³ <http://creativecommons.org/weblog/entry/11898>

Soon thereafter educators, filmmakers, video game developers, aid agencies and music video producers all used and built upon our footage.” –**Mohamed Nanabhay, Head of Online, Al Jazeera English**²⁴

“After spending seven years building massive models of human disease it becomes clear to me that no single company, not even one as big as Merck, could possibly gather and integrate enough information to make the decisions we need to make about when and how to treat something as complicated as cancer or Alzheimer’s, or for that matter, cardiovascular disease. It was going to take a collaborative effort. I saw inspiration in Wikipedia, in GNU/Linux, in systems that were capable of scaling far beyond the capacity of a single institution. We’re working on the construction of a scalable, open commons for biological research. What Creative Commons is doing to build scalable communities who share – whether it’s creative works like photographs, stem cells, patents, or massive biological data like we’re doing at Sage – is essential infrastructure for the Web.” –**Stephen Friend, President, CEO, and co-Founder of Sage**²⁵

“Why is Creative Commons so helpful and important? Because it provides a balanced, sane alternative to the madly out-of-whack copyright system I deal with every day. I am an academic librarian and copyright specialist who teaches faculty, students, librarians, archivists and others about their rights as creators and their rights as users. In the United States alone, plummeting budgets and rising costs for both K-12 and higher education are making it harder for students and teachers to access the quality educational resources they need. Until recently, most educational content was locked behind digital paywalls or hidden in print books, and the free stuff you could find online was often unreliable. Now, the pool of high quality open educational resources is growing every day, with open textbooks, open courseware, and other experimental projects popping up all the time.” –**Molly Kleinman, Special Assistant to the Dean of Libraries, University of Michigan**²⁶

“Copyright laws solved one problem for a prior era, a way of marking a piece of content to indicate who the creator (or publisher) is. But, if you want to actually USE that content, under standard copyright law you or your lawyer send a letter, you get back a license agreement, you agree to terms, and you get rights to reuse the content. Every single use requires a new agreement. As they say, that doesn’t scale. The genius of Creative Commons is a simple, universal way to let people know what they can do with your content without having to bother you each time. With the Internet, we’ve found that a whole class of uses of creative material makes sense, and with a Creative Commons license you can clearly tell people what it is they can do. What is impressive about Creative Commons is that it scales. Public.Resource.Org, the non-profit I run, has published a boatload of content we get from the U.S. government: 90 million pages of documents, 1,000 videos, and a few handfuls of photographs. With the Creative Commons CC Zero and Public Domain tools, we have an easy way of telling people that they don’t have to ask permission to use this information.” –**Carl Malamud, founder of Public.Resource.Org**²⁷

“Indaba Music is a community of over 350,000 musicians from 185 countries who create music together in online recording sessions. As you might surmise from this concept, Indaba Music leverages Creative Commons licensing in a number of ways, each meaningful to our business and to the community we have cultivated. For instance, the Indaba Music Sessions are online projects in which musicians come together to combine tracks recorded in different places into single pieces of music. Every file that is uploaded to a session can be explicitly licensed under Creative Commons so musicians have control over how their music is used by those with whom they collaborate. Indaba Music Contests are another great example of how Creative Commons has continuously broken down barriers in music. We have run several

²⁴ <http://creativecommons.org/weblog/entry/18213>

²⁵ <http://creativecommons.org/weblog/entry/19646>

²⁶ <http://creativecommons.org/weblog/entry/19158>

²⁷ <http://creativecommons.org/weblog/entry/18664>

collaborative contests in which our entire community was able to remix and re-imagine such artists as The Roots, Rivers Cuomo, John Legend, and The Crystal Method with all remixes licensed under Creative Commons. Our Creative Commons Clips Library is the newest CC addition to Indaba Music. Anyone can search thousands of CC licensed audio clips generated by professional musicians for Indaba Music. CC licensing has opened up possibilities that never before existed, and has created an environment full of openness, collaboration, and sharing.” –**Daniel Zaccagnino and Matthew Siegel, co-Founders, Indaba Music**²⁸

“We are on the cusp of an explosive revolution in human knowledge and culture. We now have the tools and the global infrastructure to let the billions of humans on Earth collaboratively create their own entertainment and reference works: films, textbooks, images, and music. Regular people, working together, are smashing apart the short-sighted, curmudgeonly cultural framework of micropayments, IP portfolios, walled gardens, and dot-com data silos to free up information for everyone to enjoy, use, and share. I truly believe that within a generation we can open the world’s knowledge to all of its inhabitants and reduce or eliminate the misery caused by lack of access to information. And Creative Commons is a crucial part of the cultural compact that makes that revolution possible. Free Culture licenses, like those from Creative Commons, are a promise between global collaborators that indeed we are working for the good of all. Creative Commons licenses tell readers and listeners that they, too, can be participants in a global community of creators.” –**Evan Prodromou, writer, programmer, and entrepreneur**²⁹

It was at this juncture that we hit upon the Creative Commons licensing model as one that would help us achieve many of our aims of flexibility, scalability and being able to help catalyse our mission of a book in every child's hands. In particular, three things stood out – a shared value system of sharing and openness, a community that was deeply embedded in these ideals and, from our perspective, it was scalable because it allowed us to license content to multiple organizations and individuals, both known and unknown, with a one time effort of releasing them under a Creative Commons license as opposed to the traditional model which involves time consuming negotiations and discussions with each known organization or individual who wants to use our content. We license entire books under CC-BY and CC-BY-SA licenses, we license our illustrations similarly and even photographs and other publicity material too. Over the last year we have been building the foundations for a social publishing model – where we curate communities that are passionate about reading and help us create content. Such a model rests on the idea of a participatory culture and an essential ingredient is a permissive licensing strategy – Creative Commons licenses offers us this, a large community with shared values and an ecosystem to tap in to.” – **Gautam John, Pratham Books**³⁰

“Figuring out how to get maximum protection for a photograph you take is easy. One simply does nothing -- in most countries a creative work is automatically subject to default copyright law. If one wants to emphasize this one can add a copyright notice, but this is not required. Maximum restriction is the default. Figuring out how to let other people build upon one's creative work is actually much harder. In fact, without Creative Commons there is no easy way to do so. Creative Commons provides a clear, effective way for each of us to choose to share our creative work when we want to, dramatically reducing the barriers to voluntary sharing. It provides legally enforceable mechanisms that live happily alongside the default of maximum restriction of copyright law. Creative Commons empowers creators to choose how our works are used and shared as well as protected. The ability to share our creative work easily is an important complement to the traditional ability to restrict their use. It's important for individuals and it's important for society. There is no doubt that the voluntary sharing of effort can produce immense civic, social, and individual value. Voluntary collaboration, based on shared resources, shared data and shared

²⁸ <http://creativecommons.org/weblog/entry/19365>

²⁹ <http://creativecommons.org/weblog/entry/7739>

³⁰ <https://creativecommons.net/superheroes/gautam-john/>

creative work provides new tools for solving complex problems. By making voluntary sharing easy, Creative Commons provides new avenues for individual choice and human interaction.” –**Mitchell Baker, Chairwoman of Mozilla Foundation**³¹

“The flexibility afforded by a CC-BY license allows for materials to be adapted quickly. I hear that a typical textbook revision works on a 7-year cycle. Curriki materials can be updated and “published” in a matter of seconds and the community can correct any content errors just as quickly. However, OER allows teachers to freely adapt materials to best fit their pedagogical and cultural needs. Furthermore, by creating or uploading such materials onto a public repository, teachers will no longer need to work in isolation, continuously ‘re-inventing the wheel.’” –**Christine Mytko, educator and lead science reviewer at Curriki**³²

“A lot of educators and creators in the education space are creating different types of content and curriculum and want to share them. They think that other people can just pick them up and take them, but they don’t realize they’re most likely locked up under copyright. Creative Commons is the foundation for open education. Without flexible licensing there’s no way to determine which materials are shareable, adaptable, reusable, and localizable.” –**Cathy Casserly, Vice President for Innovation and Open Networks and Senior Partner at the Carnegie Foundation for the Advancement of Teaching**³³

³¹ <https://creativecommons.net/superheroes/mitchell-baker/>

³² <http://creativecommons.org/weblog/entry/22899>

³³ <http://creativecommons.org/weblog/entry/22255>