

## Creative Commons Licences in Spain

Until a couple of years ago, few people had heard of the Creative Commons licences<sup>1</sup>, but the term is now beginning to be associated with a standard format

of licence for free digital works on the Internet, just as the licences developed by the GNU project (GPL, LGPL)<sup>2</sup> are associated with a standard format for free software. In recent years many different initiatives have grown up to facilitate access to culture and provide a means of sharing it using legal mechanisms<sup>3</sup>. However this particular system of assigning rights, which is similar to the free software licences, is becoming widely used on the Internet and in other media. An increasing number of websites and blogs are making their contents available using one of the six standard Creative Commons licences<sup>4</sup>. Even some works published in more traditional media —such as on paper for example— are also opting for this type of licence. However, much doubt and confusion still remains as to what these licences really are and what they can be used for. In this article I will try to clear up these doubts and explain the way in which these licences have been introduced in Spain.

Creative Commons is a not-for-profit American corporation found in 2001 whose aim is to promote legal and technical mechanisms that will provide

access to culture in general by facilitating exchange and dissemination of any creative work. The project is headed, among others, by Lawrence Lessig, James Boyle, Eric Eldred and Hal Abelson. In late 2002, using the free software model as a base, they created the project for the licences, under which a series of legal texts are offered free of charge to creators to allow them to assign certain rights to their works easily. This is possibly Creative Commons's best-known project and has wrought a minor revolution on the Internet, with a shift from the strict "All rights reserved" to the more flexible "Some rights reserved". It is an a priori assignment of rights, in many cases obviating the need for requests or questions, because the answer is there from the moment the work is subject to the licence.

Creative Commons promotes the rational use of author's rights. It does not seek to do away with them, merely to let authors assign certain rights to their works and to do so freely, without requiring intermediaries. The aim of Creative Commons is to facilitate access to culture. It makes it possible to bypass intermediaries, it makes it possible for certain rights to be assigned a priori, without the need for express permission, and thus it facilitates dissemination of the works and the ability to share them with a larger number of people. The number of works covered by this type of licence has grown rapidly over the last year and is certain to increase further in coming years.

The success of the Creative Commons system can be explained in various ways. One primary reason may be the three different version of the licence<sup>5</sup>. There is a full legal text, complete with all the small print, but there is also a first-tier version, the summary or *deed*, which explains in few words and using icons what rights are ceded and what the conditions are. The third tier is the machine-readable code which can be enclosed on the website and which allows access to content subject to one of these licences. Thanks to this code *plugins* have been developed such as the MozCC<sup>6</sup> or specific search engines like YahooCC<sup>7</sup>. Another possible explanation for their success is the flexibility of the licences. They all allow copying, distribution, display and performance, but the conditions under which this can be carried out range from permitting commercial usage to restricting any derived works. By using the Creative Commons licences, authors can market their work and offer it free of charge on the Internet and can restrict commercial use by third parties. This system is not intended to solve all the problems of the use and abuse of authors' rights, but it is intended to make people think about access to culture in general. Using one of these licences does not ensure that the author's rights are not violated, but at least they can make it possible for the work to be disseminated more easily and for new works to be created, for example.

The licences are currently available in twenty-one jurisdictions.



Lawrence Lessig, Copyright II, Barcelona 2005

### History of the Creative Commons licences in Spain

From the outset, Creative Commons took the decision to adapt the licences to the different legislations on authors' rights operating in different states. This meant that each creator could avail of his or her local laws rather than being tied to foreign ones. At the University of Barcelona, we first came into contact with Creative Commons in early 2003, when we were looking for a system for distributing lecturers' teaching materials. There was already a precedent in the academic world: a model for disseminating teaching content, OpenCourseware<sup>8</sup> from the Massachusetts Institute of Technology (MIT). When we asked for legal advice we were told about Creative Commons and got in touch with them. We were looking for a similar licence that we could use to release our content, but in addition they offered us the chance of heading adaptation of the licences to Spanish legislation, within the framework of the iCommons project which was being set up at the time. This internationalisation project, which began in 2003, consists not only of translating the licences to the different languages but also adapting them to the different jurisdictions. The original legal texts are based

on American legislation and it is therefore necessary to amend, eliminate or include certain paragraphs so that they are legally binding in every jurisdiction. The licences are currently available in twenty-one jurisdictions and there are over ten projects underway.

The process of adapting the licences to Spanish legislation was made possible thanks to the collaboration of many people: lawyers, computer experts, journalists, publishers, translators, activists, and many other unnamed people without whom it would have been impossible to meet our self-imposed deadline of 1 October 2004, when all the work crystallised into the six current licences, which are now available on the Creative Commons website. The process began in February 2004, when a preliminary draft of one of the licences was posted on the website: this had to be amended in May as the result of the appearance of a new version of the licences containing substantial changes. With the help of the Almeida law firm we prepared a new draft which was debated on a free access list until

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September<sup>9</sup>. We set ourselves a deadline of 1 October 2004, not as an end but as a beginning. From then on, the project of disseminating the licences began. Creators could now avail of this system of a priori assignment of rights.

More than two years have now passed since the project to introduce Creative Commons in Spain began, and nine months since the official adaptation of the licences, and we are now in a position to make an initial evaluation of the project. There has been growing interest among authors, creators, institutions, and administrations. Interest has also been expressed in translating the texts into all of the official languages of Spain. Although the legislation is the same throughout Spain, it is important to have different language versions available in order to help bring the project to all the cultures in the state. Versions are currently available in Spanish and Catalan, but new ones will soon be released in Galician and Basque. Together with their official licences, these will be downloadable from the four languages on the Creative Commons website.

The response to the project from authors has been favourable and an increasing number of creators are using this system to assign certain rights of use of their works. Other artists have considered doing the same, but have run into legal obstacles or contractual restrictions. Some of the latter group have begun to call for changes in the current system of copyright to make it possible for authors to decide at any time what they want to do with their work. Artistic institutions such as museums and art centres have also shown an interest in this system, sometimes, at the request of the artists themselves. Catalogues have already been published with contents that can be freely copied and distributed, and talks and debates have been organised on the subject.

In the academic milieu, many Spanish universities are considering following in the footsteps of the MIT and the timid steps taken by the University of Barcelona, and opening up their teaching content. They see no sense in locking their teachers' knowledge up; instead they believe it is better that it is shared and distributed over the Internet by using one of the Creative Commons licences.

Some public authorities, too, already made more aware by other similar projects such as free software, have expressed their support for Creative Commons and have helped promote exchange and dissemination of work. Some, for instance, stimulate or favour the creation of free contents in calls for projects for public aid. Own contents are beginning to be freed up and initiatives by groups close to the "free" culture are being supported.

Perhaps the most important aspect of the introduction of the Creative Commons licences in Spain is the debate it has aroused on author's rights and access to culture. Current business models are becoming obsolete with advances in technology. We need to search for new models and not try to hold onto the existing ones which restrict access to the works. On occasions, intermediaries may overprotect the rights on the authors' behalf, when the authors themselves would actually prefer greater flexibility or would opt for more innovative formulas for distributing their work.

The debate is open and there can be no doubt that the ultimate winner will be culture as a whole, and with it all those of us who want to enjoy and share it. ❏

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#### NOTES & REFERENCES

- 1 Creative Commons <http://creativecommons.org>
- 2 Licences of the GNU project <http://www.gnu.org/licenses/licenses.es.html>
- 3 Guide to licences for free contents: "A Guide To Open Content Licences", Lawrence Liang, [http://pzwart.wdka.hro.nl/mdr/research/liang/open\\_content\\_guide](http://pzwart.wdka.hro.nl/mdr/research/liang/open_content_guide)
- 4 The standard licences are (for Spanish jurisdiction): Attribution (by) <http://creativecommons.org/licenses/by/2.1/es/>  
Attribution-NonCommercial (by-nc) <http://creativecommons.org/licenses/by-nc/2.1/es/>  
Attribution-ShareAlike (by-sa) <http://creativecommons.org/licenses/by-sa/2.1/es/>  
Attribution-NoDerivs (by-nd) <http://creativecommons.org/licenses/by-nd/2.1/es/>  
Attribution-NonCommercial-ShareAlike (by-nc-sa) <http://creativecommons.org/licenses/by-nc-sa/2.1/es/>  
Attribution-NonCommercial-NoDerivs (by-nc-nd) <http://creativecommons.org/licenses/by-nc-nd/2.1/es/>
- 5 An example of the three-tier version of the attribution licence.  
Summary or deed: <http://creativecommons.org/licenses/by/2.1/es/deed.es>  
Legal text: <http://creativecommons.org/licenses/by/2.1/es/legalcode.es>  
Machine code: [http://creativecommons.org/licenses/by/2.1/es/work-html-popup?lang=es&jurisdiction=es&license\\_code=by](http://creativecommons.org/licenses/by/2.1/es/work-html-popup?lang=es&jurisdiction=es&license_code=by)
- 6 MozCC is an extension for Mozilla-based browsers which allows identification of pages subject to a Creative Commons licence <http://www.yergler.net/projects/mozcc/>
- 7 YahooCC is a Yahoo search engine for searching for contents subject to a Creative Commons licence <http://search.yahoo.com/cc>
- 8 The contents can be found at <http://ocw.mit.edu>
- 9 The process carried out can be consulted at the list <http://lists.ibiblio.org/pipermail/cc-es/>

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