Facilitate Open Science Training for European Research
Creative Commons: A Legal Overview

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Ioanna Tzagaraki & Georgina Athanasiou
Creative Commons

Introduction to Creative Commons

• Creative Commons, USA, 2002

• Standardized tools

→ grant permission to their copyright material
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Creative Commons

Three "layers" of licenses

The licenses exist in three formats:

- readable by machines
- readable by humans (Commons Deed)
- readable by lawyers (Legal Code)
Creative Commons

Few words about Creative Commons

• ‘work alongside copyright’
  • ‘some rights reserved’
Creative Commons

Enforceability

*Curry v. Audax* Case no. 334492 / KG 06-176 SR,

- Dutch Court

  ➢ **JUSTICIABILITY** → Creative Commons as a *cause of action*

  From 2006 till now
  
  
  *never been found unenforceable*
Creative Commons

Ported vs unported: What does it mean? What are the problems of ported licenses?

One of CC’s goals is ensuring that all of its legal tools work globally:

<table>
<thead>
<tr>
<th>Older Versions</th>
<th>4.0 Version</th>
</tr>
</thead>
<tbody>
<tr>
<td>- integration</td>
<td>- no integration</td>
</tr>
<tr>
<td>- translation</td>
<td>- translation</td>
</tr>
</tbody>
</table>
Creative Commons

- **Green**: Licenses have been ported
- **Blue**: Licenses are being ported
- **Light Blue**: Licenses will be ported

*FOSTER*
Creative Commons

<table>
<thead>
<tr>
<th>Contracts</th>
<th>Licenses</th>
</tr>
</thead>
<tbody>
<tr>
<td>More binding</td>
<td>Permissions</td>
</tr>
</tbody>
</table>

**Academia:** contract law perspective


<table>
<thead>
<tr>
<th>District court</th>
<th>Court of Appeal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Only Contract law should be applied</td>
<td>Copyright law can be applicable too</td>
</tr>
</tbody>
</table>

**Unilateral Contracts**

<table>
<thead>
<tr>
<th>Offer</th>
<th>Acceptance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Made to the whole world</td>
<td>By performance</td>
</tr>
</tbody>
</table>
Creative Commons

Creative Commons in the Cypriot Jurisdiction

- **Chapter 149**
  Articles 2(2)(b), 7, 8

**Offer**
By applying the Creative Commons Legal Tools to the material

**Acceptance**
By starting acting within the scope of the license
Creative Commons

Consideration

- no royalties

- *Jacobsen v Katzer:*

  “there should be recognized economic motives inherent in public licenses, even when profit is not immediate”
Creative Commons

Irrevocability

Is applied to *already licensed material*:

- *no termination* of existent contracts by *revocation*

- licensees will
  - *always* use the licensed material
  - *under the same terms* which granted them accessibility in the first place
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Privity

- Share Alike
- Derivatives

A (Initial Author) —> B (Intermediate Licensee) —> C (Subsequent Author)
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Section 5 – Disclaimer of Warranties and Limitation of Liability.

1. Unless otherwise separately undertaken by the Licensor, to the extent possible, the Licensor offers the Licensed Material as-is and as-available, and makes no representations or warranties of any kind concerning the Licensed Material, whether express, implied, statutory, or other. This includes, without limitation, warranties of title, merchantability, fitness for a particular purpose, non-infringement, absence of latent or other defects, accuracy, or the presence or absence of errors, whether or not known or discoverable. Where disclaimers of warranties are not allowed in full or in part, this disclaimer may not apply to You.

2. To the extent possible, in no event will the Licensor be liable to You on any legal theory (including, without limitation, negligence) or otherwise for any direct, special, indirect, incidental, consequential, punitive, exemplary, or other losses, costs, expenses, or damages arising out of this Public License or use of the Licensed Material, even if the Licensor has been advised of the possibility of such losses, costs, expenses, or damages. Where a limitation of liability is not allowed in full or in part, this limitation may not apply to You.

3. The disclaimer of warranties and limitation of liability provided above shall be interpreted in a manner that, to the extent possible, most closely approximates an absolute disclaimer and waiver of all liability.
Exclusion Clauses in Consumers Contracts

• Are licensees considered consumers in law? (directive 93/13/ec, Act 93(I)/1996)

• Directive 93/13/ec, art. 3(1):

An exclusion clause is unfair if:

- Not individually *negotiated*
- Causes *significant imbalance*
- To the *detriment of the consumer*
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Moral rights

Art. 7(4) Act 59/1976, art. 6bis Berne Convention

- the *attribution* right
- the *integrity* right

• **Waivable**
  (Canada, United Kingdom, United States)

• **Inalienable**
  (France, Germany, Italy, Greece)
Creative Commons
Creative Commons

Attribution Right – (Name Reference)

The right of the author to *claim authorship* over his creation

- *Mandatory* to mention the name of the author
  - USA: *Non Attribution*

- Creative Commons Guidelines:
  https://wiki.creativecommons.org/wiki/Best_practices_for_attribution
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Integrity right

The right of the author to protect his honor or reputation

• Violation of the spirit or essence of the project
• Affect the original author’s honor or reputation

The creator keeps the power to maintain the integrity of his work.
Creative Commons

**Integrity Right Protection Example**

- Picture A
  - Modification by cut
  - Possible integrity right violation
Thank you for your time!