



OER COPYRIGHT AND LICENSING TOOLKIT

A guide for higher education institutions interested in creating and using Open Educational Resources

February 2012

Basic definitions
and concepts

Creative Commons
licences

Applying a licence
to your work

Copyright
clearance

Copyright and licensing toolkit

This toolkit is aimed at higher education stakeholders who are working with Open Educational Resources (OER).

It explains the notion of copyright and describes the different licensing options available to the author/creator of a work.

Whether you are wanting to license your own work, or are tasked with clearing copyrighted documents, you will find comprehensive information about the basic concepts in copyright and licensing, the types of open licences that exist, and tools and techniques to provide support.

A brief note on copyright:

- By default, copyright is automatic and 'all rights reserved', meaning that the author/creator of a work must grant permission to people who wish to use the work.
- Copyright comprises a number of different rights, some of which can be legally assigned to others, often by means of a licence. Such licences determine how others might use that work, including whether or not they can access, use, print, copy, distribute, display, perform, modify or sell that work – in practice changing the status from 'all rights reserved' to 'some rights reserved'.
- An author may select from a broad scope of licensing options. These range from very restrictive copyright licences, to a waiver of all rights by dedicating to the public domain (i.e. 'no rights reserved').

A brief note on terminology:

- The person who creates the work is termed the author or creator – which includes writers, musicians, artists, scientists, programmers etc.
- Copyright is not always held by the author of a work – in that case, we would talk about the 'copyright holder' or the 'copyright owner'.
- The copyright holder of a work is sometimes the publisher rather than the author.
- The licensor is the person or organization that holds the license to a work. This might or might not be the author of the work. The licensee is the person who seeks to use the licensed work or to whom a licence is granted.

The toolkit has the following sections. You can read through them all in sequence or just go straight to the issue that interests you.

1. Basic definitions and concepts.
2. Creative Commons licences.
3. Applying a licence to your work.
4. Copyright clearance.

Each section comprises sub-sections that provide more detail on the focus issue.

1. Basic definitions and concepts

We look at:

- **What is copyright?**
- **What rights are associated with copyright?**
- **How does copyright differ between countries?**
- **How long does copyright last?**
- **What is a licence?**
- **What is the public domain?**
- **What is fair practice?**

What is copyright?

The term 'copyright' refers to laws that govern the use of the creative works of an author or creator.

Intellectual Property Rights (IPR) are a mechanism for encouraging people to create innovative works, processes, designs or brands by granting them a limited monopoly on their creations. IPR enable creators to take ownership of their works and possibly to earn money, fame or other rewards from their creations.

Copyright is a type of intellectual property that protects original expression. Copyright does not protect effort or ideas, but rather the expression of those ideas. A work must be in some tangible form (e.g. written, recorded, drawn, painted, sculpted, built) in order to qualify for copyright.

The works of writers, artists and musicians are usually governed by copyright, whether this is explicitly stated or not.

In most countries, copyright is automatic; creators do not need to register or even mark their work with the © symbol to be granted copyright.

What rights are associated with copyright?

Under copyright, exclusive rights are granted to the author or creator of an original work (such as literary, scientific and artistic works), including the right to access, use, print, copy, display, distribute, perform, modify or sell the work.

Copyright is also associated with moral rights related to author's integrity.

Moral rights include the author's right to be recognised as the author, the right to the integrity of the work and the right not to have the work adapted, modified or distorted in a way that would lessen the author's reputation.

Moral rights may be waived or transferred in some jurisdictions and what they comprise varies by jurisdiction. Moral rights can also be transferred through inheritance.

How does copyright differ between countries?

Different countries have different copyright laws.

However, there are several international agreements that provide standards, including the first international agreement, known as the Berne Convention for the Protection of Literary and Artistic Works, which was first established in 1886 and set the tone for all later international agreements on copyright and related rights. This convention was last amended in 1971.

The Berne Convention sets out minimum standards of national copyright legislation (e.g. automatic copyright protection) in that each signatory country agrees to certain basic rules that their national laws must contain. Signatories should give citizens of other signatory countries the same rights of copyright that the convention gives to a country's own citizens.

The World Intellectual Property Organization (WIPO) governs copyright and other intellectual property rights. Countries seeking membership of the World Trade Organization must also sign the Berne Convention.

The following countries in Africa are part of the Berne Convention:

Algeria, Botswana, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Democratic Republic of Congo, Egypt, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mauritius, Morocco, Namibia, Niger, Nigeria, Rwanda, Senegal, South Africa, Sudan, Swaziland, Tanzania, Togo, Tunisia, Zambia and Zimbabwe.

Other countries in Africa have developed their own copyright laws, which may or may not include the same set of minimum standards as those dictated in the Berne Convention.

How long does copyright last?

Copyright duration differs between countries, lasting between 50 and 100 years after the author's death, or for a shorter period for anonymous or corporate authorship. Thereafter, the copyrights of a work expire and the work becomes part of what is known as the 'public domain'.

In the public domain, works are not copyrighted and are therefore freely available. Works that are in the public domain can be accessed and used freely and for any purpose – e.g. printed, copied, displayed, distributed, performed, modified or sold – without a licence.

What is a licence?

The exclusive rights granted to a copyright holder can all be licensed, but they vary depending on local law.

Only the copyright holder/owner can grant permission (known as a 'licence') to others to use, print, copy, display, distribute, perform, modify or sell the work.

Even when a work is licensed, the copyright and moral rights of the work all remain with the copyright holder. An individual may obtain a licence from the copyright holder to copy the work, but the terms of the licence will vary with the nature of the work and what the individual seeking the licence (i.e. the licensee) wishes to do with it.

These licences may be complex, because the exclusive rights granted by copyright to the copyright owner can be split in terms of jurisdiction/territory, or with respect to language. Also, the sequence of uses may be fixed, and the number of copies to be made and their subsequent adaptation and/or use may also be specified.

Through licences or other contracts, the copyright owner may transfer or assign his/her entire interest in all or some of the rights in the copyrighted work.

What is the public domain?

In many countries, the term 'public domain' actually has two meanings.¹

The first meaning refers to public knowledge or making something publicly available.

The second meaning is a legal term that refers to the collection of works that are not copyrighted. This is the meaning that we use in this toolkit. This includes works with copyright terms that have expired, works that were dedicated originally to the public domain, and works that are not eligible for copyright. These works are 'no rights reserved' – people may use them freely for any purpose without requesting permission.

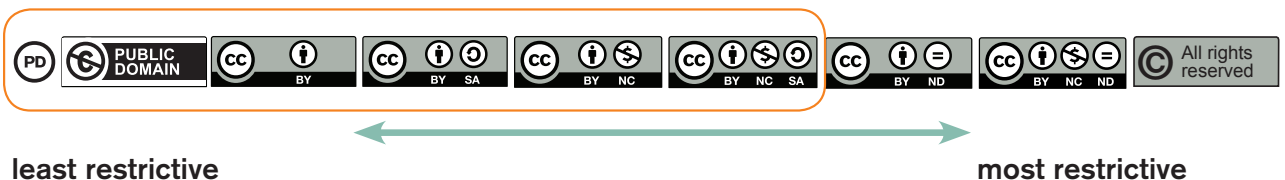
What is fair practice?

International copyright treaties and national copyright legislation include provisions for using portions of copyrighted content under certain conditions without seeking permission.

Many countries have copyright exceptions and limitations that allow for the use of copyrighted content under certain circumstances – e.g. for teaching purposes in a classroom. This is often called 'fair practice', 'fair dealing' or 'fair use' depending on the country. However, in most countries the concept of fair practice is somewhat vague and indefinite.

In South Africa, although not specified in copyright legislation, fair dealing allows the reproduction of 10% of (or one chapter from) a book, or one article of a journal, to be copied by a person for the purposes of research or private study.

What are open licences?



¹ Content by: Kathleen Ludewig Omollo. *Introduction to Open Educational Resources: dScribe*. Retrieved August 2011 from http://open.umich.edu/oertoolkit/topic_menus/dScribe/index.html. This work is licensed under a [Creative Commons Attribution 3.0 Licence](#).

Traditionally, copyright ranged from full copyright where 'all rights are reserved', to the public domain (pd) or 'no rights reserved'.

Over the past decade, there has been a movement towards creating more freely accessible materials and documents. This is particularly in the light of advances in digital technologies and the internet, where works can be made accessible to a much larger group of people on different continents.

Open licences were created to make it easier for a creator to share works freely with the public.

An open licence is any licence that applies to copyrighted content that allows any person to reuse that content without asking for prior permission. Open licences apply a *some rights reserved status* to a work, and so they fall between copyright © and public domain (pd).

Open licences are public licences and allow anyone worldwide to use a copyrighted work without necessarily having to pay a fee or royalty or ask permission *as long as they adhere to the conditions specified in the licence*. It is only if a person desires to use a work in a way other than that specified in the licence that permission needs to be sought from the copyright holder.

What are Open Educational Resources (OER)?



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The concept of Open Educational Resources (OER) describes any educational resources (including curriculum maps, course materials, textbooks, streaming videos, multimedia applications, podcasts, and any other materials that have been designed for use in teaching and learning) that are openly available for use by educators and students, without an accompanying need to pay royalties or licence fees. See *Basic Guide to OER*, for more information on OER — <http://www.oerafrica.org/ResourceResults/tabid/1562/mct/Details/id/39016/Default.aspx>.

The content in this section drew on the following resources:

- Wikipedia: *Copyright*. <http://en.wikipedia.org/wiki/Copyright>
- Julien Hofman (2009) *Introducing Copyright: A plain language guide to copyright in the 21st century*. *Commonwealth of Learning (COL)*. <http://www.col.org/resources/publications/Pages/detail.aspx?PID=312>
- WIPO: *Berne Convention for the Protection of Literary and Artistic Works* (1886). <http://www.wipo.int/treaties/en/ip/berne/index.html>
- WIPO: *Limitations and Exceptions*. <http://www.wipo.int/copyright/en/limitations/index.html>
- The African Copyright and Access to Knowledge Project. <http://www.aca2k.org/>
- Open.Michigan: *License your Work*. <http://open.umich.edu/share/license>
- University of the Witwatersrand: *Copyright Guidelines for Staff & Students of the University of the Witwatersrand, Johannesburg (WITS)*. <http://libguides.wits.ac.za/content.php?pid=227586&sid=1883163>
- Unesco/COL: *A Basic Guide to Open Educational Resources*. <http://www.oerafrica.org/ResourceResults/tabid/1562/mct/Details/id/39016/Default.aspx>

2. Creative Commons licences

We look at:

- **What is Creative Commons (CC)?**
- **What are the types of Creative Commons licences?**
- **What does non-commercial mean?**
- **How are Creative Commons licences designed?**
- **What are ported and unported licences?**

What is Creative Commons (CC)?

The most common open licences for digital works come from the Creative Commons licence suite.

Creative Commons (CC) is a non-profit organization that aims to promote better identification, negotiation and reutilisation of content for the purpose of creativity and innovation.

The Creative Commons licences have been designed to offer a flexible and straightforward tool for people who value accessibility and use of their works over monetary incentives, while still maintaining some rights.

Creative Commons licences are not an alternative to copyright. They work alongside copyright and enable you to modify your copyright terms to best suit your needs. A Creative Commons licence enables creators to distribute their content to a wide audience and specify the manner in which the work can be used while still maintaining their copyright.





What are the types of Creative Commons licences?

The Creative Commons licences consist of four usage conditions, which can be mixed and matched to form one of six licences.²

Publishing under a Creative Commons licence is easy.

² The content is adapted from: Creative Commons. *What is Creative Commons?* Retrieved August 2011 from <http://creativecommons.org/about/downloads/>. This work is licensed under a [Creative Commons Attribution 3.0 Licence](#).

First, choose the conditions that you want to apply to your work.

Condition	Symbol	Explanation
Attribution		<p>All CC licences require that others who use your work in any way must attribute it – i.e. must reference the work, giving you credit for it – the way you request, but not in a way that suggests you endorse them or their use of the work.</p> <p>If they want to use your work without giving you credit or for endorsement purposes, they must get your permission first.</p>
Non-Commercial		<p>You let others copy, distribute, display, perform and (unless you have chosen No Derivatives) modify and use your work for any purpose other than commercially.</p> <p>If they want to use your work commercially, they must get your permission first.</p>
No Derivative Works		<p>You let others copy, distribute, display and perform only original copies of your work.</p> <p>If they want to modify your work, they must get your permission first.</p>
Share Alike		<p>You let others copy, distribute, display, perform and modify your work, as long as they distribute any modified work on the same terms.</p> <p>If they want to distribute modified works under other terms, they must get your permission first.</p>

Based on your choices, you will get a licence that clearly indicates how other people may use your creative work.



Attribution CC BY



Attribution Share Alike CC BY-SA



Attribution No Derivatives CC BY-ND



Attribution Non-Commercial CC BY-NC



Attribution Non-Commercial Share Alike CC BY-NC-SA



Attribution Non-Commercial No Derivatives CC BY-NC-ND

If authors do not wish to enforce any of the four conditions, they may waive attribution and all copyrights related to a work through the Creative Commons Zero Waiver.

If your work contains third-party (i.e. not created by you) content then the Creative Commons licence compatibility wizard can assist in providing guidance for the most suitable licence to be used, because not all of the licences are compatible with one another.

What does non-commercial mean?

The Creative Commons Non-Commercial (NC) clause allows others to copy, distribute, display, and perform your work – and derivative (i.e. modified) works based upon your work – but the work cannot be used for commercial purposes.

The Non-Commercial clause is a controversial and criticised condition available in the Creative Commons licence suite, particularly when related to educational courseware. There are several reasons for this.

At a basic level it is not clear what non-commercial means. Since Creative Commons licences emerged within the past decade, there is little previous case law that exists to assist in interpreting this clause. Creative Commons' initial belief was that the term 'Non-Commercial' should be left undefined so that communities would build their own definition and, if necessary, have recourse to the courts to set the standards of what the term meant.

Various interpretations of non-commercial include the following:

1. The most extreme interpretation of non-commercial is that no money should be exchanged as part of the transaction of using of the materials – regardless of whether the money represents a break-even of marginal cost, reimbursement or profit. This has been the view of the open source software community.

But according to Hofman (2009), this is not how non-commercial is usually interpreted, especially within the educational community.

2. A second view is that non-commercial is determined by the type of user instead of whether there is a financial exchange.

For example, some consider any use of a licensed work by a corporation to be commercial and any use of a licensed work by a non-profit organization to be non-commercial. Under this definition, many licensors in the educational community believe that charging for course packs is permitted under the NC clause.

Rutledge (2008) notes that some believe that any for-profit businesses should not be able to charge course fees or make use of NC content.

Hofman (2009) argues that this would imply that a private school may not use NC materials for educational use, and that a for-profit company may not use NC materials for non-profit purposes such as corporate social investment activities.

However, [Massachusetts Institute of Technology \(MIT\), in their OpenCourseWare \(OCW\)](#), state that '**Determination of commercial vs. non-commercial purpose is based on the use, not the user**'. Thus, according to MIT OCW, for-profit companies may use materials with an NC clause depending on *how* the materials are used. For example, a commercial education and training business may not offer courses based on OCW materials if students pay a fee for the courses and the business intends to make a profit – although incidental charges to recover reasonable reproduction costs are permitted.

Likewise, the [Commonwealth of Learning Copyright Guidelines](#) specifically address the issue of the NC clause and make a distinction between profit (commercial) and cost recovery for operating costs (non-commercial). By this definition, a corporation or non-profit organization may still charge registration fees, and recover materials duplication costs and overhead costs incurred during customisation, duplication and distribution of materials – as long as there is no profit gained.

3. Others believe that a transaction is non-commercial unless the transaction is driven by a profit motive.

While this approach may seem intuitive, the concept of motive or 'intent' is very complex and difficult to prove in court. In practice, if a non-commercial use is ever brought to court, the court will look at the licensor's intent when determining the meaning of the term, and possibly also at what the licensee understood the term to mean, and/or at industry practice.

The discrepancies in understanding what is meant by non-commercial led Creative Commons to conduct a community survey in 2008, with the aim of better understanding the various interpretations of non-commercial. The survey revealed that different communities have developed their own understandings of the term, but each community has not necessarily respected the definitions of other communities.

The [resulting report](#) in 2009 examined various scenarios, such as whether the user is an 'allowable non-commercial user', such as an individual or a non-profit educational institution or a library; if the work is used in, or in relation to advertising; if there is a financial transaction; and finally what derivative uses are made of the work.

While the Creative Commons report may help users better understand what does and does not constitute permitted non-commercial use, in the end, the courts, not Creative Commons, will have the final say over what non-commercial use means.

Due to the varying interpretations of non-commercial, one concern with the NC restriction is that it is potentially incompatible with the other Creative Commons licences (see Möller 2006). In practical terms, it is more difficult to reuse NC content. For example, content licensed under a Creative Commons Share Alike (CC BY-SA) licence without commercial restrictions cannot be combined with content licensed under a Creative Commons Non-Commercial Share Alike (i.e. CC BY-NC-SA) licence.

Critics of the NC clause argue that the clause is harmful because it restricts content by limiting reuse, creating a significant barrier to the growth of free content in education, and it hinders the development of new economic models that add value around free content.

How are Creative Commons licences designed?

In order to make the licences easy to understand and legally binding, and the licensed works easy to find, Creative Commons licences have a three-layer design.³

Legal Code: Each licence begins as a traditional legal tool, in the kind of language and text formats that most lawyers know and love.

Human-Readable: Since most creators of works are not in fact lawyers, Creative Commons also makes the licences available in a format that non-lawyers can read – the Commons Deed (also known as the 'human-readable' version of the licence). The Commons Deed is a handy reference for licensors and licensees, summarizing and expressing some of the most important terms and conditions.

Machine-Readable: In order to make it easy for the Web to know when a work is available under a CC licence, Creative Commons provides a 'machine-readable' version of the licence – a summary of the key freedoms and obligations, written into a format that software systems, search engines and other kinds of technology can understand. You can use Google, Yahoo, Flickr, Wikimedia Commons etc. to search for Creative Commons content. This is why CC-licensed works include a link back to the licence text (e.g. <http://creativecommons.org/licenses/by/3.0/>); search engines use the licence URL to identify CC-licensed resources on the Web.

³ This content is by: Creative Commons. *About the Licences*. Retrieved August 2011 from <http://creativecommons.org/about/licenses/>. This work is licensed under a [Creative Commons Attribution 3.0 Licence](#).

What are ported and unported licences?

When looking at a particular CC-licensed document or work, you may find that it refers to ported or unported licences. This refers to the underlying legal code.

The verb 'port' applies to the adaptation of data to suit a particular technological or policy jurisdiction/territory/environment.

Unported licences are licences that are not associated with any specific jurisdiction (e.g. country). They do not mention any particular jurisdiction's law.

The unported versions are written according to international copyright treaties and are, therefore, in theory, compatible under all copyright legislation in various countries. Due to subtle differences in both legal systems and how various countries interpret the various international treaties on copyright, the unported version may include or exclude clauses that are either not legally binding, or are legally meaningless, in any specific jurisdiction – and thus, some aspects of the licence may not align perfectly to a particular jurisdiction's laws.

Creative Commons partners with lawyers around the world to localize or **port** its licences to different copyright legislations around the world.

The porting process involves both linguistically translating the licences and legally adapting them to particular jurisdictions. These licences are designed to have the same effect anywhere in the world, while at the same time following the legal conventions of particular jurisdictions, so that they can be more easily understood and used by the local community. Thus, usage of these jurisdiction-specific licences has started replacing unported licences in some instances.

In deciding whether to use a ported or unported licence, consider your primary audience. Are they located within one country?

Regardless of whether you select a ported or unported licence, all of the Creative Commons licences are public licences, which means anyone worldwide may use the work as long as they follow the conditions of the licence. The legal code differs, but the only difference in the human-readable version of the licence is the presence of the country name and flag – e.g. compare (unported) <http://creativecommons.org/licenses/by/3.0/> and (ported) <http://creativecommons.org/licenses/by/2.5/za/>.

The content in this section drew on the following resources:

- Creative Commons: *About the Licenses*. <http://creativecommons.org/about/licenses/>
- Creative Commons (2011) *What is Creative Commons?* Half-page flyer. <http://creativecommons.org/about/downloads>
- MIT OCW: *Interpretation of Non-Commercial*. <http://ocw.mit.edu/terms/#noncomm>
- Erik Möller (2006) *The Case for Free Use: Reasons not to use a Creative Commons-NC license*. In *Open Source Jahrbuch 2006*. http://www.opensourcejahrbuch.de/download/jb2006/chapter_06/osjb2006-06-02-en-moeller.pdf
- Creative Commons: *CC Affiliate Network*. <http://creativecommons.org/international>
- Creative Commons: *Monitor: Unported License Adoption*. <http://monitor.creativecommons.org/Unported>

- Creative Commons (2009) *Defining Non-Commercial*.
http://wiki.creativecommons.org/Defining_Noncommercial
- University of Michigan (2011) *Mlibrary: Committed to Creative Commons and Compatibility*.
<http://publishing.umich.edu/2011/04/13/mlibrary-creative-commons/>
- Creative Commons Learn (2009) *Why CC BY?*
http://learn.creativecommons.org/wp-content/uploads/2009/07/ccLearn_primer-Why_CC_BY.pdf
- Creative Commons: *Zero Waiver*. <http://creativecommons.org/choose/zero/>

3. Applying a licence to your work

There is no registration required to license your work. All you need to do is select a Creative Commons licence and then display the licence information on your work.

We look at:

- Which licence should I choose?
- How do I display the licence in my materials?

Which licence should I choose?

Hopefully Section 2 was useful in helping you select an appropriate Creative Commons licence or waiver for your work.

If you would still like some guidance, the Creative Commons licence chooser asks you to answer a few key questions about permitted uses of your materials, and then provides guidelines on which licence would be most applicable.

If your work contains third-party (i.e. not created by you) content then the Creative Commons licence compatibility wizard can assist in providing guidance for the most suitable licence to be used.

Section 4 provides detailed information about how to clear your existing work for third-party copyrighted material, including how to attribute (i.e. reference or give credit for) someone else's Creative Commons-licensed work.

How do I display the licence on my material?

Once you select a licence, the next step is to display this licence on your material. Doing this ensures that people who wish to use your material know how they can do this by easily following the terms specified in your selected licence.

Regardless of the medium in which the material appears, the following licence information is required:

- CC licence name with a link to the appropriate licence text.
- CC logo.
- The name of the copyright holder.
- The name of the author (this may be different from the copyright holder), the year, and the title of the resource.

You may wish to add information on how you wish to be attributed.

For example:

Using our video?

Let us know! You can send us a message through our [contact form](#).

According to the license, you must attribute the footage to Al Jazeera (but not in any way that suggests that we endorse you or your use of our work).

You are required to leave our logos intact, reference this website and the license itself.

Image from Al Jazeera, used under a CC BY licence.


Though not required by the licence, it is recommended electronic publishing practice that you also include the following information:

- Institutional branding or logo.
- General contact person (e.g. oer@university.ac.za).
- Acknowledgements of those who contributed (funders, collaborators).
- Necessary disclaimers (e.g. medical content, recording of students, patients or actors).
- If the work is published on the internet, you may also want to include the URL for the resource.

For web pages/HTML/CD resources:

At a minimum, the licence should appear on the main page; preferably it will appear on each page, such as in a footer.

For example:



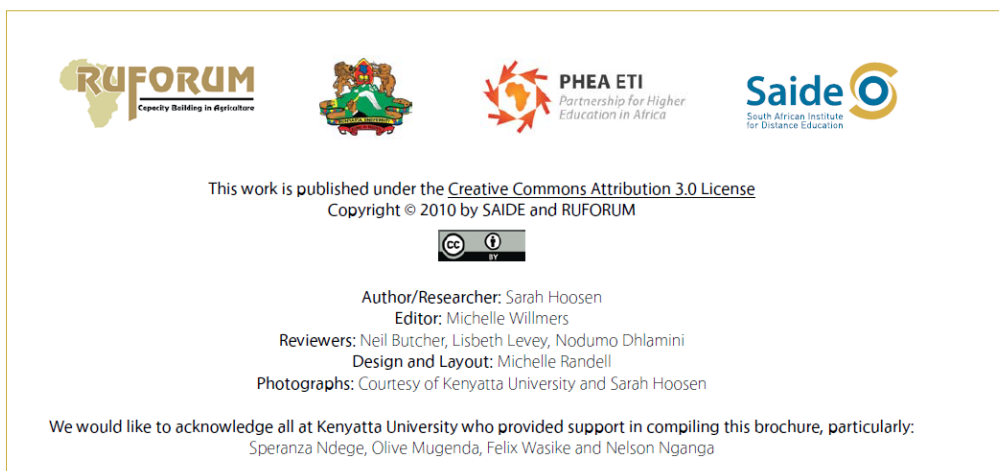
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For documents (text documents, presentation slides, spreadsheets etc.):

The licence information should appear somewhere in the document, preferably on the first, final or imprint page (i.e. reverse side of a document's title page that lists such information as the publisher's imprint, publication date and history, licensing, ISBN etc.).

Here is an example of a licence on a final page:




This work is published under the Creative Commons Attribution 3.0 License
Copyright © 2010 by SAIDE and RUFORUM

Author/Researcher: Sarah Hoosen
Editor: Michelle Willmers
Reviewers: Neil Butcher, Lisbeth Levey, Nodumo Dhlamini
Design and Layout: Michelle Randell
Photographs: Courtesy of Kenyatta University and Sarah Hoosen

We would like to acknowledge all at Kenyatta University who provided support in compiling this brochure, particularly:
Speranza Ndege, Olive Mugenda, Felix Wasike and Nelson Nganga

Here is an example of a licence on an imprint page:



Being a Teacher
ISBN 978 0 620 46795 7

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If it is a large document, it is recommended that attribution information be placed on every page. This is because there is a chance that the document may be cut up into smaller segments as it is distributed in the form of sections or chapters.


The information that appears on the title page can also be included in the header/footer on every page of the resource. Usually, the following information appears:

- The CC BY licence used, with a hyperlink or the icon for the licence.
- The name of the author.
- The institutional logo.
- The title of the resource.
- The chapter/module name or number.


An example of a header:

SECTION ONE | INTRODUCING THE MODULE
5

An example of a footer:



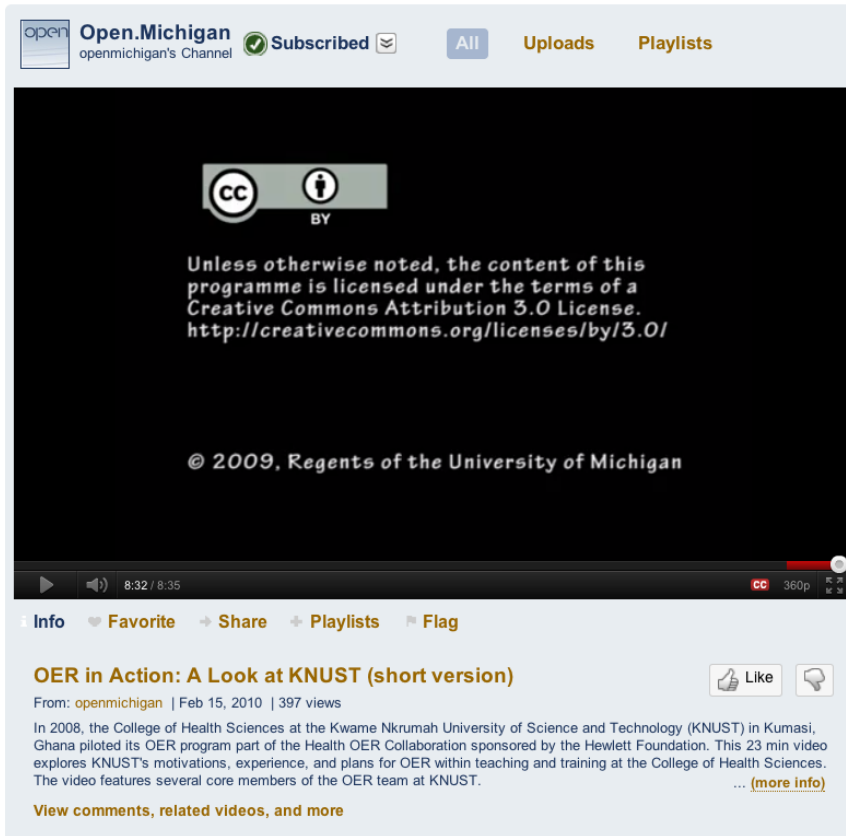
This work is licensed under the Creative Commons Attribution 3.0 South African Licence.
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For videos:

Include a 'video bumper' or a still picture with the licence information at the start or end of the video.

For example:



For audio resources:

When introducing the resource, read into the script the details of attribution and licensing. If the audio files are located on the internet include the attribution and licence details with a description/link to the resource.

For example:



4. Copyright clearance

Copyright clearance is the process of seeking permission from the copyright holder to distribute his/her work.

If you wish to distribute selected readings widely or make selected readings digitally available on a website then you need to seek permission.

If your work contains third-party (i.e. not created by you) content (e.g. images, text, charts) and you wish to distribute your work widely (e.g. as an OER) – whether in person, or electronically or online – then you must undergo copyright clearance to obtain permission for third-party content.

We look at:

- **What are some example situations that require copyright clearance?**
- **What are challenges in seeking permission?**
- **What are some examples of successfully obtaining permission?**
- **How do I properly attribute content that is Creative Commons-licensed?**
- **What about when permission is denied or is not an option?**
- **What tools and templates are available?**

What are some example situations that require copyright clearance?

1. At some universities in Africa, access to the internet is limited. As a result, academics may want to supply third-party readings or articles to their students in print form or on a CD ROM/DVD for a specific course. This is the use of material for education purposes for a specific number of users. For those documents that have conventional copyright, permission needs to be sought from copyright holders, or an agency operating on behalf of copyright holders, to print and distribute the readings or articles to the students.
2. Some universities may have sufficient internet access and may be able to supply the readings or articles in digital format through the internet or a local intranet. This situation may include documents to be placed on the university intranet under password protection, so that the number of people who will be downloading the readings or articles can be limited. Depending on the type of access and jurisdiction, local law may require permission from copyright holders for this use.
3. Universities or organizations may want to release third-party readings or articles as OER. This would mean that these would be made into freely accessible resources (either posted on a website or supplied in print form or CD ROM/DVD), likely under a Creative Commons licence. As OER are publicly accessible, this use would require permission from copyright holders.

What are challenges in seeking permission?

Various potential challenges can arise when applying for permission to use resources or make readings accessible. These include:

- **Cost:** Some copyright holders such as large publishers may charge a fee for allowing readings to be used or for digital versions of the reading to be placed on a website. This may be a one-off fee, or may be a yearly charge. In some cases, this may be a reasonable cost for the reading, and in other cases the cost may be too high.
- **Number of copies:** In addition to cost, some copyright holders may allow users access to a resource but restrict the number of copies that can be printed or downloaded (which would only be possible by introducing some form of digital rights management). This would be manageable if the reading is intended for a particular programme or course, where there is a defined number of students, but more difficult if the reading is not linked to a specific programme or course.
- **Number of words:** Some copyright holders, particularly journals, may place a restriction that only a certain number of words (such as the abstract) from an article or reading can be made digitally accessible, but that the reading itself needs to be downloaded by each individual user from the (journal) website at a cost.
- **Accessibility:** A reading may come in different formats – including OCR scanning, PDF or a normal Microsoft Word document. It may happen that the copyright holder will allow users to access the document online, but will not allow users to download the reading onto their computers. This could be a problem for those users without regular internet access.

Assuming downloading of a reading is allowed, a PDF version may pose a problem as users will not be able to adapt the document. Additionally, some versions of Adobe restrict access in some way through digital rights management, such as only allowing printing of a certain number of pages.

- **Security:** Some copyright holders may be concerned with security, and may wish to know the different types (and/or number) of users accessing their documents, and they may require some security – such as password protection – on the website on which you make the work available.
- **Interoperability:** If licences are sought for a collection of readings for one particular course, it may happen that different types of licences may be granted to different readings. If a person wishes to modify the course in some way, the different licences for the different readings may be difficult to negotiate, and some licences are not compatible with others. For example, some licences can be quite restrictive, such as BY-NC-ND and BY-NC-SA, which are only compatible with themselves – as shown in the diagram:

Compatible licenses								PD		
PD										

This diagram was created by using a compatibility wizard.

What are some examples of successfully obtaining permission?

Example 1: Obtaining permission to redistribute existing free materials

In our agriculture OER work for AgShare, we discovered that there are very few OER course materials in the agricultural sciences at the tertiary level. We therefore focused our efforts on identifying freely available reading materials that are available online. Because these are reading resources for students and lecturers, our focus was not necessarily on finding resources for adaptation.

We found the following kinds of materials:

1. Journal articles in Open Access journals, some of which carry Creative Commons licences.
2. A handful of case studies and other reference materials with Creative Commons licensing or other licences that allow for redistribution without requesting permission.
3. The vast majority of resources, however, are produced by international, governmental or non-governmental organizations and are freely available, but are also copyrighted. We are therefore requesting explicit permission to use and distribute, with attribution, for scholarly purposes. In one instance, the publisher told us that it was their *implicit* intention to allow their resources to be redistributed without permission – however, the copyright statement on the publisher’s website does not make this *explicit*.

We believe that in most instances, if a resource is available online free of charge, the copyright holder will be willing to allow others to use and distribute the work – with attribution, and probably only for scholarly purposes and without modification.

Example 2: Obtaining a licence for existing, proprietary, commercial works

One of OER Africa’s content focus areas is teacher education and development. Saide authored a Teacher Education Series, which was published from 1998 to 2002 with Oxford University Press. Saide owned the copyright for the learning guides, readers and video/audio resources that make up the modules in this series. As these resources are now out of print and the publishing rights for most of the modules in the series have reverted to Saide, Saide wanted to make the series – including the Saide-authored content and some third-party readings – digitally available on the OER Africa website under a Creative Commons licence.

In order to do this, permission needed to be sought with regard to the third-party readings. Letters were sent to the copyright holders – in this case, the publishers – who were informed of our desire to post the readings online and were requested to select a Creative Commons licence.

Permission was granted for many of the readings, but not all, and some copyright holders either refused permission or granted permission under certain restrictions.

Saide reviewed the status for each module, and found that permission was granted for a sufficient number of key readings for it to be useful for those readings to be made available on the website. A full reference list for all of the readings was provided so that users could source the readings (where permission was not granted) independently or apply for copyright permission themselves should they need to – Saide offered to supply print copies to those users wishing to do so.

How do I properly attribute content that is Creative Commons-licensed?

All Creative Commons licences require future users to attribute the works they use:⁴

1. You must attribute the work in the manner specified by the copyright holder (but not in any way that suggests that they endorse you or your use of the work).

The Creative Commons FAQ has this to say about attributing CC-licensed works:

If you are using a work licensed under one of our core licences, then the proper way of accrediting your use of a work when you’re making use of an **exact copy** of the work is:

- a. to keep intact any copyright notices for the work;
- b. to credit the author, licensor and/or other parties (such as a wiki or journal) in the manner they specify;
- c. the title of the work; and
- d. the URL for the work if applicable.

⁴ This section includes content by: Molly Kleinman (2008) *CC How To #1: How to attribute a Creative Commons licensed work*. Retrieved September 2010 from https://open.umich.edu/oertoolkit/references/Kleinman_CC_HowTo_1.pdf. This work is licensed under a [Creative Commons Attribution 3.0 United States Licence](https://creativecommons.org/licenses/by/3.0/).



You also need to provide the URL for the Creative Commons licence selected with each copy of the work that you make available.

If you are making a **derivative** (i.e. modified) use of a work licensed under one of the core licences, in addition to the above you need to identify that your work is a derivative work. For example: 'This is a Finnish translation of the [original work] by [author]' or 'Screenplay based on [original work] by [author]'.

These instructions are clear in theory, but many people who apply CC licences to their work do not specify how they would like to be attributed. On sites like Flickr or ccMixter, you might not be able to determine the creator's real name, and sometimes the work doesn't have a title.

2. In practice, you can handle the attribution requirements as follows:

- **'Keep intact any copyright notices for the work'**: If a work you are using has a notice that says '© 2008 Molly Kleinman', reproduce that notice when you credit the work. If such a notice does not appear, you do not need to worry about it.
- **'Credit the author, licensor and/or other parties (such as a wiki or journal) in the manner they specify'**: If a creator/author has a note attached to her work that says, 'Please attribute Molly Kleinman as the creator of this work', then attribute Molly Kleinman. If there is no note, but there is a copyright notice, attribute the copyright holder named in the copyright notice. If there is no note or copyright notice but there is a username, check the creator's profile to see if it specifies how to attribute the creator's work. If it does not specify this, attribute the username. If there is no creator name of any kind, but there is a website (like Wikinews), attribute the website by name.
- **'The title of the work'**: If the work has a title, call it by name. If it does not have a title, you can say 'This work by Molly Kleinman...' or 'Untitled, by Molly Kleinman...', whatever seems appropriate.

- **‘The URL for the work if applicable’:** Link back to the original source of the work. This can help creators keep track of places where their work appears by seeing what links are driving traffic to their websites. It also gives users of a work an easy way to track down the original source. If you are reproducing a CC-licensed work in a print format, you might prefer not to include a long URL, and there might be situations where leaving out a URL is appropriate. But in general, the link is the most valuable part of the attribution.
 - **‘The URL for the Creative Commons licence’:** The original work should have a link to the licence under which it was released, and you need to link to this licence. You do not need to include the full text of the licence when you reproduce a CC-licensed work.
3. There is no standard way to format the attribution of a CC-licensed work, and you can adapt the style or phrasing to suit your needs or the standard citation style of your discipline.
 4. The licences do not require you to inform a creator that you are using his/her CC-licensed work, but it’s a nice thing to do. Most people are very happy to learn that someone is using and building upon their creations – which is why they use Creative Commons licences.
 5. When using content that has a Share Alike (SA) option, remember that this only applies to *derivative* works/‘adaptations’, whereby you have to re-publish your version according to the licence conditions of the original work from which you drew your adaptation.
 6. However, if you wish to use a CC-licensed work in a manner that is not permitted by the licence, you can ask the copyright holder for permission to use the resource in a manner that you would like. If this permission is granted, then you need to attribute the work in the same way as outlined above.

What about when permission is denied or is not an option?

When permission is not possible, you may need to replace third-party content with CC-licensed, public domain, self-created or commissioned work, or other permissioned content.

If no suitable replacement is found, remove the resource, image etc. and in its place add a reference to the original, either by URL or bibliographic citation for print material.

What tools and templates are available?

There are a number of tools and templates available to simplify the copyright clearance process.

1. The [Flowchart for Copyright Clearance](#) provides the sequence of steps to be followed when seeking permission to use selected resources in an OER or to make resources or readings accessible for a particular course or programme or to make resources digitally accessible (e.g. online).

2. The tracking template for permissions – [Template for seeking permissions for copyrighted material to be posted on a website as OER](#) – provides a template that can be used to list: all the resources where permission is sought; the name of the copyright holder; the contact details of the copyright holder; dates and details of correspondence; queries arising from the correspondence; the status of the request; and, if copyright has been granted, the conditions under which this has been given.
3. The [Creative Commons Licences Compatibility Wizard](#) is a useful tool that can be used to help you understand issues of interoperability and choose a licence for your work in different circumstances. The [compatibility wizard explains](#) how the tool can be used and provides some examples.
4. Examples of letters that can be sent to copyright holders in order to obtain permission are also included in this toolkit. The [example letter where permission is sought for a specific course or programme](#) is for use when you are seeking copyright permission for resources that will be used specifically for a chosen course or programme.
5. The [example letter where permission is sought for resources to be digitally accessible](#) is for use when you are seeking copyright permission for resources that are not necessarily for a specific course or programme, but are to be made digitally accessible (e.g. online).

The content in this section drew on the following resources:

- The Higher Education Academy: *Legal Aspects of OER*. In *Open Educational Resources infokit*.
<https://openeducationalresources.pbworks.com/w/page/25308415/Legal%20Aspects%20of%20OER>
- The Higher Education Academy: *Intellectual Property Rights Considerations*. In *Open Educational Resources infokit*.
<https://openeducationalresources.pbworks.com/w/page/24838224/Intellectual%20Property%20Rights%20considerations>



South African Institute for Distance Education – OER Africa (2011).
OER Copyright and Licensing Toolkit: A guide for higher education institutions interested in creating and using Open Educational Resources. Johannesburg: Saide.

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