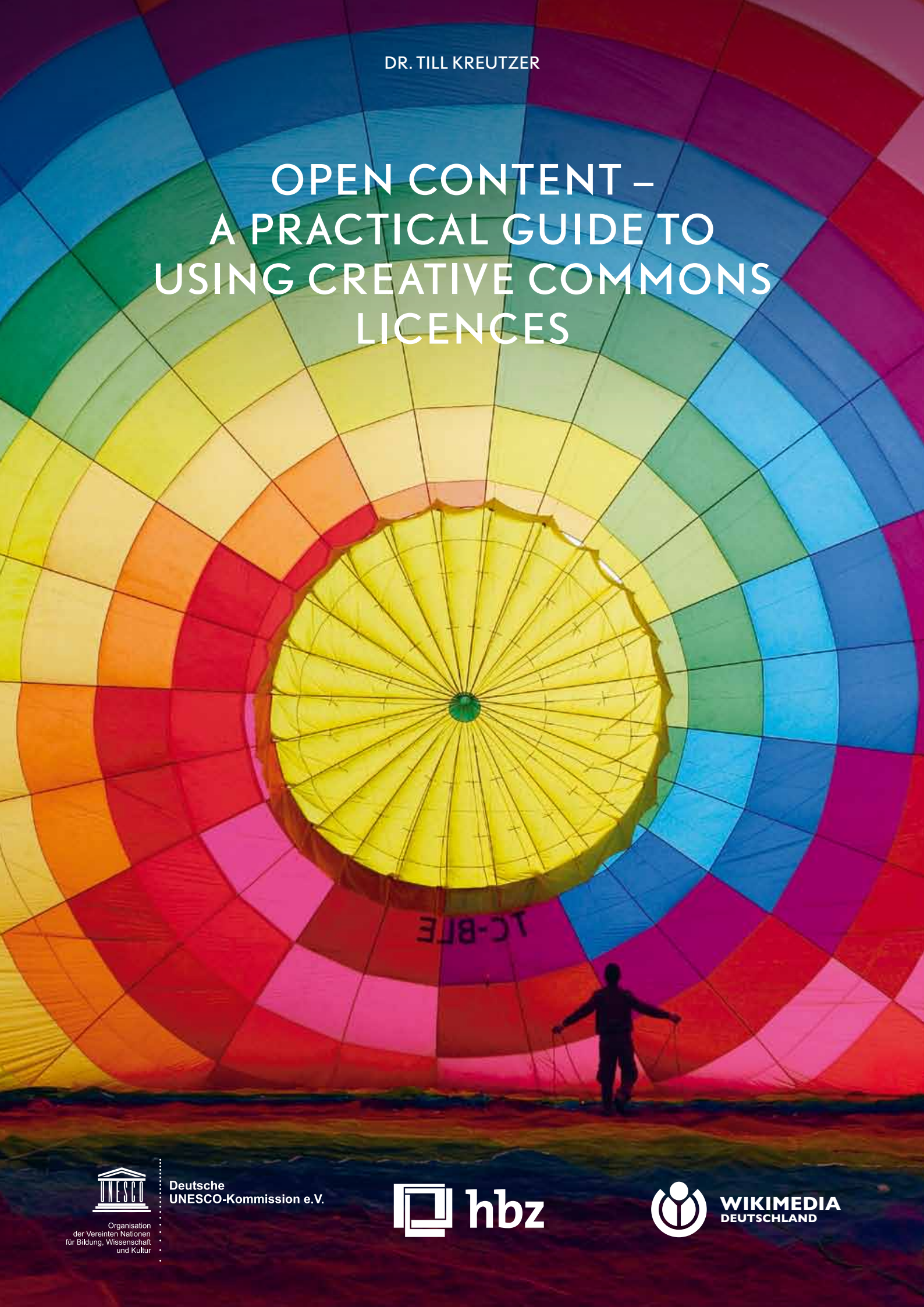
DR. TILL KREUTZER

OPEN CONTENT – A PRACTICAL GUIDE TO USING CREATIVE COMMONS LICENCES



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This picture of a hot-air balloon was one of the finalists of the "Picture of the Year" competition on the free media archive Wikimedia Commons in 2011. With its more than 20 million pictures, videos, graphics and audio files, Wikimedia Commons is the biggest online media archive for Open Content.

EDITORS' PREFACE

"All rights reserved" is the phrase usually associated with traditional copyright. It implies that the copyright holder reserves all rights by default. Neither copying and distributing nor creating derivative works is permitted without the explicit permission of the rights holder.

"Some rights reserved," the guiding principle of open content licences, is the answer to this problem: Open content enables creators and rights holders to spread their work more easily – by enabling others to use, share and mix their work without the need to ask in advance. Artists may use available music or pictures to create own remixes. NGOs may choose to make texts and graphics on their website more easily available to others. People looking for pictures, for example to illustrate websites or publications, may find open content works in the respective databases. Numerous projects are becoming feasible every day through the "unlocking" and opening of content to the world. People are constantly creating public goods by sharing and building upon each other's knowledge and creativity.

Open content thus serves as an invaluable tool for two important purposes: It makes copyright compatible with the digital age – where each user of content can easily become a creator. At the same time, it makes access to information and knowledge much easier. In our globalised world, this is becoming more and more important. Access to information and knowledge is one of the cornerstones of modern knowledge societies.

With this publication, we intend to provide interested individuals and organisations with practical guidelines for the use and application of open content licences: How do open content licences work? How do I choose the most suitable licence for my individual needs? Where can I find open content online? These are only some of the questions which these guidelines try to answer. By this, we hope to contribute to the informed use of open content licences. We thank Dr. Till Kreutzer for writing these valuable guidelines and would like to wish all our readers an informative and instructive reading.

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1. INTRODUCTION: FROM THEORY TO PRACTICE

In 2011, this picture of the interior of the Saint Petersburg Mosque was deemed one of the best pictures uploaded to the online media archive Wikimedia Commons.

The principle of Open Content licencing was invented to facilitate the use and distribution of copyright-protected works. Copyright is a rather restrictive regime which grants a series of exclusive rights to the copyright holder, including the right to distribute or modify a work. These acts cannot be undertaken without specific permission from the right holder.

Notwithstanding, there are certain types of uses which can be undertaken without permission. These are known as "limitations" or "exceptions" to the exclusive rights, which include, for example, the right to quote from a work or to make a private copy. But these limitations are not very broad and at times difficult to assess.

Open Content promotes the development of a digital commons.

The inventors of the Open Content idea considered the copyright regime as too restrictive for both users and creators alike. Therefore, they decided to establish a system of easy-to-use standard licences (i.e. rules that allow the use of copyright-protected works under certain conditions) in order to promote a free culture and the development of a digital commons. Nowadays, millions of copyright-protected works are published online under Open Content licences, including movies, music, images, texts and graphics which can be used, distributed, made available, modified or remixed by anybody without explicit consent from the copyright holder or the payment of a licence fee. It is thus fair to say: The digital commons became a reality within the last decade.

The DIGITAL COMMONS are a kind of commons involving the production and shared ownership of digital goods.

The Open Content Model relies on three basic principles:

1. The simplification of legal transactions: The Open Content licences are published online and can be used by any interested creator or other rights owner.

They provide rights owners with a tool that allows them to conclude legally binding agreements with anybody who is interested in using their work. Unlike in the usual legal (contractual) transaction, there is no need for the parties – i.e. licenser (right holder) and licensee (user) – to contact each other via other means.

2. The granting of a broad, royalty-free permission to use: The user is allowed to use the work freely for most purposes. In fact, the user's rights to use the content are much wider than the exceptions envisaged under conventional copyright law. All rights are granted without costs. The right holder, on the other hand, can choose among a variety of licences ranging from very restrictive to very permissive ones, allowing them to decide which rights are granted freely and which are reserved for individual agreements.

3. The reduction of legal uncertainties: Both users and right holders benefit from the simplicity of the licences, as the legal regime they implement is considerably less complex than copyright law itself. The benefit for the licenser consists in being able to tell their users in a plain and standardised language what they can and what they cannot do with the work. Rules that are understood are more likely to be obeyed. The user, on the other hand, knows what they are allowed to do and can easily understand the obligations.

The guiding principle of the Open Content idea is "some rights reserved." It was conceived in contrast to the traditional copyright caveat "all rights reserved" which may be found on many CDs, books or magazines. At the same time, the "some rights reserved" principle marks off the Open Content concept from the public domain: Open Content is neither free (of copyrights) nor can it be used without permission or rules. It is protected by copyright law and can be used only subject to the conditions of the legally binding licence the rights owner chooses for their work. Therefore, public licencing is neither a political nor a legal statement about Intellectual Property Rights (IPR) nor does the concept challenge the IPR system. Public licencing is rather a concept that facilitates the handling of copyright protected works for the benefit of rights owners and users alike.

INTELLECTUAL PROPERTY RIGHTS (IPR) are all exclusive rights granted to the creators of intangible goods, e.g. songs, texts or inventions. IPRs include copyright, trademarks or patents.

This guide was written to facilitate the legitimate and correct use of Open Content and Open Content licences. It was written for anyone wishing to learn more about Open Content, particularly for creators, companies, organisations and private users, and not so much for legal experts. Its aim is to keep information and language simple. This requires a balancing act between simplicity and professional precision which, hopefully, has been achieved in the present publication. Feedback and further suggestions to the author are always welcome.

The principle of "some rights reserved" benefits rights owners and users alike.

Please note that this guide was published to provide general information and to answer common questions about Open Content licencing, in some cases reflecting the author's personal opinion only. It is not intended to constitute or be a substitute for legal advice. Those seeking legal advice on a particular case are advised to consult a lawyer.

2. THE BASICS OF OPEN CONTENT LICENCING

In 2012, this picture of the Galileo Galilei planetarium in Buenoes Aires was one of the finalists of the biggest photo competition "Wiki Loves Monuments" which takes place every year and is dedicated to cultural heritage monuments. Every September, thousands of volunteers take pictures of cultural heritage sites around the world and upload them to the online media archive Wikimedia Commons.

2.1 BACKGROUND

The Open Content principle is based on the ideas of the Free and Open Source Software (FOSS) movement. The Open Source approach was established in the software market in the 1990s, mainly resulting from the great success of GNU-Linux and its licence, the GNU General Public License (GPL). Written in 1989, the GPL was the first free software licence, which allowed users to use, study, share and modify the software. Today, entire markets are based on the development, maintenance, customisation and marketing of Open Source Software. The inventors of the Open Content principle adopted the basic ideas of FOSS and applied them to other forms of creative contributions, such as music, films or images.

The main protagonist of the Open Content movement was Lawrence Lessig, a legal scholar of Harvard Law School in Cambridge, USA. In 2001, he joined forces with Hal Abelson and Eric Eldred and founded the Creative Commons (CC) initiative to promote the digital commons. CC's aim was to encourage and enable creators to open their works for general use without having to rely on costly and complex legal advice or having to donate their rights to the public domain. For this purpose, CC designed and published a variety of different licences which are easy to handle by the licensers and easy to observe by the users. In addition, the initiative offers useful information and a number of tools on its website, which can be used by anybody free of charge.

CREATIVE COMMONS is the non-profit organisation dedicated to making creative works available to the public. To that end, it has released a number of copyright licences to be used by the public.

The underlying philosophy aside, Open Content is a licencing model that is based on copyright law. Copyright-protected works are made available to the public for the by and large free and unhindered use. Being a licencing scheme, however, the Creative Commons licences are not based on or lead to the public domain.[1] On the contrary, they depend on effective copyright protection. Without copyright, the licence could not be effective, especially not when it comes to the enforcement of the licence obligations.[2]

Licencing means to grant a third party (anyone else except the right holder) the right to use a copyright-protected work. The licence is, however, granted only under certain conditions and obligations on the user's side. Open Content licences may, for example, oblige the licensee to credit the author with every use. This relation between right and obligation could be expressed as: "You are allowed to republish this work under the condition that you name the author."

Open Content licences are generally suitable for every kind of creative work. The CC licences are generic licences which can be used for music, films, texts, images and any other aesthetic creation. However, they are not designated to licence software. As technical products, computer programmes require different licence conditions. In fact, there are specific licences available for software, such as the abovementioned Open Source licences. Also, there are special licences for other technical creations such as databases.[3]

Open Content licences not only serve the interest of the author but also of the public.

Open Content is sometimes referred to as an anti-copyright approach. This is, however, not true. It is a model for right holders to manage their copyright in a specific way. Open Content does not oppose copyright per se, but allows a licenser to take a different approach to the traditional "all rights reserved" approach. Open Content licences are tools which can be employed in order to serve both: the individual interest of the author and the public interest. It is, however, for each copyright

owner to decide whether Open Content licences suit their personal needs.

2.2 DIFFERENT OPEN CONTENT LICENCE MODELS

Unlike Free and Open Source Software,[4] the term "Open Content" is not precisely defined, i.e. there is no commonly agreed definition.[5] This allows for a great variety of diverging licences. In this publication, Open Content licences (also known as "public licences") are assumed to be standard licences that allow the licensee at least to distribute, make publicly available and reproduce a work for non-commercial purposes in any way and on any media free of charge.[6] Needless to say, more permissive Open Content licences that allow, for example, to make and publish derivative works or to encourage commercial uses are also covered by this definition.

Major differences between the various licences ensue when it comes to the question of using the work creatively, i.e. making modifications and distributing the modified versions or using the work for commercial purposes. Whereas some licences allow for the modification, translation, updating, remixing or customising of a work, others do not. Among those that allow modifications, some follow the "copyleft principle," also known as ShareAlike (SA). Such clauses oblige the author of a modified version of an Open Content work to make it available under the same licence as the original author. If somebody modifies the work and publishes the new version, they have to grant their users the very same freedoms that applied to the original work. The idea behind this principle is simple: An Open Content work shall remain open in all its manifestations and versions. Without the ShareAlike obligation, modified versions of the work could be published and distributed under proprietary licence schemes. This, in turn, could oppose the intentions of the original creator.[7]

2.3 THE BENEFITS OF OPEN CONTENT LICENCING

Using an Open Content licence has several benefits. Besides the possibility of a much broader distribution of a work, it also increases legal certainty for users and significantly decreases legal transaction costs.

A) BROAD DISTRIBUTION

The main objective of Open Content licencing is to allow for a broad distribution. Distribution is encouraged by granting more or less unlimited distribution rights and rights which entitle the licensee to share the content. This is an essential precondition for legitimate sharing, as copyright law, at least in Europe, does not provide for a right to publicly share protected content without the right holder's explicit consent. This applies equally to both online and offline sharing. Open Content licences allow the users to upload the work on websites, blogs or any other web publication. They also allow the production of hardcopies of the work in any form, such as photocopies, CDs or books, and the distribution of these copies to anybody without any restriction.

Open Content licences automatically establish a licence grant between author and users.

The positive effect on the work's potential publicity should not be underestimated. Without an Open Content licence, the sharing of a work, for instance, via another online source would require an individual contractual agreement between the sharer and the right holder. The same would apply

The COPYLEFT PRINCIPLE aims to make creative works available to the public by requiring that all modified and adapted versions of the original be free as well.

when somebody would like to modify, remix or mash up a work with other works and to publish the modified version: Under copyright law all these uses are subject to the individual consent of the right holder. The licence grant of an Open Content licence, by contrast, is established automatically.

By facilitating the required legal transactions, Open Content licences not only serve the interests of the authors, but also those of the general public. In fact, authors and users benefit from the increasing number of interesting creative contents that can be accessed and used for many different purposes without having to pay remuneration. In other words, they benefit from the ever-growing "cultural commons" that is available for reception and/or creative use without complex individual contractual proceedings.

Free and Open Content is not synonymous with cost-free but with free-to-use.

OPEN CONTENT describes works that are available under a free licence and which can be used and re-destributed under certain conditions as detailed in the licence text.

The public interest factor might or might not create incentives for authors to open their works. It may, however, be said that Open Content is especially relevant for public authorities which own copyrights in creative contents, as they produce and publish works for the public interest and not for commercial purposes. As the costs for the creation and publication of said works are mostly borne by the taxpayers, Open Content publication strategies are particularly recommended for public authorities.

Also, from the perspective of private right holders, the Open Content approach is not necessarily first and foremost an altruistic one. Otherwise it would not be so successful. Open Content enables sharing, thereby decentralizing and disseminating the sources. This is often more beneficial for the author than a restrictive distribution concept, such as "all rights reserved". If the content is interesting enough to encourage other people to share it, it will be listed more prominently in the search engines, thus, gaining even more publicity. This, in turn, may have a positive impact on the author's popularity and the demand for their works. However, it also brings about potential economic benefits: Attention is a scarce resource in the attention economy[8] which is so dominant in the digital age. In fact, attention is an essential economic factor: Attention leads to clicks; clicks lead to advertising revenues and/or increased recognition; increased recognition leads to higher demand and higher payment rates or salaries. Especially on the Internet, more freedoms for the users and less control will often lead to higher revenues than "all rights reserved" paradigms.

In order to understand the whole effect of this concept, it is essential not to confuse the term "open" with "cost-free" or "non-commercial". Free as in Free Software as well as open in Open Source or Open Content, is not equivalent to "cost-free" but to "free-to-use". Public licencing strives to provide users with the necessary rights to use copyright-protected content in the way they want to. Subject to the conditions contained in the public licences, they are free to use the content, i.e. to copy, distribute and make it publicly available. In addition, there is no requirement to pay licencing fees. This additional paradigm: freedom of royalties (i.e. licencing fees) is supposed to support the freedom to use. Without it, many people would be excluded from the use, because they could not afford to pay the royalties.

However, this paradigm does not necessarily mean that Open Content must be available free of charge or can only be exploited non-commercially; nor does it mean that a creator or a publisher cannot make money by making it available to the public. If this was the case, the Open Source industry could not exist.[9]

B) INCREASED LEGAL CERTAINTY AND SIMPLIFICATION OF LEGAL TRANSACTIONS

Open Content licences enhance legal transparency and certainty for both users and right holders alike. Copyright is a complex matter: A legal layperson can barely figure out under what circumstances a work can be legally copied for private use, made available for educational purposes or quoted. By contrast, Open Content licences, e.g. CC licences, offer an explanation in plain language to inform the licensee what they can do, which obligations they have to comply with and what they should refrain from doing. These explanations are also beneficial for the licenser, who is generally not a legal expert (especially not if it is the author themselves) and who in this way gets all necessary information regarding the rules for using the material.

A further important benefit of Open Content licences is the simplification of the legal transaction between the owner and the user. Open Content licences are standardised tools which keep such transactions simple for both sides. Drafting and negotiating individual licence contracts is a complex matter which usually requires the involvement of lawyers. Donating copyright-protected works to the commons in an international environment (the Internet) is even more complex. Open Content licences free the creator and other right holders from these complexities. Notably, the licence texts published by large initiatives such as CC are thoroughly drafted by legal experts and then made available free of charge for the use of interested parties.

C) DELIBERATELY GIVING UP CONTROL

Open Content licencing requires the will to deliberately give up control over the use of one's work. Having no, or only very limited control, is not necessarily a bad thing, but a feature of public licencing. In fact, the notion of being in total control of the use of content is deceptive in most cases, especially concerning internet publications, irrespective of whether one applies an "all rights reserved" or a "some rights reserved" approach. Once an article, image or poem is made available online, the control over the use usually vanishes. In other words, the more popular the content becomes, the more difficult it becomes to control it effectively. It will be shared on the Internet, whether it is legal or not, unless drastic measures are taken - such as rigid Technical Protection Measures (TPM)/Digital Rights Management (DRM) or an extensive strategy for rights enforcement which requires the engagement of lawyers, piracy agencies or other invasive methods.

TECHNICAL PROTECTION MEASURES
are a means to prevent copyright infringing reproductions or usages of creative works.

The crucial decision about having or not having control is therefore inherently a question of going or not going online. Once a small scale creator decides to upload their work on a publicly accessible website (for large enterprises this might be different), it is a logical next step to publish it under a public licence. It cannot be denied that there will probably be people who break the rules and will neither comply with copyright law nor the Open Content licence. However, for the many considerate users who are overwhelmed by the complexity of copyright law, the licence not only provides freedom but also guidance.

Content will always be shared over the Internet. Open Content licences provide a legal framework.

Most people are willing to comply with the law, but without understandable information about the rules, they are doomed to fail. Is it allowed to download online content, to share it, to print it, to embed it? With regards to copyright law, most users will not be able to answer these questions.

The Open Content licence, on the other hand, instructs the user about such problems by keeping the answers short and simple. It might, for instance, state: "You can use the content in any way you want, provided that you comply with the licence obligations." In other words, the licence obligations are made clear in a way the user can understand and comply with. The resulting legal certainty not only benefits the right holders but also the users.

2.4 LEGAL ASPECTS AND PRACTICAL IMPLICATIONS OF OPEN CONTENT LICENCING

The following section describes in detail how an Open Content licence functions in general and what some of its practical implications are. These aspects are usually relevant for all types of Open Content licences. For more information on specific licence types, please refer to chapters 3 and 4.

A) COMPREHENSIVE SCOPE OF THE LICENCE GRANT

As already mentioned, Open Content is based on the "some rights reserved" paradigm. Whereas most of the rights to use a work are licenced and thus permitted, some are reserved.

Open Content licences thus offer any interested user the opportunity to obtain broad rights to use the content in any way, for any purpose, on any medium, everywhere and without geographical or temporal restrictions. Nonetheless, there may be restrictions (depending on what kind of licence is applicable) on commercial uses or modifications and transformations.

Open Content licences are compatible with commercial business models.

This means, for example that a novel published under a public licence can be copied at will, in digital or non-digital form. It can be scanned or otherwise digitalised, uploaded on servers, saved on hard-drives or downloaded. In terms of copyright, all these uses are referred to as "reproductions." The work might also be printed and (re-)distributed, e.g. as a book, eBook or made publicly available on the Internet. Music may be performed publicly; poems may be recited and plays enacted.

Open Content licences are intended to facilitate the use of protected works, no matter where their use takes place geographically. This has been taken into consideration in the drafting of the licences: Due to their non-discriminatory nature, they are intended to be applicable on a worldwide[10] basis.

Also, the rights are granted without remuneration or any other form of consideration. That does, however, not necessarily mean that the acquisition of a copy or the access to the work is free of charge (see chapter 2.4, section c below), although this is usually the case.

Reserved rights come into play when a work is licenced under a public licence which does not cover, for instance, the right to modify a work and to distribute these modifications. Anyone wishing to engage in these "reserved rights," needs to enter into an individual licencing contract with the right holder. Authors, for example, may decide to use a non-commercial licence to be able to decide about commercial uses on a case-by-case basis and to claim royalties when somebody wants to realize a profit using their works. Should a licenser decide to choose a restrictive licence (e.g. a non-commercial licence), this does not necessarily mean that they are opposed to uses that are outside the scope of the public licence grant.

Such uses are not prohibited per se, but are subject to an additional agreement with the right holder.

B) APPLICABILITY TO ALL COPIES OF A WORK

A public licence always applies to one particular work and not to a certain copy of that work. A work is an intangible creation which expresses the author's individuality. Photos, texts, music compositions or graphic designs are works. A music or image file, a book or a journal are only tangible embodiments of the work but not the work itself.

For the licencing decision, it is important to know that the licence applies to the work and not to a particular copy of that work. If one was not aware of the difference between a work and a copy, wrong assumptions about the effect of licencing might be made.

It is, for instance, a widespread practice to freely share image files of low-resolution or low-quality music files under an Open Content licence with the intention and belief that the rights in high-resolution versions of the same image or music production are not covered by the licence and can still be exploited commercially. This strategy is based on the wrong assumption that the licence only applies to the low-resolution copy of the work. However, it is not the respective copy of the work which is licenced, but the work itself. The licence applies to all kinds of copies of the image, irrespective of their quality. Low-resolution and high-resolution versions of a photo do not constitute different works but only different formats of the same work.

In other words: If low-quality copies are shared under an Open Content licence, the licence also applies to high-quality copies of the same work. Hence, it might be possible to restrict the access to high-resolution copies by paywalls or other technical protection measures. However, once a user gets hold of a high-resolution copy, they can share it under the terms of the CC licence under which the low-resolution copy was published.[11]

C) NO ROYALTIES

All Open Content licences follow the paradigm of "no royalties." No royalties means that the rights to use the work are granted free of charge. It does not, however, affect any other possible sources of income. An example: The content of a book, i.e. the articles, images, illustrations etc., can be Open Content although the book itself is sold. In this case, the buyer only pays the price for the physical hardcopy, in other words, the price for the acquisition of the physical good, i.e. the paper, the cover and so on. The Open Content licence applies to the content of the book, i.e. to the use of the copyright-protected works. It grants a user the rights to copy, distribute and make the work available without having to pay any royalties or licencing fees.

Rights-owners need to hold exclusive rights of their content in order to use a public licence.

Take another example from the online world: The access to an Open Content online repository can be subject to fees, whereas the provided articles are published under a public licence. In this case, the subscription fee is charged for the service, not for the rights to use the content. The subscription is therefore no royalty; demanding it does not conflict with the "no royalties"-paradigm.

Against this background, commercial business models can easily be reconciled with the Open Content idea. Anybody who wants to combine an Open Content publication strategy with a commercial business model is free to do so. Whether this is actually feasible has to be assessed on a case-by-case basis paying due regard to the particularities of the respective case.

D) CONCLUSION OF THE LICENCE CONTRACT

A licence is a permission to use a copyright-protected work in a way that would otherwise constitute an infringement. Whether a licence is a contract or a simple, one-way promise varies from jurisdiction to jurisdiction. The effect, however, is the same: The licence is a valid legal agreement that governs the use of a particular work. Uses which are not covered by the licence or do not comply with the licence obligations are illegitimate acts that can have legal consequences.

To conclude a public licence is simple. In a first step the licenser notifies the potential users that their work can be used under the terms of a specific licence. This is done by attaching a licence notice to the work, including a link to the licence text.[12] From a legal perspective, this act is regarded as an offer to the public (i.e. to any interested party) to use the work according to the licence conditions. Once a user uses the work in a way which triggers the licence,[13] the licence agreement is concluded and the licensee has the necessary permission to legitimately use the work (but also the duty to observe the obligations contained in the licence).

The entire content of Wikipedia is published under a free licence.

E) PRECONDITIONS FOR USING OPEN CONTENT LICENCES

In order to be able to licence a work as Open Content, the licenser needs to own all the necessary rights to do so. A public licence grants non-exclusive rights to use a work to any interested party. For this, the licenser needs to have exclusive ownership of all the rights that are covered by the public licence. The owner of mere non-exclusive rights is, depending on the jurisdiction, usually not able to grant rights to third parties.

If the licenser is not, or not sufficiently, entitled to grant these rights, the licence grant is – on the whole or in parts – null and void. As a result, the licenser commits a copyright infringement for the assumption of rights she does not actually own. Even worse, all users are also guilty of copyright infringement, because the licence grant was invalid.

The legal reason for the latter is that only the owners of rights can (sub-)licence rights to others. A licence grant without entitlement on the licenser's side is void. For example, a publisher owns the exclusive print and distribution rights of a novel, but does not have the rights to make the content available online. In this case, the publisher cannot be an Open Content licenser for the work, as the Open Content licence would also cover rights to make the content available online. By applying the Open Content licence, the publisher would violate the (in the case of doubt: author's) right to make the work available by wireless means. The same applies to any Open Content licensee who would make the novel available online. As the licenser does not have the right thereto, the user cannot obtain it from them either. Whether the licenser and/or the user actually knew or could have known about the lack of entitlement is irrelevant.

How does the licenser obtain the entitlement to act as a licenser? The initial owner of copyright is always the creator.[14] If the creator acts as the licenser themselves, no further steps are needed. However, if a third party shall act as a licenser, one or more contractual transfers of rights are required. When the rights are transferred repeatedly, it is important to establish a consistent licence chain to properly entitle the licenser. In other words, if a work is licenced several times from one party to another before it is published under a public

licence, all licence deals concluded in between have to cover all necessary rights and need to be effective.[15]

F) CENTRALISED VS. DECENTRALISED LICENCING SCHEMES

There are many different Open Content publication strategies. Designing a sustainable and effective strategy can, however, be tricky. Some of the options require transferring rights prior to the actual publication under the public licence, others do not. What model is feasible depends on the individual situation. Two major approaches shall be exemplified here using the online encyclopedia Wikipedia:

Wikipedia is a massive multi-author collaboration project. Anyone who wishes to contribute is invited to do so. The authors can upload their articles and modifications of existing articles themselves. All contributions are published under the same CC licence (CC BY-SA).[16] There are two major approaches to licencing in such a project: Either every author acts as licenser for their own contributions or all rights are consolidated in a central body, for instance, in the Wikimedia Foundation which then acts as licenser for all published content. The first alternative could be called a decentralised, the latter a centralised licencing scheme.

The decentralised licencing scheme

The founders of Wikipedia opted for a decentralised licencing scheme. The authors who contribute copyright-protected articles or edit existing articles in the encyclopedia keep their exclusive rights and licence them to the users. No rights are transferred to the Wikimedia Foundation, which, in turn, does not and cannot act as the licenser for the articles. In this scenario, the foundation acts, from a copyright perspective, as a platform provider and hosting service rather than as a publisher.[17]

This model can be adopted for other publications as well, e.g. anthologies, Open Access repositories, image and video platforms. The principle is simple: Unlike traditional publication and licencing models, the publisher (if that term is appropriate for platform providers altogether) is neither the central rights owner nor the licenser for the published content. The authors keep their exclusive rights and licence them by using the Open Content licence to anyone on a non-exclusive basis, including the publisher/platform provider themselves. In many cases, the Open Content licence grant will suffice to legitimise the provider's own use.[18]

Every editor of Wikipedia keeps the exclusive rights to their contributions.

WIKIPEDIA is the biggest online encyclopedia with more than 30 million articles in approx. 280 language versions. English Wikipedia is the biggest one with 4.5 million articles.

However, in certain situations, the public licence grant might not be broad enough to entitle the publisher sufficiently. Take, for example, a publisher who would like to print and sell an anthology with articles written by a number of authors. The articles are to be published under a public licence, allowing the authors to keep their exclusive rights. In this scenario, the publisher merely acts as a vendor of the book rather than as a licenser of the articles. To prevent commercial competition by other publishers, the publishing house might decide to publish the articles under a CC NonCommercial (NC) licence. The authors might, for example, licence their contributions under a CC BY-NC licence.

Under this arrangement, the CC licence does not cover the own use of the publisher because selling a book counts as a commercial use. The publisher has to conclude an additional agreement with the authors which entitles the publisher to commercially exploit the articles. This additional agreement could be a written contract or a one-way "container licence." The right to commercially exploit the work could be

granted on a general basis or in relation to a particular book publication.

The centralised licencing scheme

Alternatively, all rights could be transferred to the publisher who would then act as the licenser for the work under the Open Content licence. This option would require the conclusion of individual licence contracts between the authors and the publisher prior to the publication.

To give an example: Assume Wikipedia followed the centralised licencing approach. All rights would have to be transferred to the Wikimedia Foundation (or to a different legal body) which would then act as the licenser of the CC licences which were granted to the foundation by the individual authors for the Wikipedia-articles. To accomplish the transfer of rights from the authors to the publisher, "contributor agreements" would have to be concluded with every author. These are also known as "inbound licences".[19]

The scope of the inbound licence must comply with the outbound licence in order to establish a correct licencing chain.[20] In this context, it is inevitable for the authors to grant exclusive rights or even assign their rights completely to the publisher,[21] since non-exclusive licences usually – although depending on the relevant national jurisdiction – do not allow for the re-licencing or the transferring of rights to third parties. In addition, the licence grant has to be unrestricted in terms of territory and duration. Since the Open Content licences grant the users worldwide and perpetual rights to use the work, the licenser's rights must be equal in scope.

Also, whether and to what extent the scope of the licenced rights should be restricted in the inbound licence depends on the outbound licence, i.e. the Open Content licence. For example, if a NonCommercial (NC) licence is used, the inbound licence (contributor agreement) could be restricted to non-commercial uses as well. Or if the project decided for a licence with a No-Derivatives (ND) attribution as outbound licence, there would be no need for the authors to transfer modification rights to the publisher. Whether such restrictions are to be recommended, depends on the actual case. It could be reasonable to leave the individual decision about e.g. commercial uses with the author. In other cases, practical or financial aspects might suggest that all licencing decisions should be taken by a central body.

Furthermore, the inbound licence should explicitly mention that it will allow the publication of the covered works under a public licence. This is all the more important, as in some jurisdictions it is mandatory to obtain the explicit permission from the author in order to be able to sub-licence and/or to transfer rights to third parties. Although this might not be the case in every European jurisdiction, the author still needs to be aware that the work will be published as Open Content. The use of a work published as Open Content can be far more extensive than in a controlled licencing scenario. Especially when the outbound licence permits modifications, e.g. moral rights of the author could be affected.

> Once an open licence is granted it cannot be revoked.

Which alternative, the centralised or the decentralised licencing scheme, is preferable depends on the particular situation. At first glance, it might be argued that the decentralised approach is less complex to organise. It does, for instance, not require complex licencing management between the publisher and the authors. In addition, it would prevent liability issues for the publisher. If the publisher acted as licenser, they

could be made liable for the provided content. If the individual authors acted as licensers, questions of liability would usually only affect them. In Wikipedia, for instance, the author is the only person who knows the content and the history of the contribution. It would thus be fair to decide that they alone should be responsible for it.[22]

Especially in massive multi-author collaboration projects such as Wikipedia, a centralised licencing approach or rights management would be very complex. But this could equally be said for smaller ventures. Take for example a research institute which would like to publish an anthology under a CC licence containing articles from 20 different authors. Not long into the negotiations, it turns out that the authors cannot agree upon a uniform licencing model. Whereas some do not agree with public licencing at all, others wish to submit articles that have been published in a journal before. The latter cannot be licenced as Open Content, because the authors have already transferred their exclusive rights to the previous publisher and reserved only non-exclusive rights to republish them. Among those who agree with an Open Content publication, some are in favour of a permissive licence, e.g CC BY, whereas others would like to reserve the right to commercially use their work and therefore favour a CC BY-NC approach.

In a decentralised model, every author could decide individually about the outbound licencing of their contribution.[23] Those in favour of an Open Content licence could publish their article under any public licence. The others might reserve all rights. The centralised model, by contrast, would require the institution to negotiate an individual licencing agreement with every single author. Such an effort would take time and money.

On the other hand, there could be a variety of reasons for having a single, central licenser. It could, for example, be advantageous for commercial publishers to hold all entitlements. Especially in massive multi-author collaboration projects, basic decisions about the licencing scheme would be much easier to realise than in a decentralised model, where every right holder would have to be asked for permission in order to be able to, e.g. change the project's licence. Generally speaking, if crucial decisions about licencing, marketing strategies or business models depended on the approval of a number of individuals, problems would most certainly arise, as such decision-making structures are highly unpredictable and almost impossible to control.

Open Content licences withstand before a court of law.

The bottom line is that decisions about publication models and licencing schemes need to be well-considered. Every concept has advantages and disadvantages which need to be balanced against each other. This is all the more important as such decisions cannot be easily revoked and will most probably be crucial for the success of the project.

G) PITFALLS OF REPUBLICATIONS

The licenser must ensure that their Open Content licence does not violate third parties' rights. In particular, republications of works that have already been published commercially may raise problems. Publications in a journal or newspaper, for example, often require the transferral of exclusive rights to the work to the publisher. In such a situation, no second publication under an Open Content licence is possible, except with the consent of the publisher. Otherwise, the creator would violate the exclusive rights of the publisher, notwithstanding their own authorship (the issue of so called self-plagiarism, if it applies, is separate to that of copyright).

For that reason it should be made very clear in organised Open Content projects that the authors need to have the right to republish their contribution under a public licence and that no third parties' rights are infringed. These rights can be derived either from the legal ownership (author's right, copyright, exclusive usage rights) of the contributor themselves or again from an Open Content licence. Content can for example be uploaded onto Wikipedia by anyone who is not the author or rights owner, if it has already been licenced under an Open Content licence compatible or identical with the licence used in Wikipedia.[24]

H) PRACTICAL EFFECTS OF USING AN OPEN CONTENT LICENCE

As already mentioned, Open Content licencing combined with the decision to publish online will most probably lead to a certain loss of control. Anybody who would like to copy, distribute, republish or otherwise use the work is entitled to do so (except maybe commercial users). This enables the "free flow" of the work. Also, since the usage rights are granted royalty-free, the options to derive direct profits are limited after the content has been published. On top of that, the licencing decision is – at least for the particular version of the work – irrevocable. The licences to use are granted permanently and cannot be terminated by the author or right holder. Should the right holder decide to change the licencing model after the initial publication, any licencing agreements concluded prior to that change will remain valid. In other words, people who concluded the licence beforehand can still use the work according to the initial licencing terms, i.e. use and distribute it, as the licence for a work which has been spread cannot be changed in retrospect.

All these factors indicate that the initial decision about the publication model or licencing scheme is very important. Although the right holder is, in theory, free to revise any licencing decision at any time, alterations of the licencing strategy can only be made in connection with major updates of the work. Hence, decisions for Open Content publishing in general and the selection of a specific licence in particular, must be taken diligently.

I) ENFORCEMENT OF OPEN CONTENT LICENCES

Open Content is not free of rights and is not equivalent to the public domain. If somebody uses the work in a way which is not permitted by the licence terms, the rights owner can take legal action according to copyright and/or contract law.[25]

In addition, the CC licences contain a legal construction which ensures effective enforceability: This is the automatic termination clause.[26] According to that rule, any licence violation terminates the licence automatically. Without a valid licence, any further use constitutes a copyright infringement which can give rise to claims for damages, injunctions and other legal remedies.

Open Content licences are valid worldwide.

Take, for example, a blogger, who posts a photo which has been licenced under a CC licence without providing the copyright and licence notices: This usage violates the licence requirements and may thus be subject to contractual remedies as well as copyright claims (as the licence is terminated automatically).[27]

J) THE PROBLEM OF LICENCE INCOMPATIBILITY

One of the main benefits of Open Content is supposedly that it can be combined with, or integrated into, other publications in

order to be republished in a new context. Licence incompatibilities, however, threaten this objective of public licencing.

The term "licence incompatibility" indicates that two or more works cannot be published as a combined work due to contradictory licence obligations. Licence incompatibilities are an undesirable side effect of inter alia ShareAlike licences ("copyleft"). These licences feature a clause according to which – to put it simply – modified versions of the work can only be shared under the licence of the original.[28] Apart from direct interventions into the work (e.g. shortening or translating an article) the term "adaptation" or "modification" can also apply to combinations of works, especially remixes or mashups.[29]

Imagine a photo artist who would like to publish a photo collage combining one image which has been licenced under a CC BY-SA with another one which has been licenced under a different ShareAlike licence (e.g. the GNU FDL). In this case, both licences would have the same requirement, stating: "You can only share a combination or modification under my licence terms." Unless the terms of both licences are identical or at least equivalent in their content – which is very unlikely – the licences are incompatible and the content cannot be combined. Obeying one licence would inevitably result in infringing the other. The same effect might occur, depending on the particular situation and the interpretation of the respective licences, if somebody would like to combine articles or graphics licenced under different licences.

Free licences apply to all copies of the respective work – regardless of their quality.

Licence incompatibilities contradict the objective of establishing and increasing a "cultural commons" of protected works which can be rearranged, remixed and (re-) combined to create new cultural content. Since there is currently no tangible solution for the incompatibility problem,[30] its potential effects should be considered carefully when choosing a licence.[31]

The GNU Free Documentation License gives readers of text-based works the right to re-use and adapt the work and requires all derivatives to be published under the original licence. Commercial usage is allowed.

NOTES

1 However, the CC initiative also provides instruments which mark content that has fallen into or should be considered as part of the public domain. These tools have to be distinguished from the licences. Waiving copyrights or marking particular content as "not protected," i.e. public domain, means giving up the exclusive rights, whereas licencing means to grant a right to use the work under certain conditions.

2 The legal explanation for this aspect is complex and differs from jurisdiction to jurisdiction. To put it simple, exclusive IPRs, such as copyright, are effective against anybody (rights in rem), whereas a licence or a contract only binds the concluding parties. The practical differences are significant: Imagine, for instance, somebody copied a work for commercial purposes, which was licenced for non-commercial uses only. The violation of the licence could be enforced on the basis of copyright or contract law. Contract law would require the infringer to have to conclude a licence, i.e. they would have to be a party to the legal agreement. By contrast, under copyright law anyone infringing the exclusive rights of the right holder could be held accountable irrespective of whether there was a contractual relation with the rights owner or not. This shows that legal remedies derived from copyright law are usually much more effective than contractual claims.

3 E.g. the "Open Database Attribution" and "ShareAlike for Data/Databases-licence," published by Open Knowledge, see: http://www.opendatacommons.org/licenses/odbl/.

4 For Free and Open Source Software there are two definitions. See the definition of the Free Software Foundation (FSF): https://www.gnu.org/philosophy/free-sw.html and the Open Source Definition of the Open Source Initiative (OSI): http://www.opensource.org/docs/definition.php. Both definitions are by and large identical.

5 There are a variety of diverging definitions for Open Content (see e.g. http://opendefinition.org/od/), Free Content or Free Cultural Works (see: http://freedomdefined.org/Definition). Unlike the Free and Open Source Software definitions which may be regarded as de facto standard, none of the Open Content definitions seem universally accepted though.

6 It is worth mentioning that this definition is broader than other understandings of "open." According to the Open Knowledge Definition (see: http://opendefinition.org/od/), for instance, content and data are only "open," if they are subject to licence terms that require the licensee at least to name the rights owner and/or to share alike. The discussion about the notion of "open" is complex and multifaceted. Since this document is meant to explain the practical applicability of CC licences, it shall neither be outlined nor commented upon here.

7 See more about the ShareAlike principle and its effects in chapter 3.5, section c.

8 For further information on the term and concept, see: http://en.wikipedia.org/wiki/Attention_economy.

9 For details in relation to the freedom of royalties see chapter 2.4 section c.

10 See e.g. the licence grant in the section 2a of the legal code: "Subject to the terms and conditions of this Public License, the Licensor hereby grants You a worldwide, royalty-free, non-sublicensable, non-exclusive, irrevocable license to exercise the Licensed Rights in the Licensed Material to ..."

11 See the CC FAQ to this aspect und der the questions: "Can I apply a CC license to low-resolution copies of a licensed work and reserve more rights in high-resolution copies?" (https://wiki.creativecommons.org/Frequently_Asked_Questions#Can_I_apply_a_CC_license_to_low-resolution_copies_of_a_licensed_work_and_reserve_more_rights_in_high-resolution_copies.3F) and "How do I know if a low-resolution photo and a high-resolution photo are the same work?" (https://wiki.creativecommons.org/Frequently_Asked_Questions#How_do_I_know_if_a_low-resolution_photo_and_a_high-resolution_photo_are_the_same_work.3F).

12 In a book or other non-digital publication a hyperlink could be printed. Alternatively, the licence text itself could be included as a whole. For more information in relation to the practical questions of including licence notices and similar aspects, see chapter 4.

13 Certain uses are allowed by statutory provisions, i.e. limitations and exceptions. For them the user needs no licence and is insofar not bound by the terms of the licence. For example, in many countries private copying is permitted by law. Hence no licence is required for private copying. Accordingly, the public licence does not apply to such use. The effect is that the user does not have to meet the licence obligations, e.g. they do not have to credit the author, etc. For further details see chapter 3.4, section b.

14 Under common law based copyright systems, there are exceptions from this basic principle. English copyright law, e.g. provides for a rule according to which the employer becomes the initial owner of the copyright in all works that are created by their employees in the course of their employment. The US copyright act has a similar rule, called work-for-hire.

15 Unlike property rights in physical goods, IPRs can generally not be acquired bona fide, i.e. IPR can be transferred only if the transferor owns all the rights allowing them to do so thus being appropriately entitled. Whether the transferee is in good faith when acquiring the rights, since they confide in the transferor's assurance, is irrelevant.

16 In relation to this licence see chapter 3.1, section b.

17 Apart from the licencing aspect, the Wikimedia Foundation is of course much more to Wikipedia than a mere platform provider. It is e.g. responsible for the governance structures and many other essential elements.

18 This might not be relevant for mere platform providers who will usually not be regarded as users in terms of copyright law and therefore do not need a licence. A platform provider in the proper sense does not use protected content in terms of copyright law but merely supplies the technical infrastructure to enable the platform's users to make content available. However, for a publishing house that publishes books, it is inevitable to obtain a copyright licence to do so, since printing articles in a book and selling it is a distribution that falls into the scope of copyright law.

19 An inbound licence refers to the contractual agreement between the authors and the publisher. An outbound licence is the licence between the publisher and the users, here the CC licence.

20 That is because of the need for a proper licence chain. The licenser cannot grant rights which they do not own or are not allowed to dispose of themselves.

21 From a legal perspective, there are several approaches to design contributor agreements. Some jurisdictions, especially the common law based copyright systems, allow for an assignment of the copyright. Whereas a licence is a permission to use the copyrighted work owned by another party, an assignment is a transfer of the copyright itself, one could say: a transfer of ownership. Some contributor agreements are based on the licence, other on the assignment approach. However the Continental European author's rights-regimes (e.g. Germany, Austria) do generally not allow for an assignment of the author's right. See for an overview: Maracke. 2013. Copyright Management for Open Collaborative Projects: Inbound Licencing Models for Open Innovation. SCRIPTed, vol. 10, issue 2, p. 140; http://script-ed.org/wp-content/uploads/2013/08/editorial.pdf.

22 This aspect would become relevant when an article infringed the rights of a third party, e.g. copyrights. If the contributor themselves was the licenser, they would be responsible and liable. The platform provider might be obliged to remove the infringing article from the platform, but they would not be liable for damages. If the platform provider acted as a content provider, i.e. as licenser, they could also be held liable for damages.

23 Unlike in a massive multi-author collaboration project, such as Wikipedia, diverging outbound licences should not be too problematic in such small publications. Hence, a uniform licence scheme would at least not be compelling.

24 See the explanations at: https://en.wikipedia.org/wiki/Wikipedia:FAQ/Copyright#Can_I_add_something_to_Wikipedia_that_I_got_from_somewhere_else.3F.

25 Concerning the differences between contract and copyright law remedies, see footnote 2. Regarding the international enforceability of public licences under different jurisdictions, see: Jaeger/Metzger. 2011. Open Source Software. 3rd edition. Recitals 371-379 (in German).

26 See section 6a of the legal code: http://creativecommons.org/licenses/by/4.0/legalcode.

27 The effect of this rule is that the moment the violation takes place, the licence becomes invalid. From that moment on, every use of the work is a copyright infringement. Indeed, according to the CCPL4 licence it is possible for the infringer to reinstate the licence (or to conclude a new one), when they remedy their non-compliance. However, uses that are conducted in the meantime, i.e. between the infringing act and the reinstatement are not remedied. See: "Licence term and termination" in chapter 3.4, section i.

28 The SA feature is described in detail in chapter 3.5, section c.

29 The CCPL4 licence defines adaptations as follows: "Adapted Material means material subject to Copyright and Similar Rights that is derived from or based upon the Licensed Material and in which the Licensed Material is translated, altered, arranged, transformed, or otherwise modified in a manner requiring permission under the Copyright and Similar Rights held by the Licensor." See section 1a of the legal code: http://creativecommons.org/licenses/by-nc-sa/4.0/legalcode.

30 See to the efforts made to solve the problem and to the ShareAlike rule in general in chapter 3.5, section c.

31 For the details of the implications see chapter 4.1.

3. THE CREATIVE COMMONS LICENCING SCHEME

"Featured pictures" on the free media archive Wikimedia Commons are the best pictures on the platform, chosen by thousands of volunteers. This ice flower is one of them.

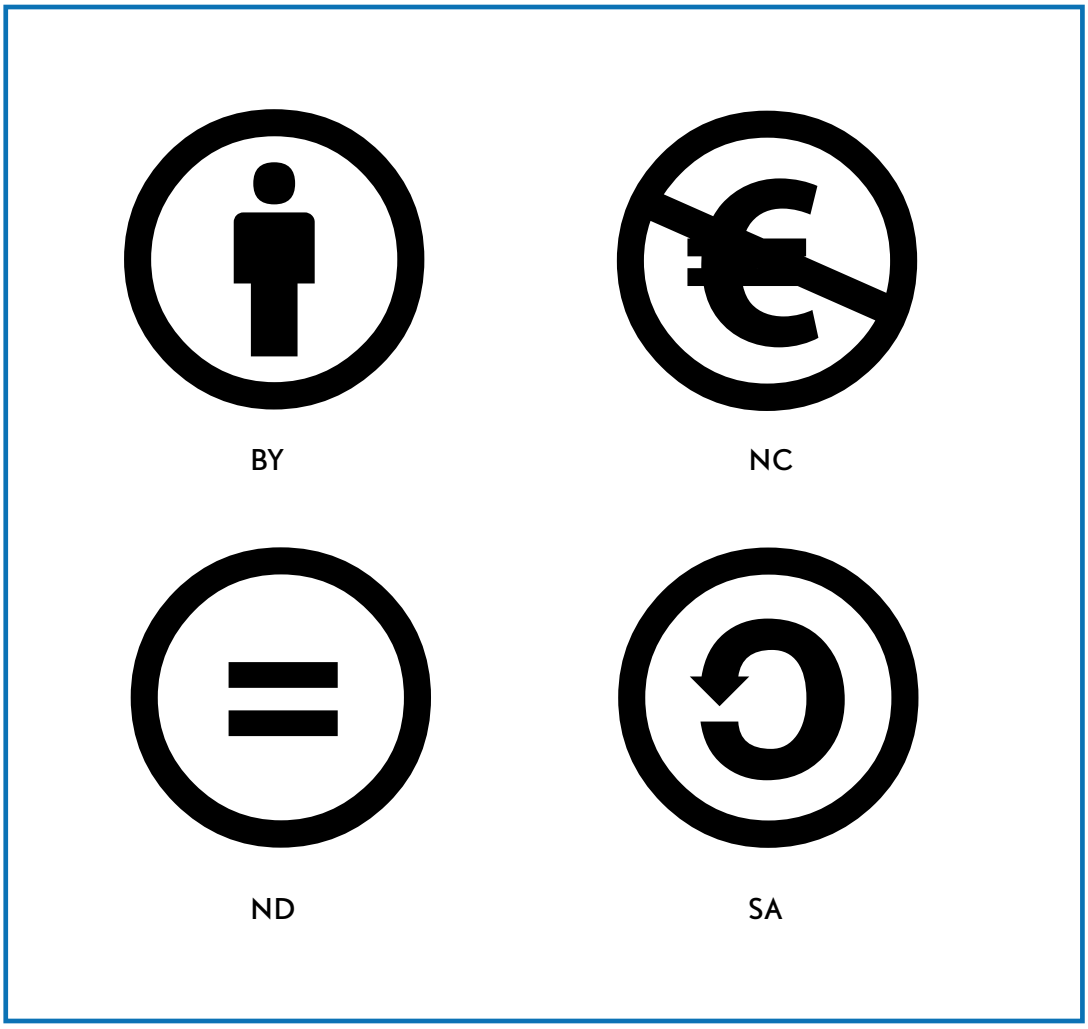
CC is by far the most widespread Open Content licencing model. Its popularity and widespread use means CC can nowadays be considered de facto as the standard for Open Content licencing.

3.1 OVERVIEW OF THE SIX CREATIVE COMMONS LICENCE TYPES

In order to meet the varying needs of different publishing strategies, CC provides a set of six licences and two public domain tools. Each licence contains one or more of four basic elements (the "licence features") which are illustrated by abbreviations and pictograms.[1]

"BY" stands for attribution (the obligation to credit the author and other parties designated for attribution); "NC" stands for NonCommercial (commercial use is excluded from the licence grant); "ND" means NoDerivatives (only verbatim copies of the work can be shared) and "SA" represents ShareAlike (i.e. the work can be modified and modified versions can be published but only under the original or a compatible licence).

FIGURE 1: PICTOGRAMS OF THE CC LICENCE FEATURE



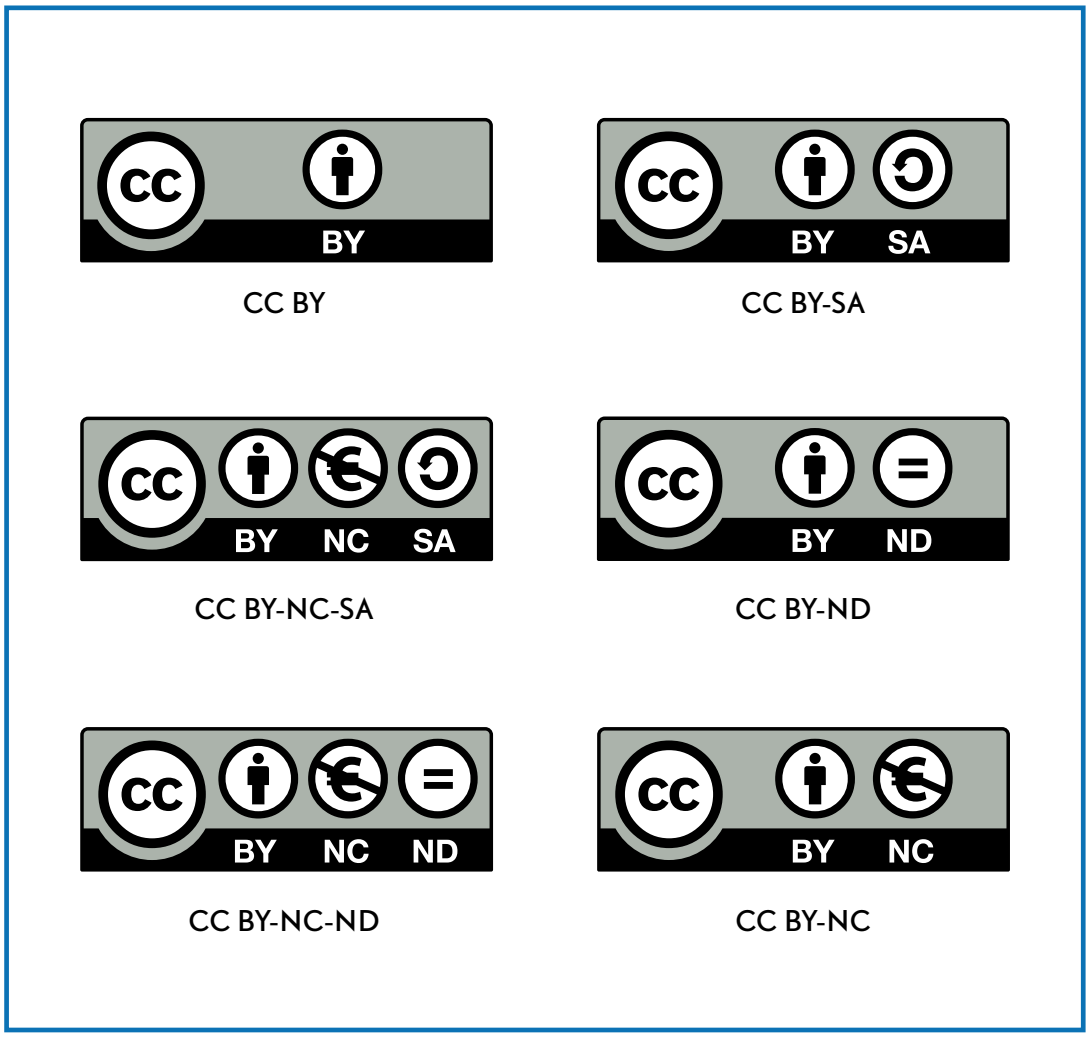
These four features form the basis of a fixed set of six CC licences:

The most permissive licence is CC BY. It grants unrestricted, irrevocable, royalty-free, worldwide, indefinite rights to use the work in any way, by any user and for any purpose. The only requirement is that the user credits the author and other parties designated to receive attribution and retains copyright and licence notices. All other licence versions contain further restrictions. The most restrictive licence is the CC BY-NC-ND. It allows neither modifications nor commercial use. This section gives a brief overview over the different CC licence types. The different licence features, restrictions and obligations are further explained in more detail in section 3.5.

A) CC BY (ATTRIBUTION)

As already mentioned, CC BY grants an unrestricted licence to use the respective content. How the content is used, e.g. in original or modified form, by whom or for what purpose, is irrelevant. According to section 3a of the legal code [2] the following obligations must be met:

FIGURE 2: THE SIX VARIATIONS OF THE CC LICENCES



1. The author and other parties designated to receive attribution must be named in the manner requested by the licenser as long as the requested form of attribution is reasonable.[3]

2. If supplied by the licenser, copyright notices, a reference to the CC licence (preferably as a link to the CC website), a notice that refers to the disclaimer of warranty and liability and a link to the original source must be retained.

3. If the work is shared in an adapted version, it must be indicated that it is a modified version. Former indications to modifications must be retained (section 3.a.1.B of the legal code).

4. If the licenser requests to remove any of the information referred to in paragraph 2 above, the user has to do so as long as it is reasonable.

5. The licensee must not create the impression that their use is in any way endorsed by the licenser or any party designated to receive attribution (section 2.a.6 of the legal code).

B) CC BY-SA (ATTRIBUTION-SHAREALIKE)

As the general licence of Wikipedia, CC BY-SA is one of the most important and widespread CC licences. Licensers, who would like their content to be uploaded onto Wikipedia, or would like to combine it with Wikipedia content, are advised to use CC BY-SA.

The most widespread Open Content licence CC BY-SA is used on Wikipedia.

The only difference between CC BY-SA and CC BY is the ShareAlike clause in section 3b of the legal code. Under the CC BY licence, anyone who adapts the work can redistribute a modified version under the terms of their choice. CC BY-SA, however, binds the adapter to the terms of the original licence. In other words, adapted versions must be shared under CC BY-SA or a compatible licence.[4] Apart from the above-mentioned duties to indicate the modifications, the adapter's licence [5] must comply with the following conditions:

1. The adapter's licence must either be the original licence or any later version of that licence. Earlier versions cannot be used. It can also be another CC licence that contains the same licence features, for example a ported version of the CC BY-SA licence.[6]

2. A hyperlink or other reasonable reference to the adapter's licence must be included.

3. The use of the modified version must not be restricted by additional terms and conditions or TPMs.

C) CC BY-ND (ATTRIBUTION-NO-DERIVATIVES)

The CC BY-ND licence does not permit adaptations of the work. To protect its integrity, only verbatim copies may be distributed and shared. The NoDerivatives restriction can lead to significant problems with the combination of different content, e.g. in remixing, sampling or joined publications. Apart from this, the licence terms are the same as in the CC BY licence described above.

D) CC BY-NC (ATTRIBUTION-NON-COMMERCIAL)

Contrary to the afore-mentioned licences, the CC BY-NC reserves the right to use the content commercially, i.e. a user is not allowed to reproduce the work or create

derivatives if their purpose is to realise a commercial gain. The respective restriction can be found in section 2.a.1 of the legal code. Apart from that, the licence is identical to CC BY and therefore subject to the same obligations.

E) CC BY-NC-SA (ATTRIBUTION-NONCOMMERCIAL-SHAREALIKE)

The CC BY-NC-SA combines the NonCommercial and the ShareAlike features. Therefore, the work can be adapted, and adapted versions can be shared under the conditions referred to in paragraph 2 above. However, no commercial use of the licenced material is permitted, neither of the original nor of any modified form. This licence is used, e.g. by the Massachusetts Institute of Technology (MIT) Open Courseware Project (OCW).[7]

F) CC BY-NC-ND (ATTRIBUTION-NONCOMMERCIAL-SHAREALIKE-NODERIVATIVES)

The CC BY-NC-ND is the most restrictive CC licence. Neither modifications nor commercial uses are permitted. The general obligations mentioned in paragraph 1 above also apply to this licence.

3.2 CREATIVE COMMONS PUBLIC DOMAIN TOOLS

As described in the beginning, a right holder retains their copyrights when using an Open Content licence. They merely grant others permission to use the work under certain conditions. As opposed to this, works in the public domain are not (or no longer) subject to copyright protection at all and may be used without restrictions. Hence, no permission – no licence – is needed anymore. To mark works in the public domain, CC offers two tools: The CC0 (No Rights Reserved) declaration to dedicate own works to the public domain and the Public Domain Mark to label works which are already free of protection, e.g. because the term of protection has expired or because they were not protected in the first place.

A) CC0 (NO RIGHTS RESERVED)[8]

The CC0 is a tool to deliberately dedicate copyright-protected works to the public domain. Thus, it is basically a waiver of rights. Once it is in effect, a work belongs to the public domain and can be used by anyone without any restrictions or obligations. CC0 is nothing but a standardised declaration of such a waiver which can be used by anyone who wishes to dedicate their work to the public domain.

As jurisdictions, especially copyright systems and systems of authors' rights differ across countries, CC0 was designed as a three-tier instrument to ensure its worldwide validity. In authors' rights systems such as in Germany, France or Austria, it is generally not possible to waive an author's right completely or, in other words, to give up one's ownership of a work. Authors' rights are considered as some kind of human right which can neither be waived nor transferred. Hence, in these authors' rights regimes, a simple waiver would probably be invalid.[9] To avoid this dilemma, the CC0 waiver is supplemented by two fallback options:

In some jurisdictions it is not possible to waive one's own author's right. Public domain tools can help here.

The first fall back option is a permissive licence similar to CC BY but without the attribution requirement.[10] Hence, it is a licence without any restriction or obligation. The second fallback option, CC0, is a legal construct usually referred to as a

"non-assertion pledge". It is a legally binding promise of the right holder not to enforce their rights in any way, even if there was a legal option to do so because the waiver and/or licence are not valid.

The idea behind the three-tier approach is the following: If the first solution is not effective, the second option comes into effect and if this was ineffective as well, the third option would come into force. In some jurisdictions, certain rights can never be waived or made subject to a blanket licence. In these cases, for example, the second fallback solution comes into play.[11]

B) PUBLIC DOMAIN MARK (NO KNOWN COPYRIGHT)

In contrast to CC0, the Public Domain Mark is not a declaration but rather a label for works which are already in the public domain. This can be the case, for example, once the term of protection of a work expires. Copyrights and authors' rights are granted for a certain amount of time only. In Europe, for instance, the rights terminate 70 years after the author's death. After this term, the work is considered to be in the public domain and can be used without restriction.

The purpose of the Public Domain Mark is to enable anyone to clearly mark works which are no longer under copyright protection. CC provides a tool on its website which generates an HTML code which can be used for public domain content available online. This code is particularly useful because search engines are then able to detect such content on the Internet.

Before the Public Domain Mark can be applied to a work, a thorough inquiry about the legal status of the particular work is required. Calculating the exact term of protection can be difficult, especially with regard to the differing rules in different jurisdictions. Tools such as the Europeana Public Domain Calculator may help in this task.[12]

3.3 GENERIC AND PORTED LICENCE VERSIONS

Over the years, the CC initiative has constantly developed, modified and modernised its licences. The current version, CC 4.0 (hereinafter referred to as CCPL4 = CC Public Licence version 4), was published on November 26th, 2013. The CC Public Licence Version 3 (CCPL3) and CCPL4 differ in a number of ways, i.e. they contain sometimes subtle, although often important, differences.[13]

The CC licences were initially designed in the light of US copyright law. Nevertheless, it was per se not intended to be a mere US project but rather an international initiative to foster the cultural commons worldwide. Soon, therefore, increasing global interest in the CC licences prompted a discussion about the need for more versions based on other jurisdictions.[14] In 2003, CC launched an international licence porting project called: "Creative Commons International." "Porting" in this sense does not only mean translating but also adapting the rules linguistically and legally to a particular jurisdiction. The aim was to adapt the CC licences to numerous jurisdictions worldwide and make them enforceable in these jurisdictions.[15] Aside from these ported versions, CC now also offers international, also known as unported/generic, versions of their licences.[16]

Legal language as well as regulations differ from country to country. Licences based on US law can thus be partly invalid in other parts of the world. For example, the liability and warranty disclaimer in the original US CC licences are invalid under German, and most likely Pan-European consumer contract law.[17] If a licence clause is invalid, complex questions arise. Such complexities may lead to legal uncertainties which might prevent organisations and individuals from using the licences in the first place.[18]

For this and other reasons, the international CC project established a network of affiliate organisations to port the licences to their respective jurisdictions. CCPL3 was ported into more than 60 jurisdictions.

Interestingly, CC has meanwhile changed its attitude towards porting. For CCPL4, as of today, no licence ports are on the horizon. In the launch notification for CCPL4 the CC officials contend that CCPL4 does not need to be ported at all. In the current version of the FAQ, CC states:

"As of version 4.0, CC is discouraging ported versions, and has placed a hold on new porting projects following its publication until sometime in 2014. At that point, CC will re-evaluate the necessity of porting in the future. […] We recommend that you use a version 4.0 international license. This is the most up-to-date version of our licenses, drafted after broad consultation with our global network of affiliates, and it has been written to be internationally valid. There are currently no ports of 4.0, and it is planned that few, if any, will be created."[19]

"Ported" Open Content licences are linguistically and legislatively adapted to a certain national jurisdiction.

It may be doubted that any licence can be valid to the full extent in all jurisdictions worldwide. However, for the time being it seems unlikely that the licence-porting project will continue, even though many right holders would probably prefer to use a licence which is not only translated into their mother tongue but also adapted to their jurisdiction. It is thus predictable that the CCPL3 licences will still be used to a significant extent, at least for some time. Especially for larger projects with many authors and a decentralised licence scheme, this is to be expected. If the licence for numerous works and contributions is supposed to be changed, e.g. to a newer version or another licence type, all rights owners have to agree. This could prove considerably difficult as, unlike some FOSS licences, CC licences do not contain an "any later version" clause.[20]

While it is understandable that licensers might prefer a licence that is adapted to their language and jurisdiction, the question of whether ported versions are advantageous depends on a number of complex considerations. In the end, the answer depends on the particular case. Here, it is only possible to give some brief remarks on aspects which should generally be considered.

At first glance, it might seem beneficial for an, for instance, French right holder to use the French ported CC licence for their works. To begin with, a licence in one's mother tongue is linguistically easier to understand.[21] Also, it is easier to estimate the legal implications when the licence is based on one's national law. Furthermore, the French licence will contain a choice of law clause according to which the licence contract and all other potential issues are governed by French law.[22] This rule simplifies the legal relationships between multi-national licensees and the licenser because it designates one definite jurisdiction as the applicable law. Without a choice of law clause, the identification of the applicable law could be very complex, since it may vary depending on the nationality of the particular licensee or their place of residence.[23]

However, it needs to be kept in mind that the legal certainty for the licenser might result in linguistic and legal uncertainties for most of the potential users as far as they live in different countries. Legal uncertainties, in turn, can constrain the use of the work, which the licenser actually wanted to encourage.[24]

Therefore, the international/unported CC licences with their "multi-jurisdictional

approach" may be regarded as beneficial, especially for online content. The same is true for licences used for multi-national, multi-author collaboration projects. It would make no sense to use a national licence, e.g. for Wikipedia. The result could, and would, in many cases be that the designated jurisdiction was alien to both, the licenser and the licensee.[25] In such projects the private international law solution is more suitable, despite its potential complexity, as it would most likely result in the applicability of either the licenser's or the licensee's national law.

When a work is modified, an adapter can only licence their modifications. The original work remains under the initial licence.

Translations

The international/unported licences have been translated into many different languages. This is true in particular for CCPL3. Official translations for CCPL4 have already been announced and can be expected to be published by the end of 2014.

Ported and unported or different linguistic versions in adaptations

A work which has been modified several times could, in a later version, be subject to a number of different licence versions, even though it has initially been published under a ShareAlike licence. The ShareAlike clause permits the contributor (adaptor) to use not only the original but also a compatible licence for their version. Compatible licences are, e.g. ported versions of the same licence. In addition, the contributor could choose to publish a modified version under a later version of the same licence. For instance, the adapter of a work which has initially been published under a CC BY-SA 3.0 could publish their newer version of the work under CC BY-SA 4.0. Alternatively, if the initial licence was CC BY-SA 3.0 Unported, they could choose a CC BY-SA 3.0 France licence for the adaptation.

Importantly, any adaptation of a work still contains the original work. From a legal perspective, the adapter can only licence their modifications; unmodified parts of the work remain under the initial licence. Without a legal solution offered by the licence, the adapter cannot really "re-licence" the work as a whole. This might lead to the confusing situation in which the user of a repeatedly modified work has to obey multiple licences at the same time.

The CCPL4 contains a new rule, which offers a simple solution for this problem: The user of the modified version is only bound to the (last) "adapter's licence" which was attached to the particular version of the work.[26] Former licences which were applicable to earlier versions of the work become irrelevant.[27]

3.4 LICENCE CONDITIONS, USER OBLIGATIONS AND RESTRICTIONS RELEVANT FOR ALL CREATIVE COMMONS LICENCES

All CC licences share a standard set of almost identical general rules. These "general licence features", which apply to all licence types, will be discussed here. The distinctive licence features "NonCommercial", "NoDerivatives" and "ShareAlike", which only apply to some of the licence types, will be elaborated in detail in section 3.5.

A) LICENCE GRANT

The licence grant clause in section 2a of the legal code differs slightly across the different licence versions. Common ground is that a non-exclusive, irrevocable, royalty-free and worldwide licence is granted to share and copy the material, irrespective of the type of use. In other words, the work can be reproduced in any form (digital or non-digital) and on any media (e.g. hard disks, paper, servers, etc.). It can also be conveyed by any possible means, e.g. over the Internet, as hard copies (CD, paper among others) or via email.

Obviously, the licence grant differs from licence to licence regarding commercial and non-commercial uses – the NC licence being the only one which allows the reservation of commercial usage rights. Also, the right to share modified/adapted versions of the work varies between the ND versions and the other licences. Even though the ND licences permit the creation of modifications, the "adapted material" cannot be distributed without further permission of the licenser, however.

According to section 2.a.1 of the legal code, all CC licences are "non-sublicensable." This wording represents an important basic principle of public licencing: Rights to use the material are granted by the right owner to the user. Users cannot grant rights in the material to other users, i.e. they cannot grant sub-licences.[28] This construction prevents complex licence chains, which would otherwise occur, if the works could be re-distributed by a number of users.

B) LICENCE CONCLUSION AND EFFECTIVENESS OF LICENCE OBLIGATIONS

The licence terms only come into effect when a use falls within the scope of copyright's exclusive rights. When using a work in a way which is outside the scope of copyright the user does not have to abide by the licence obligations. Below, some examples are discussed when this might be the case.

Where the licence is not needed and not applicable: internal use

Section 2.a.2 of the legal code states:

"Exceptions and Limitations. For the avoidance of doubt, where Exceptions and Limitations apply to Your use, this Public License does not apply, and You do not need to comply with its terms and conditions." Additionally, section 8a of the legal code states:

"For the avoidance of doubt, this Public License does not, and shall not be interpreted to, reduce, limit, restrict, or impose conditions on any use of the Licensed Material that could lawfully be made without permission under this Public License."

In other words, uses which do not require a licence do not trigger the licence obligations. Statutory freedoms of use (e.g. copyright exceptions), such as the quotation right, are not restricted by the licence, which means that within their scope, the licence obligations are not effective. For example, private copying is often – though not always – permitted by national law. Hence, no licence is required for private copying and, accordingly, the CC licence does not apply to such use. The effect is that the user does not have to meet the licence obligations. For example, the user would not have to credit the author when making a private copy. Should they, however, decide to upload their private copy to a website, the licence comes into effect and the licence obligations become binding.

Only a rights-owner can grant the right to use their material and sub-licence it.

Copyright is limited in many other ways – not only concerning uses in the private sphere. Any use which falls outside of the

scope of copyright protection can be conducted without obeying the CC licences. To put it simply, the CC licence obligations, and the respective grant of rights, only become relevant in the context of publication and distribution.[29] Especially in the private sphere, CC material can be used almost without any obligations.

According to section 2.a.1 of the legal code, the attribution obligation must be observed only, when the work is "shared." Sharing is defined in section 1i of the legal code as: "to provide material to the public by any means or process that requires permission under the Licensed Rights, such as reproduction, public display, public performance, distribution, dissemination, communication, or importation, and to make material available to the public including in ways that members of the public may access the material from a place and at a time individually chosen by them."

Read together the two clauses mean: If the material is not conveyed to members of the public,[30] the user is not asked to comply with the attribution obligation.

Open Content licences only become relevant when making a work publically available and distributing it.

The term public

Simply put, "sharing" means conveying the material to members of the public. But what does public mean in this context? The question is of enormous practical relevance, especially for corporate users and public authorities, but also for private users, since uses in the public sphere are subject to licence obligations and restrictions; uses in the non-public (e.g. private) sphere are not.

The importance of the differentiation shall be emphasised by two examples: Imagine a Facebook user posted someone else's ND-photo on her wall. Before posting it, she has adapted the photo optically and technically. Her Facebook posts are only available to her direct contacts. If this use was considered to be public (because her contacts would be considered as members of the public), the user would violate the licence terms which demand that altered material must not be made available to the public. If the group of her contacts was, however, not considered as a public group, she would act in a perfectly compliant way.

Another example may be a company which produces a brochure which includes some modified ND photos. The brochure will only be distributed within the company group but not to third parties. Is the deployment within the group an internal use or a public distribution? If the latter was true, the use would violate the licence terms.

The question is even more relevant when it comes to SA licences. As already mentioned, the SA feature obliges adapters to licence their modified version of the material under the same licence. This requirement is often confused with an "obligation to publish." In fact, the SA provision does not oblige the adapter to publish their modified version. They can keep it for themselves as long as they want. They could also share it with a limited amount of user groups without infringing the SA rule.[31] Hence, SA is not an obligation to share. It is merely a rule on "how to share." If the adapter's version is shared publicly, however, it must be licenced under the same or under a compatible licence. Whether it is shared at all, or with whom, is the free decision of the adapter.

Hence, the meaning of public or more precisely "providing material to the public," as the CC licences put it, is essential for the SA clause and crucial in practice. One last example regarding this specific

case: Take the above-mentioned situation where the company wanted to share the brochure within the company group. Imagine the brochure was a modified version of another brochure which was initially published under a CC BY-SA licence. The company now adds information containing business secrets, which is why the company would like to keep the second version to itself. If transferring the brochure from one company to another within the group was regarded as "providing material to the public," the "secret version" would have to be licenced under a CC BY-SA licence. In that case, anybody (e.g. employees or any other third party) could share and republish it. If the use was considered non-public, however, the SA obligation would not be triggered and the company could prevent anybody from sharing it.

So, what is the exact meaning of public? Unlike the CCPL3, the CCPL4 licences do not contain an explanation of the term. They only define the term sharing, which on the other hand implies a use within the public sphere. This leaves us having to interpret the central term public on the basis of the applicable copyright law. However, different jurisdictions have different interpretations of this and other terms, which makes it impossible to give a universally valid answer.

In the European Copyright Directives and the thus formed European copyright acquis communautaire the term public is used in several contexts. However, the European copyright directives do not provide a general, or all encompassing, definition of the term public either. The term has, however, been mentioned in some judgments of the European Court of Justice (ECJ), which has established the following basic interpretation rules:

- Public means "making a work perceptible in any appropriate manner to persons in general, i.e. not restricted to specific individuals belonging to a private group."[32]

- The term public implies that a communication or making available of a work targets a fairly large number of persons.[33] This excludes groups of persons which are too small to be significant. A significant group can also be reached in succession. The ECJ held: "In that connection, not only is it relevant to know how many persons have access to the same work at the same time, but it is also necessary to know how many of them have access to it in succession." [34]

- It is relevant whether the user profits in monetary terms from the use.[35]

- It is essential whether the communication or making available was deliberately addressed to a public group.[36]

- Regarding works which are available online, a "making available to the public" requires the targeting of a "new public," i.e. an audience "that was not taken into account by the copyright holders when they authorised the initial communication to the public."[37] This means, for example, that hyperlinks to works which are already made available online to the general public (i.e. without technical restriction) cannot be considered as a communication or "making available" to the public.[38]

The EUROPEAN COPYRIGHT DIRECTIVE implemented the WIPO Copyright Treaty in order to harmonise certain aspects of copyright law across Europe.

Although these general rules answer a great variety of particular questions concerning the term public in copyright law, they do not allow precise answers for situations which have not already been decided by the ECJ. In other words, the EU copyright acquis lacks a unitary concept of communicating or making available of a work to the public. It is, for instance, hard to determine whether the upload of pro-

tected material to a company's intranet for the access of all employees is a communication to the public, or in the terms of CCPL4, an act of sharing. It is further unclear whether the transfer of copies from one affiliate company to another or from one public authority to another branch of that authority, constitute a communication to the public.

In the end, these questions need to be decided on a case by case basis. This is especially true for the interpretation of sharing in the CCPL4 licences, because this term comprises a number of uses which are treated differently under copyright law including, e.g. public display, public performance, distribution, dissemination, communication, or importation, and making material available to the public.

Under European copyright law, "distribution" (to the public) means the dissemination of physical copies (e.g. CDs or books). "Making publicly available," in turn, refers to online uses. Most likely, the notion of public under European copyright law would vary depending on the different use cases.

It is safe to stipulate, however, that uses within the private sphere, i.e. within groups having mutual personal relationships, are always non-public. To watch a movie with friends, to send a copy of a text via email to close colleagues or to share photos by making a Dropbox folder available to a small group of selected people, will not be considered as public sharing.

On the other hand, any online use which targets a general public qualifies as sharing under the CC licences, as the potential audience is not restricted by technical measures. This applies irrespective of whether the user pursues a commercial or non-commercial purpose.[39]

Obviously, there are countless situations which still may be considered either non-public or public. Sharing between separate and independent legal persons, i.e. two individual companies will usually qualify as a (public) distribution; whereas the distribution of material in-house, within one company, will probably not be considered as sharing.[40]

Nonetheless, it is still disputed whether the notion of public should be considered differently in the case of distribution (i.e. the conveying of physical copies) and the making available of non-physical copies (via a network or email), as it has not yet been clarified by the European courts under which circumstances the sharing of intangible copies of protected works, e.g. in a corporate or professional environment, can be considered public or non-public.

It must therefore be assessed on a case by case basis whether the licence obligations of the CC licences are triggered in the particular scenario.

C) ATTRIBUTION

The obligation to name the author and/or other parties designated to receive attribution is essential for most licensers. It ensures that the right holders are credited for their work, which is crucial to gain recognition and/or publicity. Crediting is thus the main reward for the Open Content publisher whether it is the author, company or public institution.

The great importance of attribution is highlighted by the fact that all CC licences contain the BY feature. The respective obligation can be found in section 3a of the legal code.

Crediting properly

The CC licences are quite flexible regarding the crediting requirement. The user is merely requested to give attribution in a "reasonable manner."[41] Even if the licenser suggests/prescribes a certain method of attribution, this only binds the licensee, if

they can reasonably comply with it. This creates leeway for a number of attribution methods which will be applicable depending on the particular media formats and use-cases. There are several explanations on correct attribution[42] available on the CC website and a number of best practice guidelines.[43]

Proper crediting is easier when the general concept of attribution and its goals are understood. Thus, the following paragraphs seek to explain the background to the above-mentioned rules:

First and foremost, it is important to understand that crediting is only effective when the user can relate the credit to a particular work. For instance, if a website provider decided to centralise all crediting information for all implemented images on one central page, they would have to make sure that each credit could be allocated to the correct picture (e.g. by hyperlinking the information to the particular image file). The closer the credit is attached to the work, the more likely the attribution requirement will be complied with and the intent and purpose of crediting retained.

Because credits are the main reward for using Open Content licences all Creative Commons licences contain the BY feature.

The obligation to name the author and "any others designated to receive attribution" (section 3.a.1.A.i of the legal code)

The obligation to name the author and the copyright owner is a common rule under copyright law that shall ensure, as mentioned above, that the author gains publicity and possibly monetary rewards. It is also necessary to prevent plagiarism, i.e. to ensure that the original author is acknowledged as the author, and not the user.

The obligation to implement a copyright notice (section 3.a.1.A.ii of the legal code)

If the licenser provides a copyright notice, it must be retained.

The obligation to refer to the licence and to the warranty disclaimer (section 3.a.1.A.iii, iv of the legal code)

The obligation to supply a copy of or a link to the licence is necessary to ensure that all users can benefit from the licence in the first place. A user cannot observe a licence they are not aware of. Thus, if the licence information is not attached to the particular copy the user has accessed, they will not be properly entitled. The obligation to link to the disclaimer of warranties is based on the same idea. A contractually determined limitation of liability can only be legally valid if it is brought to the licensee's attention. Since the warranty and liability disclaimer form part of the licence (section 5 of the legal code), this obligation can only be complied with by providing the licence text.

The obligation to link to the online source (section 3.a.1.A.v of the legal code)

To a reasonable extent, the licensee is also obliged to retain Uniform Resource Identifiers (URI) or hyperlinks to the licenced material. This also applies (like all other attribution obligations) to the use in offline publications. Imagine someone used a photo from Flickr in a print magazine: The obligation to link to the source would be complied with by printing the full Flickr URI, thus allowing the reader to find the source.

The obligation to indicate modifications (documentation obligation, section 3.a.1.B of the legal code)

DATABASE RIGHTS refer to ancillary rights granted to the creator of a database.

The obligation to indicate modifications has several reasons. First and foremost, it aims to protect the original author's reputation. If everybody was allowed to modify a work in any way, this could result in modified versions which the original author might not want to be associated with, e.g. because they dislike the style or the quality. The documentation obligation ensures that modifications by third parties are clearly attributed to them and not to the original author. Moreover, this rule ensures that the evolutionary history of the work can be retraced at all times. This is particularly important for massive multi-author collaboration projects such as Wikipedia which rely to a considerable extent on version histories to make the origination process of the articles transparent.

No obligation to name the title of the work in CCPL4

One change in CCPL4 compared to former versions is that the attribution requirement does no longer request the licensee to name the work's title. According to the FAQ under CCPL4 it is still recommended to name the title (if the licenser supplied one), but it is no longer mandatory.[44]

D) APPLICATION OF THE LICENCE TO DATABASE AND OTHER RELATED RIGHTS

Material published under CC licences will often be protected by an accumulation of IPRs. Take, for instance, a music file: Authors' rights protect the composition and the lyrics, **neighbouring rights** the sound recording and the performance of musicians and singers. The CCPL4 licences apply to all copyrights and related rights.

NEIGHBOURING RIGHTS are related to authors' rights but are not connected to a work's actual author, e.g. performers' or broadcasters' rights.

In section 1b of the legal code they are defined as "copyright and/or similar rights closely related to copyright, including, without limitation, performance, broadcast, sound recording, and sui generis **database rights**, without regard to how the rights are labelled or categorized."[45]

Section 4 of the licences' legal code explicitly addresses database rights. The sui generis right on databases is a European peculiarity which does not exist in many other parts of the world (e.g. the US). It was introduced on EU level in 1996 by means of the Database Directive[46] which is mandatory for all member states.

Section 4 of the legal code clarifies that the general licence grant in section 2.a also covers these specific database rights. If the licenced material includes a protected database, it is permitted to extract, copy, reuse and share it in whole or in part. Unlike some ported versions of CCPL3, the CCPL4 licence requires the user to comply with the licence obligations when they use a protected database.[47]

Whether these rights are granted depends on the decision of the licenser. It would, for instance, be possible to licence elements of the database but not the database itself. The database and its contents are separate subjects of protection; hence, they can be licenced (or not licenced) independently. If the licenser wanted to restrict the licence to one of these two elements (the content of the database or the database itself) they would have to clearly identify which elements are covered by the licence and which are excluded.[48]

Since the grant of database rights is closely connected to the copyright grant, the licence obligations and restrictions are equally applicable to the database rights.[49] If, for example, a database was licenced under a NC licence, the reuse, sharing, copying, etc., would only be permitted for non-commercial purposes. If it was licenced under an ND licence, it would not be pos-

sible to take substantial portions of the database and incorporate them into another database.

Again, if the database was licenced under an SA licence, any own database which included a substantial part of the original database would have to be licenced under the same or a compatible licence.[50]

E) PATENT AND TRADEMARK RIGHTS

According to section 2.b.2 of the legal code patents and trademark rights cannot be licenced under the CC licences. This is especially important for corporate and institutional licensers who own trademark rights in their company name, logo, etc.

The exclusion of trademark licences means that a trademark associated with the work can only be used to share said work in terms of the CC (copyright-) licence grant. For instance, a CC-licenced book which was published under a registered trademark of the publisher could be copied and shared with the general public. However, no licencee would be allowed to use the trademark in any other way but for sharing this book. They could neither promote their own works under that trademark nor could they allege that the trademark owner endorsed the publication of their own modified versions. This is further ensured by the obligation to mark modifications.[51]

F) MORAL RIGHTS, PRIVACY AND PERSONAL RIGHTS

One of the main reasons for the nationalised CC licence ports was the different concept of moral rights in different jurisdictions. Moral rights are supposed to protect the personal relationship between an author and their work. Among others, moral rights include the right to first publication, the attribution right and a protection right against distortions of the work ("right of integrity"). Especially the authors' rights regimes in continental Europe have very strong moral rights which are only negotiable to a certain extent. Nations which pursue a "copyright approach" such as the UK or the US, do not grant such "sacrosanct" moral rights. In these states, moral rights are subject to the freedom of contract, i.e. they can easily be contracted-out, limited or waived.

The different approach between the above-mentioned jurisdictions challenges the concept of unitary public copyright licences which are supposed to be valid and enforceable all over the world. Hence, moral rights used to be a major aspect in the porting of the CC licences to other jurisdictions. Licence ports from countries with a strong protection of moral rights, e.g. the German CCPL3, contain special clauses which stipulated that moral rights remained unaffected by the licence grant.[52] The CCPL3 unported version did not address the aspect in any way. This lack of regulation raised doubts on whether the licence grant could be regarded as fully valid under authors' rights regimes.

As CC abandoned the idea of licence ports in CCPL4, a new concept was needed to deal with moral rights. The CCPL4 introduction website explains how moral rights and neighbouring aspects, such as privacy or other personal rights, are now dealt with: "The 4.0 licence suite uniformly and explicitly waives moral rights held by the licensor where possible to the limited extent necessary to enable reuse of the content in the manner intended by the license. Publicity, privacy, and personality rights held by the licensor are expressly waived to the same limited extent."[53]

The intended effect is that moral, personal and other rights which might be affected by the licence, but are outside the scope of copyright,[54] are waived to the maximum extent possible under the applicable copyright law.[55] However, the waiver's scope is limited, covering only what is

necessary to be able to use the licenced work.

This approach leaves the decision, how far personal and moral rights can be waived and to what extent they remain in force, to the applicable law. Whether it is legitimate, for example, to use a CC licenced song in a pornographic movie or CC licenced photos in a political campaign will differ from jurisdiction to jurisdiction.[56]

However, the resulting legal uncertainty should not be overestimated. Despite their theoretical importance within the authors' rights regimes, moral rights are de facto much less disputed than commercial rights of use and are very rarely the subject of lawsuits. The moral, personal and data protection rights waiver, or as the case may be, the non-assertion pledge, shall only ensure the usability of the work. If someone made selfies available online and licenced them under a permissive, modifications-allowing CC licence, they should be aware that people might use them in a way that they would not appreciate.[57] Moral and other personal rights, such as the right of integrity, should, however, only be regarded as a last resort to oppose uses in extreme, and therefore rare, cases.

A more significant issue which is not – and cannot be – solved by the licences alone is personal rights. Especially photos, videos and articles are often published under a public licence in violation of third parties' personal rights. For instance, photos or videos showing individuals are published online without their permission. Articles including personal data that should not be conveyed without consent are posted in blogs or on websites. Redistributors of such infringing material can become subject to legal action, irrespective of the public licence. As a matter of fact, the licenser may only decide about rights affecting themselves. If other people's rights are affected by a publication the licenser has to ensure that all necessary permissions are obtained. If they fail to do so, the infringed person can hold both, the licenser and the licencee, liable.[58] This means, if, for example, a person uses a CC-licenced picture which violates personal rights, they can also be held liable. Whether the user knew or could have known about the infringement of personal rights is irrelevant.

Creative Commons licences do not touch upon third parties' personal rights.

G) DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY

All CCPL4 licences contain a comprehensive disclaimer of warranties and liability. This means that the work is shared "as-is" and that the licenser is not liable for any damages, losses or for whatever other harmful event could result from the use of the work.

Under European tort law and other regulations, it is not possible to fully exclude all liability for damages and negligence.[59] Section 4.c of the legal code is thus intended to ensure that in the case of mandatory statutory law imposing minimum liability standards, the liability is reduced to the lowest possible level under the applicable law.

Whether such a severability (or: salvatory) clause can sustain an (most probably) ineffective liability clause, might be arguable. However, even if the liability rules in CCPL4 were invalid, the liability for damages arising from the provision of CC material (and Open Content in general) would most likely be minimal. Although the actual standard of liability will vary from jurisdiction to jurisdiction, all liability regimes will consider the fact that Open Content is shared without compensation. The contractual liability for contracts with-

out consideration is generally very limited. Under German law, e.g. the prevailing opinion among legal experts is that the statutory liability for public licencing is equivalent to the liability for gifts. Hence, the level of liability is the lowest possible under German contract law.

H) PROHIBITION OF THE DEPLOYMENT OF TECHNOLOGICAL PROTECTION MEASURES

Due to a mandatory provision in the European Copyright Directive,[60] the circumvention of effective TPMs is prohibited in all EU member states and under any circumstances. This means, e.g. that nobody is allowed to reproduce a copy-protected work by circumventing the TPM, not even for private copying or quoting.

Section 2.a.4 of the legal code clearly states that TPM protection shall not be effective for CC-licenced works. The effect is that any licencee is allowed to conduct whatever technical modification of the copy of the work is needed to be able to use it according to the licence terms, even if it required the circumvention of an effective TPM.

I) LICENCE TERM AND TERMINATION

CC licences are concluded perpetually (section 6.a of the legal code), i.e. they apply until the copyright, or any other related rights in relation to the material, expire. After all rights expired, the material becomes part of the public domain and there is no longer a need for a licence.

Furthermore, the licence grant is irrevocable (section 2.a.1 of the legal code). Hence, the licenser cannot actively terminate the licence contract. However, the licence terminates automatically upon any breach of the licence conditions (section 6.a of the legal code). Uses which are conducted after the violation has occurred are copyright infringements for which the user can be held liable. For example, if a user failed to attribute the author or did not provide a notice referring to the licence text, they would forfeit their right to use the material. As previously explained, without a licence they would be liable for copyright infringement, just as any other person who uses a protected work without permission. Licences of third parties, however, are not affected by the termination.[61]

If the licence is terminated, CCPL4 offers two possible routes to reinstate it.[62] According to section 6.b.1 of the legal code, the licence is reinstated automatically if the infringing licensee remedies the violation within 30 days after they discovered it or after they were informed about it by the licenser or otherwise. Alternatively, the licenser can reinstate the licence expressly (section 6.1.b of the legal code). However, according to the CCPL4 FAQ, the user is liable for any non-compliant uses which were conducted before the licence was reinstated.[63]

As soon as a licence condition is breached, the licence terminates automatically.

3.5 ADDITIONAL LICENCE-SPECIFIC RESTRICTIONS AND OBLIGATIONS

Besides the abovementioned obligations and restrictions which are valid for all six types of CC licences, the NC, ND and SA licence elements – which are part of only some of the CC licences – are also subject to some specific requirements which a licensee should be aware of.

A) NC – NONCOMMERCIAL

Three of the six CC licences contain the NC element. NC means that the licenser reserves the right to exploit the material

commercially. Any user who wishes to use the work for commercial purposes needs additional consent (i.e. an additional licence) from the right holder.

NC licences are widespread and very popular among the CC licence suite, at least in some areas.[64] The reasons for this popularity are manifold. Indeed, there can be good reasons to choose an NC licence in particular cases. However, in most situations, the NC versions lead to significant and often unintended drawbacks. As the NC restriction affects free distribution and inhibits many uses (often unintentionally), they are generally not considered as "open/free culture" licences.[65] Even in the context of education and research, the use of NC-content is characterised by legal uncertainty.[66] For example, NC content cannot be integrated into Wikipedia, as Wikipedia uses a CC BY-SA licence. For these and other reasons, NC licences are highly disputed in the Open Content community.

The NonCommercial licence feature leaves a wide margin for interpretation on what commercial usage is.

It is not the task of this guide to resume or comment on these discussions and its various arguments.[67] Instead, it is the aim of this guide to explain the NC restriction and to hopefully clarify some misunderstandings about it. Below, however, some of the arguments are taken up to explain strategic aspects regarding the selection of the appropriate licence for different cases.

What is the meaning of NonCommercial?

In the recent versioning process for CCPL4, it was debated whether, and if so how, the definition of the term NonCommercial should be clarified in the licence text. In the end, CC decided against any change of the definition.[68] Hence, the provisions in CCPL3 and CCPL4 do not vary in this respect.

Section 1i of the NC licences' legal code defines NonCommercial as follows: "NonCommercial means not primarily intended for or directed towards commercial advantage or monetary compensation. For purposes of this Public License, the exchange of the Licensed Material for other material subject to Copyright and Similar Rights by digital file-sharing or similar means is NonCommercial provided there is no payment of monetary compensation in connection with the exchange." [69]

Obviously, this definition leaves a lot of room for interpretation. Particularly, the phrase "is directed towards monetary compensation" signals that the NC clause shall be understood in a very broad sense. How broad is, however, hard to estimate, especially since it is not clear whether the word "primarily" applies to the second alternative as well, in other words, whether the sentence has to be read as: "NonCommercial means not primarily … directed towards commercial advantage or monetary compensation." [70]

The clause only mentions one specific use: Peer-to-peer file-sharing is deemed non-commercial. In other contexts, uses must be individually examined whether they are "(not) primarily intended for or directed towards commercial advantage or monetary compensation." This leaves a wide margin for interpretation.

Thus, it is impossible to give an objective and general answer to the question of when a use is commercial or non-commercial. Being a contract, the licence has to be interpreted from an objective point of view considering the views of both, licenser and licensee. Moreover, due regard must be paid to the applicable law in the particular case.

In 2008, CC conducted a survey investigating the perception of creators and users

regarding the commercial/non-commercial dichotomy.[71] The findings revealed that creators and users have by and large a common understanding of the general meaning of the terms commercial and non-commercial. Concerning borderline cases and specific questions, however, the results of the study were not very conclusive. Altogether, the survey can serve as an interesting pool of information, as it reflects similarities and differences in the views of different stakeholders.[72] One interesting overall result was, for example, that users tend to interpret the NC clause more restrictively than the right holders themselves. However, due to its limited scope and non-representative character, the study cannot be used as a reliable source for legal interpretation.[73]

On the whole, there is no unitary interpretation of the terms commercial and non-commercial, and with regard to the different jurisdictions, cannot be expected to exist. Nonetheless, an attempt will be made below to give some concrete answers for certain typical use-cases, although these must be understood as the author's personal opinion only.[74]

The distinction given here between commercial and non-commercial is based on two general factors: user-related aspects and use-related aspects.[75] Each category comprises a number of more detailed factors which indicate commercial or non-commercial uses respectively. In addition, the two general factors, combined with further indicators, should give a good overview about a number of typical use-cases.[76]

The following chart showing commercial/non-commercial use-cases shows the most essential indicators. It is based on the following assumptions:

- The general attitude of a user towards for-profit or not-for-profit activities is not the only determining factor, but a strong indicator whether their uses should be classified as commercial or non-commercial.[77]

- The term commercial has to be understood in a broad sense. If the use serves even a remote financial interest of the user, it must be deemed commercial.[78] It may be assumed that activities of profit-oriented users (especially companies) generally serve a business interest, at least remotely.

- Uses that generate direct profits should always be considered commercial.

- Whether the particular use (also) serves the public interest or only the self-interest of the user has some relevance for its classification as commercial or non-commercial.

- Among the uses of individuals, there is a difference between job-related and private uses. If the use is job-related, the classification depends on whether the intention of the employer/client is "primarily directed towards commercial advantage."[79] In other words, a use could be commercial even if the user did not follow their own commercial interests but supported those of a third party. If the use only serves a private purpose and only takes place in the private sphere, it is always non-commercial.

- Apart from these differences, it is irrelevant who the user is. Individuals can follow commercial interests much the same as legal entities or institutions.

- Uses that are covered by copyright limitations and exceptions do not fall into the scope of the licence. If such regulations permitted certain commercial uses, the NC restriction would not be effective.[80]

Further explanations regarding the following chart:

- A freelancer is an individual who runs a business and uses the material for their business interests. The term freelancer shall be understood in a broad sense. It shall include inter alia artists who make a living from their creative work.

- A private person is an individual who uses the material for private purposes only. Uses of individuals which are conducted to fulfil their job-related duties are deemed to be uses of their employers. In case a private person acts commercially on their own account, e.g. by selling hardcopies of CC licenced-material, they are considered a freelancer.

The following assessment has to be understood as a reflection of the author's personal opinion only. Some projects which use NC licences offer explanations of their own, which might not fully match the author's assumptions.[81] In these cases, it is recommended to follow the guidelines of the respective project.[82]

CHART 1: WHO CAN USE NC CONTENT IN WHAT USE CASE?

ABBREVIATIONS:
Yes = Use of NC content is permitted
No = Use of NC content is not permitted
n.a. = Not applicable, i.e. such constellation is inconceivable in the logic of the chart as explained above

User type	Company	Public institution	Non-profit NGO	Free-lancer	Private person
Sell hardcopies	No	No	No	No	No
Licence content against payment	No	No	No	No	No
Use for advertising	No	No	No	No	No
Use to make money	No	No	No	No	No
Use for the job	n.a.	n.a.	n.a.	No	n.a.
Use on a website that displays ads to recover hosting costs	No	Yes	Yes	No	Yes
Use on a platform, where the platform provider (not the content provider) displays ads	No	Yes	Yes	No	Yes
Use for inhouse education and information	No	Yes	Yes	No	n.a.
Use for private entertainment and to entertain friends/family of the user	n.a.	n.a.	n.a.	n.a.	Yes
Use to inform/entertain customers/clients/audience	No	Yes	Yes	No	Yes
Use in tuition-free courses for educational purposes	No	Yes	Yes	No	Yes
Use in tuition-based courses for educational purposes	No	No	No	No	No
Use for corporate-funded research	No	No	No	No	n.a.
Use for tax-funded research	No	Yes	Yes	No	n.a.
Use for inhouse corporate research	No	n.a.	n.a.	No	n.a.

Advantages and Disadvantages of NC licences

As mentioned before, NC licences have several drawbacks. As such, the decision to take such a restrictive licence should be carefully thought through. The author's impression is that most creators who decide to use an NC licence do so because they do not wish other people and organisations to make money with their creative work without an obligation to share potential profits. This motivation might be understandable from a psychological point of view. However, in many cases it leads (without any good reason) to a lose-lose situation. The licenser loses many potential users and uses that would in actual fact serve their interest – broad distribution and widespread attention to the work. Many users cannot, or at least dare not (because of legal uncertainty) make use of the work not even for purposes the licenser would not object to. The NC element might also affect uses for educational and academic purposes, as the question whether NC content can be used in tuition-based courses (see the chart) is highly disputed.

The same is true for scientific uses within public-private-partnerships or even publicly funded research. Even the use on entirely "private" websites where publishers try to recover some of their hosting costs through advertising, is arguable. Would a right holder actually like to prevent these uses? Is it likely that such users would seek individual permission when their use might not be permitted by the licence? Would they conduct an in-depth legal examination to ascertain whether their use is legitimate or not?

An objective evaluation of the advantages and disadvantages of NC licences leads to the conclusion that their disadvantages outweigh the benefits for both creators and users in the great majority of cases. From an objective standpoint, the selection of an NC licence is only appropriate if there are realistic prospects that commercial users will pay to use the material. In many cases this is (above all in relation to online content) highly unlikely, especially without an elaborate marketing strategy. Moreover, if the licenser is not willing or not able to enforce potential violations of the NC restriction by taking legal action, it hardly makes sense to impose it in the first place.

When choosing a licence, it is of utmost importance to be aware of the reasons why a particular Open Content licence is chosen. In the majority of cases, careful consideration will reveal that non-pecuniary motives prevail. There are altruistic reasons, such as the wish to contribute to a cultural commons or to inform people about important subjects. However, the majority of considerations will be of a rather egoistic kind. Widespread distribution draws attention to the author's work. Attention can result in engagements, popularity or even fame. If, for example, the creator is not able or willing to establish and maintain a professional commercial distribution strategy themselves, why not enable others to develop a channel and reach out for an audience which they could not reach themselves?[83]

For corporate licensers and creators who are already well known and successful, NC licences can be a good choice, provided they are employed as a tool to support an elaborate marketing strategy. Musicians, for example, can use NC licences to draw attention to their work by publishing some of their works on websites or platforms. Should they be able to attract significant commercial interest, no publisher could exploit their work without negotiating individual terms. However, it is very likely that publishers would contact creators and musicians before investing into the distribution and marketing of their works anyway, i.e. irrespective of whether their material

was published under a NC licence or not. Akin to the publishing business (especially fiction publication), a successful music distribution requires a close liaison between creators and commercial exploiters. If the music distributor wanted to establish a successful band, they would have to arrange concerts, interviews, media coverage, merchandising and so on. Without cooperation between artists and publisher, this would be impossible. In other words, the possibility of using the music without individual consent will in most cases not prevent a commercial exploiter from having to negotiate individual terms.

That said, NC licences are generally only advantageous for professional publishers who can afford to create and deploy complex marketing strategies and who are willing and able to pursue licence violators. NC licences enable price differentiation and so-called dual licencing business models. Similar to the shareware and freeware concepts in the software world, there are possibilities to freely share (under CC NC) abridged versions of books, movies or to convey other "light versions" for free in order to draw attention to the work.[84] The "full versions" can then still be marketed commercially. Whether such strategies are feasible should be evaluated thoroughly weighing up the pros and cons.

The legal uncertainties of the NC feature have a discouraging effect on re-users.

On the whole, the number of situations where the use of NC licences is the best choice is very limited. There might, however, be a better option which could also serve the intended effect (prevent commercial users to use the work without individual negotiation), while avoiding many of the negative side effects of the NC licences: Some commentators argue that CC SA is "the better NC".[85] In short: The SA licence grant is not restricted to non-commercial uses and does therefore not impede the free (commercial) use. However, commercial users such as publishers or music companies would be reluctant to use SA content without additional permission because they could only do so under the same licence (CC BY-SA). To arrange a commercial (i.e. traditional) distribution they would need additional rights or exceptions, i.e. the need to negotiate with the creators would arise nonetheless. Furthermore, if a commercial distributor included SA material in their own works, e.g. by sampling or synching CC music with a film, the SA obligation would also apply to their own material. In other words, the film would have to be distributed under the CC licence due to the copyleft-effect, sometimes also referred to as the "viral effect."[86] This makes it all the more unlikely that CC SA material would be integrated into commercial productions without further consultation of the licenser.

B) ND – NODERIVATIVES

Two CC licences contain the restriction NoDerivatives: CC BY-ND and CC BY-NC-ND. As any licence restriction, the ND element does not mean that the material cannot be adapted or modified at all. It rather means that the right to modify the work is reserved, i.e. anyone who would like to publish an adapted version of the material must obtain an additional licence. Intent and purpose of the restriction is to protect the integrity of the work.

The term adaptation

Section 1a of the legal code defines adapted material as follows:

"Adapted Material means material subject to Copyright and Similar Rights that is derived from or based upon the Licensed Material and in which the Licensed Material is translated, altered, arranged, transformed, or otherwise modified in a manner requiring permission under the Copyright

and Similar Rights held by the Licensor. For purposes of this Public License, where the Licensed Material is a musical work, performance, or sound recording, Adapted Material is always produced where the Licensed Material is synched in timed relation with a moving image." [87]

Section 2.a.1.B of the ND licences' legal code points out that adapted material can be produced but not shared. Hence, the ND restriction only applies when the adapted material is shared; its production and private use is still allowed.[88] The clauses in CCPL4 are the same as the respective rules in CCPL3. As such, there is no difference between the licence versions.

What exactly is an adaptation?

There are some examples in the legal code of uses, which are to be considered adaptations and uses, which are explicitly excluded from this definition. According to section 1a of the legal code, an adaptation takes place when the material is "translated, altered, arranged, transformed, or otherwise modified in a manner requiring permission under the Copyright and Similar Rights." [89] According to section 2.a.4 of the legal code, mere technical modifications are, however, not deemed adaptations. The latter means that format shifting is not considered an adaptation nor is the digitisation of a non-digital work. In these cases, the work itself remains unchanged. The digitisation of a printed novel, for instance, does not change the novel (the work), but only the media in which it is embodied. Therefore, it is not considered an adaptation or modification under copyright law but simply a reproduction of the work.

To determine which uses are adaptations is much more difficult. The licence gives examples of some acts which are usually considered modifications/adaptations under copyright law: Translations and the transformation of a work into another category of work, e.g. making a film out of a novel, are considered adaptations. Also, the act of synching music with other works, e.g. to use music as a background for a video, is indisputably deemed an adaptation.

Apart from these explicitly mentioned acts of modifications, no further explanation is given. The licence directs the user to the applicable law.[90] This makes it impossible to give unitary answers. To which extent licensees can republish adapted material, will vary from jurisdiction to jurisdiction. This is even true for different jurisdiction within the European Union, as the European copyright acquis communautaire has not yet harmonised the modification right, i.e. there is no unitary EU-wide concept of adaptations. Whether users of ND content need an additional licence for certain kinds of use depends on several aspects. The question is: Does the applicable law consider the particular use as a use of an adapted/modified version of the work?

CC SA makes sure that the content can only be used if the ShareAlike licence is kept intact.

Adaptations of the work itself

Modifications of the work itself, e.g. abridgements, extensions, or re-arrangements of its content are generally considered adaptation under copyright law. This applies irrespective of whether the adaptor owns the copyright in the modified version, because the modification itself is subject to copyright protection.

Adaptation by changing the context and combining the work with other content – remixes, mash ups, collections and work combinations

More complex questions arise when verbatim copies of the work are used in a new context. Can, for example, an ND photo be

used in a book where it is framed by an article? Can someone publish a collection of 100 photos of different origin, including ND images, on a website? Can someone include an ND text in an anthology combining articles written by a number of authors? Can someone exhibit an ND video in an artistic video collection? Can someone combine several media, including ND sound recordings, in a multimedia installation and sell them?

All these questions can only be answered on a case-by-case basis under consideration of the applicable law. The legal situation for Italian users can thus be different from the legal situation for German users. As the legal terms adaptation or modification need to be interpreted, it is very important to know the applicable (national) case law to assess the issue in question.

The distinction between collections and combinations of works will most likely be an important factor under every jurisdiction. In a collection, e.g. an anthology or a catalogue, a number of works are simply put together for publishing. The different contents stand alone as separate and distinguishable works, so their identification and the identification of each author are unproblematic. Hence, to include a work into a collection will usually not be considered an adaptation.

On the other hand, combining works will in many cases have the effect of "entwining" the individual works causing them to lose their individual expression. Depending on the technique, work combinations tend to display their own aesthetic expression which differs from the individual works which were used. If this is the case, the result will usually have to be considered as "adapted material" and the ND licence will not permit its publication unless allowed under the applicable copyright law.[91]

One determining differentiator between collections and combinations is whether the individual works remain separate and distinguishable in the given context. If the work itself was modified, e.g. a text was curtailed or a song remixed, the ND restriction would apply in any case, since mashing up and remixing will usually involve such modifications. If a verbatim copy of the work was, however, simply grouped with others, the result would in many cases be a collection rather than a combination, i.e. there would be no adaptation.

If verbatim copies of works were combined to create a new comprehensive work with its own aesthetic expression, the new work would also have to be considered "adapted material." Here, the combined material would not be "grouped" but rather "merged" resulting in the emergence of a new and larger work which contains both, own and reused material. Examples for this would include the use of a copyright-protected image in a movie, the use of a copyright-protected cartoon character in a video or the above-mentioned use of music tracks in moving images.

The definition of „adaptation" varies from jurisdiction to jurisdiction. In general it means the transformation of a work into another category of work.

In light of the above, it would seem appropriate to adopt the following principle as a general rule of thumb: Every time existing material is merged into a larger work which has a character of its own, the works are adapted in the terms of copyright and the CC ND restriction. The more the individual works are used "as-is" and "stand-alone," i.e. they are only grouped, the less likely their combination/collection will be considered as adapted material.

CHART 2: WHAT USES ARE ALLOWED UNDER ND LICENCES?

Use Case	Permitted under ND?
Mashup video	No
Image or text in newspaper or journal	Yes
Music remix	No
Sampling	No
Image or text on website, blog or social media posting	Yes
Translation	No
Music synching	No
Screen adaptation (e.g. of a novel, music)	No
Images in catalogue	Yes
Article in text collection	Yes
Image Collage	Depends (generally No) [92]
Parody	Depends on the jurisdiction [93]
"Kitchen-Video" with background music	No
Documentary film integrating sound footage	No

Following this distinction, it is possible to make a relatively clear cut between adaptations which are not permitted under ND, and mere reproductions, which are. Some typical constellations are explained in the chart above.

Explanations:

- Most relevant for the answer is whether the reused work(s) remain separate and distinguishable in the given context, i.e. whether they were modified or verbatim copies were used.

- If the reused work itself was modified, e.g. a text was shortened or a song remixed, the ND restriction would apply in any case. Therefore, the answer is "No" (cannot be used under ND). By contrast, in all cases marked "Yes" it is presumed that the reused material itself is used "as-is".

- If the reused work was merged with other material into a new and larger work, the answer would be "No." This is the case when all the material is mashed/mixed as to create a new and larger work with an aesthetic expression which replaces the independent expression of the reused work(s).

- If verbatim copies of ND material are only grouped with other material (i.e. a photo is framed by a text on a website) without being merged into a new work, the answer will generally be "Yes."

- The creation of adaptations as such is not restricted by the ND clause, if the material is not published.

The classifications above only express the author's personal understanding of the distinction between adaptations and reproductions. Some projects using ND licences

might offer their own explanations. If this is the case, it is always recommended to follow the guidelines of each particular project.

Advantages and Disadvantages of ND licences

Whether ND licences are the best licence choice depends very much on the particular situation. Reluctance to allow other people to "tamper" with one's creation is an understandable but rather subjective reason.[94] Instead, it might be preferable to base decisions on more objective aspects or at least to balance subjective and objective arguments. From an objective viewpoint, one might have to concede that if the licence does not permit modifications, the positive effect for the cultural commons cannot be achieved. In fact, the ND licences share several drawbacks with the NC and other restricted licences. First of all, as already mentioned in the NC section, it is pointless to opt for an ND licence if it is impossible to enforce any potential violations of the restriction. Furthermore, one should consider the detrimental effect of the legal uncertainties which come with licence restrictions. Users who might have wanted to use the content might be discouraged by the vague ND restriction. Finally, many of the generally beneficial effects of Open Content could not be achieved with ND-licenced content, as an individual agreement (a licence deal) would be needed in order to be able to merge the material with other content. Otherwise it could not be improved, updated or translated; music could not be remixed or sampled, video sequences could not be mashed. Whether it is in their interest to prevent creative uses or uses which might improve their work, is for the licenser to decide. For some types of works and some publishing purposes, ND licences are more appropriate than for others; the same applies for different types of publications.

OPEN EDUCATIONAL RESOURCES are teaching and learning materials released under free licences which allow for dissemination, modification and re-use.

If content cannot be modified or adapted, the positive effect for the cultural commons is limited.

Material with an informative purpose, for example, can benefit greatly from the possibility of modification. Modifications can improve or update the information contained therein or even iron-out mistakes. A project such as Wikipedia, for instance, could not function under an ND-licence regime. Educational resources need to be modified and translated in order to make them useful in other parts of the world or for different target groups. Therefore, **Open Educational Resources (OER)** should not be published under ND licences. These considerations will also apply to many other informative and/or educational works.

Works, on the other hand, which serve only an aesthetic purpose (such as music or movies) cannot be "improved" in the proper sense. Whether they are good or not is in the eye of the beholder. However, if someone would like to advocate or contribute to a cultural commons, an ND licence is not an appropriate option. CC itself refuses to grant the ND licences the status "Approved for Free Culture!" ND material can neither be remixed nor mashed nor otherwise changed. Anytime ND-licenced contents are combined with others in whichever way, the use will be characterised by legal uncertainty.

In some cases, although much less often than most people would expect, it can be reasonable or even necessary to protect the integrity of the work with an ND licence. This is, for example, true for "certified information" required for regulation which can or should not be modified by anybody other than the certifying institution. This includes, e.g. technical standards and other norms, including legal norms.
ND licences can also be used to support certain business models. It might, for example, be possible for somebody to publish a generic version of textual information

which needs customising to be useful or applicable in particular cases. By using an ND licence, the publisher reserves some kind of exclusivity on customisation, whereas under a licence automatically permitting the publication of adaptations others could be encouraged (and would be allowed) to spread such customised versions free of charge.

These examples show that objective factors suggesting the use of ND licences are rather rare. Of course, anyone is free to decide that their work should not be modified without individual permission. Such a decision should, however, be weighed against the mentioned drawbacks of these licences.

C) SA - SHAREALIKE

Two CC licences contain the ShareAlike element. SA means that adapted material can only be published under the original or under a compatible licence. In CCPL4, the SA clause (section 3b) states:

"In addition to the conditions in section 3(a), if You Share Adapted Material You produce, the following conditions also apply.

1. The Adapter's License You apply must be a Creative Commons license with the same License Elements, this version or later, or a BY-SA Compatible License.

2. You must include the text of, or the URI or hyperlink to, the Adapter's License You apply. You may satisfy this condition in any reasonable manner based on the medium, means, and context in which You Share Adapted Material.

3. You may not offer or impose any additional or different terms or conditions on, or apply any Effective Technological Measures to, Adapted Material that restrict exercise of the rights granted under the Adapter's License You apply."

In short, this means that the adaptor (who publishes a modified version of the material) is bound to use the licence conditions chosen by the original licencer. The adaptor is not allowed to further restrict the users' freedoms, may they result from more restrictive licence conditions, from technical restrictions or anything else. The sense of this "contagious freedom" is easily explained: All manifestations and shapes of a work should share the same freedoms.

Within this reasoning, the rule does indeed make sense: Licences without SA enable others to "monopolise" the content. A record company could, e.g. take a music song which was published under CC BY, remix it and market the result "unfree" (i.e. commercially or against royalties). SA clauses prevent such "monopolisations" through their viral effect on modifications.

When does the SA condition apply?

SA applies to the publication of adapted material. Hence, the rule applies only when a) the material is adapted and b) it is shared. SA does not oblige anybody to share adapted material. On the contrary, adapting the work and keeping it to oneself is perfectly legitimate.[95]

What does SA mean? Which licence must I use for the publication of adapted material?

There are three options to licence adapted SA material, i.e. three options for the adaptor's licence:[96]

1. The adapted material is shared under the same CC SA licence as the original (e.g. CC BY-SA 4.0 International) or any later version of this licence (e.g. CC BY-SA 5.0 International).

2. The adapted material is licenced under a CC licence with the same elements as the original licence. This applies espe-

cially to ported versions. A modified picture which was initially licenced under CC BY-SA 3.0 Unported could thus be shared under CC BY-SA 3.0 Germany. Again, later versions of such ported version could be used as well. Under CCPL4, this second option might, however, become obsolete, as no ported versions of the licences are planned as of today.

3. The adapted material is licenced under a CC BY-SA "compatible licence." At present, this third option is obsolete. Compatible licences are referred to as licences which have been approved by CC (see section 1c of the legal code and the referring link[97] in the clause). The clause was already contained in the CCPL3 licences. However, as of today not a single licence has been approved.

According to section 3.b.3 of the legal code, the adapter may not impose additional rules or further restrictions on downstream users. In other words, if an adaptor used the initial licence (e.g. CC BY-SA 4.0) for their version, but restricted the rights in their general terms and conditions or addenda to the CC licence, they would violate the SA clause.[98]

Mixing SA material with Open Content under different licences – the licence compatibility problem

As explained above, SA requires adaptors to re-licence their modified material under the same licence. Let us imagine an adaptor mixes BY-SA, BY-NC and BY-NC-SA video snippets to create a mashup: As the components of the mashup are indistinguishable, the new work has to be licenced under one single licence (e.g. BY-SA). In this case, both the BY-SA licence and the BY-NC-SA licence stipulate: "You can share the mashup (the adaptation) only under my license terms." Obviously, this is impossible. The adaptor can only licence the mashup under either BY-SA or BY-NC-SA, as both licences contain different and in the end contradicting conditions. The BY-NC-SA licence prohibits commercial uses, whereas the BY-SA licence permits them. Hence, both licences are incompatible.

The result is referred to as the "licence incompatibility problem." A licence incompatibility is a situation where the user can comply with only one of two or more conflicting licence obligations. In other words: The adaptor either violates one licence or the other.

Licence incompatibilities are a big problem for free culture. Its central idea is to create a pool of freely reusable content that can be mixed, mashed up and otherwise combined easily. Licence incompatibilities, on the other hand, not only increase the legal uncertainties of remixing, they also prohibit many potential uses.

Licence incompatibilities are a problem for the usability of Open Content and free culture.

The dimension of the licence compliance problem is illustrated by the fact that most of the CC licences are incompatible with each other; resulting in the undesirable effect that content with differing licences cannot be combined.

The following chart[99] shows that 32 out of 64 possible ways to combine differently-licenced CC works in a remix, mashup or other larger work are not permitted.[100]

The chart illustrates that the more restrictive the licence is, the less likely the content can be mixed with others in a larger work. The explanation is quite simple: NC material can, for instance, not be mixed in a remix that will be published under a licence that allows for commercial

CHART 3: POSSIBLE COMBINATIONS OF CC CONTENT [101]

	PUBLIC DOMAIN	PUBLIC DOMAIN	BY	BY SA	BY NC	BY ND	BY NC SA	BY NC ND
PUBLIC DOMAIN	✓	✓	✓	✓	✓	✗	✓	✗
PUBLIC DOMAIN	✓	✓	✓	✓	✓	✗	✓	✗
BY	✓	✓	✓	✓	✓	✗	✓	✗
BY SA	✓	✓	✓	✓	✗	✗	✗	✗
BY NC	✓	✓	✓	✗	✓	✗	✓	✗
BY ND	✗	✗	✗	✗	✗	✗	✗	✗
BY NC SA	✓	✓	✓	✗	✓	✗	✓	✗
BY NC ND	✗	✗	✗	✗	✗	✗	✗	✗

use. Doing so would make the NC work commercially usable since it will form part of the remix. SA material, on the other hand, can only be re-licenced under the same licence. SA works can therefore only be combined with other content that is published under a licence which allows for the re-licencing under any other licence. The combination of CC BY-SA and CC BY content could, for instance, be licenced under CC BY-SA because the BY licence allows that.

Commentary on the licence compatibility problem in general and the SA licences in particular

Despite the increasing efforts to solve the compatibility problem one way or another, it is undeniable that little success has been achieved so far. However, solving the compatibility problem may be regarded as a key condition for the success of the whole system. A "creative commons" in the proper meaning can only serve its own purpose when the content contained can be (re-)used creatively. Incompatible licences are an obstacle to this core objective. Moreover, they contradict the wish to make it legally possible to use the outstanding technical possibilities to remix/mash up works.

As SA licences (like all restrictive licences) amplify the problem of licence incompatibility, their use should be considered thoroughly. In general, the ShareAlike principle is convincing: Open content should stay open in all its forms and iterations.[102] Overly permissive licences enable the appropriation of Open Content by pulling it out of the cultural commons. On the other hand, permissive licences are much easier to handle. It might even be argued that they provide more incentive to use the content. In the end, the licenser has to balance the different motivations: Is it more important to ensure the openness of the material (then CC BY-SA would be the appropriate licence) or to encourage as much interest in the use as possible (then CC BY should be used)?

NOTES

1 The CC licencing model is explained here: http://creativecommons.org/licenses/?lang=en.

2 Unless otherwise stated all references to CC licences refer to Version 4 (CCPL4). Regarding the different licence versions, see: chapter 3.1.

3 Usually the user will be asked to credit the author's real name. If the licenced material refers, however, to a pseudonym or was published anonymously the user is requested to credit accordingly.

4 See as to the details of the SA clause, see chapter 3.5 section c.

5 The "adapter's licence" is defined in section 1b of the legal code. The term refers to the licence that a contributor uses to share their adapted version of the work.

6 See also chapter 3.1, section b.

7 See: http://ocw.mit.edu/index.htm.

8 For the text, see: http://creativecommons.org/publicdomain/zero/1.0/legalcode.

9 See for example: Kreutzer. 2011. Validity of the Creative Commons Zero 1.0 Universal Public Domain Dedication and its usability for bibliographic metadata from the perspective of German Copyright Law; http://pro.europeana.eu/c/document_library/get_file?uuid=29552022-0c9f-4b19-b6f3-84aef2c3d1de&groupId=10602.

10 See CC0 section 3 according to which the "affirmer" (the person who uses CC0 for her work) "grants to each affected person a royalty-free, non- transferable, non-sublicensable, non-exclusive, irrevocable and unconditional license…." In short: The fall back licence permits any use whatsoever without conditions.

11 Regarding these questions, see: Kreutzer. 2011. Validity of the Creative Commons Zero 1.0 Universal Public Domain Dedication and its usability for bibliographic metadata from the perspective of German Copyright Law. p. 11 et seq.; pro.europeana.eu/c/document_library/get_file?uuid=29552022-0c9f-4b19-b6f3-84aef2c3d1de&groupId=10602.

12 For more information on the Europeana Public Domain Calculator, see: http://outofcopyright.eu.

13 See an overview at: creativecommons.org/version4. A more detailed comparison including references to the different drafts of CCPL4 and the drafting process can be found here: http://wiki.creativecommons.org/4.0.

14 For more information about the history of this process and the CC International approach, see: Maracke. 2010. Creative Commons International. The International License Project. JIPITEC, vol. 1 , issue 1, p. 4-18; https://www.jipitec.eu/issues/jipitec-1-1-2010/2417.

15 Catharina Maracke, former project lead of the CC International Project, writes in the aforementioned article (footnote 14, p. 6): "The goal of this international porting project is to create a multilingual model of the licencing suite that is legally enforceable in jurisdictions around the world."

16 The unported CC licences are not focused on a particular jurisdiction, neither in linguistic nor in regulative terms, i.e. they should not be confused with the (national) USCC licences. According to section 8f CCPL3, the terminology of the unported licences is based on international copyright treaties, like the Berne Convention for the Protection of Literary and Artistic Works, the Rome Convention or the WIPO Copyright Treaty. See: http://wiki.creativecommons.org/Version_3#Further_Internationalization.

17 Another problem with the application of US licences in Europe can be caused by moral rights regulations. In some nations, like the US, they can be waived by contractual agreement (e.g. by a licence). In other territories, for instance in some continental European authors' rights jurisdictions such as France or Germany, they cannot be waived nor assigned to a third party and there are restrictions on licencing.

18 Even when ported licence versions are used for transnational licencing, a number of problems may arise, especially in the field of private international law which designates the applicable law in such cases. These issues cannot be elaborated upon in this guide. For further information see: Maracke. 2010. Creative Commons International. The International License Project. JIPITEC, vol. 1, issue 1, recitals 33-38; https://www.jipitec.eu/issues/jipitec-1-1-2010/2417 and Jaeger/Metzger. 2011. Open Source Software. 3rd edition. Beck, Munich. Recitals. 381-382 (in German).

19 See: http://wiki.creativecommons.org/Frequently_Asked_Questions#What_if_CC_licenses_have_not_been_ported_to_my_jurisdiction_.28country.29.3F. However, as it is also stated, official translations of the international version will be provided.

20 Such a clause has the effect of allowing the licensee to decide whether they want to use the material under the previous or the new licence version - after a new licence version was published. As such, newly introduced licence versions can spread faster. Section 14 of the GNU General Public Licence version 3 is an example for such a clause.

21 It should also be noted that the international versions are available in many languages.

22 The international/unported licences do not contain a choice of law rule. The clause that addressed this topic in CCPL3 (section 8f of the legal code) was not included into CCPL4.

23 The determination of the applicable law depends on the rules of "private international law." These rules can vary from country to country. Hence, without a choice of law rule in the licence, it can occur that Canadian law determines a different applicable law than Spanish law for a licence that was concluded between a Canadian

rights owner and a Spanish user. The possible result is that the applicable law differs from one licenser-licensee relationship to the other.

24 Obviously, only users who read French can understand a French licence text. Furthermore, the national licences generally use specific terms of the respective jurisdiction. Their interpretation can be challenging even for foreign lawyers who are native speakers (e.g. Franco-Canadian lawyers who have to apply French law).

25 E.g. in a case where a Russian user (licensee) uses the article of a Brazilian author in their blog.

26 The rule is not easy to detect. It can be found in section 2.a.5.B of the legal code, which reads: "Additional offer from the Licensor – Adapted Material. Every recipient of Adapted Material from You automatically receives an offer from the Licensor to exercise the Licensed Rights in the Adapted Material under the conditions of the Adapter's License You apply." See: http://creativecommons.org/licenses/by-sa/4.0/legalcode.

27 This is true at least as long as the adapter complies with the ShareAlike rule and chooses a legitimate adapter's licence. However if that were not the case, because, e.g. the adapter used a BY-SA-NC for a modification of a work that was initially licenced under BY-SA, they would violate the licence obligations. The effect would be that the licence for their version of the work was null and void because of the automatic termination clause until the infringement was cured. See: chapter 3.4, section i.

28 Of course, adapters can and have to licence their versions of the work themselves.

29 However, the NC restriction is also relevant for in-house uses. According to section 2.a.1.A of the CC NC licences' legal code, "reproduction" is permitted by these licences only for non-commercial uses, i.e. the NC licence feature restricts not only uses that are directed to the public but also internal uses.

30 See the following section for the interpretation of the term "public."

31 E.g. sharing via password-protected servers that are available only to certain users is perfectly compliant with the SA provision. See the FAQ: http://wiki.creativecommons.org/Frequently_Asked_Questions#Can_I_share_CC-licensed_material_on_password-protected_sites.3F.

32 See: ECJ Case C-135/10 - Società Consortile Fonografici (SCF) vs. Marco Del Corso, paragraph 85; (http://curia.europa.eu/juris/document/document.jsf?text=&docid=120443&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=298306) Here, the ECJ maintained interalia that the patients of a dentist practice were not "persons in general" but formed a rather private, non-open group. Hence, "private groups" are not only friends and family but can also consist of persons without a personal relationship. See: ECJ Case C-135/10 - Società Consortile Fonografici (SCF) vs. Marco Del Corso, paragraph 85; http://curia.europa.eu/juris/document/document.jsf?text=&docid=120443&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=298306.

33 According to the judgment of the ECJ, the patients of a dentist are not a large group that qualifies for that criterion. See: ECJ Case C-135/10 - Società Consortile Fonografici (SCF) vs. Marco Del Corso, paragraph 84; http://curia.europa.eu/juris/document/document.jsf?text=&docid=120443&pageIndex=0&doclang=EN &mode=lst&dir=&occ=first&part=1&cid=298306.

34 However, in the dentist's case the ECJ did not assume that the succession of patients ultimately form a public group. See: http://curia.europa.eu/juris/document/document.jsf?text=&docid=120443&pageIndex=0&doclang=EN &mode=lst&dir=&occ=first&part=1&cid=298306.

35 In an ECJ case, the court held that a dentist practice would not increase its income by playing radio programs in the office. See: ECJ Case C-135/10 - Società Consortile Fonografici (SCF) vs. Marco Del Corso, paragraph 88; http://curia.europa.eu/juris/document/document.jsf?text=&docid=120443&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=298306.
In another case it maintained, however, that for a hotel owner the reception of TV programs by guests had an economical impact on the business. See: ECJ case C-306/05, Sociedad General de Autores y Editores de España (SGAE) vs. Rafael Hoteles SA, paragraph 44; http://curia.europa.eu/juris/showPdf.jsf?text=&docid=66355&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=300896.

36 E.g., if somebody listens to a radio sitting in a park, they do not intend to entertain the passers-by – ergo there is no public use.

37 See: ECJ, Case C-466/12, Nils Svensson et al vs. Retriever Sverige AB, paragraph 24; http://curia.europa.eu/juris/document/document.jsf?docid=147847&doclang=EN.

38 The ECJ also held in this decision that it was irrelevant if "the work appears in such a way as to give the impression that it is appearing on the site on which that link is found, whereas in fact that work comes from another site." This could mean that embedding content e.g. in YouTube videos, is not making available under copyright law and requires therefore no authorisation of the rights owner.

39 The distinction between commercial and non-commercial uses only becomes relevant with regard to CC NC licences, see chapter 3.5 section a. It is a common misunderstanding that copyright distinguishes between commercial and non-commercial uses. The most essential borderline is rather drawn between public and non-public uses.

40 This is true at least from the copyright perspective. See: Jaeger/Metzger. 2011. Open Source Software. 3rd edition. Beck, Munich. Paragraph 46 (in German); Meeker. 2012. The Gift that Keeps on Giving – Distribution and Copyleft in Open Source Software Licenses. International Free and Open Source Software Law Review Vol. 4, Issue 1, p. 32.

41 Section 3.a.2 of the legal code states: "You may satisfy the conditions in section 3(a)(1) in any reasonable manner based on the medium, means, and context in which You Share the Licensed Material. For example, it may be reasonable to satisfy the conditions by providing a URI or hyperlink to a resource that includes the required information." For details see the CC FAQ: https://wiki.creativecommons.org/Frequently_Asked_Questions#Can_I_insist_on_the_exact_placement_of_the_attribution_credit.3F and https://wiki.creativecommons.org/Frequently_Asked_Questions#How_do_I_properly_attribute_material_offered_under_a_Creative_Commons_license.3F.

42 See: https://wiki.creativecommons.org/Frequently_Asked_Questions#How_do_I_properly_attribute_material_offered_under_a_Creative_Commons_license.3F.

43 See: http://wiki.creativecommons.org/Marking/Users. Another informative source is a guide on how to attribute CC licenced material, provided by CC Australia: http://creativecommons.org.au/content/attributingccmaterials.pdf.

44 See: https://wiki.creativecommons.org/Frequently_Asked_Questions#How_do_I_properly_attribute_material_offered_under_a_Creative_Commons_license.3F.

45 See: https://wiki.creativecommons.org/images/6/6f/Making_BY-NC_ (comparison).pdf.

46 See: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0009:EN:HTML.

47 According to the German CCPL3 licences the licenser waives all database rights (see section 3 of the legal code, last sentence). The effect of such a waiver is that the licenser gives up the ownership in the database. Thus, all involved database rights cease to exist and no licence can be granted anymore (no rights, no licencing).

48 In the CC wiki, one can find further information about marking works with CC licences in different use- cases. See for details: http://wiki.creativecommons.org/Marking_your_work_with_a_CC_license.

49 That means, on the other hand, if somebody used a CC licenced database in a jurisdiction where the applicable law did not provide for database rights, the user would not be bound by the licence obligations since CC does not create rights that are not granted by the applicable law. If no IPRs were granted, the CC licence would not be applicable. See: section 2.a.2 of the legal code.

50 Further details are explained at: https://wiki.creativecommons.org/Frequently_Asked_Questions#If_my_use_of_a_database_is_restricted_by_sui_generis_database_rights.2C_how_do_I_comply_with_the_license.3F.

51 In general, section 2.a.6 of the legal code explicitly prohibits the insinuation of a relationship to the licenser ("no endorsement"). The clause reads: "Nothing in this Public License constitutes or may be construed as permission to assert or imply that You are, or that Your use of the Licensed Material is, connected with, or sponsored, endorsed, or granted official status by, the Licensor or others designated to receive attribution as provided in section 3(a)(1)(A)(i)."

52 See section 4d CCPL3 Germany: https://creativecommons.org/licenses/by/3.0/de/legalcode.

53 The licence text, section 2.b.1 of the legal code, states: "Moral rights, such as the right of integrity, are not licensed under this Public Licence, nor are publicity, privacy, and/or other similar personality rights; however, to the extent possible, the Licensor waives and/or agrees not to assert any such rights held by the Licensor to the limited extent necessary to allow You to exercise the Licensed Rights, but not otherwise."

54 This rule, however, does not apply to trademark or patent rights. They are addressed in a different clause, which was explained in chapter 3.4 section e.

55 For regimes that do not allow waivers of moral rights the clause provides a fallback option in the form of a non-assertion pledge, i.e. the licenser does not waive the rights but agrees not to assert them.

56 Such questions are especially relevant for content published under licences that allow modifications. However, they can also be fundamental for uses of verbatim copies. The integrity right not only protects against modifications that distort the work, it can also (depending on the applicable law) prohibit uses of the original version in contexts that could harm the author's reputation, including political campaigns.

57 See "Deliberately giving up control" in chapter 2.3, section c.

58 To what extent the user is liable and what claims they might face depends on the applicable law.

59 For that reason, many CCPL3 ports for EU Member States contained adapted liability disclaimers to conform to the national regulation.

60 See: Directive 2001/29/EC, Art. 6.

61 The respective clause in CCPL3 that contained this provision was deleted in CCPL4. Section 7.a CCPL3 states: "Individuals or entities who have received Adaptations or Collections from You under this License, however, will not have their licenses terminated provided such individuals or entities remain in full compliance with those licenses." From a legal perspective this is self-evident, so the deletion of this clause should make no difference from a legal perspective. See: http://creativecommons.org/licenses/by/3.0/legalcode.

62 See the explanation in the FAQ: https://wiki.creativecommons.org/Frequently_Asked_Questions#How_can_I_lose_my_rights_under_a_Creative_Commons_license.3F_If_that_happens.2C_how_do_I_get_them_back.3F.

63 For reference, see footnote 62.

64 A recent study about the dissemination of different CC licences in certain contexts showed e.g. that nearly 70% of all images published under a public licence on Flickr were published under an NC licence (see: http://cc.d-64.org/wp-content/uploads/2014/03/CC_in_zahlen_infografik2.pdf). An analysis of the Directory of Open Access Journals (also contained in this study) revealed that 45% of the articles were licenced as non-commercial, although 52,5 % were licenced under CC BY.

65 That is highlighted by the fact that the NC licences, as well as the ND variants, do not exhibit the "Approved for Free Culture Works" logo on their licence deeds.

66 See "Advantages and Disadvantages of NC licences" in chapter 3.5, section a.

67 For advantages, and especially disadvantages of NC licences see: Klimpel. 2013. Free knowledge thanks to Creative Commons Licenses – Why a non-commercial clause often won't serve your needs, https://www.wikimedia.de/w/images.homepage/1/15/CC-NC_Leitfaden_2013_engl.pdf.

68 See: http://de.creativecommons.org/2013/11/25/version-4-0-ist-da/ (in German).

69 See section 1.d. of the legal code: https://creativecommons.org/licenses/by-nc-nd/4.0/legalcode.

70 Obviously, it makes a huge difference if any use that is "directed towards commercial advantage" is considered commercial or only those, which are "primarily directed towards…" If the former were true, even very remote commercial advantages would suffice to suggest a commercial use. In the latter case, however, the commercial purpose had to be a main objective.

71 See the blogpost on the CC website (including links to all material): http://wiki.creativecommons.org/Defining_Noncommercial.

72 From a legal perspective, the findings of the study can be, very cautiously, used for a basic risk assessment. If it turned out in a broad survey that many creators did not consider a certain use commercial, there is some probability that other licensers will share that opinion. Obviously there is no guarantee that this applies to the particular case or that the argument stands up in court.

73 The survey reflects only the perception of certain groups of licensers and licensees. Only US creators and users were interviewed. In addition, the questions related solely to online content. Unfortunately it does not consider the applicable law either. Hence, the findings might reveal interesting facts. However, for the legal interpretation of the dichotomy between commercial and non-commercial, their significance is very limited.

74 A German lawsuit recently revealed how unpredictable the outcome of legal disputes about these questions can be. A German district court decided that a (non-commercial) public broadcaster, who had used a photo on its website that was published on Flickr under NC acted commercially. That the broadcaster's website was provided free-of-charge and displayed no ads, that the broadcaster was financed through an obligatory public licence fee (German: "Rundfunkbeitrag") and other facts that would oppose the notion of a commercial use, were deemed irrelevant. See for more details: http://www.irights.info/webschau/creative-commons-landgericht-koeln-sieht-deutschlandradio-als-kommerziellen-nutzer/22162 and the verdict: http://www.lhr-law.de/wp-content/uploads/2014/03/geschwärztes-Urteil-LG-Köln-2.pdf (both in German). A short commentary in English can be found at: https://www.techdirt.com/articles/20140326/11405526695/german-court-says-creative-commons-non-commercial-licenses-must-be-purely-personal-use.shtml.

75 The licence text suggests that the NC clause relates first and foremost to the particular use case, whereas the general classification of the user (as for-profit or not-for-profit) is a minor or even irrelevant factor. However, to ignore the user-related factor would, in my opinion, negate the view of licensers and licensees. For most people's notion of commercial/non-commercial uses it will make a significant difference whether the user is e.g. a company or a public institution. The results of the aforementioned CC NC study support this assumption (see: "Advantages and Disadvantages of NC licences" in chapter 3.4, section i).

76 The combination of both factors shows that, according to CC, the NC restriction shall at least not only be interpreted from a user-related perspective. The CC FAQ state: "Please note that CC's definition does not turn on the type of user: if you are a non-profit or charitable organization, your use of an NC-licensed work could still run afoul of the NC restriction, and if you are a for-profit entity, your use of an NC-licensed work does not necessarily mean you have violated the term. Whether a use is commercial will depend on the specifics of the situation and the intentions of the user." See: https://wiki.creativecommons.org/Frequently_Asked_Questions#Does_my_use_violate_the_NonCommercial_clause_of_the_licenses.3F.

77 Counter examples would be, e.g. a public museum printing a CC BY-NC photo on a postcard that is sold. In that case the use would be commercial although the institution itself is a non-profit organisation. Whereas, if a company funded a foundation that conducted a project to foster the public health system and used an CC BY-NC photo for the invitation to a conference (which was open to the public and free-of-charge) the use would be non-commercial.

78 If the company mentioned in footnote 77 would itself organise the conference, there would be a strong indicator that it served at least remotely its business interests,

i.e. that the use was at least "directed towards commercial advantage."

79 For example, if an employee of a company copies articles that are licenced under CC NC for her colleagues or customers of the company, the use is commercial, since she only uses the material to fulfil her job-related duties.

80 See chapter 3.4, section b: The CC licences do not apply for uses that are permitted by law. Hence, the licence would not restrict any uses that are legitimate according to limitations or exceptions under the applicable law.

81 See e.g. the FAQ of the MIT OCP under: http://ocw.mit.edu/terms/#noncomm. The MIT notion of the NC clause is partly more restrictive and partly more liberal than my general interpretation.

82 Since the interpretation, if any, of the licenser is a relevant indicator for the interpretation of the licence, from the mere legal standpoint it is recommended to follow it. Apart from that, I think that also a moral perspective suggests that the view of anybody, who voluntarily dedicates their creative efforts to the commons, should be respected.

83 An example: A printed book is directed at a different audience than an online publication. It is marketed through very peculiar distribution channels that are hardly accessible for "outsiders." If a publisher adopted an eBook that was published online free of charge, the author would in most cases benefit from that. Even if the publisher decided not to share any profits, the author would still benefit from the increased attention and potential rise in popularity.

84 It is worth mentioning, however, that a dual licencing strategy will not help to differentiate between copies of the work in different qualities. The approach is comparatively widespread as a business model: Image files in low-resolution or low-quality music files are freely shared under NC or other Open Content licences with the intention and belief that the rights in high quality versions of the material are effectively reserved and can therefore be exploited commercially. This strategy is based on a wrong legal assumption. The Open Content licence applies to the work and not to the copy of the work. The work is the photo as the author's individual creative achievement. That means that if low-quality copies are shared under an Open Content licence, the licence applies also to high-quality copies of the same work. If a user gets hold of a high-resolution copy, they can share it under the terms of the Open Content licence. Some protection of the business model can be reached by making high-resolution copies accessible on sites with limited access and pay walls only. However, this cannot prevent that possessors of high-resolution copies to share them under the Open Content Licence. CC acknowledges this fact, see: https://wiki.creativecommons.org/Frequently_Asked_Questions#Can_I_apply_a_CC_license_to_low-resolution_copies_of_a_licensed_work_and_reserve_more_rights_in_high-resolution_copies.3F.

85 See in detail: Klimpel. 2013. Free knowledge thanks to Creative Commons Licenses – Why a non-commercial clause often won't serve your needs, p.12; https://www.wikimedia.de/w/images.homepage/1/15/CC-NC_Leitfaden_2013_engl.pdf.

86 See, for instance, the explanation at: http://en.wikipedia.org/wiki/Copyleft#Viral_licensing.

87 See section 1.a. of the legal code: https://creativecommons.org/licenses/by-nc-nd/4.0/legalcode.

88 The meaning of the term "sharing" is explained in chapter 3.4, section b.

89 See: https://creativecommons.org/licenses/by-nc-nd/4.0/legalcode.

90 See also the FAQ: "What constitutes an adaptation depends on applicable law, however translating a work from one language to another or creating a film version of a novel are generally considered adaptations. In order for an adaptation to be protected by copyright, most national laws require the creator of the adaptation to add original expression to the pre-existing work. However, there is no international standard for originality, and the definition differs depending on the jurisdiction. Civil law jurisdictions (such as Germany and France) tend to require that the work contain an imprint of the adapter's personality. Common law jurisdictions (such as the U.S. or Canada), on the other hand, tend to have a lower threshold for originality, requiring only a minimal level of creativity and 'independent conception.' Some countries approach originality completely differently. For example, Brazil's copyright code protects all works of the mind that do not fall within the list of works that are expressly defined in the statue as 'unprotected works.' Consult your jurisdiction's copyright law for more information." See: https://wiki.creativecommons.org/Frequently_Asked_Questions#What_is_an_adaptation.3F.

91 Again: The CC licence restrictions, such as ND, do no prohibit what is legitimate under the applicable law. In some jurisdictions, remixes and mashups can be published without consent of the copyright owners. This is especially true for the US, where these acts can be legal under the fair use doctrine. However, in present European copyright law no such rule exists. It is therefore unlikely that mashups or remixes are subject to copyright limitations in one of the member states. However, every copyright jurisdiction limits the protection of pre-existing material against its use for the creation of new material to some extent. Under German law, e.g. a creator of a new work can be inspired by existing works. Defining the borderline between modifications that are subject to copyright and "free uses" which are not is therefore considerably difficult.

92 Whether the collage is allowed under ND depends on the technique applied. If the images are merely grouped together, it is most likely not considered as an adaptation. If they are, however, merged into a new work with an aesthetic expression of its own, it will most probably be regarded as an adaptation.

93 Parodies of works will often require adaptation. However, many jurisdictions provide a statutory exception for parodies. In that case the ND restriction would not be effective.

94 It should be noted again that the widespread apprehension that the original creator is associated with modified versions of her work made by third parties is unfounded. As already mentioned, the licence requires anybody who shares adapted versions of the work to indicate that fact.

95 In relation to this argument, see section E.1.b.

96 The adaptor's licence is defined in section 1b of the legal code as "the license You apply to Your Copyright and Similar Rights in Your contributions to Adapted Material in accordance with the terms and conditions of this Public License."

97 See: http://creativecommons.org/compatiblelicenses.

98 For example, an adapted version could be made available on a website that obliges every user in its general terms and conditions to report every use or to resist from certain ways of redistribution. For further information, see: https://wiki.creativecommons.org/Frequently_Asked_Questions#What_if_I_have_received_CC-licensed_material_with_additional_restrictions.3F

99 See: http://wiki.creativecommons.org/images/5/5b/CC_License_Compatibility_Chart.png. For more information on CC0, see: https://creativecommons.org/publicdomain/zero/1.0/.

100 Combinations in terms of the chart are such that qualify for adaptations according to the CC licences, see: https://wiki.creativecommons.org/Frequently_Asked_Questions#Can_I_combine_material_under_different_Creative_Commons_licenses_in_my_work.3F. Under this assumption, ND material is always x-ed because it cannot be modified (i.e. not even combined with public domain material). However, also ND works can be combined with otherwise licenced material if the combination is not considered an adaptation (see for the details, chapter 3.5, section b). In general, licence compliance issues arise only in larger works (remixes, mashups, etc.). Mere aggregations (collections) of material are not considered an adaptation. Hence all works can be licenced under their own terms without conflicts unless the works were aggregated on a platform (such as Wikipedia) where according to the platform policy all content has to be published under the same licence.

101 CC explains the chart as follows: "The chart below shows which CC-licenced material can be remixed. To use the chart, find a licence on the left column and on the top right row. If there is a check mark in the box where that row and column intersect, then the works can be remixed. If there is an "X" in the box, then the works may not be remixed unless an exception or limitation applies." https://wiki.creativecommons.org/Frequently_Asked_Questions#Can_I_combine_material_under_different_Creative_Commons_licenses_in_my_work.3F.

102 In fact, SA licences can efficiently protect certain kinds of projects, e.g. Wikipedia, from appropriation or misuse. Wikipedia articles are licenced under CC BY-SA. The licence ensures that the articles stay open, even after they were extended, updated or improved. The use of BY-SA in Wikipedia is an aspect to be generally considered in one's own licencing decision. Content under incompatible licences cannot be combined with articles from Wikipedia, which is currently the largest resource for open knowledge in the world.

4. PRACTICAL GUIDELINES: USING CREATIVE COMMONS LICENCES

This picture of Pilea involucrata, the friendship plant, was one of the finalists in the competition "Picture of the Year 2012" which takes place annually on Wikimedia Commons, the biggest online media archive for Open Content.

4.1 CHOOSING THE "RIGHT" LICENCE

The selection of the licence is an essential step in an Open Content strategy. Advantages and disadvantages of the respective licence should be thoroughly balanced before the material is licenced. The prevailing factor for the choice should be the individual intention pursued with the licencing. One should ask oneself: Why do I licence my work under the CC scheme? Which rights do I want to reserve and why?

The potential motivations behind such a decision are manifold. However, in many cases the licence selection is based on intuition: "I do not want anybody to make money with my work, so I use an NC license." – "It should not be possible for a publisher to adopt the publications of our foundation and generate profit with it." – "I will not have anybody tampering with my creative work, so I use an ND license." All of these arguments can often be heard in numerous variations. They are, although perfectly understandable from a psychological standpoint, not a good basis for selecting restrictive licences.

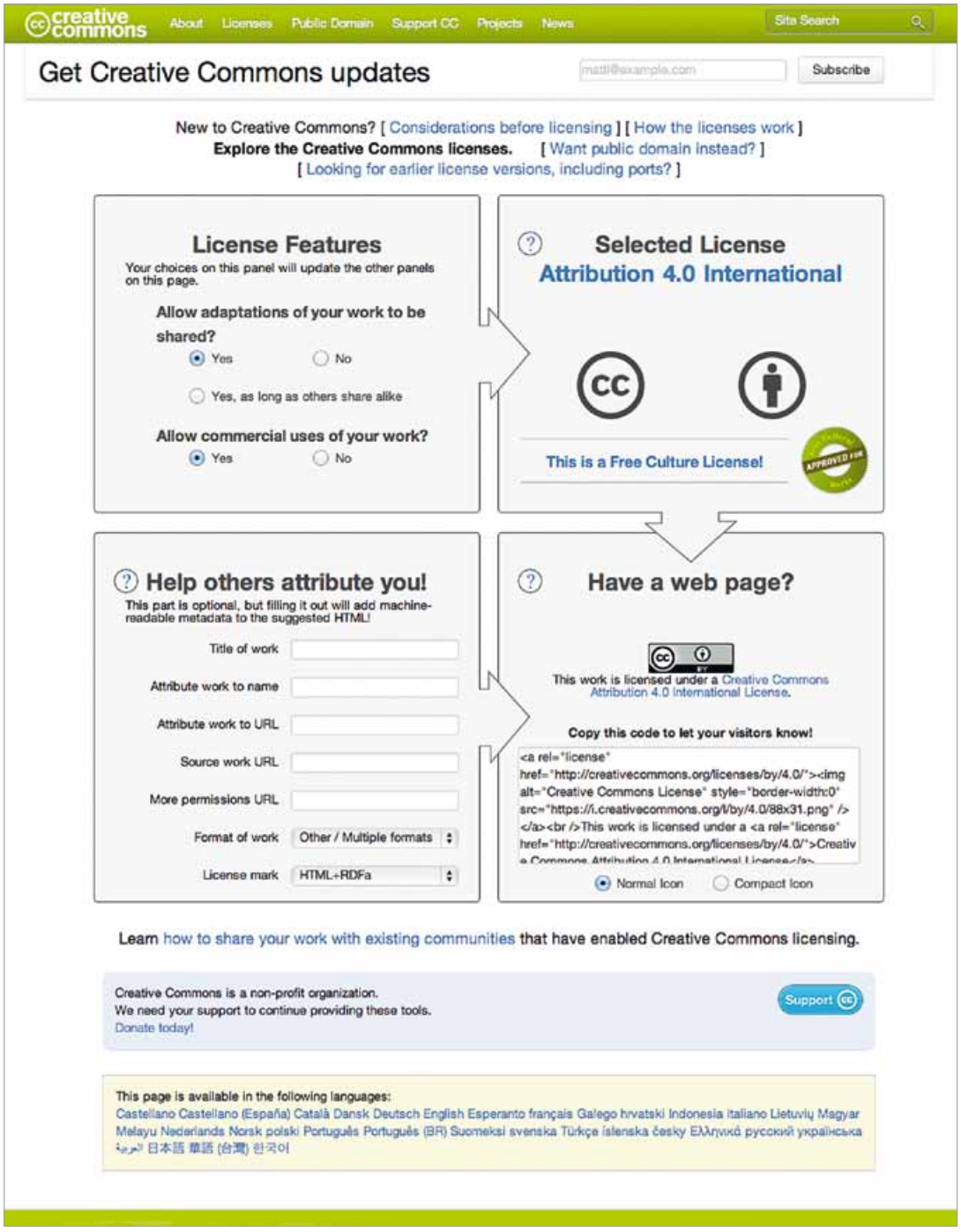
In the sections about the NC, ND and SA clauses, I emphasised that the licence restrictions are always accompanied by the risk of legal uncertainty. They lead to complex legal questions and prevent uses that are actually in the licenser's interest and/or even actually permitted by the licence (e.g. in cases where interested users are put off by legal uncertainty).[1]

This does not mean that one should decide for CC BY, the most permissive licence, in all cases. As already mentioned, there can be good reasons to opt for a more restrictive licence type. However, as these will generally also have disadvantages for the licenser, it is recommended to carefully weigh up the advantages and disadvantages. This is all the more relevant for broad Open Content publication strategies of, for instance, companies or public institutions.

4.2 GENERATING THE LICENCE

Attaching a CC licence to a work is very simple. The first step consists in going to the CC website which contains a "licence chooser."[2] To choose a CCPL4 licence, two questions need to be answered in order to determine the licence elements (ND, SA, NC). After that, the licence chooser displays the respective licence and the respective links to the licence text and the short explanation of the licence features (the CC "Deed"). Moreover, an HTML snippet is automatically generated that can be integrated into the code of websites.[3]

LICENCE CHOOSER [4]



CHOOSING A LICENCE
On the website of Creative Commons it is easy to choose an open licence according to one's needs.

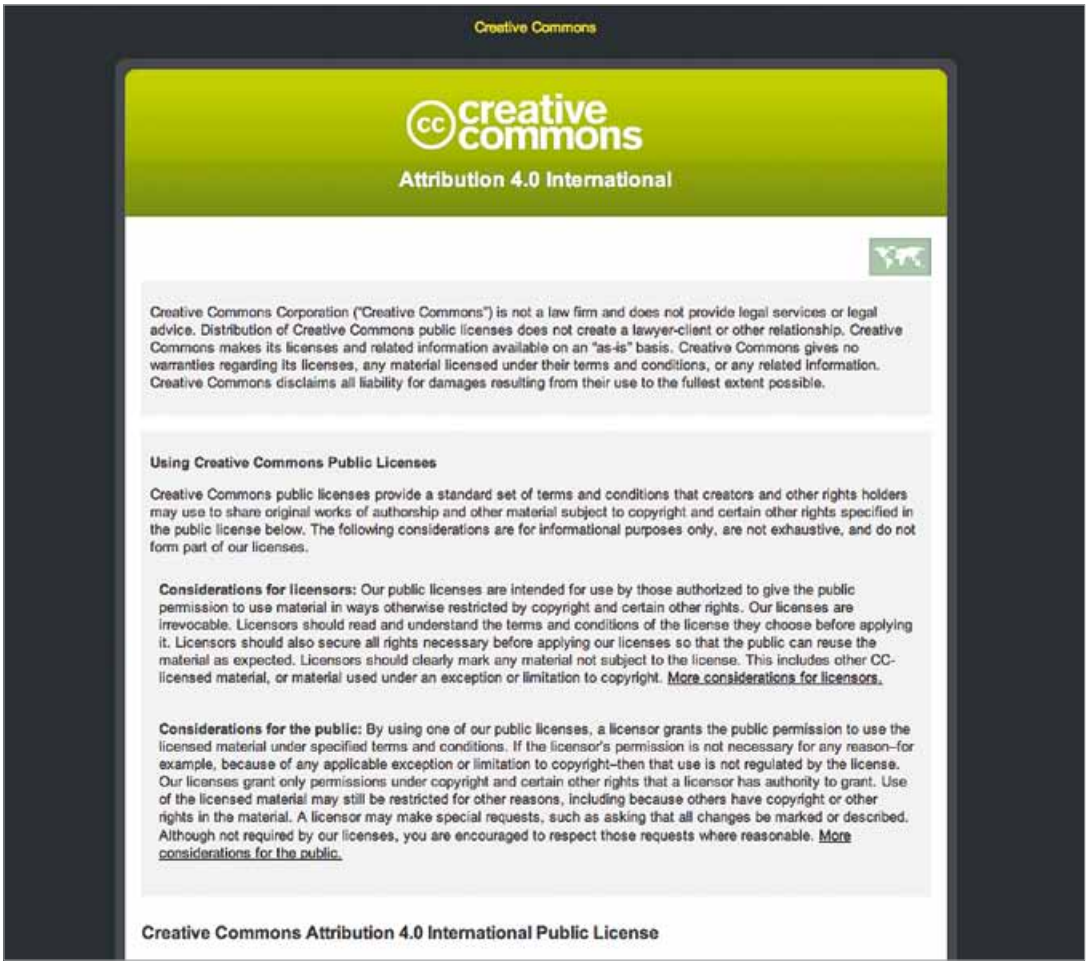
The CC licences consist of three layers visualised in a graph on the CC website.[5]

THE THREE LAYERS [6]

THE THREE LAYERS of Creative Commons licences as visualised on their website.

The ground layer is the "Legal Code," i.e. the full text of the licence contract, written in "legalese." This layer is the main element from a legal perspective, although most non-lawyers will never read it in detail.
The middle layer is the CC Deed, also known as the "Human Readable Version." The Deed is a short summary of the most relevant terms and conditions of the licence. The Deed is not itself a licence in the legal sense. It serves only as a handy tool which makes the rules of the licence easily understandable. As CC puts it: "Think of the Commons Deed as a user-friendly interface to the Legal Code beneath, although the Deed itself is not a licence, and its contents are not part of the Legal Code itself."
The upper layer is the "Machine Readable Version of the Licence." It is a code snippet

THE LEGAL CODE [7]


Creative Commons

creative commons

Attribution 4.0 International

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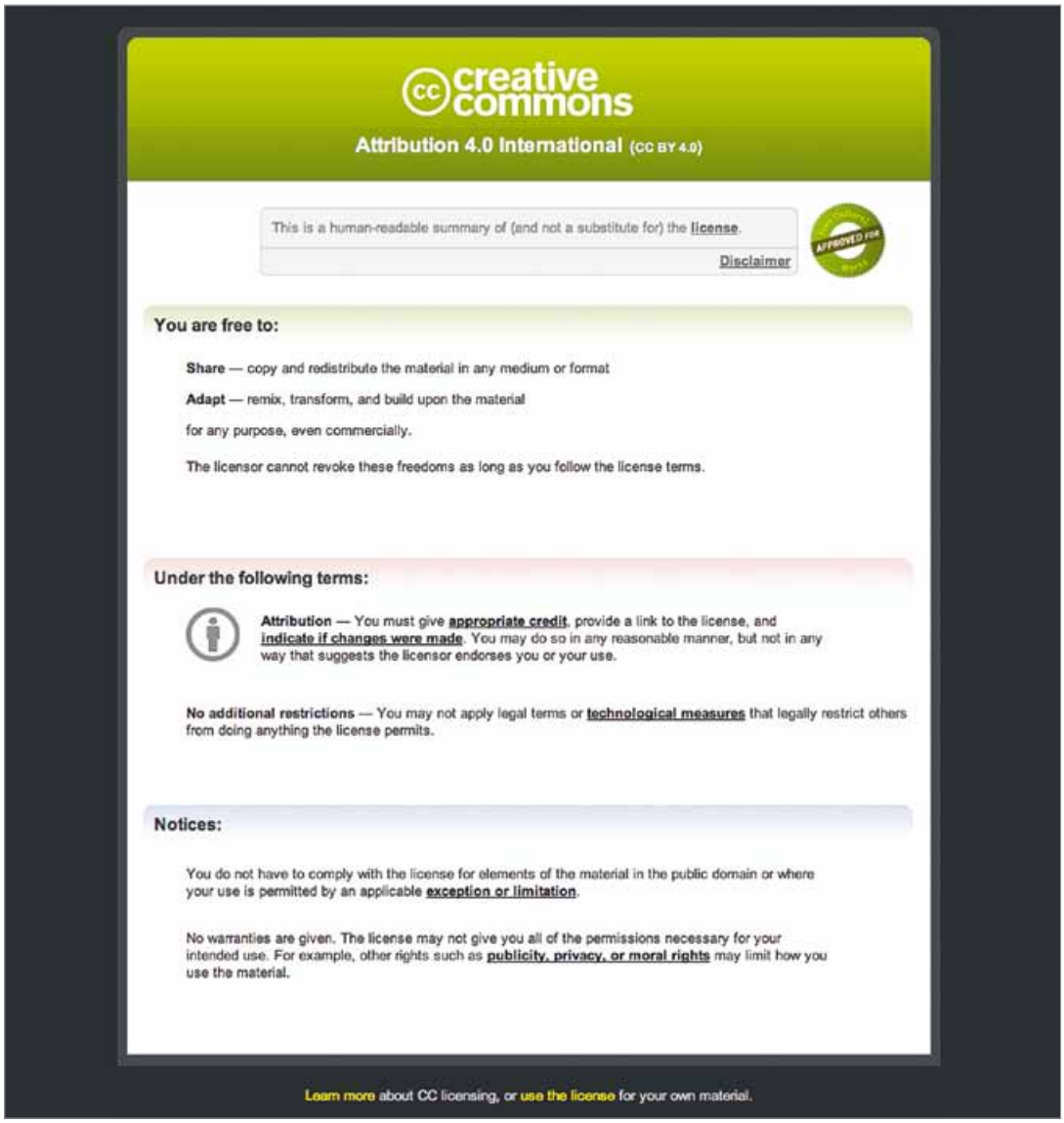
Considerations for the public: By using one of our public licenses, a licensor grants the public permission to use the licensed material under specified terms and conditions. If the licensor's permission is not necessary for any reason–for example, because of any applicable exception or limitation to copyright–then that use is not regulated by the license. Our licenses grant only permissions under copyright and certain other rights that a licensor has authority to grant. Use of the licensed material may still be restricted for other reasons, including because others have copyright or other rights in the material. A licensor may make special requests, such as asking that all changes be marked or described. Although not required by our licenses, you are encouraged to respect those requests where reasonable. More considerations for the public.

Creative Commons Attribution 4.0 International Public License

The LEGAL TEXT of the Creative Commons licences is the main element from a legal perspective.

THE DEED [8]



The DEED serves to help users understand the main criteria of the respective licence.

which will be implemented into websites enabling especially search engines to locate Open Content. In the code, the key freedoms and obligations are summarised in a machine-readable language, the CC Rights Expression Language (CC REL).[9]

```
<a rel="license" href="http://creativecommons.org/licenses/
by/4.0/"><img alt="Creative Commons License" style="border-
width:0" src="https://i.creativecommons.org/l/by/4.0/88x31.png"
/></a><br />This work is licensed under a <a rel="license"
href="http://creativecommons.org/licenses/by/4.0/">Creative
Commons Attribution 4.0 International License</a>.
```

HTML-SNIPPETS enable search engines to find freely licenced content on the Internet.

4.3 ATTACHING CREATIVE COMMONS LICENCES TO DIFFERENT WORKS

How to best practically attach a CC licence to a particular work depends on the media the material is published in. The basic principle is simple: The licence should be attached in a way which allows any potential user to recognise the work, or even an entire publication (e.g. a website or a book) as being licenced under a particular CC licence. The licence notice is essential for the granting of usage rights: If the user is not aware that a particular work can be used under a CC licence, and, more importantly, does not know the terms of the licence, no rights would be granted and no licence contract would be concluded.

CC does not specify how the licenser should implement a licence in certain situations. Please note that this question is not the same as the question of how third party content must be attributed.[10] Where the licence notice should be located, depends on the use-case. One rule of thumb applies in general: The licence notice should be as evident as possible. The closer it is attached to the licenced work, the more likely it will be found by the user.

The perfect way to apply a licence notice for example to a photo used on a website is to include it in the caption. The least feasible solution would be to include the licence notice in a central place, e.g. a subdomain such as the "About" or "Terms of use" pages. Most users would not find such hidden information and the licence would thus not be effective.

In the following paragraphs some recommendations for typical use-cases will be made. More in-depth information about marking works with CC licences in different contexts can be found in the CC Wiki.[11]

ATTACHING THE LICENCE TO WEB CONTENT

Website providers use Open Content in different ways. In some cases, all of the content on a website is licenced under the same licence. In this case, it might be suggested to implement a general licence notice, e.g. in the footer of each webpage. The wording of this general notice is irrelevant. CC itself uses this notice: "Except where otherwise noted, content on this site is licensed under a Creative Commons Attribution 4.0 License."

The hyperlink leads the user to the CC Deed of the CCPL4 BY licence. In the Deed, anyone can find another hyperlink to the full licence text. In addition, it is recommended to provide the particular licence logo as a banner in order to attract the attention to the licence notice. The full notice on the CC webpages, for instance, looks like this:

THE LICENCE NOTICE [12]

Except where otherwise noted, content on this site is licensed under a Creative Commons Attribution 4.0 International license.

It should be noted that it may be necessary to apply different notices to some particular material. If someone published a photo on

their CC-licenced website which was CC-licenced by a third party under a different licence, this difference would have to be highlighted. In that case, the other licence notice should be as closely attached to the material as possible in order to prevent the assumption that the general licence notice also applied to the particular photo. In fact, it would be appropriate to include the licence notice in the photo's caption, together with the attribution notices.[13]

This would also be an appropriate approach in cases where the website provider published Open Content only occasionally (rather than licencing all content on the site under the same public licence).

Licence notices in digital documents or books

If a book or a PDF document contained occasional copies of Open Content works (e.g. an occasional photo, text or graph), the aforementioned approach would also be suitable. Ideally the notices (i.e. licence or, if third party material, attribution) would have to be attached directly to the respective copy, e.g. in a footnote or a caption. In addition, the licence could be embedded into a PDF file by applying the Extensible Metadata Platform (XMP).[14]

Alternatively, it might be possible to centralise the notices in an annex, which should be as descriptive as possible.[15] If, however, someone chose such a solution, there would have to be an evident reciprocal connection between the centralised reference register and the particular work.[16] Moreover, the licence notices should include at least a reference to the licence text,[17] e.g. a hyperlink to the CC website. Alternatively, the full licence text could be included in the document or book as well.[18] If the entire publication was licenced under the same licence, a central licence notice would be the best solution. In a book, e.g. the licence notice could be printed in the imprint or another prominent location. Please note that the more hidden the notice, the less likely it will be found and recognised by a potential user, contrary to the interest of the licenser.

Licence notices in videos, music, radio or TV shows

Giving adequate licence notices in non-textual publications can be tricky. Where should the licence and attribution notices be included in a radio broadcast? Where to put such licences and notices in a video? If such media was published online as well, a simple solution would be to implement the notices into their online source. If not, the notices would have to be implemented into the work itself. Due to the different nature of e.g. video and radio broadcasts, no general answer on how to do it can be given. However, since the original author does not have to comply with licencing obligations,[19] there are a variety of possible solutions.[20] Again, the more prominent and descriptive these solutions are, the more likely they will be noticed by users.

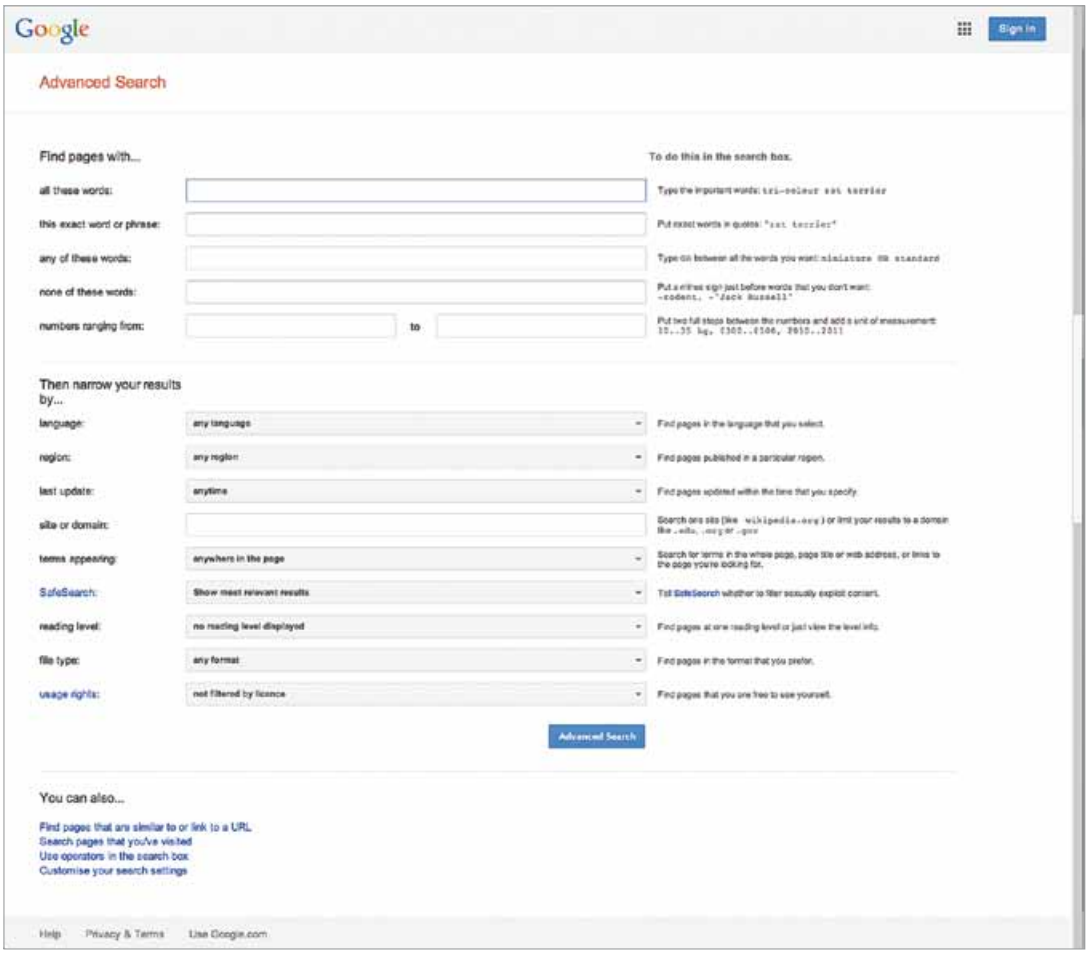
4.4 FINDING OPEN CONTENT ONLINE

Search engines are essential to finding Open Content on the web. Google provides a specific Open Content search function which can be found in the "advanced search" options.

The advanced search option allows users to filter the search results according to usage rights. Several options can be chosen to limit the search results, these include, e.g. "content that can be freely used and shared," "content that can be freely used and shared also for commercial purposes," etc. The Google Image Search features the same function.

Usually, users search for certain kinds of content. In this case, the use of content platforms might be more convenient than the use of general search engines. There are several platforms for images, videos or even music which allow searching specifically for Open Content.

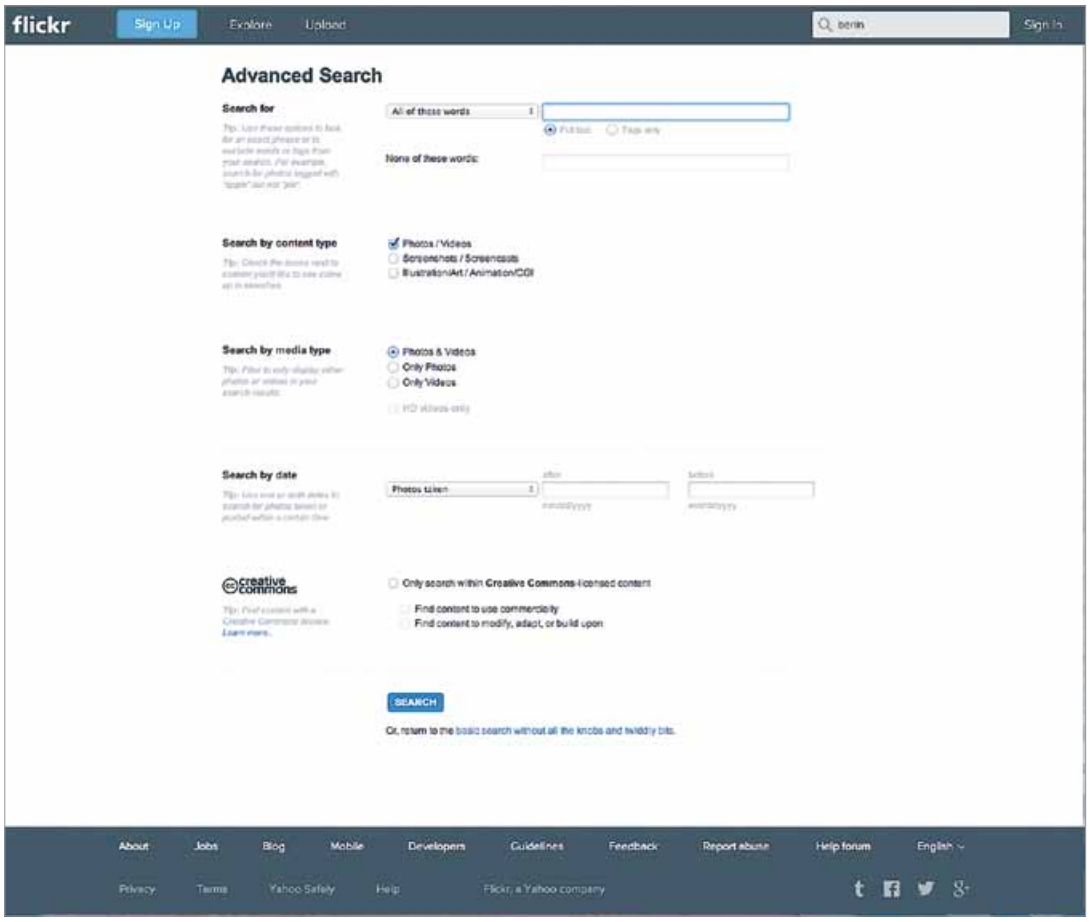
GOOGLE: ADVANCED SEARCH [21]



A) SEARCHING FOR OPEN CONTENT IMAGES

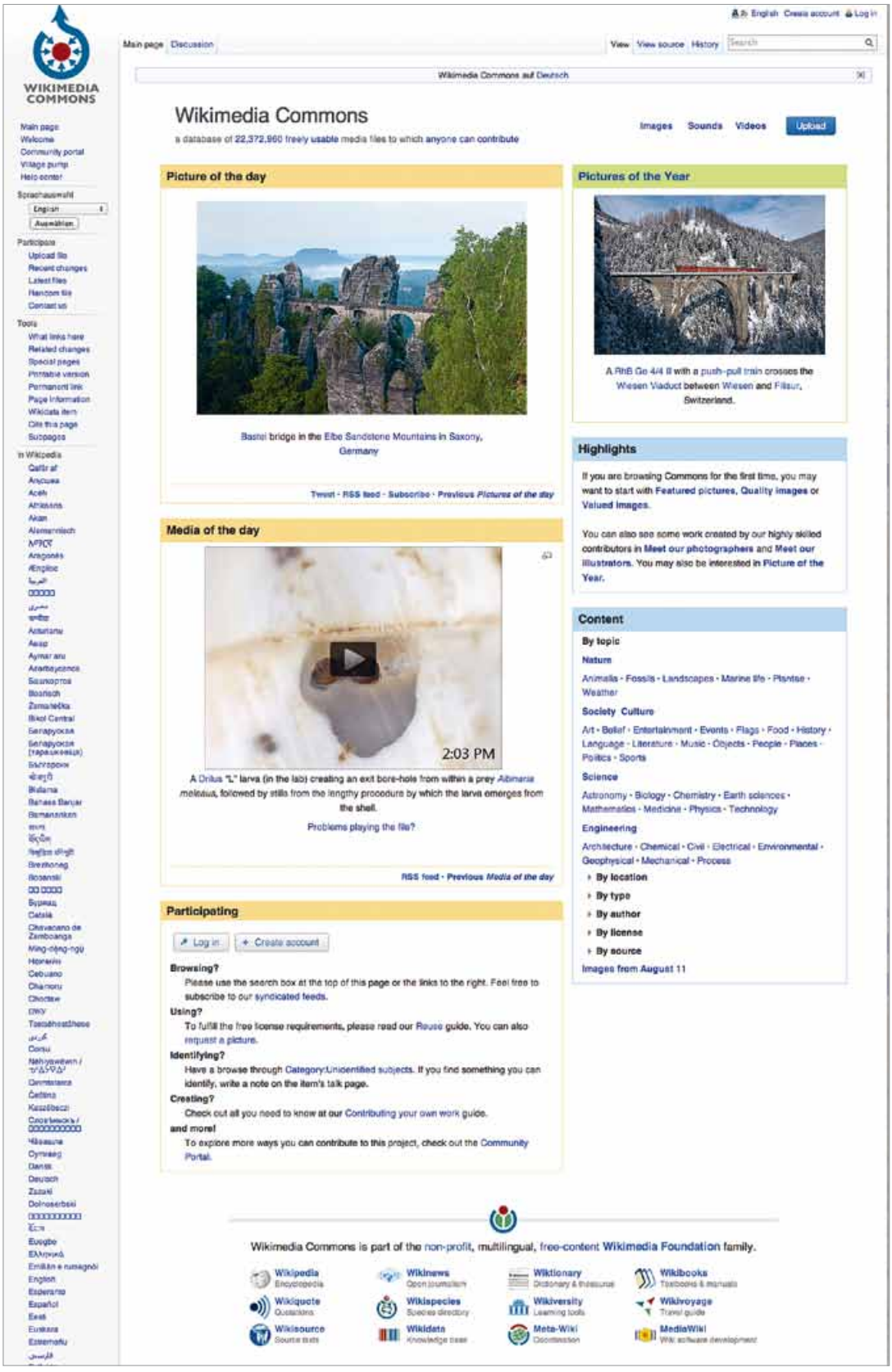
Flickr is the world's largest photo community. Millions of images are uploaded onto the platform, many of which are licenced under CC licences. To find them, the advanced search offers a respective setting:

FLICKR: ADVANCED SEARCH [22]



Another large image archive is the Wikimedia Commons Database. Most of the photos contained therein are published under a public licence or even dedicated to the public domain.

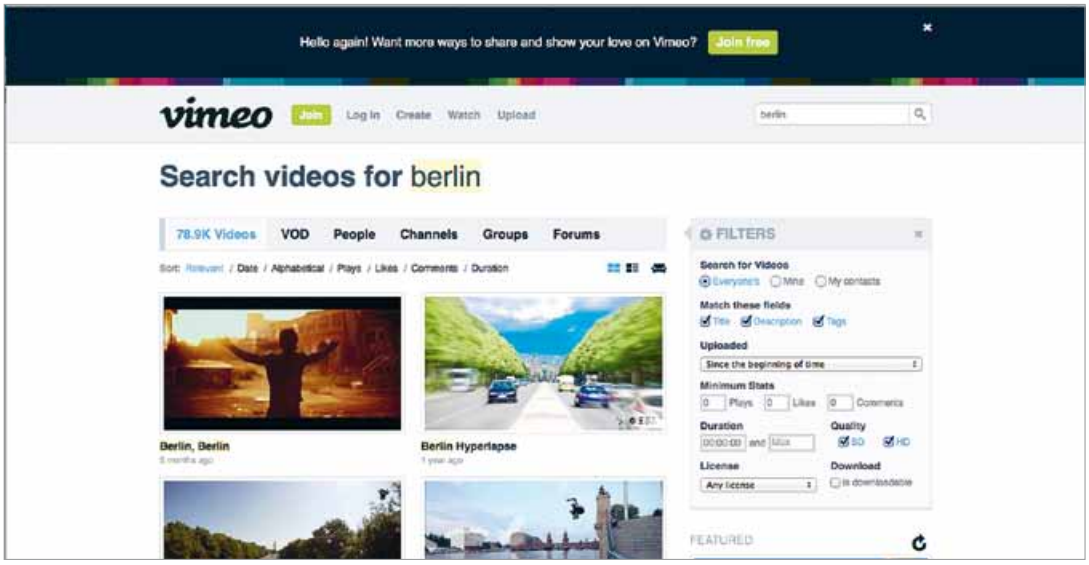
WIKIMEDIA COMMONS [23]



B) SEARCHING FOR OPEN CONTENT VIDEOS

The video platform Vimeo is particularly progressive in the field of Open Content. It enables the user of self-created content to choose a CC licence before uploading the video content to the site. Moreover, if someone searches for certain content, there is a link called "advanced filters" which contains an option to search for CC licenced content.

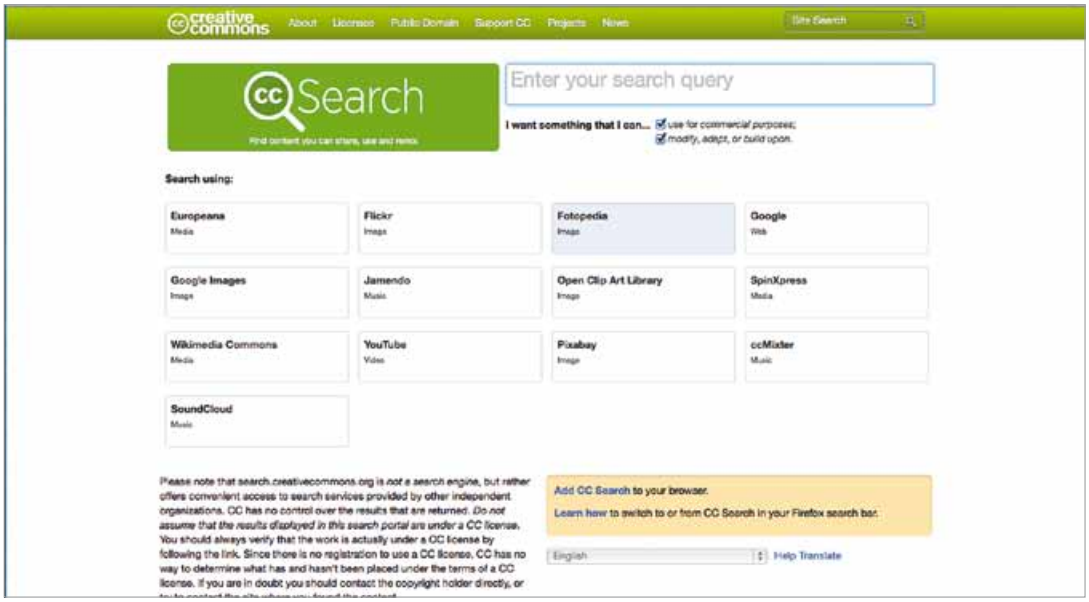
VIMEO SEARCH [24]



C) SEARCHING FOR OPEN CONTENT WITH THE META-SEARCH-FUNCTION OF CREATIVE COMMONS

The CC website features a special search function for Open Content of different types. It allows a user to search on a number of platforms including YouTube, Jamendo (music), SoundCloud (music) or Europeana (multiple kinds of works).

CREATIVE COMMONS SEARCH [25]



NOTES

1 See the remarks in chapter 3.5, section a, b, and c.

2 To open the licence chooser click the link "choose a licence" on the homepage http://www.creativecommons.org. The direct link can be found at: https://creativecommons.org/choose/.

3 For online publications it is highly recommended to copy and paste metatags into the site's source code. Proper meta-information is essential especially for search engines in order to interpret the licence information properly and thus create correct search results.

4 Source: Creative Commons, https://creativecommons.org/choose/?lang=en.

5 See: http://creativecommons.org/licenses/?lang=en.

6 Source: Creative Commons, https://creativecommons.org/licenses/?lang=en.

7 Source: Creative Commons, https://creativecommons.org/licenses/by/4.0/legalcode.

8 Source: Creative Commons, https://creativecommons.org/licenses/by/4.0/.

9 Find more information about the embedding of licence concerning metadata of licences at: http://wiki.creativecommons.org/XMP.

10 The initial implementation of the licence is the licenser's task. The licenser is not the licensee, i.e. they themselves are not bound to the terms of the licence they use for their content. The attribution issue, however, addresses the licensees of other people's work.

11 See: http://wiki.creativecommons.org/Marking_your_work_with_a_CC _license.

12 Source: Creative Commons, https://creativecommons.org/.

13 For the attribution requirements for the use of third party material see chapter 3.1, section a.

14 See: http://wiki.creativecommons.org/XMP.

15 The chapter could, for instance, be titled: „License notices for third party material."

16 One should provide at least the page number, or, if more than one third party work is used on the same page, further identifiers.

17 Apart from the licence text location, the notice should name the licence and its version. See the example from the CC website in "Attaching the licence to web content" in chapter 4.3.

18 Such a solution will, however, hardly be suitable if the publication contains content from third parties that was released under a number of different licences

19 For the argument see footnote 13.

20 For the issue of proper attribution in such media, see the CC publications about proper crediting at: http://wiki.creativecommons.org/Marking/Users or http://creativecommons.org.au/content/attributingccmaterials.pdf.

21 Source: Google, http://www.google.com/advanced_search.

22 Source: Flickr, https://www.flickr.com/search/advanced/.

23 Source: Wikimedia Commons, http://commons.wikimedia.org.

24 Source: Vimeo, https://vimeo.com.

25 Source: Creative Commons, http://search.creativecommons.org.

5. FINAL REMARKS

Open Content licences have the great potential of making it possible to share copyright-protected content with others in a legally feasible and transparent way. However, one needs to be aware of potential pitfalls. This is true for both, the right holder and the user.

Not only to be legally compliant, but also in order to respect the rights of those who share their creative efforts freely with others, every user should be aware of their duties and obligations. On the other hand, those who would like to publish their content under a public licence should take an informed decision about the licence they choose. The tendency to use restrictive licences, e.g. NonCommercial licences, is problematic for the free culture movement in general and can jeopardize the sharing of content, thereby most likely undermining the right holder's original objectives. It is therefore of utmost importance to think carefully about which licence will best meet one's own particular intentions.

5. SUBJECT INDEX

The first cultural hackathon "Coding da Vinci" took place in 2014. It brought together coders, designers and cultural enthusiasts in order to gain new insights into cultural heritage data. This image of a scarab beetle is part of one of these datasets, donated by the Museum for Natural History Berlin.

A
Adaptation: 23, 30 ff., 34 ff., 48 f., 52 ff.
All rights reserved: 9,12, 14 f.
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Attribution: 28, 38 ff.
Authors' rights: 12 ff., 16 ff., 19 ff., 22, 31 f., 41 f.

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Deutsche
UNESCO-Kommission e.V.

Organisation
der Vereinten Nationen
für Bildung, Wissenschaft
und Kultur

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