

THE RATIONALE BEHIND CREATIVE COMMONS

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[This email is part of a weekly series written by Lawrence Lessig and others about the history and future of Creative Commons. If you would like to be removed from this list, please click here:

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From our last episode:

Creative Commons was launched in December, 2002. Within a year, we counted over 1,000,000 link-backs to our licenses. At a year and a half, that number was over 1,800,000. At two, the number was just about 5,000,000. **At two and a half years (last June), the number was just over 12,000,000. And today -- three months later -- Yahoo! reports over 50,000,000 link-backs to our licenses.**

CC: Aims and Lessons

So what problem was Creative Commons trying to solve? And from what in the past did we learn?

Creative Commons took its idea – give away free copyright licenses – from the Free Software Movement. But the problem we aimed to solve was somewhat different.

When Richard Stallman launched the Free Software Foundation just over 20 years ago, he was responding to something new in the world of software development. In his experience, software had been free, in the sense that the source code was freely accessible and could be freely modified. But by the early 1980s, this norm was changing. Increasingly, software was proprietary, meaning the source code was hidden, and users were not free to understand or modify that source code. Stallman thus launched his movement to build a buttress against this trend, by developing a free operating system within which the freedoms he had known could continue.

The story with culture is somewhat different. We didn't begin with a world without proprietary culture. Instead, there has always been proprietary culture – meaning work protected by an exclusive right. And in my view at least, that's not a bad thing either. Artists need to eat. Authors, too. A system to secure rewards to the creative community is essential to inspiring at least some creative work.

But for most of our history, the burdens imposed by copyright on other creators, and upon the culture generally, were slight. And there was a great deal of creative work that could happen free of the regulation of the law. Copyright was important to cultural development, but marginal. It regulated certain activities significantly, but left most of us free of copyright's control.

All that began to change with the birth of digital technologies, and for a reason that no one ever fully thought through.

If copyright regulates "copies," then while a tiny portion of the uses of culture off the net involves making "copies," every use of culture on the net begins by making a copy. In the physical world, if you read a book, that's an act unregulated by the law of copyright, because in the physical world, reading a book doesn't make a copy. On the Internet, the same act triggers the law of copyright, because to read a book in a digital world is always to make a "copy." Thus, as the world moves online, many of the freedoms (in the sense of life left unregulated by the law of copyright) disappear. Every use of copyrighted content at least presumptively triggers a requirement of permission. The failure to secure permission places a cloud of uncertainty over the legality of the use. (The critical exception in the American tradition is "fair use," which I'll talk about next week.)

Now many don't care about clouds of uncertainty. Many just do what they want, and ignore the consequences (and not just on the Net). But there are some, and especially some important institutions like schools, universities, governments, and corporations that rightly hesitate in the face of that uncertainty. Some, like an increasing number of universities, would require express permission to use material found on the Internet in classrooms. Some, like an increasing number of corporations, would expressly ban employees from using material they find on the web in presentations. Thus just at the moment that Internet technologies explode the opportunities for collaborative creativity and the sharing of knowledge, uncertainty over permissions interferes with that collaboration.

We at Creative Commons thought this was a kind of legal insanity – an insanity, that is, created by the law. Not because we believe people ought to be forced to share. But because we believe that many who make their work available on the Internet are happy to share. Or happy to share for some purposes, if not for others. Or eager that their work be spread broadly, regardless of the underlying rules of copyright. And these people, we thought, could use a simple way to say what their preferences were.

And thus the motivation for CC licenses: A simple way for authors and artists to express the freedoms they want their creativity to carry. Creators who want to say "All Rights Reserved" need not apply. But creators who want just "Some Rights Reserved" could use our licenses to express that idea simply. And individuals and institutions that wanted to use work they've found on the Internet could do so without fearing they would be confused with those who believe in "No Rights Respected" when it comes to copyright.

Like the Free Software Movement, we believed this device would help open a space for creativity freed of much of the burden of copyright law. But unlike the Free Software Movement, our aim was not to eliminate "proprietary culture" as at least some in the Free Software Movement would like to eliminate proprietary software. Instead, we believed that by building a buttress of free culture (meaning culture that can be used freely at least for some important purposes), we could resist the trends that push the other way. Most importantly, the trend fueled by the race to "digital rights management" (DRM) technologies.

What's wrong with DRM? And what about "fair use"? Great questions. Tune in next week for the start of an answer.

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