Creative Commons Licenses: the Legal Technology for Open Scholarly Publishing

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6 March 2025
Lund University
Faculty of Medicine
Open Science Day

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What is Creative Commons?

> *"Creative Commons is a set of legal tools, a nonprofit organization, as well as a global network and a movement — all inspired by people's willingness to share their creativity and knowledge, and enabled by a set of open copyright licenses.*
>
> *Creative Commons began in response to an outdated global copyright legal system. CC licenses are built on copyright and are designed to give more options to creators who want to share. Over time, the role and value of Creative Commons has expanded."*[1]

Perhaps this is mostly just interesting context, but I think it helps to understand a bit of the history of the modern open movements.

[1] The large block quotes in italics used in these slides are taken from the 2020 Course Content of the Creative Commons Certificate, which is by the Creative Commons and released under a CC BY 4.0 International license.

The History of Creative Commons

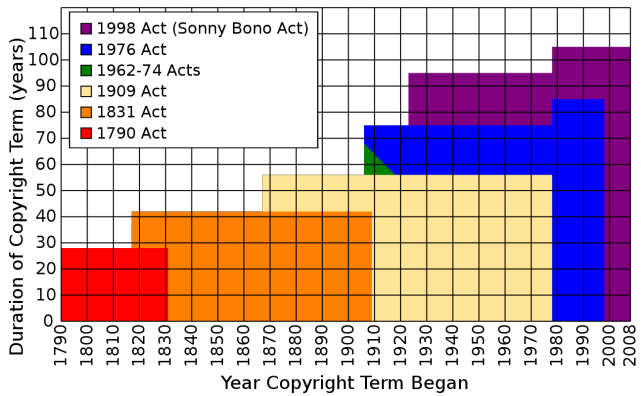
The official position on this history is, as we saw, that "*Creative Commons began in response to an outdated global copyright legal system.*"

This is not a surprising position since two of CC's founders were

- Larry Lessig, then of Stanford Law, now at Harvard Law, and
- Eric Eldred, a literacy advocate a web publisher of works in the public domain.

Lessig represented Eldred in *Eldred v. Ashcroft*, challenging the "Sonny Bono Copyright Term Extension Act" [CTEA] of 1998, all the way to the US Supreme Court. [Where they lost, in 2003.]

The CTEA extended the term of copyrights, *even for already existing works!*, by 20 years, making copyright last for **the life of the creator plus 70 years**.



[2]

[2] "**Trend of Maximum U.S. General Copyright Term**," by Tom W. Bell was released under a Creative Commons Attribution-Share Alike 3.0 Unported License..

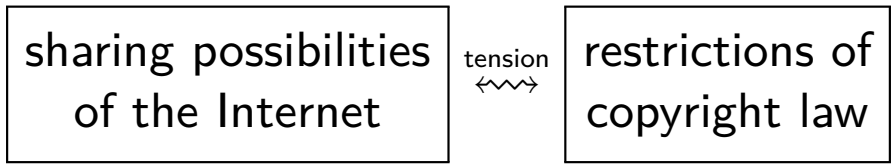
So They Founded Creative Commons...

In frustration, and perhaps sensing which way the wind was blowing, Lessig, Eldred, and a computer science professor Hal Abelson of MIT, founded the nonprofit Creative Commons in 2001.

In addition to fighting a loosing battle against the CTEA, the CC founders felt that copyrights of even much shorter duration we in conflict with modern technology:

> *"The internet has given us the opportunity to access, share, and collaborate on human creations (all governed by copyright) at an unprecedented scale. The sharing capabilities made possible by digital technology are in tension with the sharing restrictions embedded within copyright laws around the world."*

I.e.,



...As an Alternative to All-Rights-Reserved Copyright

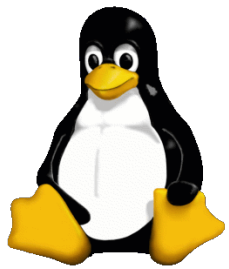
The CC approach to relieving this tension was to create a suite of licenses **whose powers stem from the powers given to creators by copyrights** which allow creators to share their works in a more precise way than merely the "all-rights-reserved" of traditional, basic copyrights.

Much more about the CC "suite of licenses" and the "powers given to creators by copyrights, below.

But first, an alternative to the above [CC-sanctioned] history:

Creative Commons was not the first commons-based, open movement.

It wasn't the first one in modern times: that honor probably goes to the *free/libre/open-source software* [FLOSS] movement.



[3]

I assert that there is a much older tension in the Western [I don't know others well enough to say] tradition which bears on the history of CC.

[3] "**Linux 2.0 Penguins**," by Larry Ewing <lewing@isc.tamu.edu> and The GIMP.

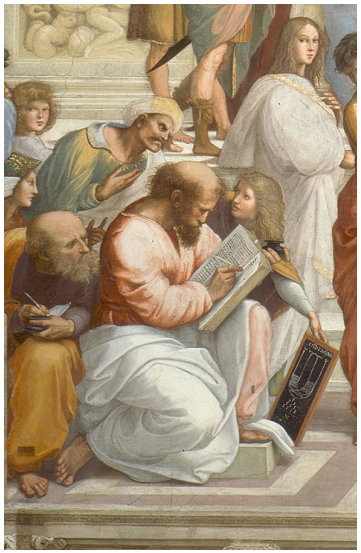
The prehistory of FLOSS

The School of Athens by Raffaello Sanzio



Image in the public domain: Raffaello died in 1520. Original in the *Stanza della Segnatura* in the Vatican. This version: https://commons.wikimedia.org/wiki/File:%22The_School_of_Athens%22_by_Raffaello_Sanzio_da_Urbino.jpg.

Pythagoras: Keeping knowledge secret on pain of death



He didn't prove or originate "his" theorem.

The *Pythagoreans* were not unlike a *cult*, with odd dietary restrictions, belief in their leader's magical powers (talking to animals, *etc.*), divided as:

- *mathematikoi* ["learners"] who lived apart and knew hidden mysteries (*e.g.*, that $\sqrt{2}$ is irrational[4]); and
- *akousmatikoi* ["listeners"] who lived with their families and only aspired to greater secrets.

Hippasus of Metapontum, a renegade mathematikos, was tracked down and executed for the crime of revealing to the public that $\sqrt{2}$ is irrational.

[Pythagoras himself was killed when unwilling to step into a bean field despite being pursued by an angry mob.]

[4] meaning that there do not exist whole numbers p and q such that $\sqrt{2} = p/q$

Euclid's radical openness

He was a librarian. [in Ptolemaic Alexandria]



His *Elements of Geometry* had more editions and influence than any other book [in the West; other than the Christian Bible].
The Elements was loved by Galileo, Newton, Hobbes, Spinoza, Descartes, Abraham Lincoln, Albert Einstein ... and many, many others[5]
For hundreds of years [in the west] it was considered a right of passage in the education of [yes, male and elite] young people to master *The Elements*.

The Elements was so influential because it was completely open, laying out all of its Theorems ***with proofs*** [including one that $\sqrt{2} \notin \mathbb{Q}$].

Proofs are like like the source code if a theorem were a program: Yes, Euclid was doing FLOSS [free/libre/open-source software] more than 2K years before the invention of the computer!

[5] *E.g., Moby Dick* says that the difficulty of whales mentally putting together the two images perceived by their widely separated eyes must be as if a human were "simultaneously to go through the demonstrations of two distinct problems in Euclid."

When FLOSS became FLOSS

Euclid's radical openness is the foundation of modern mathematics, science, and the whole Academy. *E.g.*, a modern scientific paper has a standard format, including sections for **Methods** and **Results**... that's pretty open.

This is what Richard Stallman describes when he talks about founding the GNU Project and the Free Software Movement in the 1980s: while at MIT, he wanted to improve a printer driver and he expected the manufacturer would share it's source code with him, the way scientists share methods with each other. His frustration when they wouldn't do so lead him to start down the GNU path.



This image GNU head, by Aurelio Heckert is released under a Creative Commons Attribution-ShareAlike 2.0 License.

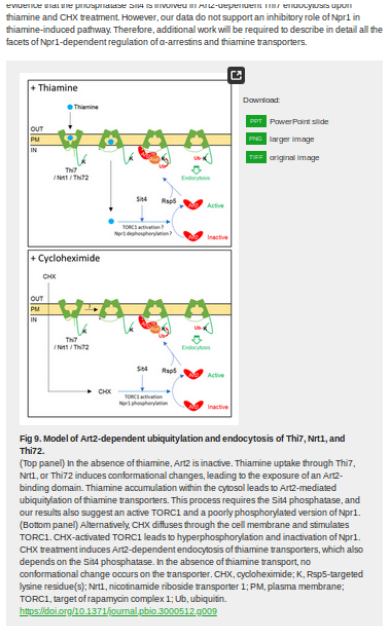


Fig 9. Model of Art2-dependent ubiquitylation and endocytosis of Thi7, Nrt1, and Thi72.
(Top panel) In the absence of thiamine, Art2 is inactive. Thiamine uptake through Thi7, Nrt1, or Thi72 induces conformational changes, leading to the exposure of an Art2-binding domain. Thiamine accumulation within the cytosol leads to Art2-mediated ubiquitylation of thiamine transporters. This process requires the Sit4 phosphatase, and our results also suggest an active TORC1 and a poorly phosphorylated version of Npr1. (Bottom panel) Alternatively, CHX diffuses through the cell membrane and stimulates TORC1. CHX-activated TORC1 leads to hyperphosphorylation and inactivation of Npr1. CHX treatment induces Art2-dependent endocytosis of thiamine transporters, which also depends on the Sit4 phosphatase. In the absence of thiamine transport, no conformational change occurs on the transporter. CHX, cycloheximide; K, Rsp5-targeted lysine residue(s); Nrt1, nicotinamide riboside transporter 1; PM, plasma membrane; TORC1, target of rapamycin complex 1; Ub, ubiquitin.
https://doi.org/10.1371/journal.pbio.3000512.g009

Materials and methods

Yeast strains and growth conditions

Yeast strains used in this study (S3 Table) are derivatives of *Saccharomyces cerevisiae* auxotrophic strain BY4742. The *npi1–1* (*rsp5*) mutant strain, obtained by insertion of a selective marker in the *RSP5* promoter and resulting in an attenuated *RSP5* gene expression by a factor of 10, was provided by Pr. Bruno André (ULB, Belgium). The *art2Δart9Δ* strain was obtained by yeast crossing and tetrad dissection. The *end3Δart2Δ* strain was generated by homologous recombination using a *natNT2* deletion cassette on an *end3Δ* background. The strains lacking genes encoding the thiamine transporters Thi7, Nrt1, and Thi72 and the gene encoding the thiazole synthase Thi4 were received from Pr. Jürgen Stolz (TUM, Germany). For proteomic analysis, yeast strains were grown in YD medium (2% glucose and 2% KAT yeast extract). For Thi7 endocytosis experiments, transformed yeast strains were grown in selective thiamine-free

This paper Yeast α-arrestin Art2 is the key regulator of ubiquitylation-dependent endocytosis of plasma membrane vitamin B1 transporters by Savocco *et al.* is released under a Creative Commons Attribution License.

A structural and #metoo *caveat*

Yes, access to knowledge has been (and continues to be) restricted by wealth and privilege and geography and power and *etc.*

But for hundreds of years **the fundamental logic of the scholarly life has been to share**.

A critical approach to the structures of education is required if we are to serve what I have been asserting is a large part of the fundamental ethic of the scholarly life. Read Paolo Freire, bell hooks, Pierre Bourdieu, and many others – please get back to me when you've figured out it all out.

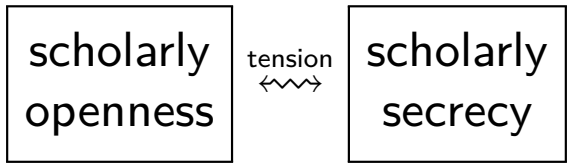


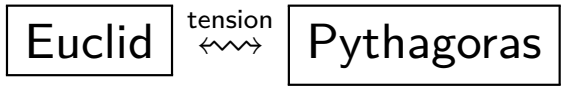
And of course there is `#metoo`. Richard Stallman's treatment of women throughout his career has been a vile contribution to the toxic culture towards women in IT.

"Maha Bali" from Uncommon Women 2018 coloring book by Kelsey Merkleya is released under a Creative Commons Attribution License.

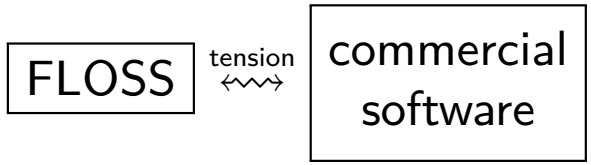
Alternate History of CC: Summary

So alternate tensions motivating CC might be, in ancient times:





and in modern times:



In particular, the **GNU Public License** is a direct antecedent of [some of the] Creative Commons licenses.

Whichever history you like, let's talk now about the present.

Creative Commons Today

Today, **Creative Commons** means (for us, at least) three things:

- a suite of licenses which give creators fine-grained control over the uses which may be made of their works
- a global movement of "*activists working on copyright reform around the globe, policymakers advancing policies mandating open access to research and data, and creators who share a core set of values. Most of the people and institutions who are part of the CC movement are not formally connected to Creative Commons.*"
- a small, distributed non-profit which works to protect and promote the licenses and to support the movement around the world.

Copyright Law

The CC licenses derive their power from the powers of copyrights, so we have to do a bit of a dive into copyright law. Some notes about our dive:

- This is not legal training, I am not giving you legal advice here, nor will you be qualified to give legal advice after today's session (unless you have other legal training, qualifications, license, and *etc.*), nor would you be qualified even if you did the full, 10-week CC Certificate course. When answering your colleagues' questions about this stuff, you should say things like "I am not a lawyer ... but in <this similar situation> I would be comfortable doing <something> because <reasons>."
- Intellectual Property [IP] lawyers are expensive, but screwing up can be costly – *e.g.*, what happened in Houston.
- Copyright law is to the scholarly life what medical malpractice law is to the medical life... so learning a bit about copyrights is really useful for us even if we don't care about open licensing!

Copyright is everywhere (in academia)

US copyright is for *"...original works of authorship fixed in any tangible medium..."*[6]

"original"	$\rightsquigarrow$	But very minimal originality suffices. *E.g.*, your vacation snaps are probably boring [I'm sorry to say] but copyrightable[7].
"works of authorship"	$\rightsquigarrow$	Also known as *"expressions"*, but definitely **not** ideas [which however may be patentable]. Some devilish details: fictional characters **are** copyrightable; recipes and theorems **are not**; some plotlines **are**, others are *scènes à faire* and so **are not** copyrightable....
"fixed ..."	$\rightsquigarrow$	*E.g.*, this is why there's always a recorder going in the back of a jazz club – now do you want to record your presentations?

[6] from §102 of the *Copyright Act* 17 U.S.C.

[7] ...probably ... but remember **IAmNotALawyer** and nothing in this presentation constitutes legal advice!

The Swedish version

Swedish copyright law[8] applies to *"...literary or artistic work..."* including, but not limited to, these categories:

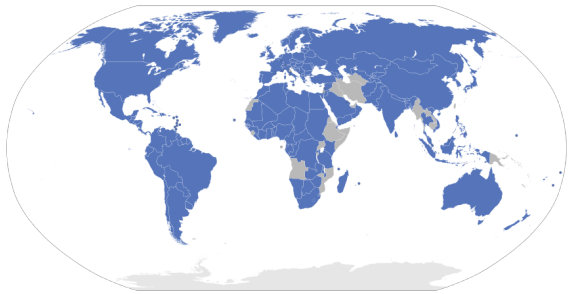
> *"1. a fictional or descriptive representation in writing or speech,*
>
> *2. a computer program,*
>
> *3. a musical or dramatic work,*
>
> *4. a cinematographic work,*
>
> *5. a photographic work or another work of fine arts,*
>
> *6. a work of architecture or applied art,*
>
> *7. a work expressed in some other manner.*
>
> *Maps and other works of a descriptive nature executed as drawings, engravings, or in a three-dimensional form, shall be considered as literary works.*
>
> *What is prescribed in this Act concerning computer programs shall mutatis mutandis apply also to preparatory design material for computer programs."*

[8] Here is an English translation at the site of the World Intellectual Property Organization.

The "©" is automatic!

Under the Berne Convention – originally signed in 1886; today it has 177 signatories and is overseen by the World Intellectual Property Organization [WIPO][9] – *copyright is "frictionless"*, in that it springs into existence the minute the work is created/fixed.

Of course, this only matters if your work is created or consumed in one of the countries colored blue here:



[10]

Conclusion: Nearly everything faculty, staff, and students create in institutions of higher education is born in chains (of copyright).

For this reason, for academics not to know something about copyright would be like a webmaster who knows nothing about computer security... it could lead to terrible trouble!

[9] Cory Doctorow says that WIPO "bears the same relationship to bad copyright law that Mordor has to evil in Middle Earth"

[10] "**The signatories of the Berne Convention for the Protection of Literary and Artistic Works**," by User:Conscious was released under a CC BY-SA 3.0 license.

The uses of copyright

A copyright owner has the exclusive right to

- **perform**,
- **display publicly**,
- **copy**,
- **distribute**, and
- **create derivative works** from the copyrighted work,

or to authorize other parties to do so, for payment.

Some devilish details:

- ⇝ Is *streaming* the same thing as *copying*, legally? Because **it is, technically.**
- ⇝ Is putting a link to a work the same as copying or distributing it?
- ⇝ What constitutes a derivative work is tricky! *Correct typos:* **no**; *translate:* **yes**; *change file format:* **no**; *write a sequel:* **yes**; *put in anthology:* **no**; *etc.*
- ⇝ In the OER/CC world, the concepts of a *remix* and a *derivative work* have an ... unfortunate relationship.

Limitations to copyright.

Works-for-hire: the copyrights to works produced as part of someone's employment belong to the employer, not the employee.

- ⇝ *Academic exception-to-the-exception:* Traditionally, academics are exempt from the *works-for-hire* doctrine – but check your contracts!

US Federal exemption: works which would fall under the *works-for-hire* doctrine with the US federal government as employer are automatically free of copyright – they are born directly into the **public domain**.

Limited duration: the exclusive control vested in a copyright owner only lasts for a finite period of time: in the US, 70 years after the death of the author, the works "fall into the public domain."[11]

[11] The rules are more complicated for works-for-hire, and any work created before 1978.

A useful limitation to copyright.

".. the Fair use[12] *of a copyrighted work, including such use by reproduction ..., for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include –*

(1) *the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;*

(2) *the nature of the copyrighted work;*

(3) *the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and*

(4) *the effect of the use upon the potential market for or value of the copyrighted work."*

§107 of the Copyright Act

[12] a closely related concept in Commonwealth countries is called **fair dealing** there.

The US Founders had a justification of all this copyright power

Copyright in the United States stems from Article I, Section 8 of the US Constitution, known as the *Copyright Clause*[13], which gives Congress the power to enact laws

> *"To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."*

Here, the Founders were following *classical liberalism*[14] by assuming that creators could be seduced to greater creative production of Science and useful Arts by the lure of monopoly profits, for limited Times, coming from their ownership of the intellectual property in their respective Writings and Discoveries.

[13] although it is also the source of the power to create patents and trademarks: all IP law, in fact!

[14] Not to be confused the the more modern **neoliberalism**, which much more relentlessly thinks of *everything* in human life in purely market terms and which is the "free-market fundamentalism" behind many of today's problems in higher ed and beyond.

But the Founders were not scholars

The [neo]liberal view of how to motivate creative activity is, I assert, manifestly in tension with the longstanding[15] values of the academic world, in which world David Wiley's 5Rs of Open, that anyone should be able to **Retain**, **Reuse**, **Revise**, **Remix**, and **Redistribute** freely and without seeking the creator's permission, seem fundamental and self-evident.

Likewise, the examples above, and so many more in over a couple of millennia, imply that scientists are more interested in sharing and collaborating than in exercising monopoly control over their works via the automatic creation of draconian, restrictive copyrights?

This is exactly what Lessig and colleagues sought to address in founding the Creative Commons organization and building the CC licenses.

The key legal idea here is to use the powers of copyright to subvert their implications from within.

That's our next topic.

[15] We've already seen what Pythagoras and Euclid have to do with this!

Anatomy of a CC License

Let's continue the same active discussion as we move into how the Creative Commons license suite responds to some of the above issues.

We'll start by motivating the four *license elements*, and then describe the resulting six complete license.

To those six licenses, we must then add a bit of discussion of CC's Public Domain Mark and Tool.

We must also talk a bit about how CC licenses operate with respect to limitations and exceptions to copyright.

Finally, we'll mention some of the architecture of all the licenses in the suite.

The *sine qua non* of a scholarly IP system

Let's think about what must be the most fundamental required part of an intellectual property system designed for use, re-use, remix, *etc.*

There are actually two sides to this:

producers of scholarly work: What do scholars most want to happen with their work?

users of scholarly work: What do we insist of downstream users of scholarly work? [This should be easy: we tell it to our students all the time, use software systems to detect its violation, and discipline students when such violations are detected.]

Who would have to do what, when, including which components, and in what format, to make this work?

BY is fundamental

All Creative Commons licenses begin "**Creative Commons Attribution**" and have the icons and . The most basic license looks *in situ* like:


This work is released under a Creative Commons Attribution 4.0 International License.

[Note **that is not** the license on these slides: it is merely shown here as an example.]

It is good form to put this license statement – *with link to specific CC license web page* – on the title page or at least near the front of the work.

You may freely retain, reuse, redistribute, perform publicly, and create derivative works of CC-BY works, but you must always give **attribution**. Think of this as finally putting some legal teeth in the constant academic refrain that appropriate credit must always be given to prior work: with the BY license element, not only is plagiarism an academic impropriety, it is actually *illegal!*

Note that **attribution** is this *legal* requirement, coming from CC licenses, while **citation** is a *scholarly norm*, enforced in various ways in the academy, that is similar but not identical to attribution.

Utilitarian and moral rights CC adjectives

What optional adjectives could we add to CC licenses [like the "BY"] so users could choose to retain some of the power of copyright?

We could think about the discussion before of *why all that copyright power*, and try to take a maximalist stance for both the *utilitarian* [probably via economics] and the *moral rights* perspectives.

NC and ND

The maximalist economic stance on the benefit of copyright is: the creator wants any profits to be "mine, all mine." Under CC-BY, the work will be freely shared, so the best this maximalist can do is to insist that at least
no one else will make any money off of my work!
This is the **NonCommercial** license adjective, with icons  ,  , or  , depending upon jurisdiction.

The maximalist moral rights stance is: the creator doesn't want anyone to mess with their work. Under CC-BY, the work will be freely shared, so the best this maximalist can do is to insist that at least *my work will never be changed – no derivative works will be made from my original!*
This is the **NoDerivatives** license adjective, with icon  .
[Note that since version 4.0, the ND adjective only requires that users *may not distribute* any derivative works they make, since it is hard to control what they may do in private.]

Maximalist on the power itself

What if the power of copyright goes to our heads, and we want to use it in a maximalist way ... but to do the good of one of the other CC license adjectives. Maybe there is an adjective which could work in conjunction with those others to make the good last longer.

We may chose to use *viral* open-source software licenses, like the *GNU Public License [GPL]* used in the GNU-Linux operating system, as inspiration here.

Once again, let's make a two-letter CC adjective code for this idea and describe how it works for creator and user in as much detail as possible.

Go viral with SA

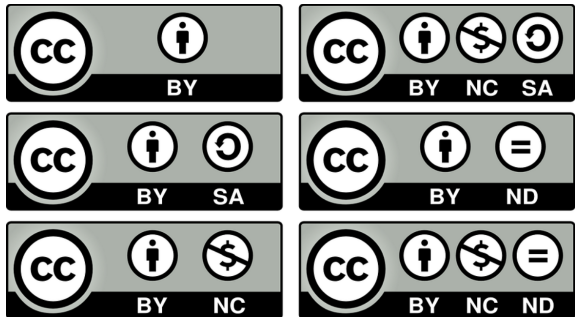
The maximally controlling creator who is (perhaps somewhat hypocritically) interested in freedom continuing into the future, might insist that any derivative works which come from their work should be shared with the same license as theirs was.

This is the **ShareAlike** license adjective, with icon  .

Note that since SA is a requirement on how future creators will license derivative works, it doesn't make sense to combine SA with ND, since ND does not allow derivative works to be distributed at all.

Summary of all combined CC licenses

Here are the resulting possible Creative Commons licenses:



Why not go all the way to **Public Domain**?

If we're so interested in giving others freedoms for our work, why not go all the way to simply putting them in the public domain?

In the United States, a creator can simply choose to dedicate their work "to the public domain," after which they have no rights over that work whatsoever (not even the right to be attributed when it is used). But this is not possible in all countries in the world!

Therefore, the Creative Commons have crafted something called "CC0, the public domain dedication tool." CC0 puts a work immediately into the public domain, in countries where that is possible. In countries where that is not possible, it includes a "fall-back license" which amounts to giving the rights of the public domain. It even has a final fall-back, in case the first two steps don't work, where the creator promises never to enforce any remaining rights whatsoever over the work.

The corresponding icon is 

.

One last icon

Sometimes [rarely] one sees the icon 

, called the *Public Domain Mark*.

This is neither a license nor a tool, it is merely an indication that the person distributing that work believes it to be in the world-wide public domain.

You should be very careful about using this mark, and only apply it if you are absolutely confident that what it asserts about the attached work is true.

I could have put the Public Domain Mark on that image of *The School of Athens* by Raffaello Sanzio, because I am very confident that a work created by someone who died in 1520 is in the public domain.

CC Licenses *vs* Limitations and Exceptions to Copyright

The power that a creator has to control what users do with their work comes from copyright.

Hence, if copyright doesn't apply, then the CC licenses can have no force.

- For example, a work which doesn't qualify for copyright protection cannot have a CC license.
- Likewise, only the copyright owner can put a CC license on a work.
- Also, a use of a work under one of the exceptions to copyright restrictions does not have to follow any of the CC license provisions on that work.

The Structure of All CC Licenses

All six of the CC licenses have the same over-all structure:
a three-layer design, depicted in this diagram $\longrightarrow$



Here the layers are

1. The **legal code** contains the "lawyer-readable" terms and conditions that are legally enforceable in court.
2. The **commons deed** consists of the web pages that lay out the key license terms in "human-readable" terms. The deeds are not legally enforceable but instead summarize the legal code.
3. The last layer is the **machine-readable** version of the license, written in something called the CC Rights Expression Language [CC REL], which is used by search engines and other automatic tools.

I used to be very scared of the legal code, but it's not actually that bad – now I like to look at it!

Using CC Licenses and CC-Licensed Works

Let's next talk about how to choose a license, including using the License Chooser, and putting enough information on your work so that others can give you appropriate attribution.

This begs the very important question of how to give that attribution, for which we have the convenient acronym **TASL**.

It's important to note here that CC licenses are *irrevocable*, although the creator can make uses of their CC-licensed work which seem to violate the terms!

Finally, an issue which comes up very often in using CC-licensed works is what are the constraints on remixing those works, perhaps in combination, and what constitutes a remix as opposed to a "collection." In this part, we need to consider which licenses can be put on a remix, when different works can even be remixed together, and what licenses can we put on a collection. There will be some helpful charts for this technical material.

Choosing and applying a CC license: the "Chooser"

We've discussed the various license features, so hopefully you are somewhat comfortable with deciding which license to use. There is perhaps still the matter of **how** you apply that chosen license.

Fortunately, the web page

creativecommons.org/choose

asks you some simple questions to make sure you are making the right license choice for your purposes, and then gives you a pretty nice statement to attach to your creation showing which license you have selected.

I recommend one addition, nearly always, to the language that the Chooser suggests, which is the phrase "except where otherwise indicated," to point out that your work may contain others' works within it, use because they have their own CC licenses or for some other reason, and you overall license should not be thought of as applying to those embedded works.

Choosing and applying a CC license: Always do **this**

Here's an example of a good licensing statement:



Except where otherwise indicated, this work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License.

There are several components to notice here:

- *An icon indicating the license.* While not a legal requirement, this is really important to help users instantly know what license terms apply to the work.
- *Some standard language, including the name of the license.* Again, not a legal requirement, but clear language, preferably standard, is also very helpful.
- *The link to the creativecommons.org license text.* This is legally required; spell out the URL if true links are not possible in whatever format you're using.

Choosing and applying a CC license: Also include **this**

You also want to include enough information in your works so that users can give you proper attribution, required by all CC licenses!
Good attribution must follow the simple rule: **TASL**.

Title: What is the name of the work?
Author: Who owns the work?
Source: Where can it be found? (Provide link if possible.)
License: Which license is the work distributed under? (Provide link to creativecommons.org license source.)

Therefore, what was missing from our licensing components, and implicitly from what the license chooser web page builds for you, is that your work should have a title and author shown somewhere. [Well, anonymous works are possible, and you could use the URL or some other description in place of a title, but that is usually not what the author really wanted.

Or you could do this:



Except where otherwise indicated, this work, Creative Commons Licenses: the Legal Technology for Open Scholarly Publishing, is by Jonathan Poritz and is licensed under a CC BY-SA 4.0.

Changing your mind about a license, other permutations

It is important to remember that CC licenses are **irrevocable**. That is, once you have put a work out into the world with a CC license on it, anyone who finds a copy with that licensing statement can use it in the ways permitted by the specific license, even if you have since changed your mind.

In particular, no later statement on your part can change what legally can be done with the first release.

That nevertheless does not prevent you from issuing another copy with a different license statement, or even from using the work in ways that seem impossible according to the license – like selling an NC-licensed work. After all, you're the copyright owner, you can do what you want with the work and no one else would have legal standing to sue you.

Who gets to apply a CC license?

While CC licenses seem to negate or be the opposite of copyright, in fact they get their force from the powers copyright laws give to rightsholders.

So someone who doesn't own the copyright on a work cannot put a CC license on it.

In the US, with a strong **works-for-hire** default in the Copyright Act, this can mean that employees cannot put CC licenses on works they create. In academia in the US, this is typically true of non-tenure-line faculty, many staff (sometimes librarians).

There can be a role for good policy to increase equity in this situation.

What is the situation in Sweden?

Even if Sweden does works-for-hire better than the US, what happens when works in one country are used in another? [Remember, by the principle of *territoriality*, the copyright law that applies is the law in the country where the use was made, **not** the law in the country where the work was created!]

How to do a proper attribution?

All CC licenses have the BY clause, meaning that reusers must always give **attribution**.

There are helpful tools, or just remember: **TASL**.

Title: What is the name of the work?
Author: Who owns the work?
Source: Where can it be found? (**Provide link** if possible.)
License: Which license is the work distributed under? (**Provide link to creativecommons.org license source.**)

Academics need to get in the habit of always giving good [TASLed] attribution statements whenever they make a copyright-significant use of a CC-licensed work.

Note that attribution is not the same thing as scholarly citation! Attribution is legally required, should follow TASL, and applies when one is using another work's *expression* but not when using only the underlying facts or ideas.

Citation is required by scholarly norms, should follow MLA or APA or whatever citation formatting your context demands, and applies when one is using another works expressions, facts, and/or ideas.

OER and exceptions and limitations to copyright: the TASL habit

Many countries have *exceptions and limitations to copyright*, such as fair use/dealing, specific educational exemptions to copyrights, exceptions to copyright which apply when a person with a physical disability needs access to a copyrighted work, *etc.*

When an exception or limitation applies to a use, it is as if the powers of copyright have taken a vacation for that use. Since CC licenses need the power of copyrights to have any force, this means that all CC license terms are in abeyance for that use.

Nevertheless, because of territoriality and since E&Ls vary a lot from country to country, it is a good idea to do good TASLing even to those uses when not required in your particular jurisdiction, and to warn downstream users and adapters of concerns (like NC or SA) which might apply to their uses, depending upon the laws in their countries.

If we believe in value of sharing our work, we should, *e.g.*, give a good TASL attribution and explain the E&L analysis we might make in some particular situation, even though it is not legally required, because that will help users in other jurisdictions perform their own E&L analysis and, possibly, use a require TASL.

Collections *vs* adaptations/remixes

There is an odd feature in copyright law, which is in fact called out with respect in the legal code for CC licenses, that gives a *thin* copyright to the creator of a **collection**.

A collection is an arrangement of identical[16] copies of other works, put in a particular configuration with possible some new material added, such as a title, cover art, and introduction, *etc*.

The copyright in a collection applies only to the arrangement and choice of works, and to any new material added.

A **remix**[17] is also a new work which incorporates other, prior works, or parts thereof, within it, but those works have all been changed by the addition of new creativity from the remixer, and are not merely copied.

An anthology of stories is a common example of a collection, whereas a book which brings together stories from several foreign languages and translates each of them into the local language is a remix, since translation is a creative act so each of the stories has been significantly modified. An image which uses clipped fragments from other images in place of parts of the original version of the image is a remix of all of those images, since it has lots of added creativity and yet incorporates prior works.

[16] well, *identical* in the sense of copyright law, so one may shift formats, such as Word→PDF, and fix small typos

[17] also called a **derivative work** or **adaptation**

Licenses on collections

Think of a collection as the plural of a *copy*, with only a thin bit of originality (and copyright) for the selection and arrangement of the collected items. A CC license on a collection, then, would only be licensing that thin part.

E.g., an ND on a collection license would mean that no one could make a collection which was based on but slightly different from the original collection, in terms of the selection and arrangement of the collected pieces.

If your collection contains only CC-licensed items, then everything should be fine, since you are only using the right to copy those works which is a right given to the public in all CC licenses.

It is a good idea to use the NC clause in a collection license if one of the collected items has that clause in its license. Otherwise it would look to a user of the collection like they could sell copies of the collection for a profit, but such a sale would include, implicitly, a sale of the item in the collection which has the NC license on it, and so that sale could not be for profit.

Licenses on adaptations, CC version

The CC FAQ has as chart which tells adapters of CC-licensed works what licenses they may use on their adaptations:

Adapter's license chart		Adapter's license						
		BY	BY-NC	BY-NC-ND	BY-NC-SA	BY-ND	BY-SA	PD
Status of original work	PD	■	■	■	■	■	■	■
	BY	■	■	■	■	■	■	■
	BY-NC	■	■	■	■	■	■	■
	BY-NC-ND	■	■	■	■	■	■	■
	BY-NC-SA	■	■	■	■	■	■	■
	BY-ND	■	■	■	■	■	■	■
	BY-SA	■	■	■	■	■	■	■

[18]

I *hate* this chart – which my OER AACing[19] colleagues need all the time.

[18] "Adapter's license chart" by Creative Commons was released under a CC-BY 4.0 license.

[19] I use "AAC," pronounced like the word "ace," for the "adopt/adapt/create" we need all the time in the OER world.

Licenses on adaptations, JP version

A web page of mine has a much better version of the chart which helps adapters choose licenses:

Adaptation Status Chart

		Status of Adaptation							
		PD	BY	BY-SA	BY-NC	BY-NC-SA	BY-ND	BY-NC-ND	ARR ©
Status of Original Work	PD	GREAT	GREAT	GREAT	GREAT	GREAT	GREAT	GREAT	GREAT
	BY	OK	GOOD	GOOD	GOOD	GOOD	GOOD	GOOD	OK
	BY-SA	NO	NO	GOOD	NO	NO	NO	NO	NO
	BY-NC	CARE	CARE	CARE	GOOD	GOOD	CARE	GOOD	CARE
	BY-NC-SA	NO	NO	NO	NO	GOOD	NO	NO	NO
	BY-ND	NO	NO	NO	NO	NO	NO	NO	NO
	BY-NC-ND	NO	NO	NO	NO	NO	NO	NO	NO
	ARR ©	NO	NO	NO	NO	NO	NO	NO	NO

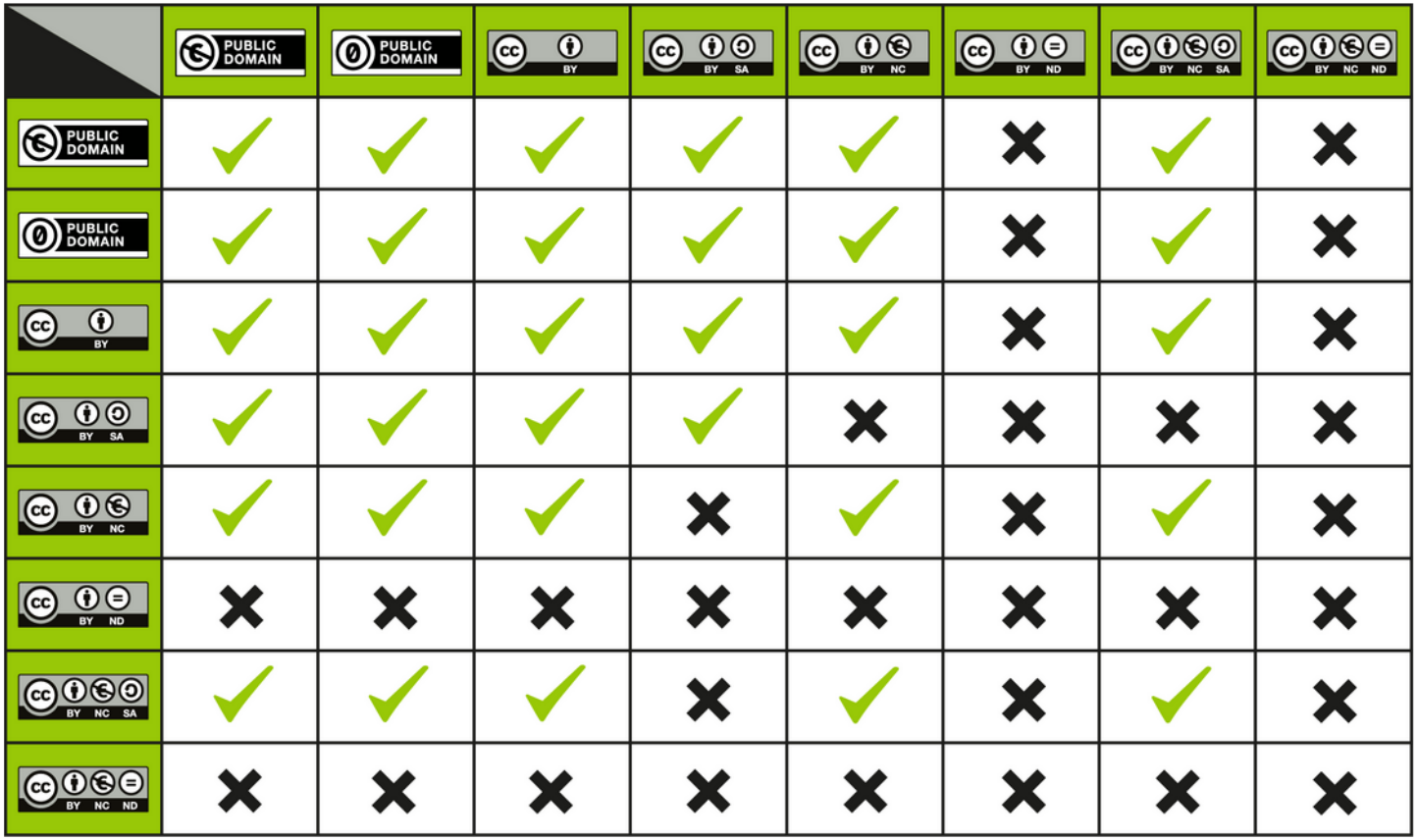
Licenses on adaptations, JP version, key

Key to Abbreviations

Abbreviation	Meaning
PD	"Public Domain." This may be indicated on the work by a mention of the CC0 Public Domain Dedication tool and/or with its symbol, or by the Public Domain Mark, or the adapter may simply know, *e.g.*, because of its age, that a work is in the public domain.
BY	Creative Commons Attribution license, often indicated by the symbol.
BY-SA	Creative Commons Attribution-ShareAlike license, often indicated by the symbol.
BY-NC	Creative Commons Attribution-NonCommercial license, often indicated by one of these symbols, depending upon region or.
BY-NC-SA	Creative Commons Attribution-NonCommercial-ShareAlike license, often indicated by one of these symbols, depending upon region or.
BY-ND	Creative Commons Attribution-NoDerivatives license, often indicated by the symbol.
BY-NC-ND	Creative Commons Attribution-NonCommercial-NoDerivatives license, often indicated by one of the symbols or.
ARR ©	"All-rights-reserved copyright." This is the traditional form of copyright outside of open licensing approaches. It may be indicated on a work with the copyright symbol © together with the phrase "all rights reserved," but not always: some works have the symbol © and then go on to add a Creative Commons license statement (since CC licenses *are built on top of copyright!*), and some works have no copyright statement at all but fall into the domain of all-rights-reserved copyright as a default.
GREAT	This adaptation status **is permitted without any additional permissions or conditions**.
GOOD	This adaptation status **is permitted without any additional permissions under the condition:** the adaptation, as well as any downstream adaptations which may be made in the future which have enough shared expression with the original work to be considered as adaptations of that work, must give attribution to the original work and its creator.
OK	This adaptation status is technically identical to the one labeled **GOOD** immediately above, *i.e.*: This adaptation status **is permitted without any additional permissions under the condition:** the adaptation, as well as any downstream adaptations which may be made in the future which have enough shared expression with the original work to be considered as adaptations of that work, must give attribution to the original work and its creator. However, in this case, since the adaptation status is not one with a CC license, *this attribution requirement is usually unexpected and therefore should be clearly stated alongside the adaptation.*
CARE	This adaptation status **is permitted without any additional permissions under the condition:** the adaptation, as well as any downstream adaptations which may be made in the future which have enough shared expression with the original work to be considered as adaptations of that work, must give attribution to the original work and its creator and may only be used for non-commercial purposes. *If the adaptation status is not one with a CC license, these additional requirements are usually unexpected and therefore should be clearly stated alongside the adaptation.*
NO	This adaptation status is **not permitted without additional permissions.**

Compatibility for remixes, CC version

The same CC FAQ has as chart which tells remixers of CC-licensed works when their remixes are permitted:



20

I also hate this chart.

[20] "Remix Compatibility chart" by Creative Commons was released under a CC-BY 4.0 license.

Compatibility for remixes, the idea

It's quite easy to reason one's way to the remixer's chart: a license on work A is compatible with a license on work B if there is some single license that is both a valid adapter's license for A and a valid adapter's license for B.

In fact, one can repeat that same thought exercise with more than just two works to figure out charts that tell if remixes of more than two CC-licensed works will be possible. [Those charts will be three- or higher-dimensional, though.]

Compatibility for remixes, JP version

A web page of mine has a much better version of the remix compatibility chart:

Remix Compatibility Chart

		Status of Work A							
		PD	BY	BY-SA	BY-NC	BY-NC-SA	BY-ND	BY-NC-ND	ARR ©
Status of Work B	PD	GREAT	GOOD	GOOD	GOOD	GOOD	NO	NO	NO
	BY	GOOD	GOOD	GOOD	GOOD	GOOD	NO	NO	NO
	BY-SA	GOOD	GOOD	GOOD	CARE	NO	NO	NO	NO
	BY-NC	GOOD	GOOD	CARE	GOOD	GOOD	NO	NO	NO
	BY-NC-SA	GOOD	GOOD	NO	GOOD	GOOD	NO	NO	NO
	BY-ND	NO	NO	NO	NO	NO	NO	NO	NO
	BY-NC-ND	NO	NO	NO	NO	NO	NO	NO	NO
	ARR ©	NO	NO	NO	NO	NO	NO	NO	NO

Compatibility for remixes, JP version, key

Key to Abbreviations 1

Abbreviation	Meaning
PD	"Public Domain." This may be indicated on the work by a mention of the CC0 Public Domain Dedication tool and/or with its symbol, or by the Public Domain Mark, or the adapter may simply know, *e.g.*, because of its age, that a work is in the public domain.
BY	Creative Commons Attribution license, often indicated by the symbol.
BY-SA	Creative Commons Attribution-ShareAlike license, often indicated by the symbol.
BY-NC	Creative Commons Attribution-NonCommercial license, often indicated by one of these symbols, depending upon region or .
BY-NC-SA	Creative Commons Attribution-NonCommercial-ShareAlike license, often indicated by one of these symbols, depending upon region or.
BY-ND	Creative Commons Attribution-NoDerivatives license, often indicated by the symbol.
BY-NC-ND	Creative Commons Attribution-NonCommercial-NoDerivatives license, often indicated by one of the symbols or.
ARR ©	â€œAll-rights-reserved copyright.â€ This is the traditional form of copyright outside of open licensing approaches. It may be indicated on a work with the copyright symbol © together with the phrase â€œall rights reserved,â€ but not always: some works have the symbol © and then go on to add a Creative Commons license statement (since CC licenses *are built on top of copyright!*), and some works have no copyright statement at all but fall into the domain of all-rights-reserved copyright as a default.
GREAT	This remix **is permitted without any additional permissions or conditions**.
GOOD	This remix **is permitted without any additional permissions under the condition:** the remix, as well as any downstream adaptations which may be made in the future which have enough shared expression with whichever of works A and/or B was under a CC license to be considered as adaptations of those works, **must give attribution to the original CC-licensed work(s) and creator(s)**.
CARE	This remix **is permitted without any additional permissions under the condition:** the remix, as well as any downstream adaptations which may be made in the future which have enough shared expression with whichever of the original works was under NC to be considered as adaptations of that work, **may only be used for NonCommercial purposes and must give attribution to both original works and creators**.
NO	This remix **is not permitted without additional permissions.**

Licenses on remixes, JP version

That same web page of mine tells what licenses may be used on remixes, when there is a possible remix:

Allowed Remix Status Chart

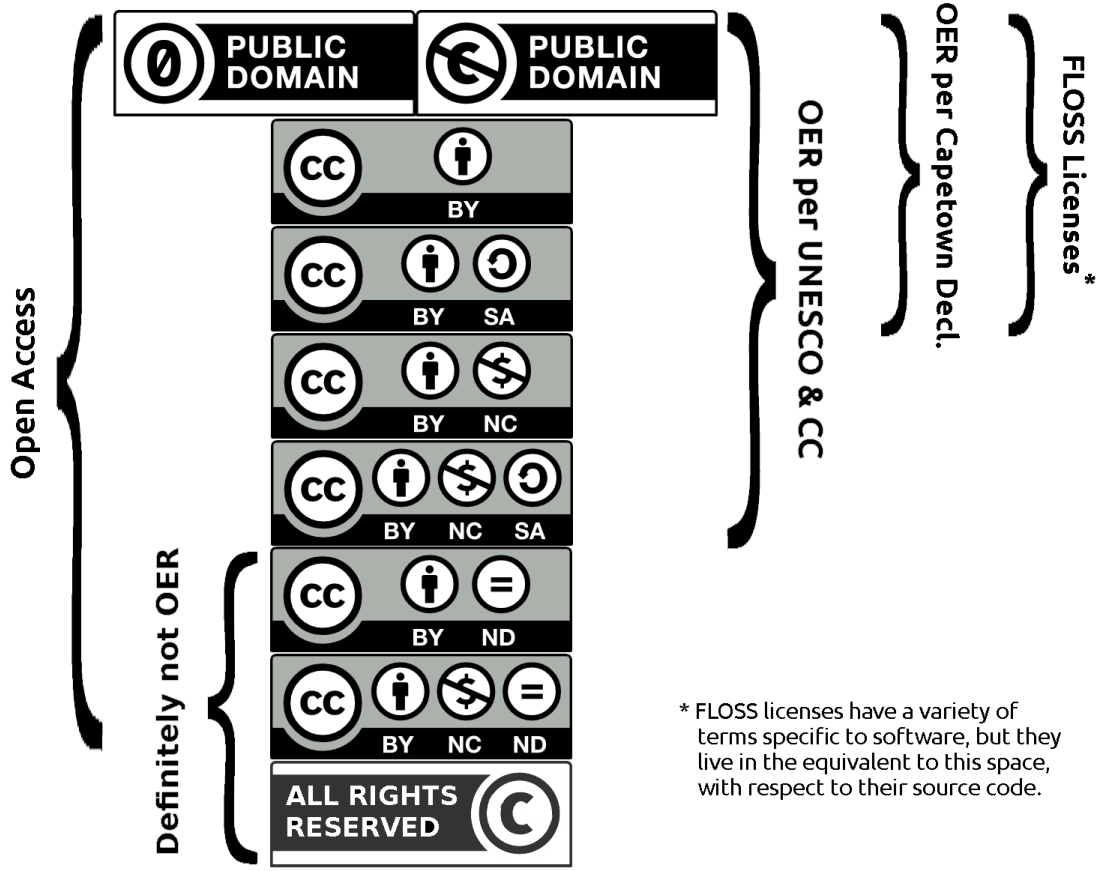
Status of Work B	Status of Work A: PD		BY		BY-SA		BY-NC		BY-NC-SA	
PD	PD: GREAT	BY-NC-SA: GREAT	PD: OK	BY-NC-SA: GOOD	PD: NO	BY-NC-SA: NO	PD: CARE	BY-NC-SA: GOOD	PD: NO	BY-NC-SA: GOOD
	BY: GREAT	BY-ND: GREAT	BY: GOOD	BY-ND: GOOD	BY: NO	BY-ND: NO	BY: CARE	BY-ND: CARE	BY: NO	BY-ND: NO
	BY-SA: GREAT	BY-NC-ND: GREAT	BY-SA: GOOD	BY-NC-ND: GOOD	BY-SA: GOOD	BY-NC-ND: NO	BY-SA: CARE	BY-NC-ND: GOOD	BY-SA: NO	BY-NC-ND: NO
	BY-NC: GREAT	ARR ©: GREAT	BY-NC: GOOD	ARR ©: OK	BY-NC: NO	ARR ©: NO	BY-NC: GOOD	ARR ©: CARE	BY-NC: NO	ARR ©: NO
BY	PD: OK	BY-NC-SA: GOOD	PD: OK	BY-NC-SA: GOOD	PD: NO	BY-NC-SA: NO	PD: CARE	BY-NC-SA: GOOD	PD: NO	BY-NC-SA: GOOD
	BY: GOOD	BY-ND: GOOD	BY: GOOD	BY-ND: GOOD	BY: NO	BY-ND: NO	BY: CARE	BY-ND: CARE	BY: NO	BY-ND: NO
	BY-SA: GOOD	BY-NC-ND: GOOD	BY-SA: GOOD	BY-NC-ND: GOOD	BY-SA: GOOD	BY-NC-ND: NO	BY-SA: CARE	BY-NC-ND: GOOD	BY-SA: NO	BY-NC-ND: NO
	BY-NC: GOOD	ARR ©: OK	BY-NC: GOOD	ARR ©: OK	BY-NC: NO	ARR ©: NO	BY-NC: GOOD	ARR ©: CARE	BY-NC: NO	ARR ©: NO
BY-SA	PD: NO	BY-NC-SA: NO	PD: NO	BY-NC-SA: NO	PD: NO	BY-NC-SA: NO	PD: NO	BY-NC-SA: NO	PD: NO	BY-NC-SA: NO
	BY: NO	BY-ND: NO	BY: NO	BY-ND: NO	BY: NO	BY-ND: NO	BY: NO	BY-ND: NO	BY: NO	BY-ND: NO
	BY-SA: GOOD	BY-NC-ND: NO	BY-SA: GOOD	BY-NC-ND: NO	BY-SA: GOOD	BY-NC-ND: NO	BY-SA: CARE	BY-NC-ND: NO	BY-SA: NO	BY-NC-ND: NO
	BY-NC: NO	ARR ©: NO	BY-NC: NO	ARR ©: NO	BY-NC: NO	ARR ©: NO	BY-NC: NO	ARR ©: NO	BY-NC: NO	ARR ©: NO
BY-NC	PD: CARE	BY-NC-SA: GOOD	PD: CARE	BY-NC-SA: GOOD	PD: NO	BY-NC-SA: NO	PD: CARE	BY-NC-SA: GOOD	PD: NO	BY-NC-SA: GOOD
	BY: CARE	BY-ND: CARE	BY: CARE	BY-ND: CARE	BY: NO	BY-ND: NO	BY: CARE	BY-ND: CARE	BY: NO	BY-ND: NO
	BY-SA: CARE	BY-NC-ND: GOOD	BY-SA: CARE	BY-NC-ND: GOOD	BY-SA: CARE	BY-NC-ND: NO	BY-SA: CARE	BY-NC-ND: GOOD	BY-SA: NO	BY-NC-ND: NO
	BY-NC: GOOD	ARR ©: CARE	BY-NC: GOOD	ARR ©: CARE	BY-NC: NO	ARR ©: NO	BY-NC: GOOD	ARR ©: CARE	BY-NC: NO	ARR ©: NO
BY-NC-SA	PD: NO	BY-NC-SA: GOOD	PD: NO	BY-NC-SA: GOOD	PD: NO	BY-NC-SA: NO	PD: NO	BY-NC-SA: GOOD	PD: NO	BY-NC-SA: GOOD
	BY: NO	BY-ND: NO	BY: NO	BY-ND: NO	BY: NO	BY-ND: NO	BY: NO	BY-ND: NO	BY: NO	BY-ND: NO
	BY-SA: NO	BY-NC-ND: NO	BY-SA: NO	BY-NC-ND: NO	BY-SA: NO	BY-NC-ND: NO	BY-SA: NO	BY-NC-ND: NO	BY-SA: NO	BY-NC-ND: NO
	BY-NC: NO	ARR ©: NO	BY-NC: NO	ARR ©: NO	BY-NC: NO	ARR ©: NO	BY-NC: NO	ARR ©: NO	BY-NC: NO	ARR ©: NO

Licenses on remixes, JP version, key

Key to Abbreviations 2

Abbreviation	Meaning
GREAT	This remix of the specified status **is permitted without any additional permissions or conditions**.
GOOD	This remix of the specified status **is permitted without any additional permissions under the condition:** the remix, as well as any downstream adaptations which may be made in the future which have enough shared expression with whichever of works A and/or B was under a CC license to be considered as adaptations of those works, **must give attribution to the original CC-licensed work(s) and creator(s)**.
OK	This remix status is technically identical to the one labeled **GOOD** immediately above, *i.e.*: This remix of the specified status **is permitted without any additional permissions under the condition:** the remix, as well as any downstream adaptations which may be made in the future which have enough shared expression with whichever of works A and/or B was under a CC license to be considered as adaptations of those works, **must give attribution to the original CC-licensed work(s) and creator(s)**. However, in this case, since the remix status is not one with a CC license, *this attribution requirement is usually unexpected and therefore should be clearly stated alongside the adaptation.*
CARE	This remix of the specified status **is permitted without any additional permissions under the condition:** the remix, as well as any downstream adaptations which may be made in the future which have enough shared expression with whichever (possibly both) of the original works was under NC to be considered as adaptations of that work, **may only be used for non-commercial purposes and must give attribution to either (or both) original works and creators if CC-licensed**. *If the remix status is not one with a CC license, these additional requirements are usually unexpected and therefore should be clearly stated alongside the remix.*
NO	This remix **is not permitted without additional permissions.**

The Graduated Spectrum of CC Licenses



This image by Kathryn Kure, Jonathan Poritz, and Andrew Rens, released under CC BY-SA 4.0 International, is a slightly modified version of The Augmented Creative Commons License Spectrum by Kathryn Kure and Jonathan Poritz, which was released under CC BY-SA 4.0 International, adding information about FLOSS and changing some small stylistic elements

Choose the Appropriate License or Legal Tool

Since CC doesn't recommend using their licenses for software, here is an aggregate recommendation of copyright license/tool for all types of material:

Type of Resource	License or Legal Tool	Recommendation
Static Content: Text and Images/Diagrams including Software Manuals	CC	**CC BY-SA 4.0** *...or CC BY 4.0*
Dynamic Content: Software (Server-side, Client-side, Apps, etc.)	FLOSS	**GPLv3** *...or MIT and BSD*
Databases	CC	**CC0** *...or CC BY 4.0, CC BY-SA 4.0*

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