

# Awesome Attributions and Lovely Licensing Statements: How OER Practitioners Can Use Creative Commons Licenses With Style and Substance

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Open Oregon Educational Resources Webinar



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## Land acknowledgement

Before we begin, I must acknowledge that I learned much of what we'll be talking about today while I was living in the unceded territory of the Ute Peoples. The earliest documented people in that area also include the Apache, Arapaho, Comanche, and Cheyenne. An extended list of tribes with a legacy of occupation there can be found on the [Colorado Tribal Acknowledgement List](#).

I am grateful for the chance to have lived and worked in that beautiful place and will always cherish that memory, even though I am no longer a resident there.<sup>1</sup>

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<sup>1</sup>And where I live now there is no tradition of land acknowledgements of which I am aware.

## Legal warning

Please note that:

***I Am Not A Lawyer.***<sup>2</sup>

Moreover:

***Even if I were a lawyer, I would not be your lawyer.***<sup>3</sup>

Therefore:

***Nothing in this presentation should be construed as legal advice!***

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<sup>2</sup>In fact, legal expertise seems to have skipped a generation in my family: my mother is a [retired] judge and one of my sons is a law school graduate! But, while I have passed the [CopyrightX course](#) from [Harvard Law School](#) and done various trainings such as the [CC Certificate course](#) and the [University of Amsterdam International Copyright Summer Course](#), I have no legal degree or experience.

<sup>3</sup>Not because I don't like you, it's just that one doesn't end up in a lawyer-client relationship without knowing, and I don't know any of you in that way!

## Warning: Quite limited scope

This is a talk for beginners using Creative Commons licenses or materials shared with Creative Commons licenses.

Or perhaps for folks who want a refresher.

Probably not for experts, e.g., copyright librarians, intellectual property (IP) lawyers, or those who have taken the [Creative Commons Certificate](#) course.

Although possibly experts who are here might have something to add to what I say – please don't hesitate to jump in to contribute, if so! – or might be interested in very much the perspective of someone (me) who has used and written OER and was in the classroom for nearly 100,000 years.<sup>4</sup>

There will also be resources and links which could be useful at all levels of CC-experience.

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<sup>4</sup>base two

## Structure of our session

We will start with some discussion of context: the “**Why**.”<sup>5</sup>

The discussion starts with talking about *Intellectual Property [IP] Law*.

Since that can be a bit dry, there will be some interactivity, or at least activity, for you to perform. Please open a blank document on your computer, an empty “Note” on your phone, or, if you’re old school, grab a pen and paper.

Note if you feel like you didn’t have time to finish one of our activities – or otherwise want to consult the content or use the links, *etc.* – these slides are available at the URL to the bottom left of your screen, as are all of the files you would need to remix it if you wanted,<sup>6</sup> under a [CC BY-SA 4.0](#) license.

Our discussion about IP law starts with **copyright**. “What’s *copyright* got to do with it?” you cry! Well, first of all, let’s talk about what and where copyright is.

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<sup>5</sup> If you’re just here for the “**How**,” feel free to take a short nap: I’ll wake you when we get there.

<sup>6</sup> although it was written in L<sup>A</sup>T<sub>E</sub>X, which is apparently not everyone’s favorite authoring tool

## Activity 1: Where is copyright?

### For the next two minutes:

If possible, *make a brand-new, copyrightable work* – a work which could be copyrighted (in the United States) if you so chose. Use anything around you to which you have access: paper and pen/pencil; laptop; phone with its audio and/or video recording capacities; pipe-cleaners and modeling clay you may have in your back pocket....

If it is not possible to create a copyrightable work under these circumstances, write a few sentences, record a video, or otherwise fix in some tangible medium your own original words describing why you cannot do so.

## Discussion 1: Copyright is everywhere (in academia)

In the United States,<sup>7</sup>

***“...works of original expression fixed in a tangible medium...”***

*“original”*    ⇨    But very minimal originality suffices. *E.g.*, your vacation snaps are probably boring but copyrightable<sup>8</sup>.

*“expression”*    ⇨    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 ...”*    ⇨    *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?

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<sup>7</sup> as specified in §102 of the *Copyright Act* 17 U.S.C.

<sup>8</sup> ...probably ... but **IAmNotALawyer** and nothing in this presentation constitutes legal advice!

## Activity 2: How to get that “©”

### For the next minute:

If possible, *get*, or at least, *start the process of getting a legal copyright on the work you just made*. This may involve:

- adding some text to your work [then: do that], or
- going to a government website [use your phone or laptop: get the URL to share with the class], or
- filling something out and mailing it [along with something else, perhaps? make a packing list!] somewhere [get the form, or a link to it, and the address, to share with the class], or
- something else?

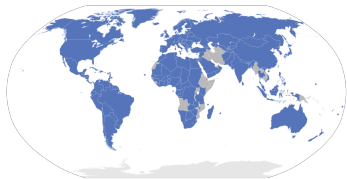
~> If you must pay a fee as part of this process, wait at the place where you have to enter in your credit card number, and we'll all share that in the discussion to follow.



## Discussion 2: 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 \[WIPO\]](#)<sup>9</sup> – *copyright is “frictionless”*, in that it springs into existence without any requirement of formal registration.

Of course, this only matters if your work is created or consumed in one of the countries colored blue to the right (or see [this list of non-Berne signatory countries](#) [not entirely up-to-date], which goes from Afghanistan, Angola, and Burundi through Turkmenistan, Tuvalu, and Uganda):



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**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 doctor who knows nothing of liability law....

<sup>9</sup> Cory Doctorow says that WIPO “bears the same relationship to bad copyright law that Mordor has to evil in Middle Earth”

<sup>10</sup> “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.

## Activity 3: What is copyright good for?

**In the next minute**, write down four things:

1. something you can do with a work whose copyright you own
2. something you can do with a work whose copyright you **do not own**
3. something you cannot do with a work whose copyright you own
4. something you cannot do with a work whose copyright you **do not own**

**Bonus round:** What do time and space have to do with it?

- ↪ Do any of your answers above change if you and the other party involved – the copyright owner or person performing the dis/allowed action – are separated in time and/or space? If so, by how much or by what kind of border or line?

## Discussion 3: 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.

## Activity 4: Is copyright all-powerful?

Do you know of any limitations to copyright? Based on situation, time, location, use...?

### **Two activities to explore that:**

Think of (and write down) something a user could do with a copyrighted work that the copyright owner might not like, but could not prevent. (Your examples may differ depending upon the kind of work being used and the legal jurisdiction....)

Why did earlier slides talk about “copyright owners?” Is there any difference between *copyright owner* and *author/artist/creator*?

## Discussion 4: 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, this is not always true, and often varies depending upon the role of the employee (full professor, adjunct, librarian, administrative staff, etc.)!

**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.”<sup>11</sup>

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<sup>11</sup>The rules are more complicated for works-for-hire, and any work created before 1978.

## Discussion 4 (cont): A useful limitation to copyright.

*“.. the Fair use<sup>12</sup> 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](#)

Actually, for OER adopters, adapters, and creators,<sup>13</sup> an much more relevant resource is the brilliant [Code of Best Practices in Fair Use for Open Educational Resources](#).

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<sup>12</sup> a closely related concept in Commonwealth countries is called **fair dealing** there.

<sup>13</sup> I'm trying to get the OER community to use the verb "to AAC," pronounced "to ace," meaning "to adopt, adapt, or create."

## Activity 5: Why all this copyright power?

Why would anyone set up a legal system which puts this kind of exclusive control in the hands of copyright owners?

**Take two minutes to brainstorm** with folks around you (if you are not alone where you are) to come up with some reasons why such a system might make sense.

You might classify your reasons as to whether they are **utilitarian** [centered on the consequences – often economic – of actions] or **deontological** [based on rules, often coming from an abstract notion of the moral sanctity of the act of artistic creation].

## Discussion 5: The Founders had an answer

Copyright – in fact, most IP law – in the United States stems from [Article I, Section 8 of the US Constitution](#), 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*<sup>14</sup> 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.

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<sup>14</sup>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.



## Discussion 5 (cont): But the Founders were not academics

The [neo]liberal view of how to motivate creative activity is, I assert, manifestly in tension with the longstanding<sup>15</sup> 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.

So how can we deal with the automatic creation of restrictive and entirely anti-academic copyrights?

Fortunately, some lawyers were inspired by both Richard Stallman's GPL license for free software and by a case they lost which had questioned the constitutionality of the [Mickey Mouse Protection Act](#), to found the Creative Commons in 2001.

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

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<sup>15</sup> Don't mention Pythagoras vs Euclid in this context unless you want to witness an unhinged mathematical rant.

## Activity 6: The *sine qua non* of a scholarly IP system

**Someone shout out 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.]

**Take a minute to think through and write down some details of this:** Who would have to do what, when, including which components, and in what format, to make this work?

## Discussion 6: BY is fundamental

All Creative Commons licenses begin with the phrase “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](https://creativecommons.org/licenses/by/4.0/).

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

That word “attribution” is a big part of what we wanted to talk about today!

As mentioned, **all** CC licenses have the requirement of attribution.

It is a IP-legal, copyright-enforced version of the scholarly norm of giving a *citation* when you use someone else’s work:

- if you don’t give a citation to someone else when you use their words or ideas<sup>16</sup>, you have committed an academic sin and may face social consequences (or even get fired, sometimes...);
- if you use someone’s CC-licensed work in a way that implicates copyright<sup>17</sup> without giving attribution, you and/or your employer can get sued.

<sup>16</sup> note ideas are not the subject of copyright, *expressions* are!

<sup>17</sup> so fair use gets you out of this requirement, as does just talking about the name of the work or the ideas within it

## Those pesky attributions

CC licenses specify what is required in those proper attributions.

Unfortunately, the requirements are described in what is called

- the license's *legal code*, which is sometimes described as “lawyer- but not human-readable;” see, e.g., [the legal code for the CC BY 4.0 license](#).

Fortunately, CC provides:

- ← a *commons deed* for each license, which is intended to be human-readable – see, e.g., [the commons deed the CC BY 4.0 license](#) and
- ← general guidance pages on its website – see, e.g., the [Recommended practices for attribution](#)).

Unfortunately, the requirements vary between the different versions of the licenses, and we are now on **v4.0!!**

Fortunately, CC provides

- a page which goes into great technical detail on how those those different licenses differ in their requirements: [License Versions](#)

## How to make *awesome attributions*

Most fortunately of all, there is an easy mnemonic that will easily guide you to awesome attributions every time! It is

### **TASL:**

**T**itle: What is the name of the work?

**A**uthor: Who owns the work? (Link to their home page if possible.)

**S**ource: Where can it be found? (Provide link if possible, usually via the Title text.)

**L**icense: Which license is the work distributed under? (Provide link to [creativecommons.org](https://creativecommons.org/licenses/) license legal code.)

Often one puts the link for the Source under the text of the Title.

## An awesome example

For example: this presentation, if you were to copy, distribute, and/or adapt it or some original expression from it, would need to be attributed. A good TASLing would be:

[Awesome Attributions and Lovely Licensing Statements: How OER Practitioners Can Use Creative Commons Licenses With Style and Substance](#) by Jonathan Poritz is licensed under [CC BY-SA 4.0](#).

or, if on a poster or somewhere else without good linking capability, this would do:

*Awesome Attributions and Lovely Licensing Statements: How OER Practitioners Can Use Creative Commons Licenses With Style and Substance*, found at [<https://poritz.net/j/share/AAaLLS/>] by Jonathan Poritz [<https://poritz.net/jonathan>] is licensed under CC BY-SA 4.0 [<http://creativecommons.org/licenses/by-sa/4.0/>]

## Some awesome details

A few details to keep in mind:

- If you mess something up with your attribution, you have 30 days after you are notified of that fact by the rightsholder to fix your mistake ... if the material was licensed with the 4.0 license suite. If not, you are immediately in violation of their copyright and this can cause troubles. [Cory Doctorow wrote about “Copyleft trolls” using this for evil.]
- If you are sharing an adapted version of someone else’s CC-licensed work, which is allowed by some but not all CC licenses, your attribution statement must say how you have changed their work.
- If the rightsholder doesn’t want their name on your work, or wants you to attribute them in a particular way, they can tell you.

## Lovely licensing statements

What about on the other end of the production: putting a CC license on your work.

Note: it's important that it is your work, or work for which you are the rightsholder, otherwise you cannot put a CC license on it!<sup>18</sup>

Basically what you have to do is give your reusers/remixers enough information so that they can TASL you!

That is, make sure the following appear on your work:

- your name
- the name of the work
- the license you are applying to the work
- the link to the license's legal code (that's a legal requirement)
- some text that says something like “work released under this license”


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<sup>18</sup>despite what the [YouTube help page about CC licenses](https://www.youtube.com/help/copyright) says – even the big boys like Google mess this up sometimes!



## Lovely details

To make things easier for your reusers (that's the whole point of CC licensing!), also include

- the license logo/icon image, like: The image shows the Creative Commons Attribution-ShareAlike (CC BY SA) license logo. It consists of three circular icons: the first contains the letters 'cc', the second contains a person icon, and the third contains a circular arrow. Below these icons, the letters 'BY' and 'SA' are displayed.
- the text might actually say “work released under this license except where otherwise indicated”
- where you want your to be found on the internet
- your home on the internet

The last two bullets above often skipped, but are nice.

Folks often include *just* the logo/icon image and that is absolutely not enough!

The phrase “except where otherwise indicated” helps if your work includes other works within it, by fair use or because they are in the public domain or are under CC license, and it tells reusers/remixers to be careful of those other embedded work which may have other licenses.

## A lovely license example

The licensing statement on the title page of this slide deck was:



This slide deck, except where otherwise indicated, is by [Jonathan Poritz](#) and is released under a [Creative Commons Attribution-ShareAlike 4.0 International License](#).

(The title was evident because it was there on the title page!)

### Creative Commons:

- main site: [creativecommons.org](https://creativecommons.org)
- FAQ: [creativecommons.org/faq](https://creativecommons.org/faq)
- license chooser: [creativecommons.org/choose](https://creativecommons.org/choose)
- marking your work with a CC license: on the CC wiki [here](#).
- information on the fantastic<sup>19</sup> on-line course leading to a *Certificate of Mastery in Open Licensing*: [certificates.creativecommons.org](https://certificates.creativecommons.org)

### Misc:

- the [Open Attribution Builder](#) from another state ([Open Washington](#))
- my own [Copyright Cheat Sheet for University Faculty](#)
- my own [Creative Commons Cheat Sheet for University Faculty](#)
- my own [New Charts for Adaptation and Remix](#) on licensing considerations for adaptations, and for remixes of more than one prior work simultaneously

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<sup>19</sup>But I'm biased: I've taken the course, become a *Master*, and now instruct it – sign up and maybe you'll be in my section!

# Discussion!!

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<sup>20</sup>subject to [CC-BY-SA 4.0](https://creativecommons.org/licenses/by-sa/4.0/)