Creative Commons Licenses

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Abstract

This paper is about Open Content licenses like the Creative Commons Licenses on which it has a special focus. Furthermore Open Access with its impact for scientific publishing and the connection to the Open Content licenses is presented. Morevoer a short introduction to the Austrian Copyright Law is given.

Keywords

Open Content, Open Access, Open Content Licenses, GNU Free Documentation License, Creative Commons Licenses, Digital Peer Publishing License, Open Content Licenses

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1 Introduction

Although the topic of this paper is „Creative Commons Licenses“ (CCL) it will not be the only focus of it. The CCL will be in the center of interest and useful to cover a very interesting area: Like Open-Source Licenses for software there are „open“-licenses for works as literature, photographs, music and further more which transfer the idea behind Open Source Licenses from Software to other work categories. These licenses for this kind of works are covered under the term Open Content Licenses.

As stated before this Open Content Licenses can be among other things used for literature and as this paper is written as an scientific work for a course at an university the main emphasis is layed on the usage of the different Open Content Licenses for that kind of work.

The background of this idea is the Open Access movement which is a current topic in the area of scientific work at universities and many other scientifc institutions. In short the main idea behind Open Access is that the results of scientific research should be freely available to all people who are interested in it through the internet. Hence this idea sounds quite simple there are also some problems connected with it.

To understand the topic and the connected problems the next chapter of this paper will cover the legal basic conditions. It will give an introduction to the copyright law (in Austria called the „Urheberrecht“).

Chapter 3 will then cover the topics Open Content and Open Access to give a detailed look on it.

On the basis of the preceding chapters it will finally be possible in chapter 4 to get an inside look on the most interesting and spread Open-Content Licenses. Of course the CCL which is stated in the topic of this paper will be covered in detail. Furthermore the usage of the Open Content Licenses will be focused on scientific work in connection to the Open Access thought.

In chapter 5 the author of this paper will then try to draw an conclusion on Open Access and the Open Content licenses related to it.

2 Legal Basic Conditions

To understand the background and the use of such licenses like the Creative Commons Licenses it is necessary to get an inside look on the legal basics.

When we speak of Open Content licenses we mean licenses which transfer the idea behind Open Source Licenses in the software world to other areas like literature, music, photographs and so on. The main focus of this paper are scientific papers, that means scientific work which is the result of scientific research. It is covered under the law as literature.

The law connected to this kind of works is the copyright law. In the following the Austrian copyright law („Urheberrecht“ - UrhG) will be presented to give an first overview of the legal situation.

2.1 The Austrian Copyright Law („Urheberrecht“)

In the following only the most important parts of the Austrian copyright law (UrhG) will be presented.

The Austrian copyright law is concerned with the protection of work in the area of literature, musical art, fine arts and cinematic art (§1 (1) UrhG). Works are protected as a whole and in parts (§1 (2) UrhG).

To illustrate the law a bit better short extractions of the UrhG will be given in the following:

> **§ 1.** (1) Werke im Sinne dieses Gesetzes sind eigentümliche geistige Schöpfungen auf den Gebieten der Literatur, der Tonkunst, der bildenden Künste und der Filmkunst.
>
> (2) Ein Werk genießt als Ganzes und in seinen Teilen urheberrechtlichen Schutz nach den Vorschriften dieses Gesetzes.
>
> **§ 2.** Werke der Literatur im Sinne dieses Gesetzes sind:
>
> 1. Sprachwerke aller Art ...

As §1 states for the definition of a work it is necessary that it is an peculiar mental creation („eigentümliche geistige Schöpfung“). This means that the work

has to have an individual characteristic that relies on the personality of the creator to be grouped under the term work and hereby be protected by the copyright law. A specific work height („Werkhöhe“) is not needed.

The protection of the work under the copyright law starts by the time a work is created. Hence no registration or other act is necessary. [Hayb04]

What is the use of protection of the work under the copyright law? The creator of the work should be protected of unauthorised duplication, distribution and so on. Besides individual interests like naming names also economic interests are to be considered. These economic interests are mainly concerned with the utilization of the work by duplication and distribution through the creator or his/her contract partner.

The next step is to determine who is protected by the copyright law? The answer to this question can be found in §10 UrhG:

> **§ 10.** (1) Urheber eines Werkes ist, wer es geschaffen hat.
>
> (2) In diesem Gesetz umfasst der Ausdruck „Urheber“, wenn sich nicht aus dem Hinweis auf die Bestimmung des Absatzes 1 das Gegenteil ergibt, außer dem Schöpfer des Werks auch die Personen, auf die das Urheberrecht nach seinem Tode übergegangen ist.

Author and hereby the person who is protected by the law is the creator of the work. Furthermore the rights will be transmitted to the legal heir.

To summarize up to this point it can be said: With the focus on scientific work the particular paper is protected under the copyright law as a work of literature. The author of the paper is the person who is protected by the copyright law and the protection starts with the creation of the work.

The next step is to look at the rights which are granted to the author:

> **§ 14.** (1) Der Urheber hat mit den vom Gesetz bestimmten Beschränkungen das ausschließliche Recht, das Werk auf die ihm durch die folgenden Vorschriften vorbehaltenen Arten zu verwerten (Verwertungsrechte).

In §14 (1) UrhG it is defined that the author has the exclusive rights of utilization of the work.

The most interesting utilization rights („Verwertungsarten“) will be presented in the next few lines:

> **§ 15.** (1) Der Urheber hat das ausschließliche Recht, das Werk – gleichviel in welchem Verfahren, in welcher Menge und ob vorübergehend oder dauerhaft - zu vervielfältigen.
>
> ...
>
> **§16.** (1) Der Urheber hat das ausschließliche Recht, Werkstücke zu verbreiten. Kraft dieses Rechtes dürfen Werkstücke ohne seine Einwilligung weder feilgehalten noch auf eine Art, die das Werk der Öffentlichkeit zugänglich macht, in Verkehr gebracht werden.

According to §15 (1) UrhG the author has the exclusive right of duplication („Vervielfältigungsrecht“) and according to §16 (1) the exclusive right of distribution („Verbreitungsrecht“) of the work. This means that no other person except the author is allowed to duplicate or distribute the work.

By the term duplication all analog and digital forms of duplication are covered. Even the non persistent storing of the work in the RAM of a computer is a duplication. The exclusive right of distribution means that only the author is allowed to offer the work to the public. It is important to be said that the right of duplication and the right of distribution are in a close relationship because the duplication usually happens for the purpose of the distribution. [Walt06]

For the presentation of the work on the internet the §18a UrhG („Zurverfügungstellungsrecht“) was derived:

> **§ 18a.** (1) Der Urheber hat das ausschließliche Recht, das Werk der Öffentlichkeit drahtgebunden oder drahtlos in einer Weise zur Verfügung zu stellen, dass es Mitgliedern der Öffentlichkeit von Orten und zu Zeiten ihrer Wahl zugänglich ist.

As there are only exclusive rights for the author so far a possibility is necessary to enable as an example the economic utilization of the work by other persons than the author (according to his/her wish):

> **§ 24.** (1) Der Urheber kann anderen gestatten, das Werk auf einzelne oder alle nach den „§§ 14 bis 18a“ dem Urheber vorbehaltenen Verwertungsarten zu benutzen (Werknutzungsbewilligung). Auch kann er einem anderen das ausschließliche Recht dazu einräumen (Werknutzungsrecht).

The §24 (1) UrhG defines that the author can grant others determined utilization rights on an exclusive or non exclusive basis. This means that for an example the author of an scientific paper can grant the rights of duplication and distribution through a contract to a publisher to make it possible that his/her paper is released in a scientific journal or a related medium.

Important to say is that according to the §23 UrhG the copyright law cannot be transfered to others except by the time of death of an author to his/her legal heir.

Concerning the contract the §26 UrhG is relevant:

> **§ 26.** Auf welche Art, mit welchen Mitteln und innerhalb welcher örtlichen und zeitlichen Grenzen das Werk von einem Werknutzungsberechtigten (§ 24 Abs 1 Satz 2) benutzt werden darf, richtet sich nach dem mit dem Urheber abgeschlossenen Vertrag. Soweit hiernach das Werknutzungsrecht reicht, hat sich auch der Urheber gleich einem Dritten, jedoch unbeschadet seines Rechtes, Verletzungen des Urheberrechtes gerichtlich zu verfolgen, der Benutzung des Werkes zu enthalten. Mit dem Erlöschen dieser Verpflichtung erlangt das Verwertungsrecht seine frühere Kraft.

As §26 UrhG says the contracting parties have freedom of choice which utilization rights are and in which form they are granted.

Although the exclusive rights of utilization the author of a work holds (see §14 UrhG) there are also a few exceptions which need to be mentioned („freie Werknutzungen“) and can be found in §41 UrhG and the following. For example in §42 some free work uses for the private area are listed:

> **§42.** (1) Jedermann darf von einem Werk einzelne Vervielfältigungsstücke auf Papier oder einem ähnlichen Träger zum eigenen Gebrauch herstellen.
>
> ...

This means that every person is allowed to create a duplicate of e.g. a scientific article with a photocopier for his/her personal use.

Another example is the §46 UrhG which enables the possibility to quote text passages of a released literature work. Without this regulation citation would not be possible.

These were just two short examples of the free work uses. It should be enough to illustrate the overall principle of the law. Many more can be found in the UrhG.

The next thing that has to be pointed out is the duration of the protection of the Austrian Copyright Law. Here §60 UrhG is applicable:

> **§ 60.** Das Urheberrecht an Werken der Literatur, der Tonkunst und der bildenden Künste, deren Urheber (§ 10 Abs. 1) auf eine Art bezeichnet worden ist, die nach § 12 die Vermutung der Urheberschaft begründet, endet siebzig Jahre nach dem Tode des Urhebers (§ 10 Abs. 1), ...

According to the §69 UrhG this means that works covered by the Austrian Copyright Law will be protected till 70 years after the death of the author.

The last few pages gave a short introduction into the Austrian Copyright Law and have hopefully helped to understand the copyright issue a bit better. The following part will cover the principle of territoriality which is an important point in the international copyright law.

2.2 The Principle of Territoriality

The principle of territoriality means that every country can have its own copyright law and therefore different levels of protection in comparison of the regional law shapings can exist. Which copyright law has to be used depends on where for example an act of violation occurs. [Hayb04]

If an author releases a book in different countries (e.g. Austria and the U.S.) more than one copyright law can be applicable -> the Austrian copyright law in Austria and the U.S. copyright law in the US. The copyright laws in several countries have often different rules. For example the duration of the protection phase in the U.S. and the Ausrian copyright law is not the same. If someone else than the author publishes this book in the U.S. after the protection phase is over (in the U.S.) it can still be a violation of the law according to the Austrian copyright law if the book is also accessible from Austria and the protection phase here is not over yet.

3 Open Content and Open Access

3.1 Open Content

3.1.1 A Definition

The first thing to say is that actually there is no unique definition of Open Content. As said in the introduction the Open Content principle tries to transfer the idea behind Open Source to other work categories like literature, music, photographs and many more. [JaMe03]

In one way the word Open in Open Content is a bit misleading. When we speak of Open Source software we mean software which can be freely duplicated, distributed and edited without the requirement of paying licensing fees. But in order to do that the source code is needed and therefore it has to be distributed. That is why this kind of software is called Open Source. But in the case of other work categories there is no source code which has to be open. In the case of Open Content it would also be possible to call it „Free Content“ but this is not used because free more or less associates that something is free of charge, altough the idea behind Open Content is the „freedom of use“. [JaMe03] Also it establishes a nice link to the Open Source idea if it is called Open Content.

Summarized this means that Open Content is about different work categories than software like literature, music, photographs and further more that were created to be freely available and used by all people in a broad way. The minimum requirement would be that the work can be freely consumed and non-commercially copied and distributed. Optional work uses would for example be the modification and the commerical usage. [John06] The concrete shaping of the work uses can be specified with the usage of Open Content licenses.

3.1.2 Examples

Who could now use such Open Content (and the connected licenses)? Some examples [Lian04]:

- A creator of a website wants that all of its content is freely available for all other people as a public resource. Everyone can use the content for his own work without obtaining permission.
- A music band wants to provide their music online to reach a broader audience but they want to ensure that their music is not commercially used without their permission.
- A designer who wants to collaborate with another designer by using his/her work and sharing his/her own work.
- A filmmaker who wants to present his produced movies to an broad audience and also allows them to use cutouts of his/her movies for their own productions.
- A person who is looking for images, sounds, videos to remix them to a new product.
- A scientist who wants to publish his research results to get a broader attention. He/She also agrees that the research results can be used by everybody and been modified or taken even further.

As it can be seen there is wide variety where Open Content can be used. The most spread licenses according to that can be found in section 4 of this paper.

3.2 Open Access

3.2.1 Definition

As with Open Content there is more than one definition of Open Access but these defintions of Open Access are much more concrete than the definitions of Open Content.

Trying to define Open Access in one sentence would result in the following: Open Access describes the target of making scientific papers/literature freely available for all people on the internet without charging any price or licensing fee and free of most restrictions.

According to an official definition of Peter Suber Open Access means: *„ Open Access literature is digital, online, free of charge, and free of most copyright and licensing restrictions“* [Sube06]

Furthermore Open Access is designated to remove price and permission barriers. This means: Price barriers are all kinds of cost like subscription fees, licensing fees, pay-per-view fees which a person who wants to consume the concrete scientific paper/article has to accept. Permission barriers are burdens which base on copyright and licensing restrictions. Although it has to be said that not all permission barriers are removed in the most cases. Especially the commercial re-use and the creation of derivative works are often forbidden. Derivative works are based on already existing works.

There have also been three important initiatives in the past which all have come to a definition of Open Access:

- Budapest Open Access Initiative (February 2002)
- Bethesda Statement on Open Access Publishing (June 2003)
- Berlin Declaration on Open Access (October 2003)

These three definitions are the most important ones to the Open Access movement. [Sube06]

All of these initiatives/meetings that took place were very important and the most eminent persons of the Open Access Movement pariticipated at this events.

As these three initiatives are of such an importance we will take a look on the definitions:

- Budapest Open Access Initiative [BOAI02]

  This is an worldwide initiative which was called in December 2001 by the Open Society Institue (OSI) in Budapest.

  The definition of Open Access according to this initiative is:

  „*By 'open access' to this literature, we mean its free availability on the public internet, permitting any users to read, download, copy, distribute, print, search, or link to the full texts of these articles, crawl them for inde xing, pass them as data to software, or use them for any other lawful purpose, without financial, legal, or technical barriers other than those inseparable from gaining access to the internet itself. The only constraint on reproduction and distribution, and the only role for copyright in this domain, should be to give authors control over the integrity of their work and the right to be properly acknowledged and cited.*“

- Bethesda Statement and Berlin Declaration on Open Access [BSOA03] [BDOA03]

  These two initiatives do rely on the same definition of Open Access. The Berlin declaration was signed by nearly all important German science institutions like the Max-Planck-Gesellschaft, the Fraunhofer Society and many more.

Their defintion reads as follows:

„*The author(s) and right holder(s) of such contributions grant(s) to all users a free, irrevocable, worldwide, right of access to, and a license to copy, use, distribute, transmit and display the work publicly and to make and distribute derivative works, in any digital medium for any responsible purpose, subject to proper attribution of authorship (community standards, will continue to provide the mechanism for enforcement of proper attribution and responsible use of the published work, as they do now), as well as the right to make small numbers of printed copies for their personal use.“*

As now the most important definitions of Open Access have been listed it is suitable to think about factors why it is forced.

3.2.2 Crisis of the Libraries and Journals

If one thinks about the process scientific literature is produced and published in the common way there is something strange about it. In first place the scientist of a state-funded organization like an universitiy does research and then wants to publish his/her research results. Therefore he/she will try to publish in a well-reputated scientific journal and transfer the utlilization rights (see chapter 1) in most cases exclusive to the publisher within an author-publisher contract. At the same time the library of the science institution will subscribe for the scientific journal and pay the subscription fees in order that students and other scientists have access to the research results of the scientist mentioned before.[Siet06]

In short, the state and thus the tax-payers finance the production of the research and then the state purchases the research results again from the publishers by an subscription of the scientific journal.

It may come clear that in most cases the only ones that profit are the publishers of the scientific journals.

None the less some studies have found out that on the publishing sector already have occured some monopoly-like structures. As an example, the costs for the subscription based journals for the University of Regensburg have doubled in the last ten years. As a consequence the libraries had to unsubscribe many journals because the could not afford them. This suffering demand led again to higher subscription fees which again forced many libraries to cancel subscription of important scientific journals. [Siet06]

All these steps led or lead to a deterioration of the supply and spreading of scientific research results which is not in the interest of the scientists and the public. This is where Open Access comes into play.

3.2.3 Publishing

The question now is: How can a scientist who wants to publish a paper under Open Access do this?

Their are two main methods for this: The paper can be published via an Open Access journal or via an archive/a repository. [Sube06]

- Open Access journal

  This is a journal which is committed to Open Access. It conducts peer review which is an very important factor for scientific publishing. Peer review means that an article is evaluated by other people which are specialists on the specific research field before it is released. The purpose of this process is quality assurance. The publishing in Open Access journals is also known as „the Gold Road“ [KuBr05]

  Of course these Open Access journals are not cost-free for their producers. Therefore there are different business models how such a journal can be financed. One very common way is the „authors pays“ model where the authors of the papers have to pay a fee in order that the paper is released in the journal. If the author cannot afford the fee it is often waived by the Open Access publishers. Another model would be the financing through institutions like universities. Some of the publishers are

profit-oriented (e.g. BioMed Central) and some are non-profit oriented (Public Library of Science). Peter Suber says about the sustainability of Open Access journals: „*We can be confident that OA journals are economically sustainable because the true costs of peer review, manuscript preparation, and OA dissemination are considerably lower than the prices we currently pay for subscription-based journals. ... Moreover, as OA spreads, libraries will realize large savings from the conversion, cancellation, or demise of subscription-based journals.*“ [Sube06]

For a list of Open Access journals the Directory of Open Access Journals can be visited at http://www.doaj.org/ which lists more than 2700 journals (by the time of writing this paper).

- Open Access archives and repositories

  An archive or repository is mostly commited to long-term preservation and Open Access. This method of publishing is also referred as „the Green Road“ to Open Access.

  According to Peter Suber each university should have its own repository. [Sube06] A repository/an archive is simplified a central online service which contains and stores the Open Access papers (a collection of documents) and grants access to them to all people according to the Open Access thought.

  The term self-archiving is very important concerning Open Access. It means that the author deposits a digital document in a publicly accessible website. [EPRI07]

3.2.4 Concerned Groups

Open Access serves and concerns many groups [Sube06]:

- Authors

  With Open Access authors can have a much wider audience. Through the publishing over the internet the authors can reach far more people and are therefore capable of gaining a higher reputation because of increased visibility and impact of their work.

  A study about the research impact of Open Access articles [HHG05] shows that citation frequency of for example IT-related papers published on Open Access terms is three times higher than for articles which are available printed or online after paying a fee. In other disciplines the citation frequency is 25 to 250 percent higher. [Siet06]

- Readers

  Readers have the advantage that they can access far more articles which they might need for their work or studies. Open Access grants more freedom and removes permission barriers.

- Libraries

  It solves the pricing crisis of the journals for them (see section 3.2.2 Crisis of the Libraries and Journals). It indirectly also helps libraries to serve their users better.

- Universities

  Open Access helps to save money (subscription fees) and improves visibility.

- Journals and publishers

  According to Peter Suber Open Access makes their articles more visible, discoverable, retrievable and useful. An Open Access journal can so at-

tract readers and at the same time advertising. Of course publishers of suscription-based journals do have interests which are not quite congruent with Open Access and oppose it for this reasons. But also these journals can have positive impacts from Open Access by improving their visibility and therefore gaining readers.

- Governments and Citizens

  As already mentioned before the state and citizens get access to the research results without paying for them again (see section 3.2.2 Crisis of the Libraries and Journals).

4 Open Content Licenses

In this chapter of the paper it is finally possible to take a look at some Open Content licenses. Of course there will be an emphasis on the Creative Commons Licenses as the topic of the paper already assumes. Nevertheless there are many other interesting licenses and as there is such a variety and amount of available Open Content licenses only a small selection of them will be presented in order to give a nice overview. Furthermore on the behalf on the Open Access thought there will be a focus on licenses which will be quite useful for that area.

On the next pages the following licenses will be explained:

- GNU Free Documentation License
- Creative Commons Licenses
- Digital Peer Publishing License
- Open Content License

Before the explanation of the different licenses can begin it is useful to list some common characteristics of Open Content Licenses.

4.1 Characteristics

There are some characteristics that most Open Content licenses have in common and that distinguish them from traditional copyright licenses. [Lian04]

- License Basis

  All these licenses are based on works having copyright and by using the license the author of the work dictates which rights and obligations the person who wants to use this work has.

- Rights granted

  In contrast to traditional copyright licenses the Open Content licenses concentrate more on granting the user some freedom in terms of rights than on stringent conditions on work usage.

- Derivative Works

  As already mentioned in section 3.2.1 a derivative work is a work based on an already existing work. Many Open Content licenses differ in the way how these derivative works are treated. Some of them use the Copyleft effect known from the popular Open Source software license the GNU GPL and some do not use it.

  The Copyleft effect means that any derivative work has to be licensed under the same terms as the original work. This prevents that somebody uses a work published under a license that gives the user a determined level of freedom and then puts the derivative work under a more stringent license resulting that the derivative work has more restrictions on usage.

  The different Open Content licenses let you control the derivative works and how the should be treated which is a very important point.

- Commercial/Non-Commercial Usage

  In most Open Content licenses you may or may not allow the commercial usage of your work.

- Procedural Requirements/Appropriate Credits

  With the usage of the Open Content licenses there are some procedural requirements connected like an reference to the used license (name, logo) and further more even the license itself or a link to the full license text. This also applies to derivative works.

Appropriate credits mean that the author has to be mentioned when distributing a work to end-users or creating a derivative work. This is important because Open Content licensed work should create an ethos of sharing and collaboration and in this mostly non-monetary sphere attributes like reputation, honour and recognition are very appreciated.

- Warranty

  As most works distributed under an Open Content license are not linked with any costs for the user mostly their is an abscence of any warranty.

4.2 GNU Free Documentation License

According to the official GNU Project website of the Free Software Foundation (FSF) the GNU Free Documentation License is:

„The GNU Free Documentation License is a form of copyleft intended for use on a manual, textbook or other document to assure everyone the effective freedom to copy and redistribute it, with or without modifications, either commercially or noncommercially." [GNUL07]

It is something like „the classic" of the Open Content licenses. It is derived from the GNU General Public License, which is one of the most common Open Source licenses for software, and was originally designed for the publishing of software documentation/manuals. Nevertheless it became more and more popular even for other texts and work categories. The most famous usage is the Wikipedia Project which has more than 5.3 millions of articles and can be found under www.wikipedia.org. [WIKI07]

The license is written in English but also available as translations in many different languages. Although it has to be said that these translations have been made by persons not associated with the FSF and are therefore stated as „unoffical" translations because they have not been checked for correctness. They are just intended to be a help for understanding the license. [GNUT07]

The GNU Free Documentation License covers are very strong Copyleft effect (see chapter 4.1 under Derivative Works) which is mandatory. It gives the user the freedom for copying and redistribution of the work no matter whether it is used for commercial or non-commercial use or it was or was not modified. Moreover the license makes it possible to give the author the sufficient credits for their work. [Lian04]

One thing that has to be thought of when other work categories than software documentation/manuals should be licensed is that the GNU Free Documentation License was specifically developed for this kind of work and some sections may not be appropriate for other work categories. [Lian04]

If somebody wants to license a work under the GNU Free Documentation License it is necessary to insert the following text passage into the work:

„Copyright (c) YEAR YOUR NAME.

Permission is granted to copy, distribute and/or modify this document under the terms of the GNU Free Documentation License, Version 1.2 or any later version published by the Free Software Foundation; with no Invariant Sections, no Front-Cover Texts, and no Back-Cover Texts. A copy of the license is included in the section entitled "GNU Free Documentation License".“ [GNUL07]

For further reading and the full GNU Free Documentation License please consult the GNU Project website at http://www.gnu.org/licenses.

4.3 Creative Commons Licenses

Creative Commons is an 2001 founded worldwide operating non-profit organisation which helps authors to distribute their Open Content works digital in an innovative and easy way whether it is an scientific paper or an photograph.

According to the official Creative Commons website they provide: „*Creative Commons provides free tools that let authors, scientists, artists, and educators easily mark their creative work with the freedoms they want it to carry. You can use CC to change your copyright terms from "All Rights Reserved" to "Some Rights Reserved."* " [CCL07]

With the tools mentioned in the citation there are open-source tools meant which help the user to publish or to search for Creative Commons licensed work.

Creative Commons offers a set of licenses on its website which people can use for their work. The idea behind it is that many people actually do not want to use all the rights the different copyright laws give them and hence they do not rely on „All rights reserved“ because they favor the widespread distribution and exposure of their works. It is more something like the term „Some rights reserved“ which covers the rights people want to withhold and the remaining rights should enable the effective distribution the work. [CCLF07]

One thing that is special about the Creative Commons Licenses (CCL) is its simple concept of the licenses. As already said there is a set of licenses provided. These licenses are built on different components [CCLA07]:

- Attribution

  „*You let others copy, distribute, display, and perform your copyrighted work — and derivative works based upon it — but only if they give credit the way you request.*“ [CCLA07]

Attribution means that every person who uses the work has to credit and acknowledge the author. In short this means the right to be identified as the author. It is the basic component of each license and therefore mandatorily.

- Non-commercial

  „*You let others copy, distribute, display, and perform your work — and derivative works based upon it — but for noncommercial purposes only.*“ [CCLA07]

  With this optional component it is possible to choose if others are allowed to use your work for a commercial purpose or just for non-commercial use.

- No Derivative Works

  „*You let others copy, distribute, display, and perform only verbatim copies of your work, not derivative works based upon it.*“ [CCLA07]

  This optional component determines if you allow other persons to create derivate works based on the original work. A verbatim copy which is a 100 percent identical copy with no changes is allowed to be created.

- Share Alike

  „*You allow others to distribute derivative works only under a license identical to the license that governs your work.*“ [CCLA07]

  The last optional component is about the Copyleft effect (see chapter 4.1 under Derivative Works). In short it means that others are only allowed to distribute derivative works under the same terms that the original work is.

To make it more clear each of these component has an unique graphical symbol (see illustration 1).

Illustration 01: Creative Commons Licenses symbols: Attribution, Noncommercial, Derivative Works, Share Alike (from left to right) [CCLA07]

The Creative Commons are offering six main licenses which combine the different components. Starting with the most restrictive license they are [CCLA07]:

- Attribution Non-commercial No Derivatives (by-nc-nd)
- Attribution Non-commercial Share Alike (by-nc-sa)
- Attribution Non-commercial (by-nc)
- Attribution No Derivatives (by-nd)
- Attribution Share Alike (by-sa)
- Attribution (by)

All licenses have some baseline rights and restrictions in common [CCLA07] [Lian04]:

Every license helps the author to retain his copyright and allows to dertermine the level of freedom granted to others. It states that the license does not affect other's people fair use rights and free expression rights.

Every license requires that a licensee has to ask for permission for everything restricted by the license. This means that if the author for an example does not allow commercial usage a person who want to use the work in a commercial way has to ask for permission. Furthermore every license requires licensees to keep any copyright notice intact on all copies of your work, link to your license form copies of the work, not to alter the terms of the license and not to use technology to restrict other licensees' lawful uses of the work.

Every license allows licensees to copy, distribute, display or perform it publicly, make digital public performances of it, to make a verbatim copy into another format but only provided the licensee uses the work up to the conditions provided by the author.

Finally every license applies worldwide, lasts as long as the duration of the work's copyright and is not revocable.

These standard terms above apply to all six main licenses.

Another special thing about the Creative Commons Licenses (CCL) which differentiates them from other Open Content licenses is the presentation. The CCL come in three forms [CCLF07]:

- the Commons Deed

  The Commons Deed (see illustration 02) is an easy understandable plain-language summary of the license with the relevant icons. It is meant to be easily and fast understandable for the users so that they can find out about the freedom connected with the work they have at one look (or mouse-click).

- the Legal Code

  The Legal Code contains the full license in legal language. It is especially relevant for lawyers and a possible legal action.

- the Digital Code

  The Digital Code is a machine-readable translation of the license which makes it possible for search engines and other tools to identify the work by its terms of use.

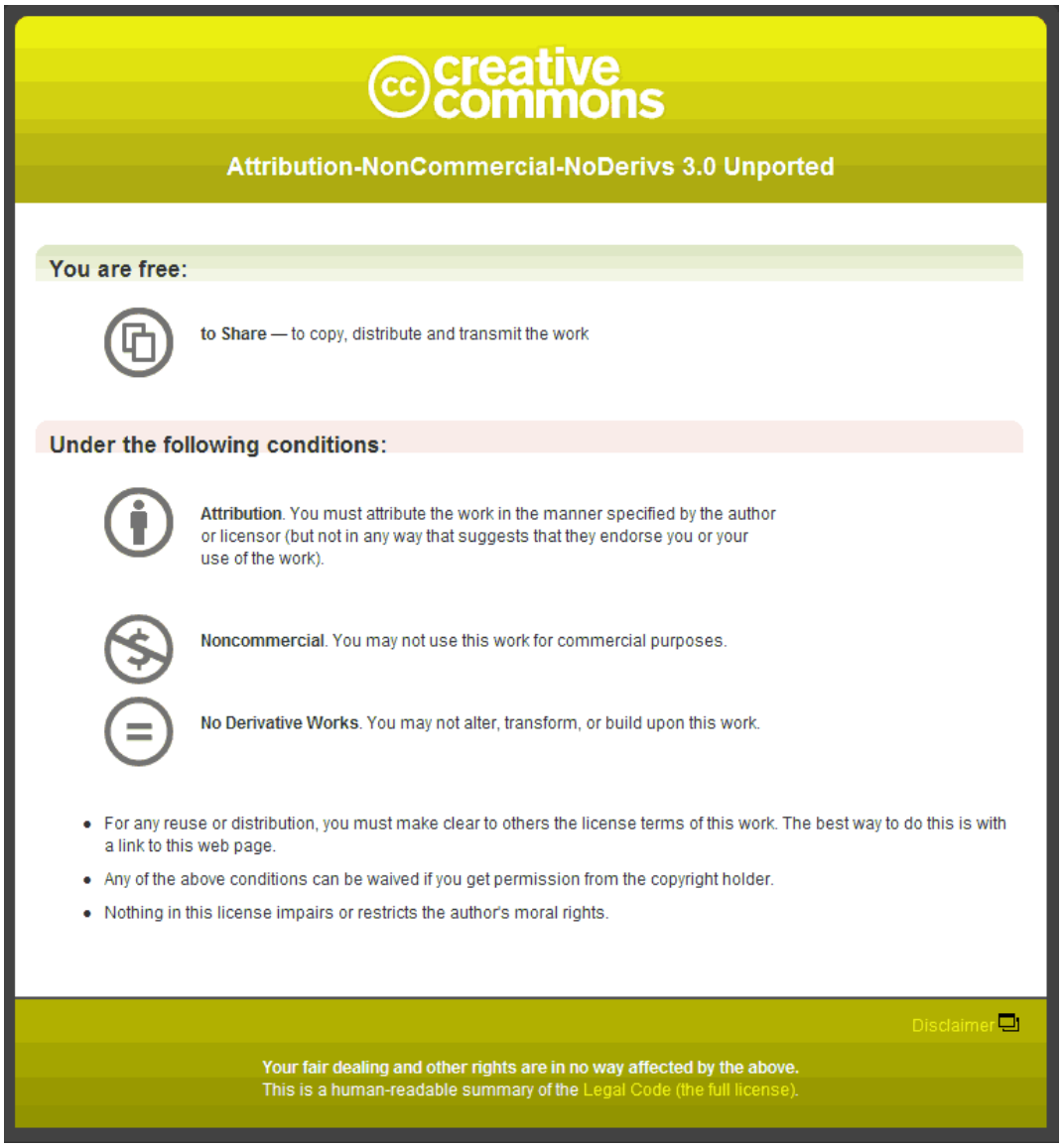

Illustration 02: Creative Commons – The Commons Deed of an by-nc-nd license[CCL07]

What are the factors that make the Creative Commons Licenses successful and popular? [KuBr05]

One important factor is the comprehensibility which is given through the three different forms of representation which are the Commons Deed, the Legal Code and the Digital Code. So every group of people can understand the license and even an automated processing like searching for CC-licensed works is available with the attached metadata (XML/RDF).

The next important factor is that the license is currently, at the time of writing of this paper, adopted in the jurisdiction of 37 countries and even more are working on its adaption. This enables a very high certainty about the legal position.

Moreover the easy handling of the licensing process is an important advantage. With an easy to use web-interface all three forms of the license (the Commons Deed, the Legal Code and the Digital Code) can be created and a link to the license can be established. There are many different logos (like illustration 03) which can used to inform that a Creative Commons license is used.

Illustration 03: Creative Commons – Some Rights Reserved Logo [CCL07]

Finally the impact and usage of the Creative Commons Licenses (CCL) to Open Access will be the topic:

In the area of Open Access publishing the CCL are very much appreciated. Many open access journals like the journals from BioMed [BiMe07] use the CCL as the base of their licensing. Even many universities like the University of Konstanz [UnKl07] do many research in the field of Open Access and the CCL.

BioMed Central [BiMe07] is a publisher of more than 170 peer-reviewed Open Access journals. All authors publishing with BioMed Central keep copyright of their work by licensing the articles under the Creative Commons Attribution license („by“ - see license types above).

The Public Library of Science (PLoS) [PLoS07] which is again a publisher of Open Access journals also applies the Creative Commons Attribution license („by“) to all works they publish.

More details, the full license texts and the easy-to-use web interface for licensing can be found on the Creative Commons website at http://creativecommons.org/.

4.4 Digital Peer Publishing License

The Digital Peer Publishing License (DPPL) was created by the Open Access initiative Digital Peer Publishing NRW (DIPP) of the Ministry of Innovation NRW. It is specifically developed for scientific/scholarly publishing and therefore works of that kind like scientific papers. Many electronic journals (eJournals) are published under the DIPP initative. [DIPP07]

The official definition of the Digital Peer Publishing License: „*DPPL is designed for scholarly content because it covers aspects of authenticity, citation, biblographic data and metadata, permant access and open formats.“* [DPPL07]

In principle the license covers 3 modules [DPPL07]:

- basic DPPL -> DPPL
- modular DPPL -> mDPPL
- free DPPL -> fDPPL

The basic module (DPPL) which is available in German and English covers the consuming and the electronical distribution of the work. Furthermore it explicitly allows that the work is made available for downloading. All these regulations are valid either for non-commercial and commerical use.

Important is that the basic module (DPPL) only permits the electronical distribution of the work. The physical distribution like printed works however is not allowed under this license. (§2 (4) DPPL)

Moreover the distribution of modified/altered versions of the work is also not permitted under the basic module. (§2 (4) DPPL)

In contrast to the basic DPPL (DPPL) the modular DPPL (mDPPL) and the free DPPL (fDPPL) allow modifications of the work (derivative work). They also cover how modifications have to be marked and how the original version has to be cited.

The difference between the modular DPPL (mDPPL) and the free DPPL (fDPPL) is that in the mDPPL only the parts that have been „earmarked“ are allowed to be changed. This means that the author of the original has to mark the areas as an example with colors that are allowed to be modified. The fDPPL however does not restrict the modifications on parts of the work. Under this license module anything in the work can be changed (under the terms of the license).

The complete license and further material can be found on the DIPP website at http://www.dipp.nrw.de/lizenzen/dppl/.

4.5 Open Content License

The Open Content License was drafted by Dr. David Wiley and published in 1998. Since its presentation the Open Content license was accepted quite well and led to a spreading of the term Open Content. It was something like the forerunner of many Open Content licenses. The last sentences are written in the past because the official website was closed in 2004 and the Open Content License has been replaced by the Creative Commons Licenses. [Lian04]

Dr. David Wiley said about the closing of the website in 2004:

„*OpenContent is officially closed. And that's just fine. My main goal in beginning OpenContent back in the spring of 1998 was to evangelize a way of thinking about sharing materials, especially those that are useful for supporting education.*“ [Lian04]

Nevertheless it is a good example because the Open Content License helps to understand some initial efforts of the Open Content movement/model.

In the Open Content License the term content is not defined. The license just states:

„*1. You may copy and distribute exact replicas of the OpenContent (OC) as you receive it, in any medium, provided that ...*“ [OCL07]

Therefore the license is applicable to all kind of content. Like mentioned before in the statement of Dr. Wiley the license was created especially with the academic/educational use in mind.

According to the license a person is allowed to make copies, to redistribute the content and to modify it.

The license allows the copying and distribution of exact replicas of the content on any medium. [Lian04] By copying and distribution of the content licensed under the Open Content license it is necessary to publish on each copy a ap-

propriate copyright notice, all references to the license and even a copy of the license along with the content.

Of course the license forbids to charge a fee for the content. But otherwise it allows to charge a fee for the offline distribution when medium or handling costs are involved. Moreover it allows a fee for instructional support or for offering an optional warranty.

Important to mention is that a derivative work has to be distributed on the same terms as the original. This is according to the before mentioned Copyleft effect (see chapter 4.1 under Derivative Works). Furthermore the derivative work has to carry prominent notice that the content has been changed and exact nature and content of the changes (with the dates of change).

Although the official website is closed the license text can be viewed at http://opencontent.org/opl.shtml.

5 Conclusion

As it can be seen the overall topic of the Open Content licenses especially when looking at copyright law as in chapter 1 and finding a definition for Open Content and Open Access is quite complex.

Concerning Open Access there is really a big movement going on and the author thinks that the Open Access idea is a good initiative which can improve scientific publishing, scientific research and even other areas. Of course do publishers of subscription-based journals have thoughts against Open Access but the author thinks that nearly all people can profit from Open Access.

After studying many Open Content licenses and researching Open Access for a remarkable span of time the author comes to the conclusion that the Creative Commons Licenses are quite good suitable for licensing Open Access papers (for details and reasons see relevant chapters). As it can be seen on page 2 this paper has also been licensed under a Creative Commons Attribution Share-alike license. The licensing process is intuitive, easy and does not cost much time.

This said the author could only advise each reader of this paper to have a look at Open Access and the Creative Commons Licenses (or other Open Content licenses) and at least think about it.

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