

Copyright and Digital Preservation: The Role of Open Licenses



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Information Environmentalism



Information Environmentalism

- Stewardship of valuable resources
 - Long-term risk analysis
 - Depletion/destruction
 - Access/use
 - Cognitive challenge of long-term planning
 - Institutional incentive challenge of same

Copyright and the Information Environment

- Once upon a time, copyright was an opt-in and opt-out system.
- In the US, had to register, deposit and publish with notice to opt-in.
 - These requirements diminished to publication-with-notice and then ended for all works published on or after March 1, 1989
 - Many works published without notice
 - In the public domain in the US

Copyright and the Information Environment

- Copyright also had to be renewed.
- The majority of works were not renewed (more than 60%).
- Result = public domain in the US

Ripe for preservation and access

Political/Legal Risk – *Golan/Hathi*

Copyright and the Information Environment

- Copyright is now automatic
- Attaches to nearly all digital works, so long as they involve a “minimal spark” of creativity
- This means rights to control uses of digital resources are all owned for the life of the author plus 70 years.
- Like policy makers, these owners do not think about long-term
 - Very little “estate planning” for copyright

Copyright and the Information Environment

- ❑ Ownership has limits
- ❑ Preservation community can and should make use of fair use, first sale and other limits on copyright.
- ❑ Fair use will provide substantial room to make preservation copies and, in many cases, to provide access.

Copyright and the Information Environment

- Digital Rights Management/Technological Protection Measures
 - Exception for libraries and archives wholly unsatisfactory (can crack DRM/TPM only to decide whether to buy)

Ask #1

- Can the Preservation Community organize itself to be the voice of tomorrow's users on issues of copyright policy and copyright estate planning?
 - Orphan works legislation
 - Copyright term extension or “restoration”?
 - Library/archives limitations
 - Exceptions to DRM/TPM rules
 - Good practices for open licensing in the long term (more in a minute . . .)

Copyright and the Information Environment

- Licensing instead of legislation
 - The self-help movement toward openness.

Creative Commons

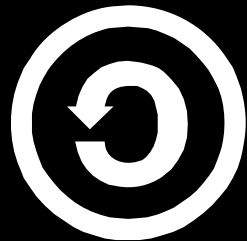
□ Enter Creative Commons

- Idea (May 2001)
 - Inspired by Open Source
- Tools (December 2002)
 - Legal
 - Executable
- Movement
 - Progress through sharing
- <http://mirrors.creativecommons.org/getcreative/>

Step 1: Choose Conditions



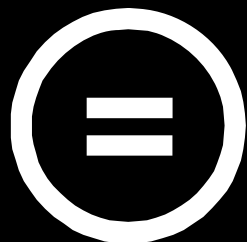
Attribution



ShareAlike



NonCommercial



NoDerivatives

Step 2: Receive a License



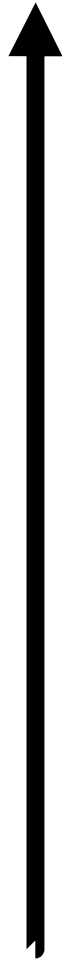


CC0 public
domain dedication

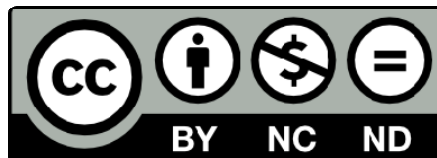
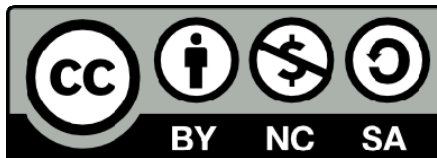
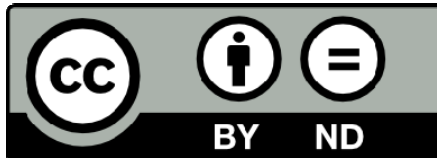
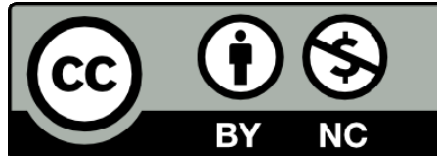


Public Domain
Mark

most free



least free





3 layers

You are free:



to Share — to copy, distribute and transmit the work



to Remix — to adapt the work



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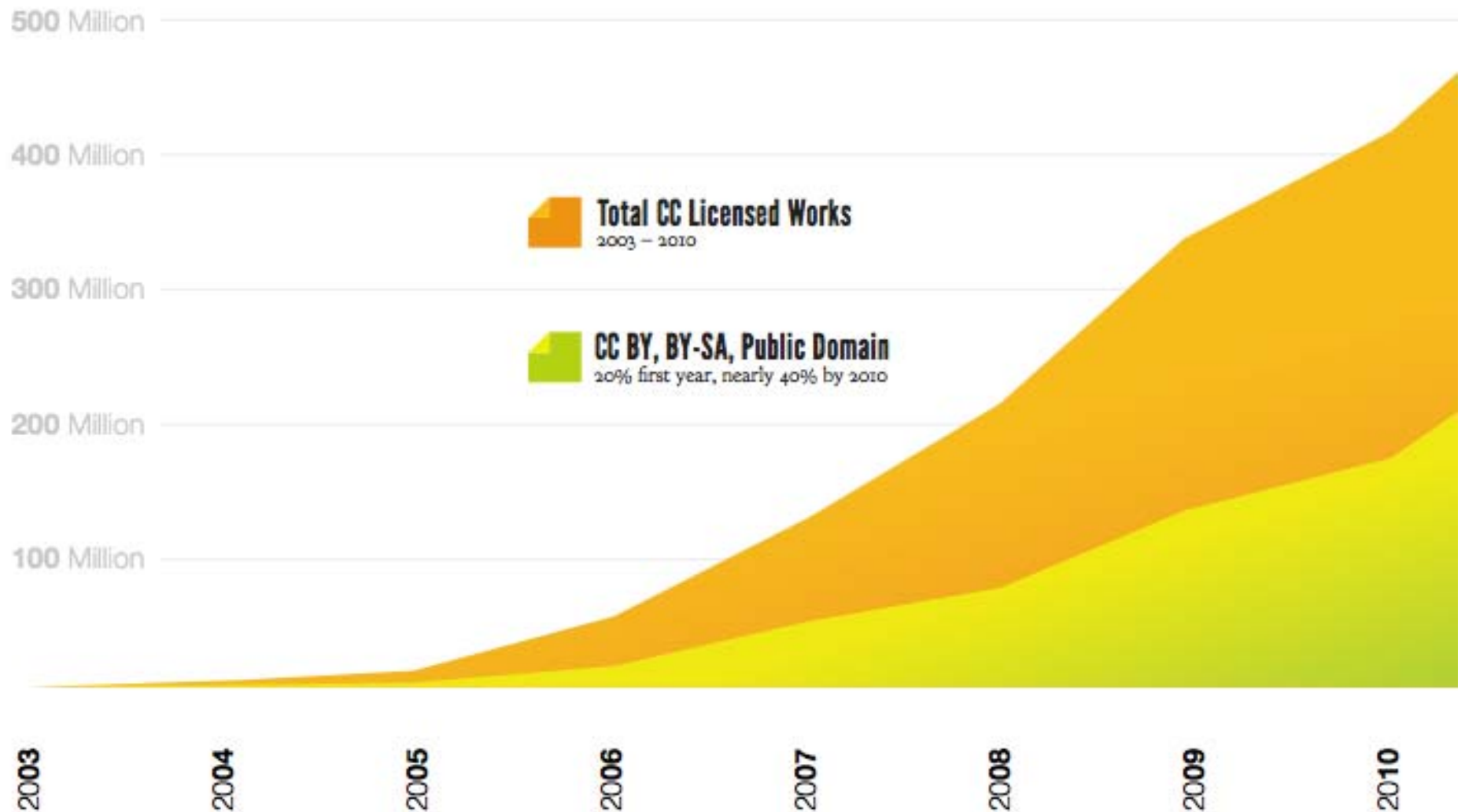
1. Definitions

- a. **"Adaptation"** means a work based upon the Work, or upon the Work and other pre-existing works, such as a translation, adaptation, derivative work, arrangement of music or other alterations of a literary or artistic work, or phonogram or performance and includes cinematographic adaptations or any other form in which the Work may be recast, transformed, or adapted including in any form recognizably derived from the original, except that a work that constitutes a Collection will not be considered an Adaptation for the purpose of this License. For the avoidance of doubt, where the Work is a musical work, performance or phonogram, the synchronization of the Work in timed-relation with a moving image ("synching") will be considered an Adaptation for the purpose of this License.
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- d. **"Licensor"** means the individual, individuals, entity or entities that offer(s) the Work under the terms of this License.
- e. **"Original Author"** means, in the case of a literary or artistic work, the individual, individuals, entity or entities who created the Work or if no individual or entity can be identified, the publisher; and in addition (i) in the case of a performance the actors, singers, musicians, dancers, and other persons who recite, sing, declaim, play in, interpret or otherwise perform literary or artistic works or expressions of folklore; (ii) in the case of a phonogram the producer being the person or legal entity who first fixes the sounds of a performance or other sounds; and, (iii) in the case of broadcasts, the organization that transmits the broadcast.

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<span rel="dc:type"
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property="dc:title">My Book</span> by
<a rel="cc:attributionURL"
property="cc:attributionName"
href="http://example.org/me">My Name</a>
is licensed under a
<a rel="license"
href="http://creativecommons.org/licenses
/by/3.0/">Creative Commons Attribution
3.0 License</a> and is an adaptation of
<a rel="dc:source"
href="http://example.net/her_book"/>Her
book</a>.</div>
```

400MM+
TOTAL CC LICENSED WORKS
AS OF 2010

40%
USING A FULLY OPEN
CC LICENSE
AS OF 2010

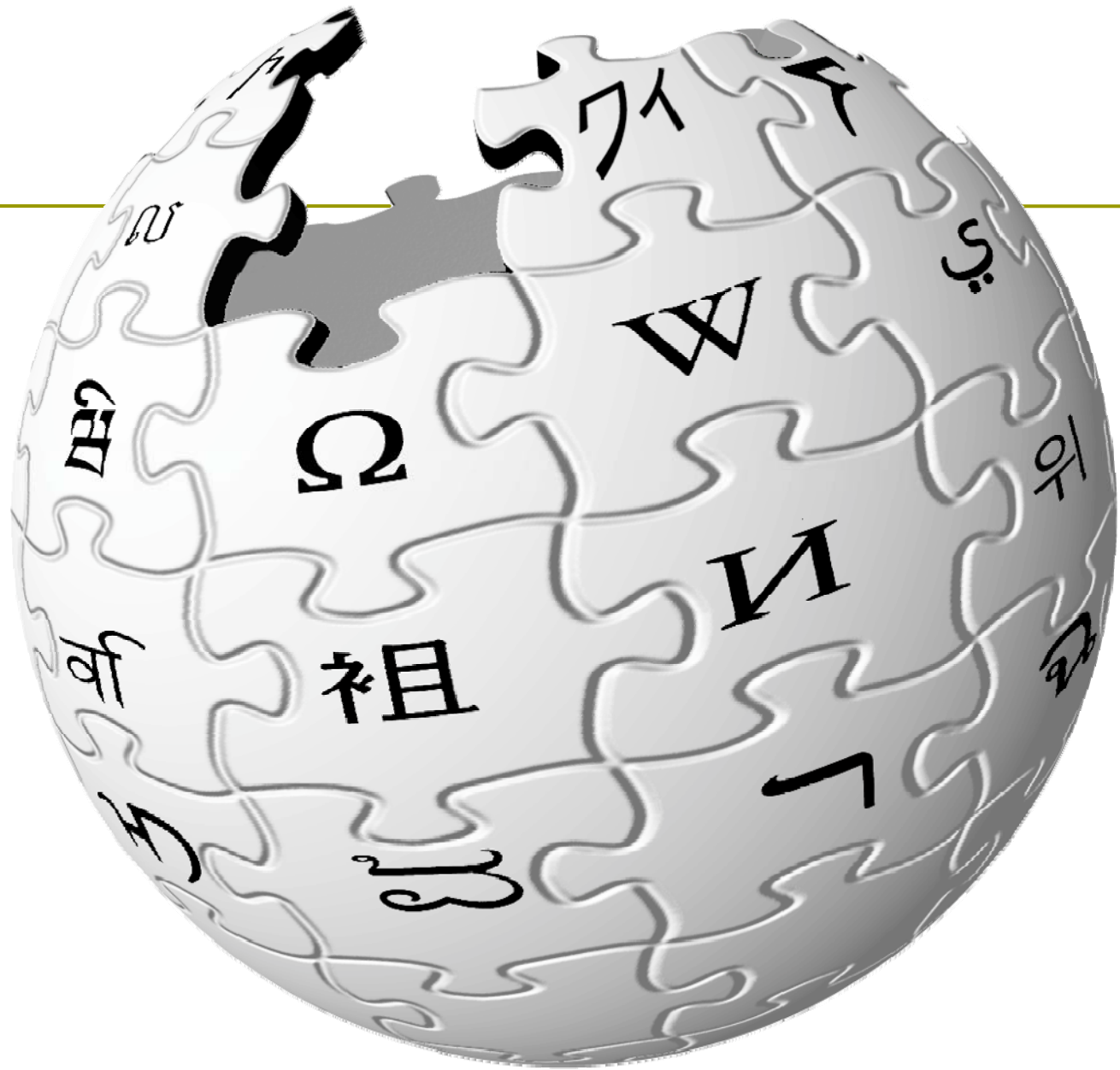


Updated #s (and growing fast)

Over 500 million
linkbacks

72 Creative Commons “Affiliate” Teams





Creative Commons Licenses

□ Only digital works?

No

Author of any work can say this is under a CC license and provide URL.

Example

[http://law.bepress.com/cgi/viewcontent.cgi?article=1074
&context=villanovalwps](http://law.bepress.com/cgi/viewcontent.cgi?article=1074&context=villanovalwps)

Creative Commons Licenses

- What are these works in the licensed commons?
 - Blogs
 - Photos (Flickr)
 - Research (Public Library of Science, BioMed)
 - Teaching materials (MIT, Rice, Berklee, etc.)
 - Music (Wired CD, Magnatune, etc.)
 - Film (documentaries, shorts, etc.)
 - Books (novels, non-fiction, technical, etc.)
 - Visual art
 - Creativity of all kinds

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 - Teaching materials (MIT, Rice, Berklee, etc.) <http://ocw.mit.edu/index.html>
 - <http://www.berkleeshares.com/>
 - Music (Wired CD, Magnatune, etc.)
 - Film (documentaries, shorts, etc.) <http://www.youtube.com/watch?v=eUphos2hqWk>
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Ask #2

- Can the Preservation Community promote copyright practices that will assist in preservation and access to preserved materials?

Suggestions

- Mark the digital public domain
 - <http://carrollogos.blogspot.com/2008/12/digital-public-domain.html>
- Encourage use of open licenses at the time of publication
- If not, embed copyright licensing in long-term contingency planning – e.g. LOCKSS
- Consider use of the “springing” open license
 - Grant the open license now with an effective date in the future
 - Grant the open license now triggered by other contingencies

Suggestions

- Mark preserved materials with all relevant copyright information
 - E.g., author information, since copyright duration based on author's lifetime.



