

CREATIVE COMMONS PEOPLE: USING THE CREATIVE COMMONS IN THE REAL WORLD

The Creative Commons approach to licensing music allows rights holders new ways to control how their music is used by replacing "all rights reserved" with "some rights reserved". As file-sharing and downloading change how music can be accessed and used, John Buckman of Magnatune explains why his company is attracted to Creative Commons and what the licensing and marketing benefits are.

Creative Commons: what's the appeal?

In autumn of 2002, I was putting together my company with the intention of creating a new breed of record label. Frustratingly, I was faced with a multitude of legal questions. How could I legally allow visitors to listen to MP3 music on my website? What would those visitors be allowed to do with that music? How could I take advantage of the 'sharing' and word-of-mouth culture of the Internet to promote my business while still remaining legal?

I chose to use a Creative Commons licence. In this article, I'd like to explain what this means, the reasons for doing so, and give a status report - two years into it - on how this decision has impacted on my business.

The freedom to create 'derivative works' is part of what has made the Internet a success, allowing people to freely build on others' work. Unfortunately, it's been largely absent in the music world, where control reigns, other than use of the public-domain canon of classical music.

How does Creative Commons work?

Lawrence Lessig, an American law professor and author, realised that a large gap exists between Internet Culture and the Legal World. Internet Culture, with its emphasis on sharing, communications and openness has produced a variety of wonderful things in recent years - perhaps the greatest explosion of creativity in this century. Lessig's fear was that the Legal World, which doesn't automatically embrace these values, is endangering the future of Internet Culture. He endeavored to bridge Internet Culture and Legal Culture, and the Creative Commons is his creation. The Creative Commons licences make it easy for creators of new works to support positive values, cheaply and legally, while still holding on to rights that the creator wants to retain.

When you create something new - such as a song or a story - you automatically get certain creator's rights over that new work. The term 'copyright' doesn't refer to just one right, but to a spectrum of rights you are granted, such as the right to control how that work is published, how it's used, as well as several other rights. When you declare a 'copyright' on a work, you effectively say that you control all aspects of how

that work can be used. This is why 'copyright' is often followed by the words "all rights reserved".

At the other end of the spectrum is the concept of 'public domain'. When you, as a creator, assign your work to the public domain, you release all your rights to that work: it is the opposite of "copyright: all rights reserved". You now have no control.

Striking the balance between "all rights reserved" and the public domain

These two extremes are not very useful on the Internet, where the mere visiting of a web page represents 'copying' HTML and graphics to your computer so that they can be displayed. Many forms of audio playback on the Internet, such as MP3 files, involve copying the entire file to your computer so that they can be played. In order to deal with this legal tangle, many websites have a "terms of use" page which explains, in sleep-inducing detail, exactly what legal rights they are granting you.

The problem with the 'terms of use' approach to website content is that it: a) requires money to be thrown at lawyers; b) isn't understandable by ordinary (non-lawyer-y) people; and c) every website has a different legal document, incurring a high legal cost if one is to try to understand what rights are being granted, such as to mix content from various sites to create a new work (e.g. a new article).

The Creative Commons tries to fix this mess. At the Creative Commons website, you will find a computerised licence creation engine, which creates standardised "some rights reserved" legal licences according to a short number of important parameters you choose to give it. But what's most interesting about the Creative Commons is that its licence generator makes it easy to create legal licences which represent certain social goals, such as openness, allowing non-commercial use of a work at no cost, and allowing reuse.

Allowing commercial use and modifications or not?

When you want to assign a Creative Commons licence to your work, you are faced with two decisions about how others will be able to use your work. The first is: *Do you want to allow commercial use of your work, at no cost and without your permission being needed?*

We are not unusual in the business world in that we exist to make money. As such, I wasn't willing to allow commercial use of our music for free. However, I reasoned that non-commercial use, such as our music appearing in a student film, or having the music appear on music recommendation websites such as www.webjay.org, would serve as free advertising and create enthusiasm for Magnatune.

When uses of our music are non-commercial, no-one is making money from it, and the likelihood of my being able to charge for that use is pretty low. Furthermore, our music is widely distributed through these free non-commercial uses, essentially providing us with free advertising. Since we also license music for commercial use, I reasoned that film students have to eventually graduate and will then want to pay for our music because of our earlier generosity.

The second question touches at the heart of Internet Culture: *Can people modify your work and, if so, does the new work have to also have a Creative Commons licence on it?* A resounding 'yes' has been part of the success of Linux and other open-source projects, but has not appeared in other, non-software, spheres.

Under the "copyright: all rights reserved" system, all these uses of music require explicit permission of the copyright holder. They typically involve hefty legal fees to allow the use.

This freedom to create 'derivative works' is part of what has made the Internet a success, allowing people to freely build on others' work. Unfortunately, it's been largely absent in the music world, where control reigns, other than use of the public-domain canon of classical music.

There's an intriguing twist to this second question: what some call the 'viral' effect of open source licences. The Linux operating system carries a software licence called The GNU Public Licence, which requires all who make new works using some GNU licence source code to release any changes they make under a GNU licence. In practice, this means that if you build on GNU licence programs, your programme will also need to be GNU licensed.

Magnatune's decision was to allow others to create new works using our music, but to require these new works to carry a Creative Commons licence. Why? There is a well-known, successful business model in the software business, where an open source licence is granted for free, but companies not wanting to be restricted by that licence choose to pay for a different licence with different terms. It's a variation on the shareware concept; offer something limited but useful for free, and charge for an unrestricted full product.

Conclusion. Creative Commons goes global

The Creative Commons' goal is to enable creators to release their works with "some rights reserved", striking a balance between the creator's personal desires, their social desire for improving the world, and creating a better future for creators in general. Since the Creative Commons is a global effort, recent advances have included translations and localised versions of the licenses to 14 legal jurisdictions. Recently, the v2.0 release of the Creative Commons licence allows for one to release derivative works under the locally-adapted version of the Creative Commons licence, for example using works under the French and American licences and releasing under the same (but adapted) UK licence.

With the legal framework under its belt, the Creative Commons organisation has focused on promotion, with the launch of CC Mixter, a remix website (run by Magnatune artist Victor Stone), a popular free 'remix me' CD included in an issue of *Wired* and the launch of the Science Commons, (an attempt to open up the field of scientific publishing).

As a critical mass of licensed works builds, the future looks bright for the Creative Commons. Thanks to its efforts, it is easier for new works to be built on previous ones. The competitive advantage of building on existing works is often greater than the 'go-it-alone' approach, that even companies as mighty as Microsoft are having trouble competing. The Linux phenomena may spread to other venues. Let's look forward to the day when we can easily build on the past, without lining the pockets of lawyers along the way.

John Buckman

John is the founder of Magnatune.com

THE CREATIVE COMMONS IN 30 SECONDS

HOW CREATIVE COMMONS WORKS

- Visit www.creativecommons.org and set use terms.
- Others may then use your work non-commercially for free.
- Commercial uses of your work still require a licence from you, and you may charge for that license.
- Allowing free non-commercial use can help promote the company and catalogue.

TYPES OF CREATIVE COMMONS LICENCES

- Non-commercial-derivs licence: allow non-commercial use. New works may use your work but only if the new work is CC licensed.
- 'Share Music' – allows track sharing via P2Ps but not for other uses.
- 'Sampling' – allows sampling of the tracks so long as the new track is 'highly transformative'. Will not allow use of unmodified track in a film, for example.

RISKS ASSOCIATED WITH CREATIVE COMMONS

You may not agree with the ways in which the music is used. For example, your music may be played at a political rally for a party whose politics you do not endorse. Or, a church may play your music, and you do not agree with their religion.

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